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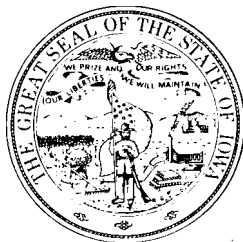
Containing

Sections of the Laws of Iowa
of a General and Permanent Nature
Enacted, Amended, or Repealed by the
1985 Regular Session
of the

General Assembly of the State of Iowa

and Including

Certain Amendments Enacted Earlier
With Delayed Effective Dates



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1985

PREFACE TO 1985 IOWA CODE SUPPLEMENT

This 1985 Iowa Code Supplement shows sections of the laws of Iowa enacted, amended, or repealed by the 1985 session of the Iowa General Assembly, arranged in the numerical sequence followed by the 1985 Iowa Code. It also shows certain sections amended by chapter 186 of the 1983 Iowa Acts and chapter 1120 of the 1984 Iowa Acts, which take effect July 1, 1986. However, it does not show temporary sections, such as appropriation sections, which are not to be codified.

EFFECTIVE DATES. Except as otherwise indicated in the text or in a footnote, the new sections, amendments, and repeals were effective on or before July 1, 1985. See the Iowa Acts to determine whether a provision was effective upon publication.

NOTES. A source note following each new or amended section refers to the bill file number and the appropriate chapter and section number in the Iowa Acts where the new section or amendment can be found in the form it had upon passage. Repeals are indicated in the form used in the 1985 Code. Following the source note or repeal may be a footnote. A footnote to an amended section usually refers only to the amended part and not necessarily to the entire section as printed. Cross-reference footnotes and other footnotes from the 1985 Code generally are not included but will be corrected as necessary and appear in the 1987 Code. Occasionally a footnote is shown for a section which, although not directly amended, is affected by some part of the 1985 Acts. In this case, only the section headnote is shown preceding the footnote. Following the source note or footnote for a new or amended section is an explanatory note to indicate whether the section or a part of it is new, or was amended, struck, or struck and rewritten.

EDITORIAL DECISIONS. If there were multiple amendments to a section or part of a section, all changes that were duplicative or otherwise did not appear to conflict were harmonized as authorized in section 4.11 of the Code. It was generally assumed that a strike or repeal prevailed over an amendment to the same material and did not create an irreconcilable conflict, and that the substitution of the correct title of an officer or department as authorized by law did not create a conflict. At the end of this Supplement are Code editor's notes which explain the major editorial decisions. Section 14.13 in this Supplement governs the ongoing revision of gender references, authorizes other editorial changes, and provides for the effective date of the changes.

INDEX AND TABLES. A subject matter Index to new or amended sections, a table of the disposition of the 1985 Acts, and a table of corresponding sections from the 1985 Code to the 1985 Code Supplement also appear at the end of this Supplement. A major transfer and rearrangement of Code sections relating to criminal corrections was mandated by chapter 21 of the 1985 Acts and is found in chapter 246 of this Supplement.

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CHAPTER 2

GENERAL ASSEMBLY

2.12 Expenses of general assembly and legislative agencies—budgets.

There is hereby appropriated out of any funds in the state treasury not otherwise appropriated a sum sufficient to pay for legislative printing and all current and miscellaneous expenses of the general assembly, authorized by either the senate or the house, and the state comptroller is hereby authorized and directed to issue warrants for such items of expense upon requisition of the president and secretary of the senate or the speaker and chief clerk of the house.

There is hereby appropriated out of any funds in the state treasury not otherwise appropriated, such sums as may be necessary, for each house of the general assembly for the payment of any unpaid expense of the general assembly incurred during or in the interim between sessions of the general assembly, including but not limited to salaries and necessary travel and actual expenses of members and expenses of standing and interim committees or subcommittees and per diem or expenses for members of the general assembly who serve on statutory boards, commissions, or councils for which per diem or expenses are authorized by law. The state comptroller is hereby authorized and directed to issue warrants for such items of expense upon requisition of the president and secretary of the senate for senate expense or the speaker and chief clerk of the house for house expense.

There is hereby appropriated out of any funds in the state treasury not otherwise appropriated, such sums as may be necessary for the renovation, remodeling, or preparations of the legislative chambers, legislative offices, or other areas or facilities used or to be used by the legislative branch of government, and for the purchase of such legislative equipment and supplies deemed necessary to properly carry out the functions of the general assembly. The state comptroller is hereby authorized and directed to issue warrants for such items of expense, whether incurred during or between sessions of the general assembly, upon requisition of the president and secretary of the senate for senate expense or the speaker and chief clerk of the house for house expense.

There is appropriated out of any funds in the state treasury not otherwise appropriated such sums as may be necessary for the fiscal year budgets of the legislative service bureau, the legislative fiscal bureau, the citizens' aide office and the computer support bureau for salaries, support, maintenance, and miscellaneous purposes to carry out their statutory responsibilities. The legislative service bureau, the legislative fiscal bureau, the citizens' aide office and the computer support bureau shall submit their proposed budgets to the legislative council not later than September 1 of each year. The legislative council shall review and approve the proposed budgets not later than December 1 of each year. The budget approved by the legislative council for each of its statutory legislative agencies shall be transmitted by the legislative council to the state comptroller on or before December 1 of each year for the fiscal year beginning July 1 of the following year. The state comptroller shall submit the approved budgets received from the legislative council to the governor for inclusion in the governor's proposed budget for the succeeding fiscal year. The approved budgets shall also be submitted to the chairpersons of the committees on appropriations. The committees on appropriations may allocate from the funds appropriated by this section the funds contained in the approved budgets, or such other amounts as specified, pursuant to a concurrent resolution to be approved by both houses of the general assembly. The state comptroller shall issue warrants for salaries, support, maintenance, and miscellaneous purposes upon requisition by the administrative head of each statutory legislative agency. If the legislative council elects to change the approved budget for a legislative agency prior to July 1, the legislative council shall transmit the amount of the budget revision to the state

comptroller prior to July 1 of the fiscal year, however, if the general assembly approved the budget it cannot be changed except pursuant to a concurrent resolution approved by the general assembly.

85 Acts, ch 65, §1 SF 409
NEW unnumbered paragraph 4

2.15 Powers and duties of standing committees.

The powers and duties of standing committees shall include, but shall not be limited to, the following:

1. Introducing legislative bills and resolutions.
2. Conducting investigations with the approval of either or both houses during the session, or the legislative council during the interim, with authority to call witnesses, administer oaths, issue subpoenas, and cite for contempt.
3. Requiring reports and information from state agencies as well as the full co-operation of their personnel.
4. Selecting nonlegislative members when conducting studies as provided in section 2.14.
5. Undertaking in-depth studies of governmental matters within their assigned jurisdiction, not only for the purpose of evaluating proposed legislation, but also for studying existing laws and governmental operations and functions to determine their usefulness and effectiveness, as provided in section 2.14.
6. Reviewing the operations of state agencies and departments.
7. Giving thorough consideration to, establishing priorities for, and making recommendations on all bills assigned to committees.
8. Preparing reports to be made available to members of the general assembly containing the committee's findings, recommendations, and proposed legislation.

A standing committee may call upon any department, agency or office of the state, or any political subdivision of the state, for information and assistance as needed in the performance of its duties and the information and assistance shall be furnished to the extent that they are within the resources and authority of the department, agency, office or political subdivision. This paragraph does not require the production or opening of any records which are required by law to be kept private or confidential.

85 Acts, ch 67, §1 SF 121
Unnumbered paragraph 2 (last paragraph) amended

2.32 Confirmation of appointments—procedures.

1. The governor shall either make an appointment or file a notice of deferred appointment by March 15 for the following appointments which are subject to confirmation by the senate:
 - a. An appointment to fill a term beginning on May 1 of that year.
 - b. An appointment to fill a vacancy, other than as provided for in paragraph "d," existing prior to the convening of the general assembly in regular session in that year.
 - c. An appointment to fill a vacancy, other than as provided for in paragraph "d," which is known, prior to the convening of the general assembly in regular session, will occur before May 1 of that year.
 - d. An appointment to fill a vacancy existing in a full-time compensated position on December 15 prior to the convening of the general assembly.
2. If a vacancy in a position requiring confirmation by the senate, other than a full-time compensated position, occurs after the convening of the general assembly in regular session, the governor shall, within sixty calendar days after the vacancy occurs, either make an appointment or file a notice of deferred appointment unless the general assembly has adjourned its regular session before the sixty-day period expires. If a vacancy in a full-time compensated position requiring senate confirmation occurs after December 15, the governor shall, within ninety calendar days after the vacancy occurs, make an appointment or file a notice of deferred appointment

unless the general assembly has adjourned its regular session before the ninety-day period expires.

3. If an appointment is submitted pursuant to subsection 1, the senate shall by April 15 of that year either approve, disapprove or by resolution defer consideration of confirmation of the appointment. If an appointment is submitted pursuant to subsection 2, the senate shall either approve, disapprove or by resolution defer consideration of confirmation of the appointment within thirty days after receiving the appointment from the governor. The senate may defer consideration of an appointment until a later time during that session, but the senate shall not adjourn that session until all appointments submitted pursuant to this section before the last thirty days of the session are approved or disapproved. If a nomination is submitted during the last thirty days of the session, the senate may by resolution defer consideration of the appointment until the next regular session of the general assembly and the nomination shall be considered as though made during the legislative interim.

Sixty days after a person's appointment has been disapproved by the senate, that person shall not serve in that position as an interim appointment or by holding over in office and the governor shall submit another appointment or file a notice of deferred appointment before the sixty-day period expires.

4. The governor shall submit all appointments requiring confirmation by the senate and notices of deferred appointment to the secretary of the senate who shall provide the governor's office with receipts of submission. Each notice of appointment shall be accompanied by a statement of the appointee's political affiliation. The notice of a deferred appointment shall be filed by the governor with the secretary of the senate and accompanied by a statement of reasons for the deferral.

5. The senate shall adopt rules governing the referral of appointments to committees, the reports of committees on appointments, and the confirmation of appointments by the senate.

6. The confirmation of every appointment submitted to the senate requires the approval of two-thirds of the members of the senate.

7. The governor shall file by February 1 with the secretary of the senate a list of all the appointment positions requiring gubernatorial action pursuant to subsection 1. The secretary of the senate shall provide the governor a written acknowledgement of the list within five days of its receipt. The senate shall approve the list or request corrections by resolution by February 15.

85 Acts, ch 145, §1 SF 584

Subsection 3, unnumbered paragraph 1 amended

2.42 Powers and duties of council.

The legislative council shall select its officers and prescribe its rules and procedure. The powers and duties of the council shall include, but not be limited to, the following:

1. To establish policies for the operation of the legislative service bureau, including the priority to be given to research requests and the distribution of research reports.

2. To appoint the director of the legislative service bureau for such term of office as may be set by the council.

3. To prepare reports to be submitted to the general assembly at its regular sessions.

4. To appoint interim study committees consisting of members of the legislative council and members of the general assembly of such number as the council shall determine. Nonlegislative members may be included on such committees when the council deems the participation of such members advantageous to the conduct of the study.

5. To conduct studies and evaluate reports of studies assigned to study committees and make recommendations for legislative or administrative action thereon.

Recommendations shall include such bills as the legislative council may deem advisable.

6. To co-operate with other states to discuss mutual legislative and governmental problems.

7. To recommend staff for the legislative council and the standing committees in co-operation with the chairperson of such standing committees.

8. To recommend changes or revisions in the senate and house rules and the joint rules for more efficient operation of the general assembly and draft proposed rule amendments, resolutions, and bills as may be required to carry out such recommendations, for consideration by the general assembly.

9. To recommend to the general assembly the names and numbers of standing committees of both houses.

10. To establish rules for the style and format for drafting and preparing of legislative bills and resolutions.

11. To appoint the Code editor, establish the salaries of the persons employed in that office and establish policies with regard to the printing and publishing of the Iowa administrative code and bulletin, the Code of Iowa and session laws, including but not limited to: The style and format to be used in publishing such documents, the frequency of publications, the contents of such publications, the numbering system to be used in the Code and session laws, the preparation of editorial comments or notations, the correction of errors, the type of print to be used, the number of volumes to be published, recommended revisions of the Code and session laws, the letting of contracts for the publication of the Code and session laws, and any other matters deemed necessary to the publication of a uniform and understandable Code of laws.

12. To establish policies for the operation of the legislative fiscal bureau.

13. To appoint the director of the legislative fiscal bureau for such term of office as may be set by the council.

14. To hear and act upon appeals of aggrieved employees of the legislative service bureau, legislative fiscal bureau, computer support bureau, and the office of the citizens' aide pursuant to rules of procedure established by the council.

15. To fix the compensation of the director of the legislative oversight bureau.

16. Authority to review and delay the effective dates of rules and forms submitted by the supreme court pursuant to section 602.4202.

17. To establish policies for the operation of the computer support bureau.

18. To appoint the director of the computer support bureau for a term of office set by the council.

85 Acts, ch 65, §2,3 SF 409;85 Acts, ch 197, §1 SF 570
Subsections 14 and 16 amended
NEW subsections 17 and 18

2.52 Access.

The director and agents and employees of the legislative fiscal bureau shall at all times have access to all offices, departments, agencies, boards, bureaus, and commissions of the state and its political subdivisions and private organizations providing services to individuals under contracts with state agencies, and to the books, records, and other instrumentalities and properties used in the performance of their statutory duties or contractual arrangements. All offices, departments, agencies, boards, bureaus, and commissions of the state and its political subdivisions and such private organizations shall co-operate with the director, and shall make available such books, records, instrumentalities, and property.

If the information sought by the legislative fiscal bureau is required by law to be kept confidential, the bureau shall have access to the information, but shall maintain the confidentiality of the information and is subject to the same penalties as the lawful custodian of the information for dissemination of the information. However, the legislative fiscal bureau shall not have access to tax return information except for individual income tax sample data as provided in section 422.72, subsection 1.

85 Acts, ch 67, §2 SF 121
Unnumbered paragraph 1 amended

2.55 Program evaluations.

1. The general assembly may by concurrent resolution or the legislative council may direct the legislative fiscal bureau to conduct a program evaluation of any agency of the state government. Upon the passage of the concurrent resolution or receiving the direction of the legislative council, the legislative fiscal director shall inform the chairpersons of the committees responsible for appropriations of the anticipated cost of the program evaluation and the number and nature of additional personnel needed to conduct the program evaluation and shall notify the official responsible for the program to be evaluated.

2. In conducting the program evaluation, the legislative fiscal bureau shall make certain determinations including but not limited to the following:

a. Whether the state agency is conducting programs and activities and expending funds appropriated to it in compliance with the Acts of the general assembly, the Code, and any federal, state or local rules which are applicable.

b. Whether the state agency is conducting authorized activities and programs pursuant to objectives intended by the general assembly.

c. Whether the state agency is conducting programs and activities and expending funds appropriated to it in an efficient and effective manner.

d. Whether there are areas in which significant inconsistency, duplication, or overlapping of activities or programs occur either within the agency or with respect to other agencies or programs.

e. The productivity of the agency's operations measured in terms of cost-benefit relationships or other accepted measures of effectiveness.

3. Upon the completion of the program evaluation, the legislative fiscal director shall provide a copy of the report to the governing official or board of the agency and afford the agency a reasonable opportunity to respond to the findings and recommendations of the report. The response shall be included in the report and the report released to the legislative council. Until its release the report shall be regarded as confidential by all persons properly having custody of it.

85 Acts, ch 65, §4 SF 409
Subsection 4 struck

COMPUTER SUPPORT BUREAU

2.100 Computer support bureau.

A computer support bureau is established under the direction and control of the legislative council. The administrative head of the computer support bureau is the director of the bureau. The computer support bureau shall serve the general assembly and the legislative council. The computer support bureau shall also provide services and support for the computer systems used by the legislative staff, the legislative service bureau, the public information office, the Code editor's office, the office of the citizens' aide and the legislative fiscal bureau.

85 Acts, ch 65, §5 SF 409
NEW section

2.101 Director.

The director of the computer support bureau shall serve on a full-time basis, and shall:

1. Employ and supervise all employees of the computer support bureau in positions and at salaries authorized by the legislative council.

2. Supervise all expenditures of the computer support bureau with the approval of the legislative council.

3. Advise the legislative council on matters relating to computer services and computer needs and uses of the legislative computer system.

4. Cooperate with legislative agencies under the control of the legislative council and the secretary of the senate and the chief clerk of the house in developing and

maintaining computer services required by the legislative council and the general assembly.

85 Acts, ch 65, §6 SF 409
NEW section

2.102 Director—salary.

The salary of the director of the computer support bureau shall be set by the legislative council.

85 Acts, ch 65, §7 SF 409
NEW section

2.103 Powers and duties.

The computer support bureau is responsible for the operation and maintenance of the legislative computer system. The bureau shall also advise the legislative council and legislative agencies under its control on uses and expanded capabilities of the legislative computer system.

85 Acts, ch 65, §8 SF 409
NEW section

2.104 Budget.

Expenses of the computer support bureau shall be paid upon approval of the director of the bureau. The budget of the computer support bureau for each fiscal year shall be prepared by the director and submitted to the legislative council.

85 Acts, ch 65, §9 SF 409
NEW section

CHAPTER 7A

PLANNING AND PROGRAMMING OFFICE

DIVISION V

COMMUNITY CULTURAL GRANTS PROGRAM

7A.51 Title.

This division shall be known and may be cited as the “Iowa community cultural grants program Act”.

85 Acts, ch 109, §1 HF 555
NEW section

7A.52 Community cultural grants commission established.

The community cultural grants commission is established as a policymaking commission to direct the establishment and funding of community and cultural grants under appropriations provided by the general assembly.

The commission shall consist of five public members, not more than two from the same political party, appointed by the governor subject to confirmation by the senate under section 2.32, and one senator to serve as an ex officio nonvoting member, appointed by the president of the senate, and one representative to serve as an ex officio nonvoting member, appointed by the speaker of the house of representatives.

Notwithstanding section 69.19, the commission members’ terms of office shall be for three years beginning July 1. Vacancies shall be filled in the same manner as the original appointment.

Members of the commission while engaged in their official duties shall be reimbursed for their actual and necessary expenses. Members of the general assembly shall be reimbursed pursuant to section 2.12.

85 Acts, ch 109, §2 HF 555
NEW section

7A.53 Powers and duties.

1. The Iowa community cultural grants commission shall establish a program of grants to cities and community groups for the development of community programs that would provide local jobs for Iowa residents and at the same time promote a city's historical, ethnic, and cultural heritages through the development of festivals, music, drama, or cultural programs or tourist attractions.

2. At least twenty-five percent of the funds appropriated shall be used for the purpose of developing community programs eligible for grants under this division which were not in existence prior to the due date of grant applications each year.

a. A city or community group may submit applications to the Iowa community cultural grants commission. Applications shall be reviewed by the Iowa arts council, the state historical board, and the tourist division of the Iowa development commission, acting as an advisory committee to the commission. The advisory committee shall submit recommendations to the commission regarding possible recipients and grant amounts.

b. The amount of the grant shall not exceed fifty percent of the cost of the community program and the application must demonstrate that the city or community group will provide the required matching money. In lieu of providing the entire match in money, a city or community group may substitute in-kind services for up to fifty percent of the matching requirement.

85 Acts, ch 109, §3 HF 555
NEW section

7A.54 Reversion of funds.

Funds appropriated for this program will not revert to the general fund of the state until eighteen months following the beginning of the fiscal year for which they were appropriated.

85 Acts, ch 109, §4 HF 555
NEW section

CHAPTER 7B

JOB TRAINING PARTNERSHIP PROGRAM

7B.4 Services provided.

1. Services to the economically disadvantaged under the state program may include activities permitted under section 204 of the federal Act and any supportive services which are not inconsistent with the federal Act.

2. Services to dislocated workers under the state program may include those activities permitted under section 303 of the federal Act.

3. Funds allocated to the state and appropriated by the state under the federal Act shall not be used in a workfare program except as provided in subsection 4, paragraphs "a", "b", and "d".

4. Priority under this section is accorded any training services which include:

a. On-the-job training.

b. Classroom training.

c. A combination of work experience and remedial education.

d. Job search assistance, including jobs clubs.

e. Tuition assistance for appropriate state approved classroom and vocational-technical programs.

5. Services provided under this section shall be provided in a nondiscriminatory manner and shall promote training in traditional and nontraditional employment opportunities for all persons.

6. After consultation with the appropriate state agencies, the office of the governor shall provide, using state funds if necessary where federal funds are limited by

the federal Act, training allowances, expenses, stipends, and supportive services which enable eligible persons to participate in state training services.

7. Permissible supportive services provided for Title III program participants include, but are not limited to, the provision of financial counseling, transportation assistance, or child care to eligible persons.

8. The state shall refrain for a job of comparable value, without effecting further layoffs, any state employee displaced as a result of either the private wholesale or retail sale of wine.

85 Acts, ch 32, §100 SF 395
NEW subsection 8

CHAPTER 7C

PRIVATE ACTIVITY BOND ALLOCATION ACT

7C.1 Short title.

This chapter shall be known and may be cited as the "Private Activity Bond Allocation Act."

85 Acts, ch 225, §3 SF 449
NEW section

7C.2 Declaration of intent.

It is the intention of the general assembly in enacting this chapter to:

1. Implement Act section 621 of the Deficit Reduction Act of 1984, Pub. L. No. 98-369, by providing a different formula for allocating the state ceiling among the various governmental units which are authorized to issue private activity bonds under the laws of this state.

2. Maximize the availability of the state ceiling to the issuers of private activity bonds within the state and thereby maximize the economic benefit to the citizens of the state from the issuance of private activity bonds.

85 Acts, ch 225, §4 SF 449
NEW section

7C.3 Definitions.

For the purposes of this chapter, unless the context otherwise requires:

1. "*Internal Revenue Code of 1954*" means the Internal Revenue Code of 1954 as has been and may from time to time be amended.

2. "*State ceiling*" means the same as defined in section 103(n) of the Internal Revenue Code of 1954.

3. "*Bond*" or "*private activity bond*" means a private activity bond as defined in section 103(n) of the Internal Revenue Code of 1954.

4. "*Issuer*" means a city or county within the state or a not-for-profit corporation, agency, authority or other entity acting on behalf of a city, county, or the state which is authorized under the laws of the state to issue private activity bonds.

5. "*Carryforward project*" means carryforward project as defined in section 103(n) of the Internal Revenue Code of 1954.

6. "*Allocation*" means that portion of the state ceiling which is allocated and certified to an issuer by the governor's designee pursuant to section 7C.7 with respect to an issue of bonds for a specific project or purpose.

7. "*Governor's designee*" means the person, agency, or authority designated by the governor to administer this chapter.

85 Acts, ch 225, §5 SF 449
NEW section

7C.4 Maximum amount of bonds.

The aggregate principal amount of bonds which may be issued by all issuers during a calendar year shall not exceed the state ceiling for that calendar year, except as provided in section 7C.8.

85 Acts, ch 225, §6 SF 449
NEW section

7C.5 Formula for allocation.

The state ceiling shall be allocated among all issuers on the basis of the chronological order of receipt by the governor's designee of the applications described in section 7C.6.

85 Acts, ch 225, §7 SF 449
NEW section

7C.6 Application for allocation.

An issuer which proposes to issue bonds for a particular project or purpose must make an application, which application may be made by the beneficiary of the project or purpose or by a person acting on behalf of the beneficiary, for an allocation of a portion of the state ceiling, prior to the issuance of the bonds, by submitting an application to the governor's designee, in the form prescribed by the governor's designee, which contains, where appropriate, the following information:

1. Name and mailing address of the issuer.
2. Name of the chief elected executive officer of the issuer.
3. Name or description and location by mailing address or other definitive description of the project for which the allocation is requested.
4. Name and mailing address of both the initial owner, beneficiary, or operator of the project and an appropriate person from whom information regarding the project or purpose can be obtained.
5. Date of adoption by the governing body of the issuer of an inducement or other preliminary resolution for the purpose of taking "official action" as required by the United States treasury regulations promulgated under section 103 of the Internal Revenue Code of 1954, if the bonds require the taking of "official action" under the Internal Revenue Code of 1954.
6. Amount of the state ceiling which the issuer is requesting be allocated to the bonds.
7. Other information which the governor's designee deems reasonably required to carry out the purposes of this chapter.

85 Acts, ch 225, §8 SF 449
NEW section

7C.7 Certification of allocation.

Upon the receipt of a completed application, the governor's designee shall promptly certify to the issuer the amount of the state ceiling allocated to the bonds for the purpose or project with respect to which the application was submitted. The allocation shall remain valid for ninety days from the date the allocation is certified, subject to the following conditions:

1. If the bonds are issued and delivered for the purpose or project within the ninety-day period, the issuer or the issuer's attorney shall within ten days following the issuance and delivery of the bonds notify the governor's designee, in such form or manner as the governor's designee may prescribe, of the date of issuance and the delivery of the bonds, and the actual principal amount of bonds issued and delivered. If the actual principal amount of bonds issued and delivered is less than the amount of the allocation, the amount of the allocation is automatically reduced to the actual principal amount of the bonds issued and delivered.
2. If the issuer does not reasonably expect to issue and deliver the bonds within the ninety-day period and evidence of an executed, valid and binding agreement to purchase the bonds is obtained from an entity with the legal ability to purchase and

this agreement is filed with the governor's designee, the ninety-day allocation period is automatically extended for an additional thirty days. The allocation period shall not be extended beyond that additional thirty days.

3. The allocation is no longer valid after December 31 of the calendar year in which it is certified, except as provided in section 7C.8.

85 Acts, ch 225, §9 SF 449
NEW section

7C.8 State ceiling carryforwards.

It is the intention of the general assembly that the maximum use be made of all carryforward provisions in section 103(n) of the Internal Revenue Code of 1954. Therefore, if the aggregate principal amount of bonds issued by all issuers in a calendar year is less than the state ceiling for that calendar year, an issuer may apply to the governor's designee for an allocation of a specified portion of the excess state ceiling to be applied to a specified carryforward project. The governor's designee shall determine the time and manner in which applications for an allocation of excess state ceiling shall be made. However, the procedures for applications shall comply with the carryforward provisions of section 103(n) of the Internal Revenue Code of 1954 and regulations promulgated under that section.

85 Acts, ch 225, §10 SF 449
NEW section

7C.9 Nonbusiness days.

If the expiration date of either the ninety-day period or the thirty-day extension period described in subsection 1 or 2 of section 7C.7 is a Saturday, Sunday or any day on which the offices of the state, banking institutions or savings and loan associations in the state are authorized or required to close, the expiration date is extended to the first day thereafter which is not a Saturday, Sunday or other previously described day.

85 Acts, ch 225, §11 SF 449
NEW section

7C.10 Resubmission of expired allocations.

If an allocation becomes no longer valid as provided in section 7C.7, the issuer may resubmit its application for the same project or purpose. The resubmitted application shall be treated as a new application and preference, priority, or prejudice shall not be given to the application or the issuer as a result of the prior application.

85 Acts, ch 225, §12 SF 449
NEW section

7C.11 Priority allocations.

The governor's designee shall give priority in the allocation of the state ceiling to a project for which there was an inducement resolution or other comparable preliminary approval by an issuer before October 19, 1983, and which otherwise qualifies for priority under Act section 631(a)(3) of the Deficit Reduction Act of 1984, Pub. L. No. 98-369.

85 Acts, ch 225, §13 SF 449
NEW section

7C.12 Authority and duties of the governor and governor's designee.

The governor shall designate a person, agency, or authority to administer this chapter. The person, agency, or authority so designated shall serve at the pleasure of the governor and shall be selected primarily for administrative ability and knowledge in the area of public finance.

In addition to the powers and duties specified in sections 7C.1 to 7C.11, the governor's designee:

1. Shall promulgate reasonable rules which are necessary or expedient to carry out the intent and purposes of the private activity bond allocation Act.

2. Shall maintain appropriate records of all applications filed by issuers pursuant to section 7C.6 and all bonds issued pursuant to these applications including, but not limited to, a daily accounting of the amount of the state ceiling available for allocation and the amount of the state ceiling which has been allocated but not used.

85 Acts, ch 225, §14 SF 449
NEW section

CHAPTER 8

BUDGET AND FINANCIAL CONTROL ACT

8.6 Specific powers and duties.

The specific duties of the state comptroller shall be:

1. *Audit of claims.* To audit all demands by the state, and to preaudit all accounts submitted for the issuance of warrants.

2. *Collection and payment of funds—monthly payments.* To control the payment of all moneys into the treasury, and all payments from the treasury by the preparation of appropriate warrants, or warrant checks, directing such collections and payment and to advise the state treasurer monthly in writing of the amount of public funds not currently needed for operating expenses. Whenever the state treasury includes state funds that require distribution to counties, municipalities or other political subdivisions of this state, and said counties, municipalities and other political subdivisions do certify to the state comptroller that warrants will be stamped for lack of funds within the thirty-day period following said certification, the state comptroller may partially distribute such funds on a monthly basis. Whenever the Code requires that any fund be paid by a specific date, the comptroller shall prepare a final accounting and shall make a final distribution of any remaining funds prior to that date.

3. *Contracts.* To certify, record and encumber all formal contracts to prevent overcommitment of appropriations and allotments.

4. *Forms.* To prescribe all accounting and business forms and the system of accounts and reports of financial transactions by all departments and agencies of the state government other than those of the legislative branch, and to consult with all state officers and agencies which receive reports and forms from county officers, in order to devise standardized reports and forms which will permit computer processing of the information submitted by county officers, and to prescribe forms on which each municipality, at the time of preparing estimates required under section 24.3, shall be required to compile in parallel columns the following data and estimates for immediate availability to any taxpayer upon request:

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

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

c. For the proposed budget year, an estimate of revenue from all sources, other than revenue to be received from property taxation, separately stated as to each such source, to be allocated to each of the several funds, and for each fund the actual or estimated unencumbered cash balance, whichever is applicable, to be available at

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

d. To insure uniformity, accuracy, and efficiency in the preparation of budget estimates by municipalities subject to chapter 24, the comptroller shall prescribe the procedures to be used and instruct the appropriate officials of the various municipalities on implementation of the procedures.

5. *Accounts.* To keep the central budget and proprietary control accounts of the state government. Budget accounts are those accounts maintained to control the receipt and disposition of all funds, appropriations and allotments. Proprietary accounts are those accounts relating to assets, liabilities, income and expense.

6. *Preaudit system.* To establish and fix a reasonable imprest cash fund for each state department and institution for disbursement purposes where needed; provided, that these revolving funds shall be reimbursed only upon vouchers approved by the state comptroller. It is the purpose of this subdivision to establish a preaudit system of settling all claims against the state, but the preaudit system shall not be applicable to the institutions under the control of the state board of regents or to the state fair board.

7. *Fair board and board of regents.* To control the financial operations of the state fair board and the institutions under the state board of regents:

a. By charging all warrants issued to the respective educational institutions and the state fair board to an advance account to be further accounted for and not as an expense which requires no further accounting.

b. By charging all collections made by the educational institutions and state fair board to the respective advance accounts of the institutions and state fair board, and by crediting all such repayment collections to the respective appropriations and special funds.

c. By charging all disbursements made to the respective allotment accounts of each educational institution or state fair board and by crediting all such disbursements to the respective advance and inventory accounts.

d. By requiring a monthly abstract of all receipts and of all disbursements, both money and stores, and a complete account-current each month from each educational institution and the state fair board.

8. *Custody of records.* To have the custody of all books, papers, records, documents, vouchers, conveyances, leases, mortgages, bonds and other securities appertaining to the fiscal affairs and property of the state, which are not required to be kept in some other office.

9. *Apportionment of interest.* To apportion the interest of the permanent school fund on the first Monday of March of each year, among the area education agencies of this state in proportion to the number of persons between five and twenty-one years of age in each, as shown by the last report filed with the state comptroller by the commissioner of public instruction.

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

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

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

13. *Certification for levy.* On February 1 the state comptroller shall, for each year of the biennium, certify to the department of revenue, the amount of money to be levied for general state taxes.

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

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

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

17. *Budget report.* The comptroller shall prepare and file in the comptroller's office, on or before the first day of December of each even-numbered year, a state budget report, which shall show in detail the following:

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

b. A schedule showing a comparison of such estimates with the askings of the several departments for the current biennium and with the expenditures of like character for the last two preceding bienniums.

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

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

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

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

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

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

i. Statements showing:

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

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

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

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

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

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

(7) Such other data or information as the comptroller may deem advisable.

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

19. *Department of human services.* For the purpose of performing the duties of

the comptroller provided in this chapter as applied to the divisions of the department of human services controlling state institutions, the comptroller shall assign an employee of the comptroller's office to check and audit all claims against such directors before such claims are approved by such directors. The comptroller shall keep all records and accounts relating to the expenditures of the directors. The comptroller shall, in the checking and auditing of claims against the directors and keeping the records and accounts of such directors, be under the direction and supervision of the comptroller, and act as an agent of said comptroller. The commissioner of the department of human services shall furnish said employee of the comptroller with office space and such help and assistants as may be necessary to properly perform the duties therein specified.

20. *Workers' compensation claims.* To employ appropriate staff to handle and adjust claims of state employees for workers' compensation benefits pursuant to chapters 85, 85A, 85B, and 86, or with the approval of the executive council contract for the services or purchase workers' compensation insurance coverage for state employees or selected groups of state employees. The state comptroller shall quarterly determine an appropriate amount, based upon the cost of workers' compensation insurance, that shall be collected from the agencies, departments or divisions which have not received an appropriation for the payment of workers' compensation insurance and which operate from moneys other than from the general fund and the payments shall be deposited in the general fund.

85 Acts, ch 212, §21 HF 686

Implementation of comparable worth salary adjustments; 85 Acts, ch 152, §1-4 HF 753

Appropriation to the first in the nation in education, an education foundation; 85 Acts, ch 213, §8 HF 773

Subsection 9 amended

Gender references changed in subsection 17, paragraph a and paragraph i, subparagraph (3)

CHAPTER 8C

MIDWEST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT

8C.1 Low-level radioactive waste compact.

The midwest interstate low-level radioactive waste compact is entered into and enacted into law with all jurisdictions legally joining therein, in the form substantially as follows:

ARTICLE I—POLICY AND PURPOSE

There is created the "Midwest Interstate Low-Level Radioactive Waste Compact".

The states party to this compact recognize that the congress of the United States, by enacting the Low-Level Radioactive Waste Policy Act (42 U.S.C. §2021), has provided for and encouraged the development of low-level radioactive waste compacts as a tool for managing such waste. The party states acknowledge that congress declared that each state is responsible for providing for the availability of capacity either within or outside the state for the disposal of low-level radioactive waste generated within its borders, except for waste generated as a result of certain defense activities of the federal government or federal research and development activities. The party states also recognize that the management of low-level radioactive waste is handled most efficiently on a regional basis; and that the safe and efficient management of low-level radioactive waste generated within the region requires that sufficient capacity to manage such waste be properly provided.

a. It is the policy of the party states to enter into a regional low-level radioactive waste management compact for the purpose of:

1. Providing the instrument and framework for a cooperative effort;
2. Providing sufficient facilities for the proper management of low-level radioactive waste generated in the region;

3. Protecting the health and safety of the citizens of the region;
4. Limiting the number of facilities required to effectively and efficiently manage low-level radioactive waste generated in the region;
5. Encouraging the reduction of the amounts of low-level radioactive waste generated in the region;
6. Distributing the costs, benefits, and obligations of successful low-level radioactive waste management equitably among the party states and among generators and other persons who use regional facilities to manage their waste; and
7. Ensuring the ecological and economical management of low-level radioactive wastes.
 - b. Implicit in the congressional consent to this compact is the expectation by the congress and the party states that the appropriate federal agencies will actively assist the compact commission and the individual party states to this compact by:
 1. Expeditious enforcement of federal rules, regulations, and laws;
 2. Imposition of sanctions against those found to be in violation of federal rules, regulations, and laws; and
 3. Timely inspection of their licensees to determine their compliance with these rules, regulations, and laws.

ARTICLE II—DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

- a. *"Care"* means the continued observation of a facility after closure for the purposes of detecting a need for maintenance, ensuring environmental safety, and determining compliance with applicable licensure and regulatory requirements and including the correction of problems which are detected as a result of that observation.
- b. *"Commission"* means the midwest interstate low-level radioactive waste commission.
- c. *"Decommissioning"* means the measures taken at the end of a facility's operating life to assure the continued protection of the public from any residual radioactivity or other potential hazards present at a facility.
- d. *"Disposal"* means the isolation of waste from the biosphere in a permanent facility designed for that purpose.
- e. *"Eligible state"* means a state qualified to be a party state to this compact as provided in article VIII.
- f. *"Facility"* means a parcel of land or site, together with the structures, equipment, and improvements on or appurtenant to the land or site, which is used or is being developed for the treatment, storage, or disposal of low-level radioactive waste.
- g. *"Generator"* means a person who produces or possesses low-level radioactive waste in the course of or incident to manufacturing, power generation, processing, medical diagnosis and treatment, research, or other industrial or commercial activity and who, to the extent required by law, is licensed by the United States nuclear regulatory commission or a party state, to produce or possess such waste. "Generator" does not include a person who provides a service by arranging for the collection, transportation, treatment, storage, or disposal of wastes generated outside the region.
- h. *"Host state"* means any state which is designated by the commission to host a regional facility.
- i. *"Low-level radioactive waste"* or *"waste"* means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in section 11(e)(2) of the Atomic Energy Act of 1954.
- j. *"Management plan"* means the plan adopted by the commission for the storage, transportation, treatment, and disposal of waste within the region.

- k. *"Party state"* means any eligible state which enacts the compact into law.
- l. *"Person"* means any individual, corporation, business enterprise, or other legal entity either public or private and any legal successor, representative, agent, or agency of that individual, corporation, business enterprise, or legal entity.
- m. *"Region"* means the area of the party states.
- n. *"Regional facility"* means a facility which is located within the region and which is established by a party state pursuant to designation of that state as a host state by the commission.
- o. *"Site"* means the geographic location of a facility.
- p. *"State"* means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any other territorial possession of the United States.
- q. *"Storage"* means the temporary holding of waste for treatment or disposal.
- r. *"Treatment"* means any method, technique or process, including storage for radioactive decay, designed to change the physical, chemical or biological characteristics or composition of any waste in order to render the waste safer for transport or management, amenable to recovery, convertible to another usable material or reduced in volume.
- s. *"Waste management"* means the storage, transportation, treatment, or disposal of waste.

ARTICLE III—THE COMMISSION

- a. There is created the midwest interstate low-level radioactive waste commission. The commission consists of one voting member from each party state. The governor of each party state shall notify the commission in writing of its member and any alternates. An alternate may act on behalf of the member only in that member's absence. The method for selection and the expenses of each commission member shall be the responsibility of the member's respective state.
- b. Each commission member is entitled to one vote. No action of the commission is binding unless a majority of the total membership cast their vote in the affirmative.
- c. The commission shall elect annually from among its members a chairperson. The commission shall adopt and publish, in convenient form, bylaws and policies which are not inconsistent with this compact, including procedures which substantially conform with the provisions of the federal Administrative Procedure Act (5 U.S.C. secs. 500 to 559) in regard to notice, conduct, and recording of meetings; access by the public to records; provision of information to the public; conduct of adjudicatory hearings; and issuance of decisions.
- d. The commission shall meet at least once annually and shall also meet upon the call of the chairperson or a commission member.
- e. All meetings of the commission shall be open to the public with reasonable advance notice. The commission may, by majority vote, close a meeting to the public for the purpose of considering sensitive personnel or legal strategy matters. However, all commission actions and decisions shall be made in open meetings and appropriately recorded.
- f. The commission may establish advisory committees for the purpose of advising the commission on any matters pertaining to waste management.
- g. The office of the commission shall be in a party state. The commission may appoint or contract for and compensate such limited staff necessary to carry out its duties and functions. The staff shall serve at the commission's pleasure with the exception that staff hired as the result of securing federal funds shall be hired and governed under applicable federal statutes and regulations. In selecting any staff, the commission shall assure that the staff has adequate experience and formal training to carry out the functions assigned to it by the commission.
- h. The commission may:

1. Enter into an agreement with any person, state, or group of states for the right to use regional facilities for waste generated outside the region and for the right to use facilities outside the region for waste generated within the region. The right of any person to use a regional facility for waste generated outside of the region requires an affirmative vote of a majority of the commission, including the affirmative vote of the member of the host state in which any affected regional facility is located.

2. Approve the disposal of waste generated within the region at a facility other than a regional facility.

3. Appear as an intervenor or party in interest before any court of law or any federal, state, or local agency, board, or commission in any matter related to waste management. In order to represent its views, the commission may arrange for any expert testimony, reports, evidence, or other participation.

4. Review the emergency closure of a regional facility, determine the appropriateness of that closure, and take whatever actions are necessary to ensure that the interests of the region are protected.

5. Take any action which is appropriate and necessary to perform its duties and functions as provided in this compact.

6. Suspend the privileges or revoke the membership of a party state by a two-thirds vote of the membership in accordance with article VIII.

i. The commission shall:

1. Receive and act on the petition of a nonparty state to become an eligible state.

2. Submit an annual report to, and otherwise communicate with, the governors and the appropriate officers of the legislative bodies of the party states regarding the activities of the commission.

3. Hear, negotiate, and, as necessary, resolve by final decision disputes which may arise between the party states regarding this compact.

4. Adopt and amend, by a two-thirds vote of the membership, in accordance with the procedures and criteria developed pursuant to article IV, a regional management plan which designates host states for the establishment of needed regional facilities.

5. Adopt an annual budget.

j. Funding of the budget of the commission shall be provided as follows:

1. Each state, upon becoming a party state, shall pay fifty thousand dollars or one thousand dollars per cubic meter shipped from that state in 1980, whichever is lower, to the commission which shall be used for the administrative costs of the commission.

2. Each state hosting a regional facility shall levy surcharges on all users of the regional facility based upon its portion of the total volume and characteristics of wastes managed at that facility. The surcharges collected at all regional facilities shall:

(a) Be sufficient to cover the annual budget of the commission; and

(b) Represent the financial commitments of all party states to the commission; and

(c) Be paid to the commission, provided, that each host state collecting surcharges may retain a portion of the collection sufficient to cover its administrative costs of collection, and that the remainder be sufficient only to cover the approved annual budget of the commission.

k. The commission shall keep accurate accounts of all receipts and disbursements. The commission shall contract with an independent certified public accountant to annually audit all receipts and disbursements of commission funds, and to submit an audit report to the commission. The audit report shall be made a part of the annual report of the commission required by this article.

l. The commission may accept for any of its purposes and functions and may utilize and dispose of any donations, grants of money, equipment, supplies, materials and services from any state or the United States, or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation.

The nature, amount, and condition, if any, attendant upon any donation or grant accepted or received by the commission together with the identity of the donor, grantor, or lender, shall be detailed in the annual report of the commission.

m. The commission is not liable for any costs associated with any of the following:

1. The licensing and construction of any facility;
2. The operation of any facility;
3. The stabilization and closure of any facility;
4. The care of any facility;
5. The extended institutional control, after care of any facility; or
6. The transportation of waste to any facility.

n. 1. The commission is a legal entity separate and distinct from the party states and is liable for its actions as a separate and distinct legal entity. Liabilities of the commission are not liabilities of the party states. Members of the commission are not personally liable for actions taken by them in their official capacity.

2. Except as provided under section *m* and section *n*, subsection 1, nothing in this compact alters liability for any act, omission, course of conduct, or liability resulting from any causal or other relationships.

o. Any person aggrieved by a final decision of the commission may obtain judicial review of such decision in any court of jurisdiction by filing in such court a petition for review within sixty days after the commission's final decision.

ARTICLE IV—REGIONAL MANAGEMENT PLAN

The commission shall adopt a regional management plan designed to ensure the safe and efficient management of waste generated within the region. In adopting a regional waste management plan the commission shall:

a. Adopt procedures for determining, consistent with considerations for public health and safety, the type and number of regional facilities which are presently necessary and which are projected to be necessary to manage waste generated within the region;

b. Develop and consider policies promoting source reduction of waste generated within the region;

c. Develop and adopt procedures and criteria for identifying a party state as a host state for a regional facility. In developing these criteria, the commission shall consider all the following:

1. The health, safety, and welfare of the citizens of the party states.
2. The existence of regional facilities within each party state.
3. The minimization of waste transportation.
4. The volumes and types of wastes generated within each party state.
5. The environmental, economic, and ecological impacts on the air, land, and water resources of the party states.

d. Conduct such hearings, and obtain such reports, studies, evidence, and testimony required by its approved procedures prior to identifying a party state as a host state for a needed regional facility;

e. Prepare a draft management plan, including procedures, criteria, and host states, including alternatives, which shall be made available in a convenient form to the public for comment. Upon the request of a party state, the commission shall conduct a public hearing in that state prior to the adoption of the management plan. The management plan shall include the commission's response to public and party state comment.

ARTICLE V—RIGHTS AND OBLIGATIONS OF PARTY STATES

a. Each party state shall act in good faith in the performance of acts and courses of conduct which are intended to ensure the provision of facilities for regional availability and usage in a manner consistent with this compact.

b. Each party state has the right to have all wastes generated within its borders managed at regional facilities subject to the provisions contained in article IX, section c. All party states have an equal right of access to any facility made available to the region by any agreement entered into by the commission pursuant to article III.

c. Party states or generators may negotiate for the right of access to a facility outside the region and may export waste outside the region subject to commission approval under article III.

d. To the extent permitted by federal law, each party state may enforce any applicable federal and state laws, regulations, and rules pertaining to the packaging and transportation of waste generated within or passing through its borders. Nothing in this section shall be construed to require a party state to enter into any agreement with the United States nuclear regulatory commission.

e. Each party state shall provide to the commission any data and information the commission requires to implement its responsibilities. Each party state shall establish the capability to obtain any data and information required by the commission.

ARTICLE VI—DEVELOPMENT AND OPERATION OF FACILITIES

a. A party state may volunteer to become a host state, and the commission may designate that state as a host state upon a two-thirds vote of its members.

b. If all regional facilities required by the regional management plan are not developed pursuant to section a, or upon notification that an existing regional facility will be closed, the commission may designate a host state.

c. Each party state designated as a host state is responsible for determining possible facility locations within its borders. The selection of a facility site shall not conflict with applicable federal and host state laws, regulations, and rules not inconsistent with this compact and shall be based on factors including, but not limited to, geological, environmental, and economic viability of possible facility locations.

d. Any party state designated as a host state may request the commission to relieve that state of the responsibility to serve as a host state. The commission may relieve a party state of this responsibility only upon a showing by the requesting party state that no feasible potential regional facility site of the type it is designated to host exists within its borders.

e. After a state is designated a host state by the commission, it is responsible for the timely development and operation of a regional facility.

f. To the extent permitted by federal and state law, a host state shall regulate and license any facility within its borders and ensure the extended care of that facility.

g. The commission may designate a party state as a host state while a regional facility is in operation if the commission determines that an additional regional facility is or may be required to meet the needs of the region. The commission shall make this designation following the procedures established under article IV.

h. Designation of a host state is for a period of twenty years or the life of the regional facility which is established under that designation, whichever is longer. Upon request of a host state, the commission may modify the period of its designation.

i. A host state may establish a fee system for any regional facility within its borders. The fee system shall be reasonable and equitable. This fee system shall provide the host state with sufficient revenue to cover any costs, including but not limited to the planning, siting, licensure, operation, decommissioning, extended care, and long-term liability, associated with such facilities. This fee system may also include reasonable revenue beyond the costs incurred for the host state, subject to

approval by the commission. A host state shall submit an annual financial audit of the operation of the regional facility to the commission. The fee system may include incentives for source reduction and may be based on the hazard of the waste as well as the volume.

j. A host state shall ensure that a regional facility located within its borders which is permanently closed is properly decommissioned. A host state shall also provide for the care of a closed or decommissioned regional facility within its borders so that the public health and safety of the state and region are ensured.

k. A host state intending to close a regional facility located within its borders shall notify the commission in writing of its intention and the reasons. Notification shall be given to the commission at least five years prior to the intended date of closure. This section shall not prevent an emergency closing of a regional facility by a host state to protect its air, land, and water resources and the health and safety of its citizens. However, a host state which has an emergency closing of a regional facility shall notify the commission in writing within three working days of its action and shall, within thirty working days of its action, demonstrate justification for the closing.

l. If a regional facility closes before an additional or new facility becomes operational, waste generated within the region may be shipped temporarily to any location agreed on by the commission until a regional facility is operational.

m. A party state which is designated as a host state by the commission and fails to fulfill its obligations as a host state may have its privileges under the compact suspended or membership in the compact revoked by the commission.

ARTICLE VII—OTHER LAWS AND REGULATIONS

a. Nothing in this compact:

1. Abrogates or limits the applicability of any act of congress or diminishes or otherwise impairs the jurisdiction of any federal agency expressly conferred thereon by the congress;

2. Prevents the enforcement of any other law of a party state which is not inconsistent with this compact;

3. Prohibits any storage or treatment of waste by the generator on its own premises;

4. Affects any administrative or judicial proceeding pending on the effective date of this compact;

5. Alters the relations between and the respective internal responsibility of the government of a party state and its subdivisions;

6. Affects the generation, treatment, storage, or disposal of waste generated by the atomic energy defense activities of the secretary of the United States department of energy or successor agencies or federal research and development activities as defined in 42 U.S.C. sec. 2051; or

7. Affects the rights and powers of any party state or its political subdivisions to the extent not inconsistent with this compact, to regulate and license any facility or the transportation of waste within its borders or affects the rights and powers of any party state or its political subdivisions to tax or impose fees on the waste managed at any facility within its border.

8. Requires a party state to enter into any agreement with the United States nuclear regulatory commission.

9. Alters or limits liability of transporters of waste, owners, and operators of sites for their acts, omissions, conduct, or relationships in accordance with applicable laws.

b. For purposes of this compact, all state laws or parts of laws in conflict with this compact are hereby superseded to the extent of the conflict.

c. No law, rule, or regulation of a party state or of any of its subdivisions or

instrumentalities may be applied in a manner which discriminates against the generators of another party state.

ARTICLE VIII—ELIGIBLE PARTIES, WITHDRAWAL, REVOCATION, ENTRY INTO FORCE, TERMINATION

a. Eligible parties to this compact are the states of Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Virginia, and Wisconsin. Eligibility terminates on July 1, 1984.

b. Any state not eligible for membership in the compact may petition the commission for eligibility. The commission may establish appropriate eligibility requirements. These requirements may include, but are not limited to, an eligibility fee or designation as a host state. A petitioning state becomes eligible for membership in the compact upon the approval of the commission, including the affirmative vote of all host states. Any state becoming eligible upon the approval of the commission becomes a member of the compact in the same manner as any state eligible for membership at the time this compact enters into force.

c. An eligible state becomes a party state when the state enacts the compact into law and pays the membership fee required in article III, section *j*, subsection 1.

d. The commission is formed upon the appointment of commission members and the tender of the membership fee payable to the commission by three party states. The governor of the first state to enact this compact shall convene the initial meeting of the commission. The commission shall cause legislation to be introduced in the congress which grants the consent of the congress to this compact, and shall take action necessary to organize the commission and implement the provisions of this compact.

e. Any party state may withdraw from this compact by repealing the authorizing legislation but no withdrawal may take effect until five years after the governor of the withdrawing state gives notice in writing of the withdrawal to the commission and to the governor of each party state. Withdrawal does not affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal. Any host state which grants a disposal permit for waste generated in a withdrawing state shall void the permit when the withdrawal of that state is effective.

f. Any party state which fails to comply with the terms of this compact or fails to fulfill its obligations may have its privileges suspended or its membership in the compact revoked by the commission in accordance with article III, section *h*, subsection 6. Revocation takes effect one year from the date the affected party state receives written notice from the commission of its action. All legal rights of the affected party state established under this compact cease upon the effective date of revocation but any legal obligations of that party state arising prior to revocation continue until they are fulfilled. The chairperson of the commission shall transmit written notice of a revocation of a party state's membership in the compact immediately following the vote of the commission to the governor of the affected party state, all other governors of the party states and the congress of the United States.

g. This compact becomes effective July 1, 1983, or at any date subsequent to July 1, 1983, upon enactment by at least three eligible states. However, article IX, section *b* shall not take effect until the congress has by law consented to this compact. The congress shall have an opportunity to withdraw such consent every five years. Failure of the congress to affirmatively withdraw its consent has the effect of renewing consent for an additional five-year period. The consent given to this compact by the congress shall extend to any future admittance of new party states under sections *b* and *c* of this article and to the power of the region to ban the shipment of waste from the region pursuant to article III.

h. The withdrawal of a party state from this compact under section *e* of this

article or the revocation of a state's membership in this compact under section *f* of this article does not affect the applicability of this compact to the remaining party states.

i. A state which has been designated by the commission to be a host state has ninety days from receipt by the governor of written notice of designation to withdraw from the compact without any right to receive refund of any funds already paid pursuant to this compact, and without any further payment. Withdrawal becomes effective immediately upon notice as provided in section *e*. A designated host state which withdraws from the compact after ninety days and prior to fulfilling its obligations shall be assessed a sum the commission determines to be necessary to cover the costs borne by the commission and remaining party states as a result of that withdrawal.

ARTICLE IX—PENALTIES

a. Each party state shall prescribe and enforce penalties against any person who is not an official of another state for violation of any provision of this compact.

b. Unless otherwise authorized by the commission pursuant to article III, section *h* after January 1, 1986, it is a violation of this compact:

1. For any person to deposit at a regional facility waste not generated within the region;

2. For any regional facility to accept waste not generated within the region;

3. For any person to export from the region waste which is generated within the region; or

4. For any person to dispose of waste at a facility other than a regional facility.

c. Each party state acknowledges that the receipt by a host state of waste packaged or transported in violation of applicable laws, rules, and regulations may result in the imposition of sanctions by the host state which may include suspension or revocation of the violator's right of access to the facility in the host state.

d. Each party state has the right to seek legal recourse against any party state which acts in violation of this compact.

ARTICLE X—SEVERABILITY AND CONSTRUCTION

The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared by a court of competent jurisdiction to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If any provision of this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters.

85 Acts, ch 67, §3 SF 121

Article VI, paragraph a amended

Citation in article VII, paragraph a, subparagraph (6) editorially corrected

CHAPTER 11

AUDITOR OF STATE

11.20 Bills—audit and payment.

If the examination is made by the auditor of state under this chapter, each auditor shall file with the auditor of state an itemized, certified and sworn voucher of expense for the time the auditor is actually engaged in the examination. The salaries shall be included in a two-week payroll period. Upon approval of the auditor of state the state comptroller may issue warrants for the payment of the vouchers and salary payments, including a prorated amount for vacation and sick leave, from any unappropriated funds in the state treasury. Repayment to the state shall be made as provided by section 11.21.

85 Acts, ch 67, §4 SF 121
Section amended

CHAPTER 12

TREASURER OF STATE

Restrictions on South Africa-related investments and
deposits by the state treasurer; see ch 12A

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

The treasurer of state shall invest or deposit, subject to chapter 12A and as provided by law, any of the public funds not currently needed for operating expenses and shall do so upon receipt of monthly notice from the state comptroller of the amount not so needed. In the event of loss on redemption or sale of securities invested as prescribed by law, and if the transaction is reported to the executive council, neither the treasurer nor comptroller is personally liable but the loss shall be charged against the funds which would have received the profits or interest of the investment and there is appropriated from the funds the amount so required.

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

The treasurer of state, following approval by the advisory investment board of the Iowa public employees' retirement system, may implement and engage in a program of lending securities in the Iowa public employees' retirement system portfolio, except the lending of common stocks shall not be allowed. When securities are loaned as provided by this paragraph, the treasurer, in order to secure the loan and as a condition thereof, shall obtain from the borrower federal securities of at least equal to one hundred three percent of market value, and the relative value of the collateral to the loan shall be maintained. The treasurer of state shall include in the reports required by sections 12.17 and 17.3, a review of the program including the fiscal impact of the program.

85 Acts, ch 227, §6 SF 110
Unnumbered paragraph 1 amended

12.25 Legislative findings.

The general assembly finds and declares that because of differences in the timing of the receipt of tax and other revenues and the expenditure of funds by the state, the state has been unable to remain timely on its obligations, including its payments

of school aid; the untimely payment of state aid has created a hardship for schools by increasing their costs and hindering their ability to remain timely on their obligations; it would be advantageous to the state to be able to issue notes in anticipation of its tax and other revenues in order to coordinate its cash flow; and pending their use, the proceeds of notes issued in anticipation of tax and other revenues should be invested in order to pay the cost of issuing the notes and as a benefit to the state. It is the purpose of this section and section 12.26 to enable the state to make timely payments of its obligations, including its school aid payments, by securing funds through the issuance of notes in anticipation of the state's tax and other revenues.

85 Acts, ch 34, §18 SF 79
NEW section

12.26 Issuance of tax and revenue anticipation notes.

1. In anticipation of the collection of revenues in and for a fiscal year, the treasurer of state may borrow money, and issue notes for the money, in an amount not exceeding the estimated state revenues for that year. The sums so anticipated are appropriated for the payment of the notes with interest at maturity. The notes may be issued prior to the beginning of a fiscal year, but the notes shall be payable not later than the end of the fiscal year for which they are issued. More than one series of notes may be issued in a fiscal year and the proceeds of notes may be used to retire a prior issue of notes provided that the total outstanding at any one time shall not exceed the limit prescribed in this section. The proceeds from the issuance of notes shall be invested in the same manner as other public funds and shall be used only for the purposes for which the anticipated tax revenues were levied, collected, and appropriated.

2. The principal of and the interest on notes shall be payable solely out of the taxes and revenues of the state for the fiscal year for which the notes are issued. The notes of each issue shall be dated, shall bear interest at the rate or rates which may be variable according to a method approved by the treasurer of state, without regard to any limit contained in chapter 74A or any other law of this state, and shall mature at such time or times not later than the end of the fiscal year, all as may be determined by the treasurer of state. The notes may be made redeemable before maturity, at the option of the treasurer of state, at the price and under the terms and conditions as provided by the treasurer of state. The treasurer of state shall determine the form of the notes and shall fix the denomination of the notes and the place of payment of principal and interest which may be at any bank within or without the state. The notes shall be executed by the manual or facsimile signatures of the treasurer of state and the state comptroller. If any official whose signature or a facsimile of whose signature appears on any notes ceases to hold office before the delivery of the notes, the signature or the facsimile is valid and sufficient for all purposes the same as if the official had remained in office until the delivery. All notes issued under this section have the qualities and incidents of negotiable instruments under the laws of this state and without regard to any other law. The notes shall be issued in registered form. The notes may be sold in the manner, at public or private sale, as the treasurer of state may determine without regard to chapter 75.

3. Notes may be issued under this section without obtaining the consent of any officer or agency of this state, and without any other proceedings or conditions other than those proceedings and conditions which are specifically required by this section. The treasurer of state or the state comptroller is not liable personally on the notes or subject to any personal liability or accountability by reason of the issuance of the notes.

4. As used in this section, "notes" means notes and other obligations, including short term obligations backed by a commercial letter of credit, issued by the treasurer of state pursuant to this section.

85 Acts, ch 34, §19 SF 79
NEW section

CHAPTER 12A

RESTRICTIONS ON SOUTH AFRICA-RELATED INVESTMENTS AND DEPOSITS

12A.1 Legislative finding.

The legislature finds that the present government of the Republic of South Africa, through its legally sanctioned policies of racial discrimination, is violative of both the substance and the intent of Iowa laws protecting individuals from unjust discrimination. Therefore, the legislature intends that state funds and funds administered by the state shall not be invested or deposited in financial institutions or companies making loans to or doing business with or in the Republic of South Africa.

85 Acts, ch 227, §1 SF 110
NEW section

12A.2 Definitions.

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

1. "*Financial institution*" means a federal-chartered or state-chartered bank, savings and loan, thrift institution, any other institution, or affiliate of the foregoing permitted by state or federal law to receive deposits of money and to pay out that money through loans, draft accounts, or the sale of financial institution securities.

2. "*Affiliate*" means any entity controlling, controlled by or under common control with a financial institution.

3. "*Financial institution security*" means a stock or bond issued by a financial institution, or a certificate of deposit, bankers acceptance, or other negotiable security issued by a financial institution.

4. "*Republic of South Africa*" includes the government, an agency, or an instrumentality of the Republic of South Africa, and any territory under the administration, legal or illegal, of the Republic of South Africa including the "bantustans" or "homelands" to which South African blacks are assigned on the basis of ethnic origin such as the Transkei, Bophuthatswana, Venda, Ciskei, and Kwazulu.

5. "*Value*" consists of cash, the par value or unpaid balance of all unmatured or unpaid investments requiring the payment of a fixed amount at payment date, and the cost price of all other investments.

6. "*Doing business in the Republic of South Africa*" means conducting or performing manufacturing, assembly or warehousing or other operations within the Republic of South Africa, except that it shall not mean any company which has adopted the Sullivan principles and has obtained a performance rating in the top two categories of the Sullivan principles rating system prepared by Arthur D. Little, Inc., or is in categories four or five of the rating system. This definition also shall not mean any company that has been a signatory of the Sullivan principles for at least five years and has obtained a performance rating in the top two categories during four of the past five years.

7. "*Doing business with the Republic of South Africa*" means directly or indirectly supplying strategic products or services for use by the government of South Africa or for use by the military or police in South Africa. This includes, but is not limited to, transactions carried out through intermediary corporations.

8. "*Strategic products or services*" means articles designated as arms, ammunition and implements of war in 22 C.F.R. §121, and data processing equipment and computers sold for military or police use or for use in connection with the pass system as practiced in the Republic of South Africa.

85 Acts, ch 227, §2 SF 110
NEW section

12A.3 Prohibited investments and deposits.

1. The treasurer of state shall not invest or deposit funds belonging to the state of Iowa in a financial institution which has made a loan, after July 1, 1985, to the Republic of South Africa, or in the stocks, securities, or other obligations of such a financial institution or of any company doing business in or with the Republic of South Africa.

2. The state board of regents shall not invest or deposit funds belonging to the institutions under the control of the state board of regents in a financial institution which has made a loan, after July 1, 1985, to the Republic of South Africa, or in the stocks, securities, or other obligations of such a financial institution or of any company doing business in or with the Republic of South Africa.

3. The Iowa department of job service shall not invest or deposit funds from the Iowa public employment retirement fund in a financial institution which has made a loan, after July 1, 1985, to the Republic of South Africa, or in the stocks, securities or other obligations of such a financial institution or of any company doing business in or with the Republic of South Africa.

4. This section does not prohibit any of the following:

a. The purchase of securities issued by the United States government or agreements to purchase or repurchase such securities or securities issued by firms not otherwise prohibited from purchase under this chapter.

b. Custodial agreements or accounts used for purchases and sales of securities otherwise acceptable under this chapter.

c. The deposit of funds with a paying agent for bonds of the state board of regents issued prior to January 1, 1985.

5. This section shall not apply to companies doing business in the Republic of South Africa who have adopted the Sullivan principles and have obtained a performance rating in the top two categories of the Sullivan principles rating system prepared by Arthur D. Little, Inc., or are in categories four or five of the rating system.

The treasurer of state shall maintain a list of such companies in accordance with the provisions of section 12A.5.

85 Acts, ch 227, §3 SF 110
NEW section

12A.4 Divestiture.

1. The treasurer of state, the state board of regents, and the department of job service shall make no additional investments of the type prohibited under section 12A.3 subsequent to June 30, 1985. The sale of securities and investments held by the treasurer of state, the state board of regents, and the department of job service on July 1, 1985 that are prohibited under section 12A.3 shall be completed by July 1, 1990, unless prior thereto the general assembly determines that substantial and fundamental progress in establishing human rights policies in the Republic of South Africa has occurred. Subject to any such action of the general assembly not less than one fifth of the value of the investments held on July 1, 1985 shall be sold in the year beginning July 1, 1988.

2. As long as funds remain in investments that would be prohibited under section 12A.3, the treasurer, the board of regents, and the department of job service shall:

a. File with the general assembly, not later than January 20 of each year, a report listing all South Africa-related investments administered by the treasurer, the board of regents, or the department of job service and their value as of the preceding December 31.

b. Exercise their right to vote stock in any election in order to require the company doing business in or with the Republic of South Africa to divest itself of investments in the Republic of South Africa and to cease doing business in or with the Republic of South Africa or to prevent the company from entering into any investment or business in or with the Republic of South Africa.

85 Acts, ch 227, §4 SF 110
NEW section

12A.5 Eligibility.

1. The treasurer of state shall maintain a list of companies that do business in or with the Republic of South Africa. The list shall be developed with reference to information obtained from the United States department of commerce and Arthur D. Little, Inc. and other authoritative sources. The treasurer shall mail written notification to each company on the divestiture list.

2. A financial institution or other company ineligible to receive investments or deposits may establish eligibility if documentary evidence is submitted to the treasurer of state. The evidence must be sufficient to establish that the financial institution or company has adopted a written policy that prohibits the lending of its assets to or doing business with the Republic of South Africa. As used in this section, "documentary evidence" includes, but is not limited to, an executed affidavit by an appropriate officer of the financial institution or company, in a form prepared by the treasurer of state, attesting to the fact that the financial institution or company prohibits the lending of its assets or doing business with the Republic of South Africa. The treasurer of state shall attempt to verify compliance by checking sources of information not affiliated with the financial institution.

3. The treasurer of state, the board of regents, and the department of job service shall adopt rules under chapter 17A to implement this chapter including rules to assess civil penalties against a person who files false or misleading documentary evidence. Penalties shall be deposited in the state general fund. The civil penalties shall not exceed five thousand dollars for each violation. All civil penalties collected shall be deposited in the state general fund.

85 Acts, ch 227, §5 SF 110
NEW section

CHAPTER 13B

APPELLATE DEFENDER

Sunset provision repealed; 85 Acts, ch 36, §2-4 SF 200

13B.4 Jurisdiction of appellate defender.

The appellate defender shall represent indigents on appeal in criminal cases and on appeal in proceedings to obtain postconviction relief when appointed to do so by the district court in which the judgment or order was issued, and may represent indigents in proceedings instituted pursuant to chapter 908, and shall not engage in the private practice of law. The court may, upon the application of the indigent or the indigent's trial attorney, or on its own motion, appoint the appellate defender to represent the indigent on appeal or on appeal in postconviction proceedings.

85 Acts, ch 36, §1 SF 200
Section amended

CHAPTER 14

CODE EDITOR

14.13 Editorial powers and duties.

1. The Code editor in preparing the copy for an edition of the Code and the Iowa administrative code and bulletin may:

- a. Correct all misspelled words in the original enrollments and filed rules.
- b. Correct all manifest grammatical and clerical errors including punctuation but without changing the meaning.
- c. Correct internal references to sections which are cited erroneously or have

been repealed, and names of agencies, officers, or other entities which have been changed, when there appears to be no doubt as to the proper methods of making the corrections. The Code editor shall compile a list of the corrections made under this paragraph in Code editor's notes to the edition of the Code in which the corrections are made. This list shall be available to the public.

d. Transpose sections or divide sections so as to give to distinct subject matters a section number but without changing the meaning.

e. Prepare comments deemed necessary for a proper explanation of the manner of printing the section or chapter of the Code.

2. The Code editor, in carrying out the duties specified in this chapter relating to publication of the Code, shall edit the Code in order that words which designate one gender will be changed to reflect both genders when the provisions of law apply to persons of both genders. The Code editor shall not make any substantive changes to the Code while performing the editorial work. The Code editor shall seek direction from the senate committee on judiciary and the house committee on judiciary and law enforcement when making any changes which appear to require substantial editing and which might otherwise be interpreted to exceed the scope of the Code editor's authority. The Code editor shall maintain a record of the changes made under this subsection. The record shall be available to the public.

3. The effective date of all editorial changes in an edition of the Code or supplement to the Code is the date the legislative council approves the printing contract for publication of that edition or supplement.

85 Acts, ch 195, §1 SF 329
Section amended

14.14 Omissions in references to code sections.

When an Act of the general assembly subsequent to the issuance of the Code of 1924 contains in the substantive part of the Act a reference to a section of the Code and designates the section by a reference such as "Code 1924", "Code 1927", or "Code 1931", the Code editor may in the preparation of the ensuing Code omit the year indicated by the reference.

85 Acts, ch 195, §2 SF 329
Section amended

14.21 Publication of parts of Code and court rules.

The Code editor in consultation with the superintendent of printing may cause to be printed from time to time, in the form of leaflets, folders, or pamphlets and in such numbers as the Code editor deems reasonable, parts of the Code for the use of public officers. The orders shall be limited to actual needs as shown by experience or other competent proof, and the printing shall be done in an economical manner approved by the legislative council.

The Code editor shall cause to be compiled, indexed and published in loose-leaf form the Iowa court rules, which shall consist of all rules of civil procedure, rules of criminal procedure, rules of appellate procedure, and supreme court rules. The Code editor, in consultation with the superintendent of printing, shall cause to be printed and distributed supplements to the compilation on or before the effective date of either new rules, or amendments to or the repeal of existing rules. All expenses incurred by the Code editor under this paragraph shall be defrayed under section 14.22. There shall be established a price for the compilation of rules, and a separate price for each supplement. The price of the compilation and of supplements shall represent the costs of compiling and indexing, the amounts charged for printing and distribution and a cost for labor determined jointly by the legislative council and rules review committee in consultation with the state printer. On request a single copy of each compilation and of each supplement shall be distributed free of charge to each of the persons or agencies referred to in section 18.97, subsections 1, 2, 5, 6, 7, 8 and 16.

85 Acts, ch 197, §2 SF 570
Unnumbered paragraph 2 amended

CHAPTER 17

OFFICIAL REPORTS AND PUBLICATIONS

17.3 Biennial reports—time covered and date of filing.

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

1. State comptroller on fiscal condition of state.
2. Treasurer of state as to the condition of the treasury.
3. Secretary of agriculture.
4. Commissioner of public instruction.
5. Commissioner of the department of human services.
6. Board of regents.
7. Superintendent of printing.
8. Industrial commissioner.
9. Commissioner of public health.
10. Commissioner of labor.
11. State historical board.
12. State librarian.
13. Library commission.
14. Department of general services.
15. State conservation director.
16. Adjutant general.

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

The officials and departments required by this section to file reports shall submit the reports on standardized forms furnished by the state comptroller. All officials and agencies submitting reports shall consult with the state comptroller and the director of the office of planning and programming, and shall devise standardized report forms for submission to the governor and members of the general assembly.

85 Acts, ch 212, §21 HF 686
Subsection 4 amended

17.16 Legislative proceedings.

The reports of the legislative proceedings shall be delivered by the secretary of the senate and the chief clerk of the house to the superintendent of printing promptly upon completion, and the superintendent of printing shall cause the reports to be printed in accordance with the contracts covering them. The superintendent of printing shall require that proof copies of the daily journal be furnished the next legislative day after date and shall promptly deliver them to the sergeants at arms of each house. The corrections and changes made in the journal by the general assembly shall be made before the printing of the corrected or completed journal.

85 Acts, ch 195, §3 SF 329
Section amended

17.30 Inventory of state property.

Each state board, commission, department and division of state government and each institution under the control of the department of human services, the Iowa department of corrections and the state board of regents and each division of the

state department of transportation are responsible for keeping a written, detailed, up-to-date inventory of all real and personal property belonging to the state and under their charge, control and management. The inventories shall be in the form prescribed by the director of the department of general services.

Inventories maintained in the files of each such agency of state government shall be open to public inspection and available for the information of the executive council and director of the department of general services.

85 Acts, ch 195, §4 SF 329
 Unnumbered paragraph 1 amended

CHAPTER 18

GENERAL SERVICES DEPARTMENT

18.17 Iowa world trade center.

This chapter does not apply to the management, operation, and ownership of the Iowa world trade center.

85 Acts, ch 33, §505 HF 225
 NEW section

18.97 Free distribution of Code, supplements, rules, Acts, state roster.

The superintendent of printing shall make free distribution of the Code, supplements to the Code, rules of civil procedure, rules of appellate procedure, rules of criminal procedure, supreme court rules, the Acts of each general assembly, and, upon request, the Iowa administrative code, its supplements, the Iowa administrative bulletin and the state roster pamphlet as follows:

1. To state law library for exchange purposes..... 65 copies
2. To law library of state University of Iowa for exchange purposes
 60 copies
3. To state historical department..... 2 copies
4. To state historical society 2 copies
5. To each judge of the supreme court, the court of appeals and the district court, two copies; and to each district associate judge and each judicial magistrate
 1 copy
6. To each judge of the federal courts in Iowa..... 1 copy
7. To the clerk of the supreme court of Iowa..... 1 copy
8. To the clerk of each federal court in Iowa 1 copy
9. To each state institution under the control of the department of corrections, the state board of regents or the state department of human services 1 copy
10. To each elective state officer 2 copies
11. To the separate departments of principal state offices and each major subdivision thereof 1 copy
12. To each member of the present and subsequent general assemblies
 1 copy
13. To chief clerk of the house 1 copy
14. To secretary of the senate..... 1 copy
15. To the chief clerk of the house and secretary of the senate such number as may be required by the house and senate.
16. To the following offices such number of copies as will enable them to perform the duties of their respective offices.
 - a. Code editor.
 - b. Attorney general.
 - c. Legislative service bureau.
 - d. Legislative fiscal bureau.
 - e. State court administrator.

f. Each district court administrator.

- 17. To the clerk of the district court and each separate office of the clerk, the county attorney, the county auditor, the county recorder, county and city assessor, the county treasurer, the sheriff and each separate office of a sheriff, the public defender's office, and the administrator of each area education agency in the state and also for use in each courtroom of the district court..... 1 copy
- 18. To the library of the United States supreme court 1 copy
- 19. To the state library of Iowa..... 1 copy for each depository library
- 20. To each member of the Iowa congressional delegation 1 copy
- 21. To each board of supervisors for each county 1 copy
- 22. To each juvenile referee 1 copy

In the case of copies of the free documents provided in this section to libraries, the superintendent of printing may provide microfiche copies in lieu of bound copies and may provide more copies than indicated in this section if the additional copies are microfiche copies.

Each office, agency, or person receiving a free copy of a document under this section shall receive only the number of copies indicated free at the time of initial distribution and if a replacement document is necessary, it shall be provided only after payment of the normal subscription charge for such document.

85 Acts, ch 218, §13 SF 250
Subsection 19 amended

18.115 Vehicle dispatcher—employees—duties.

In order to carry out the powers vested in the director by this chapter, the director of the department of general services shall appoint a state vehicle dispatcher and such other employees as may be necessary to carry out the provisions of this chapter. The state vehicle dispatcher shall serve at the pleasure of the director and shall not be governed by the provisions of chapter 19A. Subject to the approval of the director, the state vehicle dispatcher shall have the following duties:

1. The dispatcher shall assign to a state officer or employee or to a state office, department, bureau, or commission, one or more motor vehicles which may be required by the officer or department, after the officer or department has shown the necessity for such transportation. The state vehicle dispatcher shall have the power to assign a motor vehicle either for part time or full time. The dispatcher shall have the right to revoke the assignment at any time.

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

3. The state vehicle dispatcher shall install a record system for the keeping of records of the total number of miles state-owned motor vehicles are driven and the per-mile cost of operation of each motor vehicle. Every state officer or employee shall keep a record book to be furnished by the state vehicle dispatcher in which the officer or employee shall enter all purchases of gasoline, lubricating oil, grease, and other incidental expense in the operation of the motor vehicle assigned to the officer or employee, giving the quantity and price of each purchase, including the cost and nature of all repairs on the motor vehicle. Each operator of a state-owned motor vehicle shall promptly prepare a report at the end of each month on forms furnished by the state vehicle dispatcher and forward the same to the dispatcher at the statehouse, giving the information the state vehicle dispatcher may request in the report. The state vehicle dispatcher shall each month compile the costs and mileage of state-owned motor vehicles from the reports and keep a cost history card on each motor vehicle and the costs shall be reduced to a cost-per-mile basis for each motor vehicle. It shall be the duty of the state vehicle dispatcher to call to the attention

of the head of any department to which a motor vehicle has been assigned any evidence of the mishandling or misuse of any state-owned motor vehicle which is called to the dispatcher's attention.

4. The state vehicle dispatcher shall purchase all new motor vehicles for all branches of the state government, except the state department of transportation, institutions under the control of the state board of regents, the commission for the blind, and any other agencies exempted by law. Before purchasing any motor vehicle the dispatcher shall make requests for public bids by advertisement and shall purchase the vehicles from the lowest responsible bidder for the type and make of motor vehicle designated at a purchase price approved by the executive council.

5. All used motor vehicles turned in to the state vehicle dispatcher shall be disposed of by public auction, and the sales shall be advertised in a newspaper of general circulation one week in advance of sale, and the receipts from the sale shall be deposited in the depreciation fund to the credit of that department or agency turning in the vehicle; except that, in the case of a used motor vehicle of special design, the state vehicle dispatcher may, with the approval of the executive council, instead of selling it at public auction, authorize the motor vehicle to be traded for another vehicle of similar design.

6. The state vehicle dispatcher may authorize the establishment of motor pools consisting of a number of state-owned motor vehicles under the dispatcher's supervision and which the dispatcher may cause to be stored in a public or private garage. If a pool is established by the state vehicle dispatcher, any state officer or employee desiring the use of a state-owned motor vehicle on state business shall notify the state vehicle dispatcher of the need for a vehicle within a reasonable time prior to actual use of the motor vehicle. The state vehicle dispatcher may assign a motor vehicle from the motor pool to the state officer or employee. If two or more state officers or employees desire the use of a state-owned motor vehicle for a trip to the same destination for the same length of time, the state vehicle dispatcher may assign one vehicle to make the trip.

7. The state vehicle dispatcher shall cause to be marked on every state-owned motor vehicle a sign in a conspicuous place which indicates its ownership by the state except cars requested to be exempt by the commissioner of public safety or the director of the department of general services. All state-owned motor vehicles shall display registration plates bearing the word "official" except cars requested to be furnished with ordinary plates by the commissioner of public safety or the director of the department of general services pursuant to section 321.19. The state vehicle dispatcher shall keep an accurate record of the registration plates used on all state cars.

8. The state vehicle dispatcher shall have the authority to make such other rules regarding the operation of state-owned motor vehicles, with the approval of the director of the department of general services, as may be necessary to carry out the purpose of this chapter. All rules adopted by the vehicle dispatcher shall be approved by the director before becoming effective.

9. All gasoline used in state-owned automobiles shall be purchased at cost from the various installations or garages of the state department of transportation, state board of regents, department of human services, or state car pools throughout the state, unless such purchases are exempted by the vehicle dispatcher. The vehicle dispatcher shall study and determine the reasonable accessibility of these state-owned sources for the purchase of gasoline. If these state-owned sources for the purchase of gasoline are not reasonably accessible, the vehicle dispatcher shall authorize the purchase of gasoline from other sources. The vehicle dispatcher may prescribe a manner, other than the use of the revolving fund, in which the purchase of gasoline from state-owned sources shall be charged to the department or agency responsible for the use of the automobile. The vehicle dispatcher shall prescribe the manner in which oil and other normal automobile maintenance for state-owned

automobiles may be purchased from private sources, if they cannot be reasonably obtained from a state car pool. The state vehicle dispatcher may advertise for bids and award contracts for the furnishing of gasoline, oil, grease, and vehicle replacement parts for all state-owned vehicles.

85 Acts, ch 115, §1 SF 525
Subsection 7 amended

18.136 Advisory council.

The state communications advisory council shall provide guidance to the director in the development, administration, unification and standardization of communication services to meet normal and emergency requirements of all state departments. The council shall consist of the following persons or their designated representatives:

1. The commissioner of public instruction.
2. The commissioner of public safety.
3. The adjutant general.
4. The chairperson of the state transportation commission.
5. The president of the state board of regents.
6. The chairperson of the council on human services.
7. The president of the board of public broadcasting.

85 Acts, ch 212, §21 HF 686
Subsection 1 amended

DIVISION VII

FEMALE AND MINORITY SMALL BUSINESS SET-ASIDES

18.175 Title.

This division may be cited as the "Iowa Female and Minority Small Business Procurement Act."

85 Acts, ch 33, §201 HF 225
NEW section

18.176 Definitions.

When used in this division, unless the context otherwise requires:

1. "*Small business*" means a business organized for profit which has its principal place of business in Iowa and which is neither dominant in its field of operation nor an affiliate or subsidiary of a business dominant in its field of operation.

2. "*Dominant in its field of operation*" means exercising a controlling or major influence in a business activity in which a number of businesses are engaged. The following businesses are dominant in their field of operation:

a. Manufacturing businesses which employ more than one hundred persons and whose gross receipts for the preceding three fiscal years exceeded a total of fifteen million dollars.

b. General construction businesses which had gross receipts exceeding a total of six million dollars in the preceding three fiscal years.

c. Speciality construction businesses which had gross receipts exceeding three million dollars in the preceding three fiscal years.

d. Nonmanufacturing businesses which employ more than twenty-five persons and which had gross receipts exceeding three million dollars in the preceding three fiscal years.

3. "*Affiliate or subsidiary of a business dominant in its field of operation*" means a business which is at least twenty percent owned by a business dominant in that field of operation, or by partners, officers, directors, majority shareholders, or their equivalent of a business dominant in that field of operation.

4. "*Socially or economically disadvantaged person*" means a person who has been deprived of the opportunity to develop and maintain a competitive position in the economy because of any of the following circumstances:

- a. Cultural, social, or economic circumstances or background.

b. Physical location if the person resides or is employed in an area declared a labor surplus area by the United States department of commerce.

c. Other similar cause as defined by rules adopted by the director pursuant to chapter 17A.

85 Acts, ch 33, §202 HF 225
NEW section

18.177 Procurement from female and minority small businesses.

1. *Female and minority small business set-asides.* Notwithstanding section 18.6, the director may designate and set aside for awarding to small businesses owned and operated by females and socially or economically disadvantaged persons approximately five percent of the value of anticipated total state procurement of goods and services, including construction, but not including utility services pursuant to section 18.8, each fiscal year. The director may divide the procurements so designated into contract award units of economically feasible production runs to facilitate offers or bids from these small businesses. In designating set-aside procurements, the director may vary the included procurements so that a variety of goods and services produced by different small businesses may be set aside each year.

2. *Negotiated price or bid contract.* The director may use either a negotiated price or bid contract procedure in the awarding of a contract under this set-aside program. The amount of an award shall not exceed by more than five percent the director's estimated price for the goods or services, if they were to be purchased on the open market or under the competitive bidding procedures of section 18.6, and not under this set-aside program. Surety bonds guaranteed by the federal small business administration are acceptable security for a construction award under this section.

3. *Determination of ability to perform.* Before announcing a set-aside award, the director shall evaluate whether the small business scheduled to receive the award is able to perform the set-aside contract. This determination shall include consideration of production and financial capacity and technical competence.

4. *Procurement procedures.* All laws and rules pertaining to solicitations, bid evaluations, contract awards, and other procurement matters apply to procurements set aside for small businesses to the extent there is no conflict. If this division conflicts with other laws or rules, then this division governs.

85 Acts, ch 33, §203 HF 225
NEW section

18.178 Role of development commission.

The director of general services may assist the director of the Iowa development commission in publicizing the set-aside program, attempting to locate small businesses able to perform set-aside awards, and encouraging program participation. When the director of general services determines that a female or minority business is unable to perform under a set-aside contract, the director of general services shall inform the director of the Iowa development commission who shall assist the small business in attempting to remedy the causes of the inability to perform. In assisting the small business, the director of the Iowa development commission in cooperation with the director of general services may use any management or financial assistance programs available through state or governmental agencies or private sources. Primary responsibility under this section rests with the director of the Iowa development commission.

85 Acts, ch 33, §204 HF 225
NEW section

18.179 Certification.

The director shall adopt by rule standards and procedures for certifying that small businesses owned and operated by females and socially or economically disadvantaged persons are eligible to participate in the set-aside program. The procedure for

determination of eligibility may include self-certification by a business, provided the director retains the ability to verify a self-certification. The director of general services shall maintain a current directory of small businesses which have been certified under this section.

85 Acts, ch 33, §205 HF 225
NEW section

18.180 Reports.

1. *Director of general services.* The director of general services shall submit an annual report to the governor and the general assembly with a copy to the director of the Iowa development commission relating progress towards realizing the objectives and goals of this division during the preceding fiscal year. The report shall include the following information:

a. The total dollar value and number of potential set-aside awards identified and the percentage of total state procurements this figure reflects.

b. The total dollar value and number of set-aside contracts awarded to small businesses owned and operated by females and economically or socially disadvantaged persons with appropriate designation as to the total number and value of set-aside contracts awarded to each small business, and the percentages of the total state procurements the figures of total dollar value and the number of set-asides reflect.

c. The number of contracts which were designated and set aside pursuant to section 18.177, but which were not awarded to a small business, the estimated total dollar value of these awards, the lowest offer or bid on each of these awards made by the small business and the price at which these contracts were awarded pursuant to the normal procurement procedures.

2. *Director of the Iowa development commission.* The director of the Iowa development commission shall submit an annual report to the governor and the general assembly with a copy to the director of general services. The report shall include the following information:

a. The efforts undertaken to publicize the set-aside program during the preceding year.

b. The efforts undertaken to identify small businesses owned and operated by females and socially or economically disadvantaged persons, and the efforts undertaken to encourage participation in the set-aside program.

c. The efforts undertaken by the director to remedy the inability of these small businesses to perform on potential set-aside awards.

d. The director's recommendations for strengthening the set-aside program and delivery of services to these small businesses.

85 Acts, ch 33, §206 HF 225
NEW section

CHAPTER 18B

IOWA DEPARTMENT OF PUBLIC BROADCASTING

18B.13 Revenue from contracts.

The board shall retain for its use revenues generated through contracts with nonprofit organizations or their affiliated organizations from the use of the educational radio and television facility and other educational communications services.

85 Acts, ch 263, §14 HF 747
NEW section

CHAPTER 18C

IOWA WORLD TRADE CENTER

18C.1 Declaration of policy and purpose for state involvement in Iowa world trade center.

It is found and declared that there exists a need to promote, develop, maintain, and expand export and trade opportunities for agricultural, commercial, and manufactured products and services and any other products and services of the state in order to protect and advance the welfare and interests of residents of the state; that such export and trade opportunities with other nations can be promoted, developed, maintained, and expanded by the Iowa world trade center; that jobs can be maintained and created in the state as a result of increased export and trade opportunities; and that such economic results will benefit all residents of the state.

It is further found and declared that the promotion, development, maintenance, and expansion of exports and trade opportunities are public purposes and uses for which public moneys may be expended, advanced, loaned, or granted; that such activities serve a public purpose in improving export and trade opportunities or otherwise benefiting the people of this state; and that the state's purchase, operation and marketing of a building or facility as part of a world trade center will aid in accomplishing these purposes.

85 Acts, ch 33, §501 HF 225
NEW section

18C.2 Creation of selection advisory committee.

1. There is created an Iowa world trade center selection advisory committee, hereafter-referred to as "the committee". The committee shall be comprised of five members with one member appointed by the governor, one member appointed by the speaker of the house of representatives, one member appointed by the minority leader of the house of representatives, one member appointed by the majority leader of the senate, and one member appointed by the minority leader of the senate. No two members shall be from the same congressional district. Vacancies shall be filled in the same manner as the appointment of the original members. Members shall not be compensated for their services.

2. The committee shall elect from among its members a chairperson. Meetings shall be held at the call of the chairperson or whenever two committee members request it. Three members shall constitute a quorum and the affirmative vote of three members shall be necessary for any action taken by the committee.

85 Acts, ch 33, §502 HF 225
NEW section

18C.3 Duties of the committee.

1. It shall be the duty of the Iowa world trade center selection advisory committee to accept and review proposals from private groups to organize, construct, operate, and market the Iowa world trade center. In submitting a proposal, the private group shall also submit a study outlining the feasibility of its proposal. A private group submitting a proposal must include among its investors a significant number of Iowa-based companies and individuals. The committee is empowered to contract for an independent analysis of a proposal submitted. The committee is empowered to recommend for ratification by the executive council a proposal to obligate, but not in excess of thirty million dollars, the state in the construction of the Iowa world trade center under the recommended proposal. However, a proposal shall not be recommended unless the proposal provides that the private group shall provide moneys at least equal to the amount which the committee has recommended for obligation by the state. The proposal recommended by the committee must

include an agreement from the private group that construction of the Iowa world trade center will begin no later than December 15, 1985, and that a nonprofit corporation will be created by the private group pursuant to section 18C.4 to facilitate the state's involvement in the construction, operation, and marketing of the Iowa world trade center. In approving a proposal of a private group, the committee may employ other selection criteria that are consistent with the above standards. Once the committee has recommended a contract proposal, it shall be submitted for ratification to the executive council. The committee shall present a proposal by August 1, 1985 for ratification by the executive council.

2. The committee shall cease to exist upon ratification of the contract submitted to the executive council.

3. The members of the committee, upon ratification of the contract by the executive council, shall automatically become the state's representatives on the board of directors of the nonprofit corporation organized to facilitate the state's involvement in the Iowa world trade center pursuant to section 18C.4.

85 Acts, ch 33, §503 HF 225
NEW section

18C.4 State participation in the world trade center.

1. The state recognizes the nonprofit corporation organized pursuant to the contract ratified by the executive council as the entity that will facilitate the state's involvement in the construction, operation and marketing of the Iowa world trade center. The board of directors of the nonprofit corporation shall consist of nine members.

2. State representation on the nonprofit corporation's board of directors shall consist of five directors serving six-year terms. The initial directors shall be the five members appointed to the committee pursuant to section 18C.2. Vacancies shall be filled in the same manner as the appointment of the original directors.

3. Private representation on the nonprofit corporation's board of directors shall consist of four directors chosen pursuant to the corporation's articles of incorporation.

4. Amendments to the nonprofit corporation's articles of incorporation relating to the governance of the corporation shall not be made without all of the following:

- a. A majority approval of the entire board of directors.
- b. A majority approval of the five directors appointed to represent the state interests.
- c. A majority approval by the four directors appointed to represent the private interests.

5. The nonprofit corporation shall:

a. Provide for the management, operation, and marketing of the state-owned portion of the Iowa world trade center. A fee may be negotiated which will be paid by the state for necessary services provided to or for the state-owned portion. The management, operation, and marketing may be done by entering into a service agreement with a management firm. If such an agreement is entered into, the board of directors shall require periodic reports from the firm on the operation, marketing, costs, and revenues of the state-owned portion.

b. Provide for the leasing of space in the state-owned portion to the extent space is available and the leasing of it will fulfill the purposes of the state's involvement in the Iowa world trade center.

c. Use, operate, and market the state-owned portion for the purposes of promoting, developing, maintaining, and expanding export and trade opportunities for agricultural, commercial, and manufactured products and services and other products and services of the state in order to protect and advance the welfare and interests of residents of the state.

6. The nonprofit corporation organized pursuant to the contract ratified by the executive council as the entity that will facilitate the state's involvement in the

construction, operation, and marketing of the Iowa world trade center shall not be construed to be a state agency, board, commission, department, or other administrative unit of the state.

85 Acts, ch 33, §504 HF 225
NEW section

CHAPTER 19

EXECUTIVE COUNCIL

19.34 Energy conservation lease-purchase.

1. As used in this section:

a. "Energy conservation measure" means installation or modification of an installation in a building which is primarily intended to reduce energy consumption or allow the use of an alternative energy source, which may contain integral control and measurement devices.

b. "State agency" means a board, department, commission or authority of or acting on behalf of the state having the power to enter into contracts with or without the approval of the executive council to acquire property in its own name or in the name of the state. "State agency" does not mean the general assembly, the courts, the governor or a political subdivision of the state.

2. a. A state agency may, with the approval of the executive council, lease as lessee real and personal properties and facilities for use as or in connection with any energy conservation measure for which it may so acquire real and personal properties and facilities, upon the terms, conditions and considerations the official or officials having the authority with or without the approval of the executive council to commit the state agency to acquire real and personal property and facilities deem in the best interests of the state agency. A lease may include provisions for ultimate ownership by the state or by the state agency and may obligate the state agency to pay costs of maintenance, operation, insurance and taxes. The state agency shall pay the rentals and the additional costs from the annual appropriations for the state agency by the general assembly or from other funds legally available. The lessor of the properties or facilities may retain a security interest in them until title passes to the state or state agency. The security interest may be assigned or pledged by the lessor. In connection with the lease, the state agency may contract for a letter of credit, insurance or other security enhancement obligation with respect to its rental and other obligations and pay the cost from annual appropriations for such state agency by the general assembly or from other funds legally available. The security enhancement arrangement may contain customary terms and provisions, including reimbursement and acceleration if appropriate. This section is a complete and independent authorization and procedure for a state agency, with the approval of the executive council, to enter into a lease and related security enhancement arrangements and this section is not a qualification of any other powers which a state agency may possess, including those under chapter 262, and the authorization and powers granted under this section are not subject to the terms or requirements of any other provision of the Code.

b. Before a state agency seeks approval of the executive council for leasing real or personal properties or facilities for use as or in connection with any energy conservation measure, the state agency shall have a comprehensive engineering analysis done on a building in which it seeks to improve the energy efficiency by an engineering firm approved by the energy policy council through a competitive selection process and the engineering firm is subject to approval of the executive council. Provisions of this section shall only apply to energy conservation measures identified in the comprehensive engineering analysis.

c. Before the executive council gives its approval for a state agency to lease real

and personal properties or facilities for use as or in connection with any energy conservation measure, the executive council shall in conjunction with the energy policy council and after review of the engineering analysis submitted by the state agency make a determination that the properties or facilities will result in energy cost savings to the state in an amount that results in the state recovering the cost of the properties or facilities within six years after the initial acquisition of the properties or facilities.

85 Acts, ch 55, §1 SF 303
NEW section

CHAPTER 19A

STATE MERIT SYSTEM OF PERSONNEL ADMINISTRATION

Implementation of comparable worth adjustments; see 85 Acts, ch 152,

§1-4 HF 753

Study to develop a model state employment policy for state employees who are parents of young children; 85 Acts, ch 173, §34 HF 451

19A.3 Applicability—exceptions.

The merit system shall apply to all employees of the state and to all positions in the state government now existing or hereafter established except the following:

1. The general assembly, employees of the general assembly, other officers elected by popular vote, and persons appointed to fill vacancies in elective offices.

2. All board members and commissions whose appointments are otherwise provided for by the statutes of the state of Iowa, and one stenographer or secretary for each full-time member of each board and commission, and one principal assistant or deputy in each department.

3. Three principal assistants or deputies for each elective official and one stenographer or secretary for each elective official and each principal assistant or deputy thereof, also all supervisory employees and their confidential assistants.

4. The personal staff of the governor.

5. All employees under the supervision of the attorney general or assistant attorneys general, and all employees under the supervision of the appellate defender or assistant appellate defenders.

6. All presidents, deans, directors, teachers, professional and scientific personnel, and student employees under the jurisdiction of the state board of regents.

7. The commissioner of public instruction and members of the professional staff of the department of public instruction, appointed under the provisions of section 257.24, who possess a current, valid teacher's certificate or who are assigned to vocational activities or programs.

8. Patients or inmates employed in state institutions or persons on parole employed in work experience positions in state government for a period of time not to exceed one year.

9. Persons employed by the commission for the blind and the division of vocational rehabilitation or any successor thereto.

10. Part-time professional employees who are paid a fee or who are under contract for service basis and are not engaged in administrative duties.

11. Officers and enlisted personnel of the armed services under state jurisdiction.

12. All judicial officers and court employees.

13. All physicians, psychiatrists, and heads of institutions under the jurisdiction of the Iowa department of human services and the Iowa department of corrections.

14. All appointments other than boards or commissions which are by law made by the governor or executive council; one stenographer or secretary for each; one principal assistant or deputy for each; and all administrative assistants or deputies employed by the director of the Iowa development commission.

15. Members of the Iowa highway safety patrol and other peace officers employed by the department of public safety.

16. The executive director, the executive director's secretary, the division directors and their principal assistants, and programming, production, educational, and engineering personnel under the jurisdiction of the Iowa public broadcasting board.

17. Summer employment appointments during the period May 15 through September 15.

18. The commissioner of human services, assistant commissioners of human services, the administrative head of each of the divisions of the department of human services and the district administrators of the department of human services.

19. The director of transportation, the director's deputy, and the director's divisional administrators, one secretary or stenographer for each, and one administrative assistant or deputy for each.

20. The chief administrative officer of each board or commission who is appointed by the board or commission and one stenographer or secretary for the chief administrative officer.

21. Employees of the public employment relations board.

22. The deputy administrator in charge of securities within the department of insurance as designated pursuant to section 502.601.

23. Part-time and seasonal employees of the state racing commission.

24. The director, deputy director, the administrative head of the division of product management, the administrative head of the division of store management, and occasional and part-time employees of the Iowa beer and liquor control department.

Nothing in this section shall authorize the employment of any stenographer, secretary, assistant or deputy not otherwise authorized by law.

Nothing herein shall be construed as precluding the appointing authority from filling any position in the manner in which positions in the merit system are filled.

The state board of regents shall adopt rules for their employees, which are not inconsistent with the objectives of this chapter, and which are subject to approval of the Iowa merit employment commission. If at any time the director determines that the board of regents merit system does not comply with the intent of this chapter, the director, subject to the approval of the commission, may direct the board to correct the rules. The rules of the board are not in compliance until the corrections are made.

Institutions under the department of human services shall be authorized to qualify and employ applicants under rules adopted by the commission.

85 Acts, ch 90, §1 SF 445; 85 Acts, ch 212, §21 HF 686

Subsection 7 amended

NEW subsection 24

19A.9 Rules adopted.

The merit employment commission shall adopt and may amend rules for the administration and implementation of this chapter in accordance with chapter 17A. The director shall prepare and submit proposed rules to the commission. The rules shall provide:

1. For the preparation, maintenance, and revision of a position classification plan from a schedule by separate department for each position and type of employment not otherwise provided by law in state government as approved by the executive council for all positions in the merit system, based upon duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class, in the same geographical area. After such classification has been approved by the commission, the director shall allocate the position of every employee in the merit system to one of the classes in the plan. Any employee or agency officials affected by the allocation of a position to a class shall, after filing with the director

a written request for reconsideration thereof in such manner and form as the director may prescribe, be given a reasonable opportunity to be heard thereon by the director. An appeal may be made to the commission or to a qualified classification committee appointed by the commission. No allocation or reallocation of a position by the director to a different classification shall become effective if such allocation or reallocation may result in the expenditure of funds in excess of the total amount budgeted for the department of the appointing authority until approval has been obtained from the state comptroller.

Whenever the public interest may require a diminution or increase of employees in any position or type of employment not otherwise provided by law, or the creation or abolishment of any such position or type of employment, the governor with the approval of the executive council, acting in good faith, shall so notify the commission. Thereafter such position or type of employment shall stand abolished or created and the number of employees therein reduced or increased. Schedules of positions and type of employment not otherwise provided by law shall be reviewed at least once each year by the governor and submitted to the executive council for continuing approval.

2. For a pay plan within the purview of an appropriation made by the general assembly and not otherwise provided by law for all employees in the merit system, after consultation with appointing authorities with due regard to the results of a collective bargaining agreement negotiated under chapter 20 and after a public hearing held by the commission. The pay plan becomes effective only after it has been approved by the executive council after submission from the commission. Review of the pay plan for revisions shall be made in the same manner at the discretion of the director, but not less than annually. The annual review by the director shall be made available to the governor a sufficient time in advance of collective bargaining negotiations to permit its recommendations to be considered during the negotiations. Each employee shall be paid at one of the rates set forth in the pay plan for the class of position in which employed and, unless otherwise designated by the commission, shall begin employment at the first step of the established range for the employee's class. Unless otherwise established by law, the governor, with the approval of the executive council, shall establish a pay plan for all exempt positions in the executive branch of government except for employees of the governor, the board of regents, the Iowa department of public broadcasting, the commissioner of public instruction and members of the professional staff of the department of public instruction, appointed under section 257.24, who possess a current, valid teacher's certificate or who are assigned to vocational activities or programs, the commission for the blind, members of the Iowa highway safety patrol and other peace officers, as defined in section 97A.1, employed by the department of public safety, and officers and enlisted personnel of the armed services under state jurisdiction.

3. For open competitive examinations to test the relative fitness of new applicants for the respective positions. Such examinations shall be practical in character and shall relate to such matters as will fairly test the ability of the applicant to discharge the duties of the position to which appointment is sought.

Where the Code of Iowa establishes certification, registration and licensing provisions, such documents shall be considered prima-facie evidence of basic skills accomplishment and such persons shall be exempt from further basic skills testing.

Examinations need not be held until after the rules have been adopted, the service classified, and a pay plan established, but shall be held no later than one year after September 1, 1967. Such examinations shall be announced publicly at least fifteen days in advance of the date fixed for the filing of applications therefor, and shall be advertised through the communications media. The director may, however, in the director's discretion, continue to receive applications and examine candidates for a period adequate to assure a sufficient number of eligibles to meet the needs of the

system, and may add the names of successful candidates to existing eligible lists in accordance with their respective ratings.

4. For promotions which shall give appropriate consideration to the applicant's qualifications, record of performance, and conduct. Vacancies shall be filled by promotion whenever practicable and in the best interest of the system and shall be by competitive or noncompetitive examination. Such examinations shall be of the same nature and content as those used in establishing competitive registers for the class. A promotion means a change in the status of an employee, from a position in one class to a position in another class having a higher entrance salary.

5. For the establishment of eligible lists for appointment and promotion, upon which lists shall be placed the names of successful candidates in the order of their relative excellence in the respective examinations. Eligibility for appointment from any such list shall continue for at least one year and not longer than three years.

6. For the rejection of candidates or eligibles who fail to comply with reasonable requirements such as physical condition, training and experience, or who are habitual criminals or alcoholics who have not been rehabilitated from the use of alcohol for a period of six months, or addicted to narcotics, or who have attempted any deception or fraud in connection with an examination. -

7. For the appointment by the appointing authority of a person standing among the highest six scores on the appropriate eligible list to fill a vacancy.

8. For a probation period of six months, excluding educational or training leave, before appointment may be made complete, and during which period a probationer may be discharged or reduced in class or rank, or replaced on the eligible list. The appointing authority shall within ten days prior to the expiration of an employee's probation period notify the director in writing whether the services of the employee have been satisfactory or unsatisfactory. If the employee's services are unsatisfactory, the employee shall be dropped from the payroll on or before the expiration of the probation period. If satisfactory, the appointment shall be deemed permanent. The determination of the appointing authority shall be final and conclusive.

9. For emergency employment for not more than sixty calendar days in any twelve-month period without examination, and for intermittent employment for not more than one hundred twenty calendar days in any twelve-month period. For intermittent employment the employee must have had a probationary, permanent, or temporary appointment.

10. For provisional employment without competitive examination when there is no appropriate eligible list available. No such provisional employment shall continue longer than one hundred eighty calendar days nor shall successive provisional appointments be allowed, except during the first two years after September 1, 1967 in order to avoid stoppage of orderly conduct of the business of the state.

11. For transfer from a position in one department to a similar position in another department involving similar qualifications, duties, responsibilities, and salary ranges. Whenever an employee transfers or is transferred from one state department or agency to another state department or agency, the employee's seniority rights, any accumulated sick leave, and accumulated vacation time, as provided in the law, shall be transferred to the new place of employment and credited to the employee. Employees who are subject to contracts negotiated under chapter 20 which include transfer provisions shall be governed by the contract provisions.

12. For reinstatement of persons who have attained permanent status and who resign in good standing or who are laid off from their positions without fault or delinquency on their part, within a period equal to the period of their continuous employment with the state but for a period of not longer than two years.

13. For establishing in co-operation with the appointing authorities a system of service records of all employees in the classified service, which service records shall be considered in determining salary increases provided in the pay plan; as a factor in promotion tests; as a factor in determining the order of layoffs because of lack of

funds or work and in reinstatement; as a factor in demotions, discharges or transfers; and for the regular evaluation, at least annually, of the qualifications and performance of all employees in the classified service.

14. For layoffs by reason of lack of funds or work, or organization, and for re-employment of employees so laid off, giving primary consideration in both layoffs and re-employment to performance record and secondary consideration to seniority in service. Any employee who has been laid off may keep the employee's name on a preferred employment list for one year, which list shall be exhausted by the agency enforcing the layoff before selection of an employee may be made from the register in the employee's classification. Employees who are subject to contracts negotiated under chapter 20 which include layoff provisions shall be governed by the contract provisions.

15. For imposition, as a disciplinary measure, of a suspension from the service without pay for not longer than thirty days.

16. For discharge, suspension, or reduction in rank or grade for any of the following causes: Failure to perform assigned duties, inadequacy in performing assigned duties, negligence, inefficiency, incompetence, insubordination, unrehabilitated alcoholism or narcotics addiction, dishonesty, any act or conduct which adversely affects the employee's performance or the employing agency, and any other good cause for discharge, suspension, or reduction. The person discharged, suspended, or reduced shall be given a written statement of the reasons for the discharge, suspension, or reduction within twenty-four hours after the discharge, suspension, or reduction. A copy thereof shall be filed with the director. All persons concerned with the administration of this chapter shall use their best efforts to insure that this chapter and rules hereunder shall not be a means of protecting or retaining unqualified or unsatisfactory employees, and to cause the discharge, suspension, or reduction in rank of all employees who should be discharged, suspended, or reduced for any of the causes stated in this subsection.

17. For establishment of a uniform plan for resolving employee grievances and complaints. Employees who are subject to contracts negotiated under chapter 20 which include grievance and complaint provisions shall be governed by the contract provisions.

18. For attendance regulations, and special leaves of absence, with or without pay, or reduced pay in the various classes of positions in the classified service. Employees who are subject to contracts negotiated under chapter 20 which include leave of absence provisions shall be governed by the contract provisions. Annual sick leave and vacation time shall be granted in accordance with section 79.1.

19. For the development and operation of programs to improve the work effectiveness and morale of employees in the merit system, including training, safety, health, welfare, counseling, recreation, and employee relations.

20. Notwithstanding any provisions to the contrary, no rule or regulation shall be adopted by the department which would deprive the state of Iowa, or any of its agencies or institutions of federal grants or other forms of financial assistance.

21. For veterans preference through a provision that honorably separated veterans who served on active duty in the armed forces of the United States in any war, campaign or expedition for which a campaign badge or service medal has been authorized by the government of the United States shall have five points added to the grade or score attained in qualifying examinations for appointment to jobs.

Veterans who have a service-connected disability or are receiving compensation, disability benefits or pension under laws administered by the veterans administration shall have ten points added to the grades attained in qualifying examinations. A veteran who has been awarded the Purple Heart for disabilities incurred in action shall be considered to have a service-connected disability.

22. For acceptance of the qualifications, requirements, regulations, and general provisions established under other sections of the Code pertaining to professional registration, certification, and licensing.

23. For the establishment of work test appointments for positions of unskilled labor, attendants, aides, janitors, food service workers, laundry workers, porters, elevator operators, custodial or similar types of employment when the character of the work makes it impracticable to supply the needs of the service effectively by written or other type of competitive examination. If this subsection conflicts with any other provisions of this chapter, the provisions of this subsection shall govern the positions to which it applies. All persons appointed to the positions specified in this subsection shall serve a probationary period in accordance with this chapter, may acquire permanent status, and are subject to the same rules as other classified employees. Such persons shall be required to pass promotional examinations as prescribed by this chapter and the rules adopted by the merit employment commission before they may be promoted to a higher classification.

85 Acts, ch 212, §21 HF 686
Subsection 2 amended

CHAPTER 22

EXAMINATION OF PUBLIC RECORDS

22.7 Confidential records.

The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:

1. Personal information in records regarding a student, prospective student, or former student maintained, created, collected or assembled by or for a school corporation or educational institution maintaining such records.
2. Hospital records, medical records, and professional counselor records of the condition, diagnosis, care, or treatment of a patient or former patient or a counselee or former counselee, including outpatient. However, confidential communications between a victim of sexual assault or domestic violence and the victim's sexual assault or domestic violence counselor are not subject to disclosure except as provided in section 236A.1.
3. Trade secrets which are recognized and protected as such by law.
4. Records which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body.
5. Peace officers' investigative reports, except where disclosure is authorized elsewhere in this Code. However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section, except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual.
6. Reports to governmental agencies which, if released, would give advantage to competitors and serve no public purpose.
7. Appraisals or appraisal information concerning the purchase of real or personal property for public purposes, prior to public announcement of a project.
8. Iowa development commission information on an industrial prospect with which the commission is currently negotiating.
9. Criminal identification files of law enforcement agencies. However, records of current and prior arrests shall be public records.
10. Personal information in confidential personnel records of the military department of the state.
11. Personal information in confidential personnel records of public bodies including but not limited to cities, boards of supervisors and school districts.
12. Financial statements submitted to the Iowa state commerce commission pursuant to chapter 542 or chapter 543, by or on behalf of a licensed grain dealer

or warehouse operator or by an applicant for a grain dealer license or warehouse license.

13. The records of a library which, by themselves or when examined with other public records, would reveal the identity of the library patron checking out or requesting an item from the library. The records shall be released to a criminal justice agency only pursuant to an investigation of a particular person or organization suspected of committing a known crime. The records shall be released only upon a judicial determination that a rational connection exists between the requested release of information and a legitimate end and that the need for the information is cogent and compelling.

14. The material of a library, museum or archive which has been contributed by a private person to the extent of any limitation that is a condition of the contribution.

15. Information concerning the procedures to be used to control disturbances at adult correctional institutions. Such information shall also be exempt from public inspection under section 17A.3. As used in this subsection disturbance means a riot or a condition that can reasonably be expected to cause a riot.

16. Information in a report to the state department of health, to a local board of health, or to a local health department, which identifies a person infected with a reportable disease.

17. Records of identity of owners of public bonds or obligations maintained as provided in section 76.10 or by the issuer of the public bonds or obligations. However, the issuer of the public bonds or obligations and a state or federal agency shall have the right of access to the records.

18. Communications not required by law, rule, or procedure that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination. Notwithstanding this provision:

a. The communication is a public record to the extent that the person outside of government making that communication consents to its treatment as a public record.

b. Information contained in the communication is a public record to the extent that it can be disclosed without directly or indirectly indicating the identity of the person outside of government making it or enabling others to ascertain the identity of that person.

c. Information contained in the communication is a public record to the extent that it indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act, except to the extent that its disclosure would plainly and seriously jeopardize a continuing investigation or pose a clear and present danger to the safety of any person. In any action challenging the failure of the lawful custodian to disclose any particular information of the kind enumerated in this paragraph, the burden of proof is on the lawful custodian to demonstrate that the disclosure of that information would jeopardize such an investigation or would pose such a clear and present danger.

19. Examinations, including but not limited to cognitive and psychological examinations for law enforcement officer candidates administered by or on behalf of a governmental body, to the extent that their disclosure could reasonably be believed by the custodian to interfere with the accomplishment of the objectives for which they are administered.

20. Memoranda, work products and case files of a mediator and all other confidential communications in the possession of an approved dispute resolution center, as provided in chapter 679. Information in these confidential communications is subject to disclosure only as provided in section 679.12, notwithstanding this chapter.

CHAPTER 23

PUBLIC CONTRACTS AND BONDS

23.1 Definitions.

1. *"Public improvement"* as used in this chapter means a building or other construction work to be paid for in whole or in part by the use of funds of any municipality.

2. *"Municipality"* as used in this chapter means township, school corporation, state fair board, state board of regents, state department of human services and Iowa department of corrections.

3. *"Appeal board"* as used in this chapter means the state appeal board, composed of the auditor of state, treasurer of state, and state comptroller.

85 Acts, ch 195, §5 SF 329

Unnumbered paragraph 2 amended and paragraphs numbered

23.21 Reciprocal resident bidder preference by state, its agencies, and political subdivisions.

Notwithstanding this chapter, chapter 73, chapter 309, chapter 310, chapter 331, or chapter 384, when a contract for a public improvement is to be awarded to the lowest responsible bidder, a resident bidder shall be allowed a preference as against a nonresident bidder from a state or foreign country which gives or requires a preference to bidders from that state or foreign country. The preference is equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident. "Resident bidder" means a person authorized to transact business in this state and having a place of business for transacting business within the state at which it is conducting and has conducted business for at least six months prior to the first advertisement for the public improvement and in the case of a corporation, having at least fifty percent of its common stock owned by residents of this state. If another state or foreign country has a more stringent definition of a resident bidder, the more stringent definition is applicable as to bidders from that state or foreign country.

For purposes of this section, "public improvement" means public improvements as defined in section 23.1 and includes road construction, reconstruction, and maintenance projects.

This section applies to the state, its agencies, and any political subdivisions of the state.

If it is determined that this may cause denial of federal funds which would otherwise be available, or would otherwise be inconsistent with requirements of federal law, this section shall be suspended, but only to the extent necessary to prevent denial of the funds or to eliminate the inconsistency with federal requirements.

85 Acts, ch 67, §5 SF 121

Unnumbered paragraph 1 amended

CHAPTER 24

LOCAL BUDGET LAW

24.35 Definitions. Repealed by 85 Acts, ch 67, §63. SF 121

24.36 City levy limitation. Repealed by 85 Acts, ch 67, §63. SF 121

CHAPTER 25A

STATE TORT CLAIMS ACT

25A.19 Claims before appeal board.

Chapter 25 does not apply to claims as defined in this chapter. However, any or all of the provisions of sections 25.1, 25.4, and 25.5 may be made applicable to claims as defined in this chapter by agreement between the attorney general and the state appeal board from time to time.

85 Acts, ch 67, §6 SF 121
Section amended

CHAPTER 28

IOWA DEVELOPMENT COMMISSION

Tourist division to serve on advisory committee to Iowa community cultural grants commission; 85 Acts, ch 109, §3 HF 555

28.7 Duties of commission.

It shall be the duty of the commission to:

1. Collect and assemble, or cause to have collected and assembled, all pertinent information available regarding the industrial and agricultural and recreational opportunities and possibilities of the state of Iowa, including raw materials and products that may be produced therefrom; power and water resources; transportation facilities; available markets; the availability of labor; the banking and financing facilities; the availability of industrial sites; the advantages of the state as a whole, and the particular sections thereof, as industrial locations; the development of a grain alcohol motor fuel industry and its related products; and such other fields of research and study as the commission may deem necessary. Such information, as far as possible, shall consider both the encouragement of new industrial enterprises in the state and the expansion of industries now existing within the state, and allied fields to such industries.

2. Acquaint the people of Iowa with the industries located within the state, and the industrial, agricultural, and recreational opportunities existing in the state; and to encourage closer co-operation between the various industries of the state themselves and with the people of the state.

3. Encourage new industrial enterprises to locate in Iowa, by legitimate educational and advertising mediums directed to point out the opportunities of the state as a commercial, industrial, and agricultural field of opportunity, and by solicitation of industrial enterprises.

4. Aid in the promotion and development of manufacturing in Iowa. The Iowa development commission may adopt a label or trade-mark bearing the words "Made in Iowa" or "Product of Iowa" together with any other appropriate design or inscription and this label or trade-mark shall be registered in the office of the secretary of state.

a. The Iowa development commission shall have the right to register or file such label or trade-mark under the laws of the United States or any foreign country which permits such registration, making such registration as an association or through an individual for the use and benefit of the Iowa development commission.

b. The commission shall grant authority to use such label or trade-mark to such persons or firms who make a satisfactory showing to the commission that the products on which the label or trade-mark is to be used are bona fide Iowa products. Such trade-mark or label use shall be registered with the commission.

c. No person, firm, partnership, or corporation shall use the said label or trademark or advertise the same, or attach the same on any manufactured article or agricultural product except as provided herein.

5. Encourage the traveling public to visit Iowa, by the disseminating of information as to the natural advantages of the state, its lakes and resorts, and its highways and other facilities for transient travel.

6. Do such other and further acts as shall, in the judgment of the commission, be necessary and proper in fostering and promoting the industrial and agricultural development and economic welfare of the state of Iowa.

7. Provide that any inventor whose research is funded in whole or in part by the state shall assign to the state such a proportionate part of the inventor's rights to a letter patent to the state. Royalties or earnings derived from a letter patent shall be paid to the treasurer of state and credited by the treasurer to the general fund of the state.

8. Advise, consult, and co-operate with the agricultural marketing division of the department of agriculture in the promotion of Iowa agricultural products.

9. Adopt rules for the implementation of sections 28.25 to 28.28.

10. Aid in the set-aside of procurements for small businesses owned and operated by females and economically or socially disadvantaged persons pursuant to division VII of chapter 18.

11. Establish, oversee, and operate, to the extent practicable, a centrally located marketing center as provided in section 28.101.

85 Acts, ch 33, §207, 601 HF 225
 Subsection 4 editorially corrected
 NEW subsections 10 and 11

28.89 Iowa product development corporation fund.

There is created an "Iowa product development corporation fund". All funds of the corporation including the proceeds from the issuance of notes or sale of bonds under this division, any funds appropriated from the general fund to the corporation, and other income derived from the exercise of powers granted to the corporation under this division shall be paid into the Iowa product development corporation fund notwithstanding section 12.10. The money in the Iowa product development corporation fund, except moneys held by a trustee or a depository pursuant to a bond resolution or indenture relating to the issuance of bonds or notes pursuant to sections 28.90 or 28.91, shall be paid out on the order of the person authorized by the corporation. The money in the Iowa product development corporation fund shall be used for repayment of notes and bonds issued under this division and the extension of financial aid granted by the corporation under this division, and the amount remaining may be used for the payment of the administrative and overhead costs of the corporation to the extent required. Notwithstanding section 8.33, no part of this fund shall revert at or after the close of a fiscal year unless otherwise provided by the general assembly, but shall remain in the fund and appropriated for the purposes of this division. The board shall seek to repay the state for general fund appropriations by recommending to the general assembly reversions from income received from successful ventures. The board shall recommend such action at any time when the revenue available to the board is deemed sufficient to continue existing operations.

85 Acts, ch 195, §67 SF 329; 85 Acts, ch 257, §16 SF 562
 See Code editor's note
 Section amended

28.90 Product development corporation notes.

The corporation may issue Iowa product development corporation fund notes, the principal and interest of which shall be payable solely from the Iowa product development corporation fund established by this division. The fund notes of each issue shall be dated, shall mature at such times and may be made redeemable before

maturity, at prices and under terms and conditions as determined by the corporation. The corporation shall determine the form and manner of execution of the fund notes, including any interest coupons to be attached, and shall fix the denominations and the places of payment of principal and interest, which may be any financial institution within or without the state or any agent, including the lender. If an officer whose signature or a facsimile of whose signature appears on fund notes or coupons ceases to be that officer before the delivery of the notes or coupons, the signature or facsimile is valid and sufficient for all purposes the same as if the officer had remained in office until delivery. The fund notes may be issued in coupon or in registered form, or both, as the corporation determines, and provision may be made for the registration of coupon fund notes as to principal alone and also as to both principal and interest, and for the conversion into coupon fund notes of any fund notes registered as to both principal and interest, and for the interchange of registered and coupon fund notes. Fund notes shall bear interest at rates as determined by the corporation and may be sold in a manner, either at public or private sale, and for a price as the corporation determines to be best to effectuate the purposes of the Iowa product development corporation fund. The proceeds of fund notes shall be used solely for the purposes for which issued and shall be disbursed in a manner and under restrictions as provided in this division and in the resolution of the corporation providing for their issuance. The corporation may provide for the replacement of fund notes which become mutilated or are destroyed or lost.

85 Acts, ch 257, §17 SF 562
Section amended

28.91 Bonds and notes.

1. The corporation may issue its negotiable bonds and notes in principal amounts as, in the opinion of the corporation, are necessary to provide sufficient funds for achievement of its corporate purposes, the payment of interest on its bonds and notes, the establishment of reserves to secure its bonds and notes, and all other expenditures of the corporation incident to and necessary or convenient to carry out its purposes and powers. However, the corporation shall not have a total principal amount of bonds and notes outstanding at any time in excess of ten million dollars. The bonds and notes shall be deemed to be investment securities and negotiable instruments within the meaning of and for all purposes of the uniform commercial code.

2. Bonds and notes issued by the corporation are payable solely and only out of the moneys, assets, or revenues of the corporation, and as provided in the agreement with bondholders or noteholders pledging any particular moneys, assets or revenues. Bonds or notes are not an obligation of this state or any political subdivision of this state other than the corporation within the meaning of any constitutional or statutory debt limitations, but are special obligations of the corporation payable solely and only from the sources provided in this chapter, and the corporation shall not pledge the credit or taxing power of this state or any political subdivision of this state other than the corporation, or make its debts payable out of any moneys except those of the corporation.

3. Bonds and notes must be authorized by a resolution of the corporation. However, a resolution authorizing the issuance of bonds or notes may delegate to an officer of the corporation the power to negotiate and fix the details of an issue of bonds or notes by an appropriate certificate of the authorized officer.

4. Bonds shall:

a. State the date and series of the issue, be consecutively numbered, and state on their face that they are payable both as to principal and interest solely out of the assets of the corporation and do not constitute an indebtedness of this state or any political subdivision of this state other than the corporation within the meaning of any constitutional or statutory debt limit.

b. Be either registered, registered as to principal only, or in coupon form, issued

in denominations as the corporation prescribes, fully negotiable instruments under the laws of this state, signed on behalf of the corporation with the manual or facsimile signature of the chairperson or president, attested by the manual or facsimile signature of the secretary, have impressed or imprinted thereon the seal of the corporation or a facsimile of it, and the coupons attached shall be signed with the facsimile signature of the chairperson or president, be payable as to interest at rates and at times as the corporation determines, be payable as to principal at times over a period not to exceed fifty years from the date of issuance, at places, and with reserved rights of prior redemption, as the corporation prescribes, be sold at prices, at public or private sale, and in a manner as the corporation prescribes, and the corporation may pay the expenses, premiums, and commissions which it deems necessary or advantageous in connection with the issuance and sale, and be issued under and subject to the terms, conditions, and covenants providing for the payment of the principal, redemption premiums, if any, interest, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this division, as are found to be necessary by the corporation for the most advantageous sale, which may include, but are not limited to, covenants with the holders of the bonds as to:

(1) Pledging or creating a lien, to the extent provided by the resolution, on moneys or property of the corporation or moneys held in trust or otherwise by others to secure the payment of the bonds.

(2) Providing for the custody, collection, securing, investment, and payment of any moneys of or due to the corporation.

(3) Limitations on the purpose to which the proceeds of sale of an issue of bonds then or thereafter to be issued may be applied.

(4) Limitations on the issuance of additional bonds and on the refunding of outstanding or other bonds.

(5) The procedure by which the terms of a contract with the holders of bonds may be amended or abrogated, the amount of bonds the holders of which must consent to an amendment or abrogation, and the manner in which consent may be given.

(6) Vesting in a trustee properties, rights, powers, and duties in trust as the corporation determines, which may include the rights, powers, and duties of the trustee appointed for the holders of any issue of bonds pursuant to this division, in which event the provisions of that section authorizing appointment of a trustee by the holders of bonds do not apply, or limiting or abrogating the right of the holders of bonds to appoint a trustee under that section, or limiting the rights, duties, and powers of the trustee.

(7) Defining the acts or omissions which constitute a default in the obligations and duties of the corporation and providing for the rights and remedies of the holders of bonds in the event of a default. However, rights and remedies shall be consistent with the laws of this state and this division.

(8) Any other matters which affect the security and protection of the bonds and the rights of the holders.

5. The corporation may issue its bonds for the purpose of refunding any bonds or notes of the corporation then outstanding, including the payment of any redemption premiums on the bonds or notes and any interest accrued or to accrue to the date of redemption of the outstanding bonds or notes. Until the proceeds of bonds issued for the purpose of refunding outstanding bonds or notes are applied to the purchase or retirement of outstanding bonds or notes or the redemption of outstanding bonds or notes, the proceeds may be placed in escrow and be invested and reinvested in accordance with this division. The interest, income, and profits earned or realized on an investment may also be applied to the payment of the outstanding bonds or notes to be refunded by purchase, retirement, or redemption. After the terms of the escrow have been fully satisfied and carried out, any balance of proceeds

and interest earned or realized on the investments may be returned to the corporation for use by it in any lawful manner. Refunding bonds shall be issued and secured and subject to this division in the same manner and to the same extent as other bonds issued pursuant to this division.

6. The corporation may issue negotiable bond anticipation notes and may renew them from time to time but the maximum maturity of the notes, including renewals, shall not exceed ten years from the date of issue of the original notes. Notes are payable from any available moneys of the corporation not otherwise pledged, or from the proceeds of the sale of bonds of the corporation in anticipation of which the notes were issued. Notes may be issued for any corporate purpose of the corporation. Notes shall be issued in the same manner as bonds, and notes and the resolution authorizing them may contain any provisions, conditions, or limitations, not inconsistent with this subsection, which the bonds or a bond resolution of the corporation may contain. Notes may be sold at public or private sale. In case of default on its notes or violation of any obligations of the corporation to the noteholders, the noteholders have all the remedies provided in this division for bondholders. Notes are as fully negotiable as bonds of the corporation.

7. A copy of each pledge agreement by or to the corporation, including without limitation each bond resolution, indenture of trust, or similar agreement, or any revisions or supplements to it shall be filed with the secretary of state and no further filing or other action under sections 554.9101 to 554.9507, article 9 of the uniform commercial code, or any other law of the state is required to perfect the security interest in the collateral or any additions to it or substitutions for it, and the lien and trust created are binding from and after the time made against all parties having claims of any kind in tort, contract, or otherwise against the pledgor.

8. Neither the officers of the corporation nor any person executing its bonds, notes, or other obligations is liable personally on the bonds, notes, or other obligations or subject to any personal liability or accountability by reason of the issuance of the corporation's bonds or notes.

85 Acts, ch 257, §18 SF 562
Subsection 1 amended

DIVISION IX

PRIMARY RESEARCH AND MARKETING CENTER

28.101 Primary research and marketing center.

1. The commission shall establish as soon as practicable a marketing center within the commission, to be known as "The Primary Research and Marketing Center for Business and International Trade". The purpose of this center is to provide, in a central location, an inventory of the products and services of Iowa businesses. This information is to provide Iowa businesses with a source for locating and contacting potential buyers of their products and services; to aid in opening new markets for Iowa businesses; and to provide a marketing center for new businesses to utilize within the state. The director of the commission is the executive director of the center and shall coordinate activities at the satellite centers. In operating and overseeing the primary research and marketing center for business and international trade, the duties and responsibilities of the commission include the following:

a. Cataloging the products and services unique to economic development offered by and purchased by businesses located in the state.

b. Developing a marketing plan to include a listing of target markets within the state, the United States, and international communities for specific products and services already available within the state and products and services which could be made available within the state.

c. Stimulating research in and development and production of new products by state businesses.

d. Marketing management which includes keeping abreast of the changing

market demands, developing new approaches to tap potential markets, and financing.

e. Assisting Iowa businesses to enter the international marketplace through the development of export sales strategies and the procurement of export financing, including the use of bartering transactions.

f. Coordinating the satellite centers.

g. Training for and coordination of a computer system to be used by this center and its satellite centers. Wherever practicable the commission shall work with educational institutions involved with either the primary research and marketing center for business and international trade or the satellite centers to develop methods and programs that will allow the involvement of students in the development of a computer cataloging system.

h. Coordinating the delivery of programs and services with other state, local, and federal economic development programs and activities including, but not limited to, those available at institutions of higher learning in this state, the United States department of commerce, and other appropriate agencies.

2. To aid in fulfilling the purpose of the primary research and marketing center for business and international trade, the commission may provide grants to establish satellite centers throughout the state. To facilitate establishment of satellite centers, the state is divided up into fifteen regional economic delivery areas which have the same area boundaries as merged areas, as defined in section 280A.2, in existence on May 3, 1985. Each regional delivery area wishing to receive a grant from the commission to establish a satellite center in its area shall create a regional coordinating council which shall develop a plan for the area to coordinate all federal, state, and local economic development services within the area. After developing this plan, the council may seek a grant for a satellite center by submitting the coordinating plan and an application for a grant to the Iowa development commission. A grant shall not be awarded within the regional economic delivery area without the approval of the regional coordinating plan by the Iowa development commission. The Iowa development commission may rescind its approval of a regional coordinating plan upon thirty days notice, if the Iowa development commission determines that the stated purpose of the plan is not being carried out. The Iowa development commission may then accept an alternative proposal for a regional coordinating plan. If a regional coordinating council is awarded a grant for a satellite center, it shall employ a center director at the satellite center. The center director's duties and responsibilities include the following:

a. Overseeing the center's computer system and computer data input including the entry of the cataloged products and services of businesses located in the area.

b. Managing the center.

c. Communicating with the primary research and marketing center for business and international trade.

d. Coordinating local marketing activities and efforts of local business.

e. Coordinating delivery of all federal, state, and local economic development programs and services within the area.

f. Performing other duties and responsibilities assigned to the center by the primary center.

Each satellite center's duties and responsibilities involve conducting primary and secondary research or assisting local colleges, universities, and businesses in developing primary research programs. Primary and secondary research shall be used for analyzing changes in the marketplace, forecasting changes in consumer wants and needs, and possible modifications of products and services to meet the changes.

A regional coordinating council may enter into an agreement under chapter 28E with other regional coordinating councils for the purpose of fostering tourism within their areas. Regional coordinating councils shall be considered public agencies for purposes of chapter 28E.

The regional coordinating council of each regional economic delivery area shall

consist of at least six members who shall be selected from state and local government, business, and education which are representative of the region. Beginning with the fiscal year beginning July 1, 1987, only applications from political subdivisions located within regions with an approved regional coordinating plan will be accepted for moneys from the community betterment account established in the Iowa plan fund for economic development in division III of 1985 Iowa Acts, chapter 33. A political subdivision shall submit a copy of the application to the regional coordinating council at the same time as the application is submitted to the Iowa development commission.

85 Acts, ch 33, §602 HF 225; 85 Acts, ch 256, §13 HF 642
 NFW section
 Subsection 2, unnumbered paragraph 1 amended

DIVISION X

IOWA EXPORT TRADING COMPANY

28.106 Intent.

It is the intent of the general assembly that this division be used to enhance Iowa's agricultural exports, to assist exporters and producers of agricultural products, and to take advantage of the Export Trading Company Act of 1982, Pub. L. No. 97-290.

85 Acts, ch 252, §48 SF 577
 NEW section

28.107 Authorized corporation.

There may be incorporated under chapter 496A a corporation which shall be known as the Iowa export trading company. If incorporated, this corporation shall be established by the director of the Iowa development commission. The initial board of directors shall consist of the director and six additional members appointed by the director. The six members appointed by the director shall be knowledgeable in the area of farming, exporting, or marketing finance. The commission may expend an amount not to exceed one hundred thousand dollars necessary to establish and operate the export trading company until the completion of the public offering of stock. The funds used shall be repaid to the commission upon completion of its public offering of stock. Financing for the export trading company shall initially come from its public offering of stock to residents of this state. In preparation for this sale, a detailed marketing study shall be conducted which will serve as the basis for the company work plan and the company prospectus. After the sale of stock, provision shall be made for the election of a board of directors by the stockholders to replace the initial board of directors. However, the director of the Iowa development commission shall be an ex officio member of the board representing the state of Iowa. The director of the Iowa development commission shall also serve as an agent for the company.

The articles of incorporation of the company and the prospectus on the issuance of stock in the company shall provide that only residents of the state may be owners of the stock of the company and shall provide a prohibition against the takeover of the company.

85 Acts, ch 252, §49 SF 577
 NEW section

28.108 Purposes and powers.

1. The purposes of the Iowa export trading company are to assist agricultural exporters, expand existing markets, and develop new markets through, but not limited to, direct contracts with foreign governments or their agencies, specialty-type deliveries, and countertrade options. Specialty-type deliveries include small deliveries of grains or other agricultural products to countries with inadequate storage capacities or high quality grain deliveries through reduced blending.

2. The Iowa export trading company has the powers necessary to fulfill the

purposes of this division and those provided in chapter 496A and the Export Trading Company Act of 1982, Pub. L. No. 97-290 which are not inconsistent with or limited by this division.

85 Acts, ch 252, §50 SF 577
NEW section

CHAPTER 28F

JOINT FINANCING OF PUBLIC WORKS AND FACILITIES

28F.1 Scope of chapter—limitations.

This chapter provides a means for the joint financing by public agencies of works or facilities useful and necessary for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, and industrial waste, also electric power facilities constructed within the state of Iowa except that hydroelectric power facilities may also be located in the waters and on the dams of or on land adjacent to either side of the Mississippi or Missouri river bordering the state of Iowa, water supply systems, swimming pools or golf courses. This chapter applies to the acquisition, construction, reconstruction, ownership, operation, repair, extension, or improvement of such works or facilities, by a separate administrative or legal entity created pursuant to chapter 28E. When the legal entity created under this chapter is comprised solely of cities, counties, and sanitary districts established under chapter 358, or any combination thereof or any combination of the foregoing with other public agencies, the entity shall be both a corporation and a political subdivision with the name under which it was organized. The legal entity may sue and be sued, contract, acquire and hold real and personal property necessary for corporate purposes, adopt a corporate seal and alter the seal at pleasure, and execute all the powers conferred in this chapter.

A city shall not join an entity created under this chapter for the purpose of financing electric power facilities unless that city had established a municipal electric utility as of July 1, 1984. Power supplied by a municipal power agency shall not be furnished to a municipal utility not existing as of July 1, 1984.

After July 1, 1981, a city shall not join an entity created under this chapter or any separate administrative or legal entity created pursuant to chapter 28E for the purpose of utilizing the provisions of this chapter for financing electric power facilities until the proposal for the city to join such an entity has been submitted to and approved by the voters of the city.

The proposal shall be submitted at any city election by the council on its own motion. If a majority of those voting in the city does not approve the proposal, the same or a similar proposal may be submitted to the voters no sooner than one year from the date of the election at which the proposal was defeated.

85 Acts, ch 78, §2 HF 726
Unnumbered paragraph 2 amended

28F.14 Hydroelectric utilities—eminent domain—contracts.

As used in this section, "hydroelectric utility" means an entity comprised of any number of public agencies or entities created to carry out an agreement authorizing the joint exercise of any of the governmental powers enumerated in section 28F.1, which owns or operates or proposes to own or operate all or part of a hydroelectric power facility or the capacity or use of a hydroelectric power facility.

In addition to other powers, a hydroelectric utility having complied with chapter 469A shall have the power of eminent domain for the purposes of constructing a hydroelectric utility but before exercising the power it shall first exhaust all efforts to secure the necessary voluntary easements. The hydroelectric utility shall comply with provisions of law then in effect, including section 28F.11, and applicable to those

public agencies comprising the hydroelectric utility in connection with the construction of hydroelectric power facilities.

In addition to other powers, the governing body of a hydroelectric utility may purchase all or part of any power plant and may purchase all or part of the capacity, power or energy associated with any power plant owned by, or contract to sell all or part of the hydroelectric utility's power and energy including any surplus to, a public agency or private agency or an entity created to carry out an agreement authorizing the joint exercise of any of the governmental powers enumerated in section 28F.1. Any such entity, public agency, or hydroelectric utility may enter into contracts for the purchase or supply, from any source, of all or a portion of the capacity, power and energy requirements of the entity, public agency or hydroelectric utility on terms and conditions as the governing body of the entity, public agency or hydroelectric utility deems fit, subject to section 476.43. The terms may include provisions for the payment for capacity or output of a facility whether the facility is completed or operating, and for establishing the rights and obligations of all parties to the contract in the event of default. Payments made by an entity, public agency or hydroelectric utility under contracts constitute operating expenses of the entity, public agency or hydroelectric utility payable from the revenues derived from the electric power plant and systems of the entity, public agency or hydroelectric utility.

85 Acts, ch 78, §1 HF 726
NEW section

CHAPTER 29B

MILITARY JUSTICE

29B.115 Conduct unbecoming an officer.

A commissioned officer who is convicted of conduct unbecoming an officer shall be punished as a court-martial directs.

85 Acts, ch 67, §7 SF 121
Section amended

CHAPTER 29C

DISASTER SERVICES AND PUBLIC DISORDERS

29C.6 Proclamation of disaster emergency by governor.

In exercising the governor's powers and duties under this chapter and to effect the policy and purpose, the governor may:

1. After finding a disaster exists or is threatened, proclaim a state of disaster emergency. This proclamation shall be in writing, indicate the area affected and the facts upon which it is based, be signed by the governor, and be filed with the secretary of state. A state of disaster emergency shall continue for thirty days, unless sooner terminated or extended in writing by the governor. The general assembly may, by concurrent resolution, rescind this proclamation. If the general assembly is not in session, the legislative council may, by majority vote, rescind this proclamation. Rescission shall be effective upon filing of the concurrent resolution or resolution of the legislative council with the secretary of state. A proclamation of disaster emergency shall activate the disaster response and recovery aspect of the state, local and interjurisdictional disaster emergency plans applicable to the political subdivision or area in question and be authority for the deployment and use of any forces to which the plan applies, and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available.

2. When, at the request of the governor, the president of the United States has declared a major disaster to exist in this state, enter into purchase, lease, or other arrangements with any agency of the United States for temporary housing units to be occupied by disaster victims and to make such units available to any political subdivision of the state, to assist any political subdivision of this state which is the locus of temporary housing for disaster victims, to acquire sites necessary for such temporary housing and to do all things required to prepare such sites to receive and utilize temporary housing units, by advancing or lending funds available to the governor from any appropriation made by the legislature or from any other source, allocating funds made available by any agency, public or private, or becoming a copartner with the political subdivision for the execution and performance of any temporary housing for disaster victims project. Any political subdivision of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for disaster victims, and to enter into whatever arrangements are necessary to prepare or equip such sites to utilize the housing units. The governor may temporarily suspend or modify, for not to exceed sixty days, any public health, safety, zoning, transportation, or other requirement of law or regulation within this state when by proclamation, the governor deems such suspension or modification essential to provide temporary housing for disaster victims.

3. When the president of the United States has declared a major disaster to exist in the state and upon the governor's determination that a local government of the state will suffer a substantial loss of tax and other revenues from a major disaster and has demonstrated a need for financial assistance to perform its governmental functions, apply to the federal government, on behalf of the local government for a loan, receive and disburse the proceeds of any approved loan to any applicant local government, determine the amount needed by any applicant local government to restore or resume its governmental functions, and certify the same to the federal government; however, no application amount shall exceed twenty-five percent of the annual operating budget of the applicant for the fiscal year in which the major disaster occurs. The governor may recommend to the federal government, based upon the governor's review, the cancellation of all or any part or repayment when, in the first three full fiscal year period following the major disaster, the revenues of the local government are insufficient to meet its operating expenses, including additional disaster-related expenses of a municipal operation character.

4. When a disaster emergency is proclaimed, notwithstanding any other provision of law, through the use of state agencies or the use of any of the political subdivisions of the state, clear or remove from publicly or privately owned land or water, debris and wreckage which may threaten public health or safety or public or private property. The governor may accept funds from the federal government and utilize such funds to make grants to any local government for the purpose of removing debris or wreckage from publicly or privately owned land or water. Authority shall not be exercised by the governor unless the affected local government, corporation, organization or individual shall first present an additional authorization for removal of such debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, such corporation, organization or individual shall first agree to hold harmless the state or local government against any claim arising from such removal. When the governor provides for clearance of debris or wreckage, employees of the designated state agencies or individuals appointed by the state may enter upon private land or waters and perform any tasks necessary to the removal or clearance operation. Any state employee or agent complying with orders of the governor and performing duties pursuant to such orders under this chapter shall be considered to be acting within the scope of employment within the meaning specified in chapter 25A.

5. When the president of the United States has declared a major disaster to exist

in the state and upon the governor's determination that financial assistance is essential to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster that cannot be otherwise adequately met from other means of assistance, accept a grant by the federal government to fund such financial assistance, subject to such terms and conditions as may be imposed upon the grant and enter into an agreement with the federal government pledging the state to participate in the funding of the financial assistance authorized in an amount not to exceed twenty-five percent thereof, and, if state funds are not otherwise available to the governor, accept an advance of the state share from the federal government to be repaid when the state is able to do so.

6. Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders or rules, of any state agency, if strict compliance with the provisions of any statute, order or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency by stating in a proclamation such reasons. Upon the request of a local governing body, the governor may also suspend statutes limiting local governments in their ability to provide services to aid disaster victims.

7. On behalf of this state, enter into mutual aid arrangements with other states and to co-ordinate mutual aid plans between political subdivisions of this state.

8. Delegate any administrative authority vested in the governor under this chapter and provide for the subdelegation of any such authority.

9. Co-operate with the president of the United States and the heads of the armed forces, the disaster services and emergency planning agencies of the United States and other appropriate federal officers and agencies and with the officers and agencies of other states in matters pertaining to disaster recovery and emergency planning of the state and nation.

10. Utilize all available resources of the state government as reasonably necessary to cope with the disaster emergency and of each political subdivision of the state.

11. Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating disaster services.

12. Subject to any applicable requirements for compensation, commandeer or utilize any private property if the governor finds this necessary to cope with the disaster emergency.

13. Direct the evacuation of all or part of the population from any stricken or threatened area within the state if the governor deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery.

14. Prescribe routes, modes of transportation, and destinations in connection with evacuation.

15. Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises in such area.

16. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles.

17. When the president of the United States has declared a major disaster to exist in the state and upon the governor's determination that financial assistance is essential to meet disaster-related necessary expenses or serious needs of local and state government adversely affected by a major disaster that cannot be otherwise adequately met from other means of assistance, accept a grant by the federal government to fund such financial assistance, subject to terms and conditions imposed upon the grant, and enter into an agreement with the federal government pledging the state to participate in the funding of the financial assistance authorized to local government in an amount not to exceed ten percent of the total eligible expenses, with local government providing fifteen percent. If financial assistance is granted by the federal government for state disaster-related expenses or serious needs, the state shall participate in the funding of the financial assistance authorized

in an amount not to exceed twenty-five percent of the total eligible expenses. If state funds are not otherwise available to the governor, an advance of the state share may be accepted from the federal government to be repaid when the state is able to do so.

85 Acts, ch 53, §1 HF 553
Subsection 3 editorially corrected
NEW subsection 17

29C.20 Contingent fund—disaster aid.

1. A contingent fund is created in the state treasury for the use of the executive council which may be expended for the purpose of paying the expenses of suppressing an insurrection or riot, actual or threatened, when state aid has been rendered by order of the governor, and for repairing, rebuilding, or restoring state property injured, destroyed, or lost by fire, storm, theft, or unavoidable cause, and for aid to any governmental subdivision in an area declared by the governor to be a disaster area due to natural disasters or to expenditures necessitated by the governmental subdivision toward averting or lessening the impact of the potential disaster, where the effect of the disaster or action on the governmental subdivision is the immediate financial inability to meet the continuing requirements of local government. Upon application by a governmental subdivision in such an area, accompanied by a showing of obligations and expenditures necessitated by an actual or potential disaster in a form and with further information the executive council requires, the aid may be made in the discretion of the executive council and, if made, shall be in the nature of a loan up to a limit of seventy-five percent of the showing of obligations and expenditures. The loan, without interest, shall be repaid by the maximum annual emergency levy authorized by section 24.6, or by the appropriate levy authorized for a governmental subdivision not covered by section 24.6. The aggregate total of loans shall not exceed one million dollars during a fiscal year. A loan shall not be for an obligation or expenditure occurring more than two years previous to the application.

2. The proceeds of such loan shall be applied toward the payment of costs and obligations necessitated by such actual or potential disaster and the reimbursement of local funds from which such expenditures have been made. Any such project for repair, rebuilding or restoration of state property for which no specific appropriation has been made, shall, before work is begun, be subject to approval or rejection by the executive council.

3. If the president of the United States, at the request of the governor, has declared a major disaster to exist in this state, the executive council may make financial grants to meet disaster-related necessary expenses or serious needs of local governments adversely affected by the major disaster if those expenses or needs cannot otherwise be met from other means of assistance. The amount of the grant shall not exceed ten percent of the total eligible expenses and is conditional upon the federal government providing at least seventy-five percent of the eligible expenses.

4. If the president, at the request of the governor, has declared a major disaster to exist in this state, the executive council may make financial grants to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster which cannot otherwise adequately be met from other means of assistance. The amount of a financial grant shall not exceed five thousand dollars in the aggregate to an individual or family in any single major disaster declared by the president. All grants authorized to individuals and families will be subject to the federal government providing no less than seventy-five percent of each grant and the declaration of a major disaster in the state by the president of the United States.

5. If the president, at the request of the governor, has declared a major disaster to exist in this state, the executive council may lease or purchase sites and develop such sites to accommodate temporary housing units for disaster victims.

6. For the purposes of this section, “*governmental subdivision*” means any political subdivision of this state.

85 Acts, ch 53, §2 HF 553; 85 Acts, ch 195, §6 SF 329
 Subsection 1 amended
 NEW subsection 3

CHAPTER 31

STATE BANNER—DISPLAY OF FLAG—RECOGNITION DAYS

31.4 Mother’s day—father’s day.

The governor of this state is authorized and requested to issue annually a proclamation calling upon our state officials to display the American flag on all state and school buildings, and the people of the state to display the flag at their homes, lodges, churches, and places of business, on the second Sunday in May, known as Mother’s Day, and on the third Sunday in June, known as Father’s Day, as a public expression of reverence for the homes of our state, and to urge the celebration of Mother’s Day and Father’s Day in the proclamation in such a way as will deepen home ties, and inspire better homes and closer union between the commonwealth, its homes, and their children.

85 Acts, ch 99, §1 SF 224
 Section amended

CHAPTER 39

ELECTIONS, ELECTORS, TERMS AND OFFICERS

39.22 Township officers.

Township trustees and the township clerk, in townships which do not include a city, shall be elected by the voters of the entire township. In townships which include a city, the officers shall be elected by the voters of the township who reside outside the corporate limits of the city and the officers shall reside in the township outside the corporate limits of the city.

85 Acts, ch 30, §1 SF 261
 Section amended

CHAPTER 53

ABSENT VOTERS LAW

53.22 Balloting by confined persons.

1. *a.* A qualified elector who has applied for an absentee ballot, in a manner other than that prescribed by section 53.11, and who is a resident or patient in a health care facility or hospital located in the county to which the application has been submitted shall be delivered the appropriate absentee ballot by two special precinct election officers, one of whom shall be a member of each of the political parties referred to in section 49.13, who shall be appointed by the commissioner from the election board panel for the special precinct established by section 53.20. The special precinct election officers shall be sworn in the manner provided by section 49.75 for election board members, shall receive compensation as provided in section 49.20 and shall perform their duties during the ten calendar days preceding the election and on election day if all ballots requested under section 53.8, subsection 3 have not previously been delivered and returned.

b. If an applicant under this subsection notifies the commissioner that the applicant will not be available at the health care facility or hospital address at any time during the ten-day period immediately prior to the election, but will be available there at some earlier time, the commissioner shall direct the two special precinct election officers to deliver the applicant's ballot at an appropriate time prior to the ten-day period immediately preceding the election. If a person who so requested an absentee ballot has been dismissed from the health care facility or hospital, the special precinct election officers may take the ballot to the elector if the elector is currently residing in the county.

c. The special precinct election officers shall travel together in the same vehicle and both shall be present when an applicant casts an absentee ballot. If either or both of the special precinct election officers fail to appear at the time the duties set forth in this section are to be performed, the commissioner shall at once appoint some other person, giving preference to persons designated by the respective county chairpersons of the political parties described in section 49.13, to carry out the requirements of this section. The persons authorized by this subsection to deliver an absentee ballot to an applicant, if requested, may assist the applicant in filling out the ballot as permitted by section 49.90. After the voter has securely sealed the marked ballot in the envelope provided and has subscribed to the oath, the voted absentee ballots shall be deposited in a sealed container which shall be returned to the commissioner on the same day the ballots are voted. On election day the officers shall return the sealed container by the time the polls are closed.

2. Any qualified elector who becomes a patient or resident of a hospital or health care facility within three days prior to the date of any election may request an absentee ballot during that period or on election day. As an alternative to the application procedure prescribed by section 53.2, the qualified elector may make the request directly to the officers who are delivering and returning absentee ballots under this section. Alternatively, the request may be made by telephone to the office of the commissioner not later than four hours before the close of the polls. If the requester is found to be a qualified elector of that county, these officers shall deliver the appropriate absentee ballot to the qualified elector in the manner prescribed by this section.

3. For any election except a primary or general election or a special election to fill a vacancy under section 69.14, the commissioner may, as an alternative to subsection 1, mail an absentee ballot to an applicant under this section to be voted and returned to the commissioner in accordance with this chapter. This subsection only applies to applications for absentee ballots from a single health care facility or hospital if there are no more than two applications from that facility or hospital.

85 Acts, ch 67, §8 SF 121
Subsection 1, paragraph b amended

CHAPTER 56

CAMPAIGN FINANCE DISCLOSURE

56.18 Checkoff—income tax.

1. Any person whose state income tax liability for any taxable year is one dollar or more may direct that one dollar of such liability be paid over to the Iowa election campaign fund when submitting the person's state income tax return to the department of revenue. In the case of a joint return of husband and wife having a state income tax liability of two dollars or more, each spouse may direct that one dollar be paid to the fund. The director of revenue shall draft the income tax form to provide spaces on the tax return which the taxpayer may use to designate that contributions made under this section be credited to a specified political party as defined by section 43.2, or to the Iowa election campaign fund as a contribution to

be shared by all such political parties in the manner prescribed by section 56.19. The form shall inform the taxpayer of the consequences of the choices provided under this section, but this information may be contained in a footnote or other suitable form if the director of revenue finds it is not feasible to place the information immediately above the signature line.

2. A person who directs that funds be paid over under subsection 1 to a specified political party or to be shared by political parties may direct that an additional two dollars be paid over to the choice made by that person in subsection 1. The additional two dollars shall not be paid over from the person's tax liability but shall first be subtracted from any refund due on the return. If no refund or an insufficient refund is due on the return, the tax liability of the person shall be increased by the balance of the additional two dollars. In the case of a joint return of husband and wife, each spouse may direct that an additional two dollars be paid over to the choice made by that person in subsection 1.

3. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional two dollars designated by each taxpayer, the amount designated shall be reduced to the amount of refund or the amount remitted with the return that is greater than the taxes due under division II of chapter 422.

The action taken by a person for the checkoff is irrevocable.

However, before a checkoff pursuant to subsection 2 shall be permitted, all liabilities on the books of the department of revenue, and accounts identified as owing under section 421.17 shall be satisfied.

85 Acts, ch 230, §1 SF 561
1985 amendment to subsection 1 retroactive to January 1, 1985, for tax years beginning on or after that date; 85 Acts, ch 230, §14
Subsection 1 amended

CHAPTER 63

TIME AND MANNER OF QUALIFYING

63.1 Time.

Each officer, elective or appointive, before entering upon the officer's duties, shall qualify by taking the prescribed oath and by giving, when required, a bond, which qualification shall be perfected, unless otherwise specified, after being certified as elected but not later than noon of the first day which is not a Sunday or a legal holiday in January of the first year of the term for which the officer was elected. "Legal holiday" means those days provided in section 33.1.

85 Acts, ch 81, §1 SF 317
Section amended

CHAPTER 64

OFFICIAL AND PRIVATE BONDS

64.6 State officers—amount of bonds.

Unless covered by a higher limit blanket bond purchased as provided in section 18.165, subsection 1, paragraph "b", state officers shall give bonds, the premiums being paid by the state, in an amount as follows:

1. Secretary of state, auditor of state, attorney general, clerk of the supreme court, not less than ten thousand dollars.
2. Treasurer of state, not less than three hundred thousand dollars.
3. The commissioner and the directors of divisions of the department of human services in control of state institutions, twenty-five thousand dollars.

4. Each treasurer of a state institution under the control of the state board of regents shall furnish a surety bond, the amount thereof to be determined by the said board.

5. Commissioner of public health, secretary of agriculture, and each Iowa state commerce commissioner, not less than five thousand dollars.

6. Commissioner of public instruction, not less than two thousand dollars.

7. Superintendent of public buildings and grounds, such amount as the executive council may fix.

8. Commissioner of insurance, fifty thousand dollars.

9. Superintendent of banking, one hundred thousand dollars.

10. State fire marshal, five thousand dollars.

11. Labor commissioner, two thousand dollars.

12. Deputy labor commissioner, one thousand dollars.

13. Members state conservation commission, five thousand dollars.

14. State conservation director, ten thousand dollars.

15. Officers appointed by state conservation commission, one thousand dollars.

16. Secretary of executive council, such amount as the executive council may fix.

17. State librarian, five thousand dollars.

18. Law librarian, three thousand dollars.

19. Executive director of the state historical department, one thousand dollars.

20. Superintendent of printing, five thousand dollars.

21. Industrial commissioner, one thousand dollars.

22. Members state transportation commission, ten thousand dollars.

23. All other public officers, in the amount provided by law, or as fixed under section 64.7.

24. Judicial magistrates, five thousand dollars.

25. Clerks of the district court and first deputy clerks, ten thousand dollars.

The state shall pay the reasonable costs of bonds required by this section.

85 Acts, ch 212, §21 HF 686

Counties remain responsible for approval and cost of bonds for clerks of the district court and their first deputies until July 1, 1986; chapter 602, article 11, and Temporary Court Transition Rules 6.11, 6.12

Subsection 6 amended

CHAPTER 66

REMOVAL FROM OFFICE

66.19 Temporary officer.

Upon a suspension, the board or person authorized to fill a vacancy in the office shall temporarily fill the office by appointment. In case of a suspension of a sheriff, the district court may designate an acting sheriff until a temporary sheriff is appointed. Orders of suspension and temporary appointment of county and township officers shall be certified to the county auditor for entry in the election book; those of city officers, certified to the clerk and entered upon the records; in case of other officers, to the person or body making the original appointment.

83 Acts, ch 186, §10032 SF 495

Effective July 1, 1986

Section amended

CHAPTER 69

VACANCIES IN OFFICE—REMOVAL FOR NONATTENDANCE—TERMS OF CONFIRMED APPOINTEES

69.3 Possession of office.

When a vacancy occurs in a public office, possession shall be taken of the office room, the books, papers, and all things pertaining to the office, to be held until the qualification of a successor, as follows: Of the office of the county auditor, by the county treasurer; of the county treasurer, by the county auditor; of any of the state officers, by the governor, or, in the absence or inability of the governor at the time of the occurrence, as follows: Of the secretary of state, by the treasurer of state; of the auditor of state, by the secretary of state; of the treasurer of state, by the secretary of state and auditor of state, who shall make an inventory of the money and warrants in the office, sign them, and transmit the inventory to the governor; and the secretary of state shall take the keys of the safe and desks, after depositing the books, papers, money and warrants in them, and the auditor of state shall take the key to the office room.

83 Acts, ch 186, §10034 SF 495
Effective July 1, 1986
Section amended

69.8 Vacancies—how filled.

Vacancies shall be filled by the officer or board named, and in the manner, and under the conditions, following:

1. *United States senator.* In the office of United States senator, when the vacancy occurs when the senate of the United States is in session, or when such senate will convene prior to the next general election, by the governor. An appointment made under this subsection shall be for the period until the vacancy is filled by election pursuant to law.

2. *State offices.* In all state offices, judges of courts of record, officers, trustees, inspectors, and members of all boards or commissions, and all persons filling any position of trust or profit in the state, by the governor, except when some other method is specially provided. An appointment made under this subsection to a state office subject to section 69.13, subsection 1, shall be for the period until the vacancy is filled by election pursuant to law.

3. *County offices.* In county offices, by the board of supervisors.

4. *Board of supervisors.* In the membership of the board of supervisors, by the treasurer, auditor, and recorder.

5. *Township offices.* In township offices, including trustees, by the trustees, but where the offices of the three trustees are all vacant, the county board of supervisors shall have the power to either instruct the county auditor to fill the vacancies or adopt a resolution stating that the board will exercise all powers and duties assigned by law to the trustees of the township in which such vacancies exist, until such time as the vacancies may be filled by election.

83 Acts, ch 186, §10035-10037 SF 495
Effective July 1, 1986
Former subsections 3 and 6 struck and remaining subsections renumbered
Subsection 4 amended

CHAPTER 70

VETERANS PREFERENCE LAW

70.1 Appointments and employment—applications.

1. In every public department and upon all public works in the state, and of the counties, cities, and school corporations thereof, honorably discharged persons from the military or naval forces of the United States in any war in which the United States has been engaged, including the Korean Conflict at any time between June 25, 1950 and January 31, 1955, both dates inclusive, and the Vietnam Conflict beginning August 5, 1964, and ending on May 7, 1975, both dates inclusive, who are citizens and residents of this state are entitled to preference in appointment and employment over other applicants of no greater qualifications. The preference in appointment and employment for employees of cities under a municipal civil service is the same as provided in section 400.10. For the purposes of this section service in World War II means service in the armed forces of the United States between December 7, 1941, and December 31, 1946, both dates inclusive.

2. In all jobs of the state and its political subdivisions, an application form shall be completed. The application form shall contain an inquiry into the applicant's military service during the wars or armed conflicts as specified in subsection 1.

3. In all jobs of political subdivisions of the state which are to be filled by competitive examination or by appointment, public notice of the application deadline to fill a job shall be posted at least ten days before the deadline in the same manner as notices of meetings are posted under section 21.4.

4. For jobs in political subdivisions of the state that are filled through a point-rated qualifying examination, the preference afforded to veterans shall be equivalent to that provided for municipal civil service systems in section 400.10.

85 Acts, ch 50, §1 SF 266
Section amended

CHAPTER 76

PUBLIC BONDS AND DEBT OBLIGATIONS

76.2 Mandatory levy—obligations in anticipation of levy.

The governing authority of these political subdivisions before issuing bonds shall, by resolution, provide for the assessment of an annual levy upon all the taxable property in the political subdivision sufficient to pay the interest and principal of the bonds within a period named not exceeding twenty years. A certified copy of this resolution shall be filed with the county auditor or the auditors of the counties in which the political subdivision is located; and the filing shall make it a duty of the auditors to enter annually this levy for collection from the taxable property within the boundaries of the political subdivision until funds are realized to pay the bonds in full. The levy shall continue to be made against property that is severed from the political subdivision after the filing of the resolution until funds are realized to pay the bonds in full.

If the resolution is filed prior to April 1 the annual levy shall begin with the tax levy for collection commencing July 1 of that year. If the resolution is filed after April 1, the annual levy shall begin with the tax levy for collection in the next succeeding fiscal year. However, the governing authority of a political subdivision may adjust a levy of taxes made under this section for the purpose of adjusting the annual levies and collections for property severed from the political subdivision, subject to the approval of the state comptroller.

If funds, including reserves and amounts available for temporary transfer, are

found to be insufficient to pay in full any installment of principal or interest, a public issuer of bonds may anticipate the next levy of taxes pursuant to this section in the manner provided in chapter 74, whether the taxes so anticipated are to be collected in the same or a future fiscal year.

85 Acts, ch 195, §7 SF 329; 85 Acts, ch 240, §1 HF 729
 Unnumbered paragraph 3 struck
 NEW unnumbered paragraph 3

CHAPTER 79

PUBLIC OFFICERS AND EMPLOYEES, FINANCIAL PROVISIONS

Implementation of comparable worth salary adjustments; 85 Acts,
 ch 152, §1-4 HF 753

79.1 Salaries—payment—vacations—sick leave—educational leave.

Salaries specifically provided for in an appropriation Act of the general assembly shall be in lieu of existing statutory salaries, for the positions provided for in the Act, and all salaries, including longevity where applicable by express provision in the Code, shall be paid according to the provisions of chapter 91A and shall be in full compensation of all services, including any service on committees, boards, commissions or similar duty for Iowa government, except for members of the general assembly. A state employee on an annual salary shall not be paid for a pay period an amount which exceeds the employee's annual salary transposed into a rate applicable to the pay period by dividing the annual salary by the number of calendar days in the fiscal year, and multiplying the result by the number of calendar days in the pay period. Salaries for state employees other than annual salaries shall be established on an hourly basis.

All employees of the state shall earn two weeks' vacation per year during the first year of employment and through the fourth year of employment, and three weeks' vacation per year during the fifth and through the eleventh year of employment, and four weeks' vacation per year during the twelfth year through the nineteenth year of employment, and four and four-tenths weeks' vacation per year during the twentieth year through the twenty-fourth year of employment, and five weeks' vacation per year during the twenty-fifth year and all subsequent years of employment, with pay. One week vacation shall be equal to the number of hours in the employee's normal work week. Vacation allowances shall be accrued according to the provisions of chapter 91A as provided by the rules of the Iowa merit employment department. The vacations shall be granted at the discretion and convenience of the head of the department, agency or commission, except that an employee shall not be granted vacation in excess of the amount earned by the employee. Vacation leave earned under this paragraph shall not be cumulated to an amount in excess of twice the employee's annual rate of accrual. The head of the department, agency or commission shall make every reasonable effort to schedule vacation leave sufficient to prevent any loss of entitlements. In the event that the employment of an employee of the state is terminated the provisions of chapter 91A relating to the termination shall apply.

If said termination of employment shall be by reason of the death of the employee, such vacation allowance shall be paid to the estate of the deceased employee if such estate shall be opened for probate. If no estate be opened, the allowance shall be paid to the surviving spouse, if any, or to the legal heirs if no spouse survives.

Payments authorized by this section shall be approved by the department and paid from the appropriation or fund of original certification of the claim.

Commencing July 1, 1979, permanent full-time and permanent part-time employees of state departments, boards, agencies, and commissions, excluding employees covered under a collective bargaining agreement which provides otherwise, shall

accrue sick leave at the rate of one and one-half days for each complete month of full-time employment. The accrual rate for part-time employees shall be prorated to the accrual rate for full-time employees. Sick leave shall not accrue during any period of absence without pay. Employees may use accrued sick leave for physical or mental personal illness, bodily injury, medically related disabilities, including disabilities resulting from pregnancy and childbirth, or contagious disease:

1. Which require the employee's confinement,
2. Which render the employee unable to perform assigned duties, or
3. When performance of assigned duties would jeopardize the employee's health or recovery.

Separation from state employment shall cancel all unused accrued sick leave. However, if an employee is laid off and the employee is re-employed by any state department, board, agency, or commission within one year of the date of the layoff, accrued sick leave of the employee shall be restored.

State employees, excluding state board of regents' faculty members with nine-month appointments, and employees covered under a collective bargaining agreement negotiated with the public safety bargaining unit who are eligible for accrued vacation benefits and accrued sick leave benefits, who have accumulated thirty days of sick leave, and who do not use sick leave during a full month of employment may elect to accrue up to one-half day of additional vacation. The accrual of additional vacation time by an employee for not using sick leave during a month shall be in lieu of the accrual of up to one and one-half days of sick leave for that month. The state comptroller may promulgate the necessary rules and procedures for the implementation of this program for all state employees except employees of the state board of regents. The state board of regents may promulgate necessary rules for the implementation of this program for its employees.

The head of any department, agency, or commission may grant an educational leave to employees for whom the head of the department, agency, or commission is responsible pursuant to section 79.25 and funds appropriated by the general assembly may be used for such purposes. The head of such department, agency, or commission shall notify the legislative council and the state comptroller of all educational leaves granted within fifteen days of the granting of the educational leave. If the head of a department, agency or commission fails to notify the legislative council and state comptroller of an educational leave the expenditure of funds appropriated by the general assembly for the educational leave shall not be allowed.

The state comptroller shall charge the entire payroll for a pay period to the fiscal year in which the payroll is paid.

However, a specific annual salary rate or annual salary adjustment commencing with a fiscal year shall commence on July 1 except that if a pay period overlaps two fiscal years, a specific annual salary rate or annual salary adjustment shall commence with the first day of a pay period as specified by the general assembly.

85 Acts, ch 215, §1 HF 713
Unnumbered paragraph 8 amended

79.25 Educational leave—educational assistance.

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. "Educational assistance" means reimbursement for tuition, fees, books or other expenses incurred by a state employee in taking coursework at an educational institution or attending a workshop, seminar or conference without a reduction in ordinary job responsibilities and that the appointing authority determines contributes to the growth and development of the employee in the employee's present position.

b. "Educational leave" means full or partial absence from an employee's ordinary job responsibilities either with full or partial pay or without pay, to attend a course of study at an educational institution or a course of study conducted by a reputable sponsor on behalf of an educational institution. Educational leave may include reimbursement for all or a portion of educational expenses incurred.

c. "Educational leave and educational assistance" do not apply to job training and employee development programs and departmental seminars that are conducted or sponsored by a state agency for the exclusive benefit of employees of that state agency.

2. *General applicability.* The purpose of educational leave with full or partial pay and educational assistance is to assist state employees to develop skills that will improve their ability to perform their present job responsibilities or in the case of educational leave to also provide training and educational opportunities for employees of a state agency that will enable the agency director to better meet the staffing needs of the state agency.

The state comptroller shall not allow the payment of expenses for courses unless the department, agency or commission can demonstrate a relationship between the employee's job responsibilities and the courses to be taken or that the employee is required to learn new skills for which the department, agency or commission has a need.

3. *Reporting and review.*

a. The state comptroller shall periodically and at least annually review the implementation of educational leave and educational assistance programs by state agencies.

b. The head of each state agency, department or commission shall report to the state comptroller and the legislative council not later than October 1 of each year the direct and indirect costs to the agency of educational leave and educational assistance granted to agency employees during the preceding fiscal year. The report shall include an estimate of costs saved by the state agency, department or commission through the use of educational leave and educational assistance. As used in this subsection "indirect costs" includes but is not limited to, adjustments in employee work assignments and agency operations necessitated by educational leave or assistance.

c. The report to the state comptroller and legislative council shall identify the relationship of each course to the employee who is granted educational leave and how the course may improve the employee's job performance or the task to be accomplished within the agency.

d. The report to the state comptroller and the legislative council shall also include:

(1) The number of employees who were granted educational leave and the amount of tuition reimbursement allowed by the department, agency or commission.

(2) The number of employees who were granted a leave from work to attend the classes and who continued to receive their salary and the number of hours of work which those employees were excused.

(3) The number of employees who were granted a temporary leave of absence from work to attend the classes without pay and the amount of time missed.

85 Acts, ch 215, §2 HF 713
NEW section

79.28 Reprisals prohibited—state.

A person shall not discharge an employee from or take or fail to take action regarding an employee's appointment or proposed appointment to, promotion or proposed promotion to, or any advantage in, a position in a state employment system administered by, or subject to approval of, a state agency as a reprisal for a disclosure of information by that employee to a member of the general assembly, the legislative service bureau, the legislative fiscal bureau or the respective caucus staffs of the general assembly, or a disclosure of information which the employee reasonably believes evidences a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety. This section does not apply if the disclosure of that information is prohibited by statute.

A person shall not discharge an employee from or take or fail to take action regarding an employee's appointment or proposed appointment to, promotion or proposed promotion to, or any advantage in, a position in a state employment system administered by, or subject to approval of, a state agency as a reprisal for the employee's declining to participate in contributions or donations to charities or community organizations.

85 Acts, ch 20, §1 SF 90
See also §19A.19, 79.29
NEW unnumbered paragraph 2

79.29 Reprisals prohibited—political subdivisions.

A person shall not discharge an employee from or take or fail to take action regarding an employee's appointment or proposed appointment to, promotion or proposed promotion to, or any advantage in, a position in employment by a political subdivision of this state as a reprisal for a disclosure of information by that employee to a member of the general assembly, or an official of that political subdivision or a state official or a disclosure of information which the employee reasonably believes evidences a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety. This section does not apply if the disclosure of that information is prohibited by statute.

85 Acts, ch 60, §1 HF 173
See also §19A.19, 79.28
NEW section

CHAPTER 80

DEPARTMENT OF PUBLIC SAFETY

80.39 Disposition of personal property.

1. Personal property, except for property subject to forfeiture, motor vehicles subject to sale pursuant to section 321.89, and seizable or forfeitable property subject to disposition pursuant to chapter 809A, which personal property is found or seized by, turned in to, or otherwise lawfully comes into the possession of the department of public safety and which the department does not own, shall be disposed of pursuant to this section. If by examining the property the owner or lawful custodian of the property is known or can be readily ascertained, the department shall notify the owner or custodian by certified mail directed to the owner's or custodian's last known address, as to the location of the property. If the identity or address of the owner cannot be determined, notice by one publication in a newspaper of general circulation in the area where the property was found is sufficient notice. Publication notice may contain multiple items.

2. The department may return the property to a person if that person or the person's representative does all of the following:

- a. Appears at the location where the property is located.
- b. Provides proper identification.
- c. Demonstrates ownership or lawful possession of the property to the satisfaction of the department.

3. After ninety days following the mailing or publication of the notice required by this section, or if the owner or lawful custodian of the property is unknown or cannot be readily determined, or the department has not turned the property over to the owner, the lawful custodian, or the owner's or custodian's representative, the department may dispose of the property in any lawful way, including but not limited to the following:

- a. Selling the property at public auction with the proceeds, less department expenses, going to the general fund of the state, however, the department shall be reimbursed from the proceeds for the reasonable expenses incurred in selling the property at the auction.

- b. Retaining the property for the department's own use.
- c. Giving the property to another agency of government.
- d. Giving the property to an appropriate charitable organization.
- e. Destroying the property.

4. Except when a person appears in person or through a representative within the time periods set by this section, and satisfies the department that the person is the owner or lawful custodian of the property, disposition of the property shall be at the discretion of the department. The department shall maintain the receipt and disposition records for all property processed under this section. Good faith compliance with this section is a defense to any claim or action at law or in equity regarding the disposition of the property.

85 Acts, ch 201, §1 SF 455
Subsection 1 amended

CHAPTER 80A

PRIVATE INVESTIGATIVE AGENCIES AND PRIVATE SECURITY AGENCIES

80A.4 License requirements.

1. Applications for a license or license renewal shall be submitted to the commissioner in the form the commissioner prescribes. A license shall not be issued unless the applicant:

- a. Is eighteen years of age or older.
- b. Is not a peace officer.
- c. Has never been convicted of a felony or aggravated misdemeanor.
- d. Is not addicted to the use of alcohol or a controlled substance.
- e. Does not have a history of repeated acts of violence.
- f. Is of good moral character and has not been judged guilty of a crime involving moral turpitude.
- g. Has not been convicted of a crime described in section 708.3, 708.4, 708.5, 708.6, 708.8, or 708.9.
- h. Has not been convicted of illegally using, carrying or possessing a dangerous weapon.
- i. Has not been convicted of fraud.
- j. Complies with other qualifications and requirements the commissioner adopts by rule.

2. If the applicant is a corporation, the requirements of subsection 1 apply to the president and to each officer, director or employee who is actively involved in the licensed business in Iowa. If the applicant is a partnership or association, the requirements of subsection 1 apply to each partner or association member.

3. Each employee of an applicant or licensee shall possess the same qualifications required by subsection 1 of this section for a licensee.

85 Acts, ch 56, §1 SF 456
Subsection 2 struck and rewritten

80A.7 Identification cards.

The department shall issue to each licensee and to each employee of the licensee an identification card in a form approved by the commissioner. It is unlawful for a person to act in the private investigation business or private security business unless the person has in the person's immediate possession an identification card issued under this section.

The licensee is responsible for the use of identification cards by the licensee's employees and shall return an employee's card to the department upon termination of the employee's service. Identification cards remain the property of the department. The fee for each card is three dollars.

A county sheriff may issue temporary identification cards valid for fourteen days to a person employed by an agency licensed as a private security business or private investigation business on a temporary basis in the county. The fee for each card is three dollars. The form of the temporary identification cards shall be approved by the commissioner.

85 Acts, ch 56, §2 SF 456
Unnumbered paragraph 3 amended

80A.10 Licensee's bond.

A license shall not be issued unless the applicant files with the department a surety bond in an amount of five thousand dollars in the case of an agency licensed to conduct only a private security business or a private investigation business, or in the amount of ten thousand dollars in the case of an agency licensed to conduct both. The bond shall be issued by a surety company authorized to do business in this state and shall be conditioned on the faithful, lawful, and honest conduct of the applicant and those employed by the applicant in carrying on the business licensed. The bond shall provide that a person injured by a breach of the conditions of the bond may bring an action on the bond to recover legal damages suffered by reason of the breach. However, the aggregate liability of the surety for all damages shall not exceed the amount of the bond. Bonds issued and filed with the department shall remain in force and effect until the surety has terminated future liability by a written thirty days' notice to the department.

85 Acts, ch 56, §3 SF 456
Section struck and rewritten

80A.10A Licensee's proof of financial responsibility.

A license shall not be issued unless the applicant furnishes proof acceptable to the commissioner of the applicant's ability to respond in damages for liability on account of accidents or wrongdoings occurring subsequent to the effective date of the proof, arising out of the ownership and operation of a private security business or a private investigation business.

85 Acts, ch 56, §5 SF 456
NEW section

80A.12 Refusal, suspension or revocation.

The commissioner may refuse to issue, or may suspend or revoke a license issued, for any of the following reasons:

1. Fraud in applying for or obtaining a license.
2. Violation of any of the provisions of this chapter.
3. If a licensee or employee of a licensee has been adjudged guilty of a crime involving moral turpitude, a felony, or an aggravated misdemeanor.
4. If a licensee willfully divulges to an unauthorized person information obtained by the licensee in the course of the licensed business.
5. Upon the disqualification or insolvency of the surety on the licensee's bond, unless the licensee files a new bond with sufficient surety within fifteen days of the receipt of notice from the commissioner.
6. If the applicant for a license or licensee or employee of a licensee fails to meet or retain any of the other qualifications provided in section 80A.4.
7. If the applicant for a license or licensee knowingly makes a false statement or knowingly conceals a material fact or otherwise commits perjury in an original application or a renewal application.
8. Willful failure or refusal to render to a client services contracted for and for which compensation has been paid or tendered in accordance with the contract.

85 Acts, ch 56, §4 SF 456; 85 Acts, ch 67, §9 SF 121
Subsection 7 struck and subsequent subsections renumbered

80A.13 Campus weapon requirements.

An individual employed by a college or university, or by a private security business holding a contract with a college or university, who performs private security duties on a college or university campus and who carries a weapon while performing these duties shall meet all of the following requirements:

1. File with the sheriff of the county in which the campus is located evidence that the individual has successfully completed an approved firearms training program under section 724.9. This requirement does not apply to armored car personnel.

2. Possess a permit to carry weapons issued by the sheriff of the county in which the campus is located under sections 724.6 through 724.11. This requirement does not apply to armored car personnel.

3. File with the sheriff of the county in which the campus is located a sworn affidavit from the employer outlining the nature of the duties to be performed and justification of the need to go armed.

85 Acts, ch 56, §7 SF 456
Subsections 1 and 2 amended

80A.17 Confidential records.

1. All complaint files, investigation files, other investigation reports, and other investigative information in the possession of the department or its employees or agents which relate to licensee discipline are privileged and confidential except that they are subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the licensee, and are admissible in evidence in a judicial or administrative proceeding other than a proceeding involving licensee discipline. In addition, investigative information in the possession of the department's employees or agents which relates to licensee discipline may be disclosed to the appropriate licensing authority in another state, the District of Columbia, or a territory or country in which the licensee is licensed or has applied for a license. If the investigative information in the possession of the department indicates a crime has been committed, the information shall be reported to the proper law enforcement agency. A final written decision and finding of fact of the department in a disciplinary proceeding is a public record.

Pursuant to section 17A.19, subsection 6, the department, upon an appeal by the licensee of the decision by the department shall transmit the entire record of the contested case to the reviewing court.

Notwithstanding section 17A.19, subsection 6, if a waiver of privilege has been involuntary and evidence has been received at a disciplinary hearing, the court shall order withheld the identity of the individual whose privilege was waived.

2. Lists of employees of a licensed agency and their personal histories shall be held as confidential. However, the lists of the names of the licensed agencies, their owners, corporate officers and directors shall be held as public records. The commissioner may confirm that a specific individual is an employee of a licensed agency upon request and may make lists of licensed agencies' employees available to law enforcement agencies.

85 Acts, ch 56, §6 SF 456
NEW section

CHAPTER 80B

IOWA LAW ENFORCEMENT ACADEMY

80B.11 Rules.

The director of the academy, subject to the approval of the council, shall promulgate rules in accordance with the provisions of this chapter and chapter 17A, giving due consideration to varying factors and special requirements of law enforcement agencies relative to the following:

1. Minimum entrance requirements, minimum qualifications for instructors, course of study, attendance requirements, and equipment and facilities required at approved law enforcement training schools. Minimum age requirements for entrance to approved law enforcement training schools shall be eighteen years of age.

2. Minimum basic training requirements law enforcement officers employed after July 1, 1968, must complete in order to remain eligible for continued employment and the time within which such basic training must be completed.

3. Categories or classifications of advanced in-service training program and minimum courses of study and attendance requirements for such categories or classifications.

4. Minimum standards of physical, educational and moral fitness which shall govern the recruitment, selection and appointment of law enforcement officers.

5. Minimum standards of mental fitness which shall govern the initial recruitment, selection and appointment of law enforcement officers. The rules shall include, but are not limited to, providing a battery of psychological tests to determine cognitive skills, personality characteristics and suitability of an applicant for a law enforcement career. However, this battery of tests need only be given to applicants being considered in the final selection process for a law enforcement position. Notwithstanding any provision of chapter 400, an applicant shall not be hired if the employer determines from the tests that the applicant does not possess sufficient cognitive skills, personality characteristics, or suitability for a law enforcement career. The director of the academy shall, beginning July 1, 1986, provide for the cognitive and psychological examinations and their administration at no cost to the law enforcement agencies or applicants, and shall identify and procure persons who can be hired to interpret the examinations.

6. Grounds for revocation of a law enforcement officer's certification.

7. Exemptions from particular provisions of this chapter in case of any state, county or city, if, in the opinion of the council, the standards of law enforcement training established and maintained by the governmental agency are as high or higher than those established pursuant to this chapter; or revocation in whole or in part of such exemption, if in its opinion the standards of law enforcement training established and maintained by the governmental agency are lower than those established pursuant to this chapter.

85 Acts, ch 208, §2 HF 691
Subsection 5 amended

80B.13 Authority of council.

The council may:

1. Designate members to visit and inspect any law enforcement training school, or examine the curriculum or training procedures, for which application for approval has been made.

2. Issue certificates to law enforcement training schools qualifying under the regulations of the council.

3. Issue certificates to law enforcement officers who have met the requirements of this chapter and rules promulgated under provisions of chapter 17A relative to hiring and training standards.

4. Make recommendations to the governor, the attorney general, the commissioner of public safety and the legislature on matters pertaining to qualification and training of law enforcement officers and other matters considered necessary to improve law enforcement services.

5. Co-operate with federal, state and local enforcement agencies in establishing and conducting local or area schools, or regional training centers for instruction and training of law enforcement officers.

6. Direct research in the field of law enforcement and accept grants for such purposes.

7. Accept applications for attendance of the academy from persons other than those required to attend.

8. Revoke a law enforcement officer's certification for the conviction of a felony. In addition the council may consider revocation proceedings when an employing agency recommends to the council that revocation would be appropriate with regard to a current or former employee.

A recommendation by an employing agency must be in writing and set forth the reasons why the action is being recommended, the findings of the employing agency concerning the matter, the action taken by the employing agency, and that the action by the agency is final. Final, as used in this section, means that all appeals through a grievance procedure available to the officer or civil service have been exhausted. The written recommendations shall be unavailable for inspection by anyone except personnel of the employing agency, the council and the affected law enforcement officer, or as ordered by a reviewing court.

The council shall establish a process for the protest and appeal of a revocation made pursuant to this subsection.

9. In accordance with chapter 17A, conduct investigations, hold hearings, appoint hearing examiners, administer oaths and issue subpoenas enforceable in district court on matters relating to the revocation of a law enforcement officer's certification.

10. Secure the assistance of the state division of criminal investigation in the investigation of alleged violations, as provided under section 80.9, subsection 1, paragraphs "c" and "g", of the provisions adopted under section 80B.11.

85 Acts, ch 67, §10 SF 121

Subsection 8, unnumbered paragraph 2 amended

CHAPTER 80C

CRIMINAL AND JUVENILE JUSTICE PLANNING

80C.2 Advisory council.

The criminal and juvenile justice advisory council is created to advise the governor and legislature and direct the agency in the performance of its duties and to perform other duties as required by law. The council consists of twelve members. The governor shall appoint seven members each for a four-year term beginning and ending as provided in section 69.19 and subject to confirmation by the senate as follows:

1. Three persons each of whom is either a county supervisor, county sheriff, a mayor, city chief of police or a county attorney.

2. Two persons shall represent the general public and shall not be employed in any law enforcement, judicial, or corrections capacity.

3. Two persons who are knowledgeable about Iowa's juvenile justice system.

The commissioner of the department of human services, the director of the Iowa department of corrections, the commissioner of public safety, the attorney general and the chief justice of the supreme court shall each designate a person to serve on the council.

Members of the council shall receive reimbursement from the state for actual and

necessary expenses incurred in the performance of their official duties. Public members shall also receive forty dollars per diem. As used in this section and sections 80C.3 and 80C.4 unless the context otherwise requires "council" means the criminal and juvenile justice advisory council created in this section.

85 Acts, ch 195, §8 SF 329
Section amended

CHAPTER 83

COAL MINING

83.10 Performance bond requirement.

1. After a permit application has been approved but before issuance, the applicant shall file with the department, on a form furnished by the department, a bond for performance payable to the state and conditioned upon faithful performance by the operator of all requirements of this chapter and all rules adopted by the department pursuant to this chapter.

2. The bond shall be signed by the operator as principal and by a corporate surety licensed to do business in Iowa as surety. In lieu of a bond, the operator may deposit cash, or government securities, or certificates of deposit or letters of credit with the department on the same conditions as for filing of bonds.

3. The amount of the bond or other security required to be filed with the department shall be equal to the estimated cost of reclamation of the site if performed by the department. The estimated cost of reclamation of each individual site shall be determined by the department on the basis of relevant factors. The department may require each applicant to furnish information necessary to estimate the cost of reclamation. The amount of the bond or other security may be increased or reduced as the permitted operation changes, or when the cost of future reclamation changes. However, the bond amount shall not be less than ten thousand dollars.

4. Liability under the bond shall be for the duration of the coal mining and reclamation operation and for a period coincident with operator's responsibility for revegetation requirements in the rules promulgated under section 83.7.

5. If the license to do business in Iowa of a surety of a bond filed with the department is suspended or revoked, the operator, within thirty days after receiving notice from the department, shall substitute another surety. If the operator fails to make substitution, the department may suspend the operator's authorization to conduct mining on the site covered by the bond until substitution has been made. The commissioner of insurance shall notify the department whenever the license of any surety providing bond for an operator is suspended or revoked.

6. Notwithstanding sections 453.7, subsection 2, and 666.3, the interest or earnings on investments or time deposits of the proceeds of a performance bond forfeited to the department, cash deposited under subsection 2, any funds provided for the abandoned mine reclamation program under section 83.21 and any civil penalties collected pursuant to sections 83.14 and 83.15 shall be credited to the payment of costs and administrative expenses associated with the reclamation, restoration or abatement activities of the department. The department may expend funds credited to it under this subsection to conduct reclamation activities on any areas disturbed by coal mining not subject to a presently valid permit to conduct surface mining.

85 Acts, ch 140, §1 HF 626
NEW subsection 6

83.14 Enforcement.

1. When on the basis of an inspection, the director determines that a condition or practice exists which creates an imminent danger to the health or safety of the public or can reasonably be expected to cause significant, imminent environmental

harm to land, air, or water resources, the director shall immediately order a cessation of coal mining and reclamation operations to the extent necessary until the director determines that the condition, practice, or violation has been abated, or until the order is modified, vacated, or terminated by the department pursuant to procedures set out in this section.

If the director finds that the ordered cessation will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm, the director shall require the operator to take whatever steps the director deems necessary to abate the imminent danger or the significant environmental harm.

2. When on the basis of an inspection, the director determines that any operator is in violation of any requirement of this chapter or permit condition, but the violation does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant, imminent environmental harm, the director shall issue a notice to the operator fixing a reasonable time but not more than ninety days for the abatement of the violation and providing opportunity for public hearing.

If upon expiration of the time as fixed the director finds in writing that the violation has not been abated, the director, notwithstanding section 17A.18, shall immediately order a cessation of coal mining and reclamation operations relating to the violation until the order is modified, vacated, or terminated by the director pursuant to procedures outlined in this section. In the order of cessation issued by the director under this subsection, the director shall include the steps necessary to abate the violation in the most expeditious manner possible.

3. When on the basis of an inspection the director determines that a pattern of violations of the requirements of this chapter or any permit conditions exists or has existed, and if the director also finds that the violations are willful or caused by the unwarranted failure of the operator to comply with any requirements of this chapter or any permit conditions, the director shall immediately issue an order to the operator to show cause as to why the permit should not be suspended or revoked and the bond or security forfeited, and shall provide opportunity for a hearing as a contested case pursuant to chapter 17A. Upon the operator's failure to show cause, the director shall immediately suspend or revoke the permit.

4. A permittee may request in writing an appeal to the committee of a decision made in a hearing under subsection 3 within thirty days of the decision. The committee shall review the record made in the contested case hearing, and may hear additional evidence upon a showing of good cause for failure to present the evidence in the hearing, or if evidence concerning events occurring after the hearing is deemed relevant to the proceeding. However, the committee shall not review a decision in a proceeding if the department seeks to collect a civil penalty pursuant to section 83.15, and those decisions are final agency actions subject to direct judicial review as provided in chapter 17A.

The contested case hearing shall be scheduled within thirty days of receipt of the request by the department. If the decision in the contested case is to revoke the permit, the permittee shall be given a specific period to complete reclamation, or the attorney general shall be requested to institute bond forfeiture proceedings.

5. In any administrative proceeding under this chapter or judicial review, the amount of all reasonable costs and expenses, including reasonable attorney fees incurred by a person in connection with the person's participation in the proceedings or judicial review, may be assessed against either party as the court in judicial review or the committee in administrative proceedings deems proper.

6. Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the coal mining and reclamation operation to which the notice or order applies.

Each notice or order issued under this section shall be given promptly to the operator or an agent and all notices and orders shall be in writing and signed. A notice or order issued pursuant to this section may be modified, vacated, or terminated by the director. Any notice or order issued pursuant to this section which requires cessation of mining by the operator expires within thirty days of actual notice to the operator unless a public hearing is held at or near the site so that any viewings of the site can be conducted during the course of the hearing.

7. A permittee issued a notice or order under this section or any person having an interest which is or may be adversely affected by the notice or order or by its modification, vacation or termination may apply to the committee for review within thirty days of receipt of the notice or order or within thirty days of its modification, vacation or termination. The review shall be treated as a contested case under chapter 17A. Pending completion of any investigation or hearings required by this section, the applicant may file with the department a written request that the director grant temporary relief from any notice or order issued under this section together with a detailed statement giving reasons for granting such relief. The director shall issue an order or decision granting or denying the request for relief within five days of its receipt. The director may grant such relief under such conditions as the director may prescribe if all of the following occur:

a. A hearing has been held in the locality of the permit area in which all parties were given an opportunity to be heard. The hearing need not be held as a contested case under chapter 17A.

b. The applicant shows that there is substantial likelihood that the findings of the committee will be favorable to the applicant.

c. Such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air or water resources.

8. At the request of the department, the attorney general shall institute any legal proceedings, including an action for an injunction or a temporary injunction necessary to enforce the penalty provisions of this chapter or to obtain compliance with this chapter. Injunctive relief may be requested to enforce a cessation order issued by the director pending a hearing pursuant to subsection 4.

9. When on the basis of an inspection, or other information available to the department, the director has reasonable cause to believe that the operator is unable to complete reclamation of all or a portion of the permit area as required by law, the director shall issue an order to the operator to show cause as to why all or a portion of the performance bond required by section 83.10 should not be revoked.

85 Acts, ch 140, §2-4 HF 626
 Subsection 4 struck and rewritten
 Subsection 8 amended
 NEW subsection 9

83.15 Penalties.

1. A person who violates a permit condition, a provision of this chapter, or a rule or order issued under this chapter is subject to a civil penalty not to exceed five thousand dollars per day for each day of violation. If a violation results in the issuance of a cessation order, a civil penalty shall be imposed. The penalty shall not exceed five thousand dollars for each day of violation.

In determining the amount of the penalty, consideration shall be given to the operator's history of previous violations at the particular mining operation, the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public, whether the operator was negligent, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of the violation.

An operator who fails to correct a violation for which a notice or order has been issued within the period permitted for its correction shall be required to pay a civil penalty of not less than seven hundred fifty dollars for each day during which the failure or violations continue.

2. If a notice or order has been issued, the department may assess a recommended penalty in accordance with a schedule established by rule. The person to whom the notice or order was issued may submit written information within fifteen days of the notice or order to be considered by the department. The department shall serve the assessment by certified mail, return receipt requested, within thirty days of issuance of the notice or order. The department may reassess any penalty if necessary to consider facts not reasonably available on the date of issuance of the assessment. A person may consent to a penalty assessment by paying the penalty without resort to judicial proceedings.

If a violation results in the issuance of a cessation order pursuant to section 83.14 the department shall assess a penalty.

3. A contested case hearing may be requested pursuant to section 83.14, subsection 4, to review a notice, order, or penalty assessment. A person to whom a penalty assessment has been issued may request a contested case hearing solely for review of the amount of the penalty. A penalty assessment is final if a request for review is not made in a timely manner.

4. Judicial review of any action of the department shall be in accordance with chapter 17A. Judicial review of a penalty assessment shall not be permitted unless the petitioner has posted a bond equal to the amount of the assessed penalty in the district court or has placed the proposed amount in an interest bearing escrow fund approved by the department.

5. If a violation results in a cessation order pursuant to section 83.14, the attorney general, at the request of the department, shall institute a civil action in district court for injunctive relief.

Notwithstanding section 17A.20, an appeal bond shall be required for an appeal of a judgment assessing a civil penalty.

6. A person who willfully and knowingly violates a condition of a permit or any other provision of this chapter, or makes a false statement, representation, or certification, or knowingly fails to make a statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter or any order or decision of this chapter, shall be guilty of a serious misdemeanor and notwithstanding section 903.1 the maximum fine shall be ten thousand dollars.

7. Whenever a corporate operator violates a condition of a permit or any other provision of this chapter or fails or refuses to comply with any provision of this chapter, a director, officer, or agent of that corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties or criminal fines and imprisonment that may be imposed upon a person under this section.

8. An employee of the department performing any function or duty under this chapter who knowingly and willfully has a direct or indirect financial interest in any coal mining operation shall be guilty of a serious misdemeanor and notwithstanding section 903.1 the maximum fine shall be two thousand five hundred dollars.

85 Acts, ch 140, §5 HF 626
Subsections 1 to 4 struck and rewritten
NEW subsection 5
Subsequent subsections renumbered

CHAPTER 83A

MINES

83A.1 Policy.

It is the policy of this state to provide for the reclamation and conservation of land affected by surface mining and thereby to preserve natural resources, protect and perpetuate the taxable value of property, and protect and promote the health, safety and general welfare of the people of this state.

85 Acts, ch 137, §1 HF 540
Section amended

83A.2 Definitions.

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

1. "*Administrator*" means the administrative officer of the department responsible for administration or enforcement of this chapter or that officer's designee.
2. "*Advisory board*" means the "land reclamation advisory board" in the department.
3. "*Affected land*" means the area of land from which overburden has been removed or upon which overburden has been deposited or both, including crushing areas and stockpile areas but not including roads.
4. "*Committee*" means the state soil conservation committee.
5. "*Department*" means the department of soil conservation.
6. "*Mine*" means any underground or surface mine developed and operated for the purpose of extracting any ores or mineral solids except coal.
7. "*Mine site*" means a site where surface mining is being conducted or has been conducted in the past and the operator anticipates further surface mining operations, or the surface operation related to an underground mine.
8. "*Operator*" means any person, firm, partnership, or corporation engaged in and controlling a mining operation but shall not include a political subdivision of the state of Iowa.
9. "*Overburden*" means all of the earth and other materials which lie above natural deposits of gypsum, clay, stone, sand, gravel or other minerals, and includes all earth and other materials disturbed from their natural state in the process of surface mining.
10. "*Peak*" means a projecting point of overburden removed from its natural position and deposited elsewhere in the process of surface mining.
11. "*Pit*" means a tract of land from which overburden has been or is being removed for the purpose of surface mining.
12. "*Ridge*" means a lengthened elevation of overburden removed from its natural position and deposited elsewhere in the process of surface mining.
13. "*Surface mining*" means the mining of gypsum, clay, stone, sand, gravel or other ores or mineral solids for sale or for processing or consumption in the regular operation of a business by removing the overburden lying above the natural deposits and mining directly from the natural deposits exposed, or by mining directly from deposits lying exposed in their natural state. Removal of overburden and mining of limited amounts of any ores or mineral solids shall not be considered surface mining when done only for the purpose and to the extent necessary to determine the location, quantity, or quality of the natural deposit, if the ores or mineral solids removed during exploratory excavation or mining are not sold, processed for sale, or consumed in the regular operation of a business.
14. "*Topsoil*" means the natural medium located at the land surface with favorable characteristics for growth of vegetation.

85 Acts, ch 137, §2-5 HF 540
Subsections alphabetized and renumbered
Subsections 4 and 5 struck and subsection 4 rewritten and renumbered as 7
Subsection 7 amended and renumbered as 3
Subsection 8 struck
NEW subsection 14

83A.3 Advisory board.

There is established within the department of soil conservation a land reclamation advisory board which shall consist of seven members appointed by the governor, as follows:

1. The state forester or a member educated and experienced in the field of forestry.
2. The state geologist or a member educated and experienced in the field of geology.
3. One member educated and experienced in the field of agronomy.
4. One member representing the state conservation commission.
5. One member representing the department of water, air and waste management.
6. Two members representing Iowa surface mining operators. The state association or groups representing each of the industries engaged in surface mining in Iowa, or their managing boards, may jointly submit to the governor in each year when an industry representative is to be appointed a list of two or more persons qualified for the appointment. If a list is submitted, the governor shall appoint to the advisory board at least one of the persons named on the list.

Members of the advisory board may at any time request representatives of any federal, state, local, or private agency or group to serve in a consulting capacity with the advisory board.

85 Acts, ch 137, §6 HF 540
Unnumbered paragraph 1 amended

83A.6 Duties of board.

The advisory board shall:

1. Advise the department on any matter relating to administration and enforcement of this chapter and chapters 83 and 84.
2. Advise the department with respect to surface mined land reclamation demonstration projects.
3. Advise the department on the gathering, preparation, and dissemination of information on methods of reclaiming land which has been surface mined and on any state, federal, or other financial assistance which may be available to assist in paying the cost of reclamation of the land.

The department shall inform the advisory board of all complaints received relating to mining and mining operations.

85 Acts, ch 137, §7 HF 540
Section amended

83A.8 Suspension or revocation of license—refusal to renew.

The department may, with approval of the committee, commence proceedings to suspend, revoke, or refuse to renew a license of any licensee for repeated or willful violation of any of the provisions of this chapter. The department shall by certified mail or personal service serve on the licensee notice in writing of the charges and grounds upon which the license is to be suspended, revoked, or will not be renewed. The notice shall include the time and the place at which a hearing shall be held before the committee to determine whether to suspend, revoke, or refuse to renew the license. The hearing shall be not less than fifteen nor more than thirty days after the mailing or service of the notice.

85 Acts, ch 137, §8 HF 540
Section amended

83A.9 Hearing—counsel.

A licensee whose license the department proposes to suspend, revoke, or refuse to renew has the right to counsel and may produce witnesses and present statements, documents, and other information in the licensee's behalf at the hearing. If after full investigation and hearing the licensee is found to have willfully or repeatedly

violated any of the provisions of this chapter, the committee may affirm or modify the proposed suspension, revocation, or refusal to renew the license. When the committee finds that a license should be suspended or revoked or should not be renewed, the department shall so notify the licensee in writing by certified mail or by personal service.

85 Acts, ch 137, §9 HF 540
Section amended

83A.13 Registering surface mining site—sign at entrance—penalty.

1. At least seven days before beginning mining or removal of overburden at a surface mining site not previously registered, an operator engaging in mining in this state shall register the mine site with the department. Application for registration shall be made upon a form provided by the department. A registration renewal shall be filed not later than twelve months following the initial registration and each subsequent renewal. Application for renewal of registration shall be on a form provided by the department. The registration renewal fee shall be established by the department in an amount not exceeding the cost of administration. The registration fee shall be established by the department in an amount not exceeding the cost of administering the registration provisions of this chapter, as estimated by the department. The application shall include a description of the tract or tracts of land where the site is located and the estimated number of acres at the site to be affected by the mine. The description shall include the section, township, range, and county in which the land is located and shall otherwise describe the land with sufficient certainty to determine the location and to distinguish the land to be registered from other lands. The application shall include a statement explaining the authority of the applicant's legal right to operate a mine on the land.

2. A mine site registered pursuant to this section or section 83A.21 shall have, at the primary entrance to the mine site, a clearly visible sign which sets forth the name, business address, registration number, and phone number of the operator. Failure to post and maintain a sign as required by this subsection, within thirty days after notice from the department, invalidates the registration.

3. A person who falsifies information required to be submitted under this section shall be guilty of a simple misdemeanor.

85 Acts, ch 137, §10-12 HF 540
Subsection 1 amended
Subsection 2 struck
NEW subsection 2

83A.14 Bond.

The application for registration shall be accompanied by a bond or security as required under section 83A.23 or 83A.24. After ascertaining that the applicant is licensed under section 83A.7 and is not in violation of this chapter with respect to any mine site previously registered with the department, the department shall register the mine site and shall issue the applicant written authorization to operate a mine.

85 Acts, ch 137, §13 HF 540
Section amended

83A.17 Reclamation requirements.

1. An operator authorized under this chapter to operate a mine, after completion of mining operations and within the time specified in section 83A.19, shall:

a. Grade affected lands except for impoundments, pit floors, and highwalls, to slopes having a maximum of one foot vertical rise for each four feet of horizontal distance. Where the original topography of the affected land was steeper than one foot of vertical rise for each four feet of horizontal distance, the affected lands may be graded to blend with the surrounding terrain.

b. Provide for the vegetation of the affected lands, except for impoundments, pit

floors, and highwalls, as approved by the department before the release of the bond as provided in section 83A.19.

2. Notwithstanding subsection 1, overburden piles where deposition has not occurred for a period of twelve months shall be stabilized.

3. Crushing areas and stockpile areas in place on July 1, 1985 are not subject to this section unless those areas continue to function as a part of the mine site after July 1, 1988.

4. Topsoil that is a part of overburden shall not be destroyed or buried in the process of mining.

5. The department, with concurrence of the advisory board, may grant a variance from the requirements of subsections 1 and 2.

6. A bond or security posted under this chapter to assure reclamation of affected lands shall not be released until all the reclamation work required by this section has been performed in accordance with this chapter and departmental rules, except when a replacement bond or security is posted by a new operator or responsibility is transferred under section 83A.16.

85 Acts, ch 137, §14 HF 540
Section struck and rewritten

83A.18 Periodic reports.

An operator shall file with the department a periodic report for each mine site under registration. The report shall make reference to the most recent registration of the mine site and shall show:

1. The location and extent of all surface land area on the mine site affected by mining during the period covered by the report.

2. The extent to which removal of mineral products from all or any part of the affected lands has been completed.

The report shall be filed not later than twelve months after original registration of the site and prior to the expiration of each subsequent twelve-month period. A report shall also be filed within thirty days after completion of all surface mining operations at the site regardless of the date of the last preceding report. Forms for the filing of periodic reports required by this section shall be provided by the department.

85 Acts, ch 137, §15 HF 540
Section amended

83A.19 Reclamation schedule.

An operator of a mine shall reclaim affected lands according to a schedule established by the department, but within a period not to exceed three years, after the filing of a report required under section 83A.18 indicating the mining of any part of a site has been completed.

For certain postmining land uses, such as a sanitary land fill, the department, with the approval of the land reclamation advisory board, may allow an extended reclamation period.

An operator, upon completion of any reclamation work required by section 83A.17, shall apply to the department in writing for approval of the work. The department shall within a reasonable time determined by departmental rule inspect the completed reclamation work. Upon determination by the department that the operator has satisfactorily completed all required reclamation work on the land included in the application, the department shall release the bond or security on the reclaimed land, shall remove the land from registration, and shall terminate or amend as necessary the operator's authorization to conduct surface mining on the site.

85 Acts, ch 137, §16 HF 540
Section amended

83A.20 Extension of time.

The time for completion of reclamation work may be extended upon presentation by the operator of evidence satisfactory to the department that reclamation of affected land cannot be completed within the time specified by section 83A.19 without unreasonably impeding removal of mineral products from other parts of an active site or future removal of mineral products from an initiative site.

85 Acts, ch 137, §17 HF 540
Section amended

83A.23 Form of bond.

A bond filed with the department by an operator pursuant to this chapter shall be in a form prescribed by the department, payable to the state of Iowa, and conditioned upon faithful performance by the operator of all requirements of this chapter and all rules adopted by the department pursuant to this chapter. The bond shall be signed by the operator as principal and by a corporate surety licensed to do business in Iowa as surety. In lieu of a bond, the operator may deposit cash, certificates of deposit or government securities with the department on the same conditions as prescribed by this section for filing of bonds. The amount of the bond or other security required to be filed with an application for registration of a surface mining site, or to increase the area of a site previously registered, shall be equal to the estimated cost of reclaiming the site as required under section 83A.17. The estimated cost of reclamation of each individual site shall be determined by the department on the basis of relevant factors including, but not limited to, topography of the site, mining methods being employed, depth and composition of overburden, and depth of the mineral deposit being mined. The department may require an applicant for registration or amendment of registration of a site to furnish information necessary to estimate the cost of reclaiming the site. The penalty of the bond or the amount of cash or securities on deposit may be increased or reduced from time to time in accordance with section 83A.15.

85 Acts, ch 137, §18 HF 540
Section amended

83A.24 Single bond for multiple sites.

An operator who registers with the department two or more surface mining sites may elect, at the time the second or a subsequent site is registered, to post a single bond in lieu of separate bonds on each site. A single bond so posted shall be in an amount equal to the estimated cost of reclaiming all sites the operator has registered, determined as provided in section 83A.23. The penalty of a single bond on two or more surface mining sites may be increased or decreased from time to time in accordance with sections 83A.14, 83A.15, and 83A.19. When an operator elects to post a single bond in lieu of separate bonds previously posted on individual sites, the separate bonds shall not be released until the new bond has been accepted by the department.

85 Acts, ch 137, §19 HF 540
Section amended

83A.28 Forfeiture of bond.

The attorney general, upon request of the committee, shall institute proceedings for forfeiture of the bond posted by an operator to guarantee reclamation of a site where the operator is in violation of any of the provisions of this chapter or any rule adopted by the department pursuant to this chapter. Forfeiture of the operator's bond shall fully satisfy all obligations of the operator to reclaim affected land covered by the bond. The department shall have the power to reclaim as required by section 83A.17 any surface mined land with respect to which a bond has been forfeited, using the proceeds of the forfeiture to pay for the necessary reclamation work.

85 Acts, ch 137, §20 HF 540
Section amended

83A.29 Penalties for operating without a license and for failure to register.

1. If a person engages in mining without obtaining a license, the committee shall notify the attorney general who shall institute a civil action in the district court for injunctive relief and for the assessment of a civil penalty as determined by the court not to exceed five thousand dollars.

2. An operator who fails to make timely application for registration of each mine site is guilty of a simple misdemeanor. Each day mining activities are conducted at a mine site for which no application for registration has been made as required under section 83A.13 is a separate violation.

3. If an operator fails to register or reregister a site and provide required bond within thirty days following receipt of notice from the department by certified letter, the committee shall notify the attorney general who shall seek immediate injunctive relief.

4. An operator who fails to renew the operator's mining license within a time period set by the department, who has been denied license renewal by the committee, or whose license has been suspended or revoked by the committee shall also have all registrations automatically invalidated.

85 Acts, ch 137, §21 HF 540
Section amended

CHAPTER 85

WORKERS' COMPENSATION

85.59 Benefits for inmates and offenders.

For the purposes of this section, the term "inmate" includes a person confined in a reformatory, state penitentiary, release center, or other state penal or correctional institution while that person works in connection with the maintenance of the institution or in an industry maintained therein or while on detail to perform services on a public works project.

For purposes of this section, "inmate" includes a person who is performing unpaid community service under sections 907.13 and 910.2 or a work assignment of value to the state or to the public under chapter 232.

If an inmate is permanently incapacitated by injury in the performance of the inmate's work in connection with the maintenance of the institution or in an industry maintained therein, while on detail to perform services on a public works project, or is permanently or temporarily incapacitated in connection with the performance of unpaid community service under sections 907.13 and 910.2 or a work assignment of value to the state or to the public under chapter 232, that inmate shall be awarded only the benefits provided in section 85.27 and section 85.34, subsections 2 and 3. The weekly rate for such permanent disability is equal to sixty-six and two-thirds percent of the state average weekly wage paid employees as determined by the Iowa department of job service under section 96.3 and in effect at the time of the injury.

Weekly compensation benefits under this section may be determined prior to the inmate's release from the institution, but payment of benefits to an inmate shall commence as of the time of the inmate's release from the institution either upon parole or final discharge. However, if the inmate is awarded benefits for an injury incurred in connection with the performance of unpaid community service under sections 907.13 and 910.2 or a work assignment of value to the state or to the public under chapter 232, weekly compensation benefits under this section shall be determined and paid as in other workers' compensation cases.

If an inmate is receiving benefits under the provisions of this section and is recommitted to an institution covered by this section, the benefits shall immediately cease. If benefits cease because of the inmate's recommitment, the benefits shall resume upon subsequent release from the institution.

If death results from the injury, death benefits shall be awarded and paid to the dependents of the inmate as in other workers' compensation cases except that the weekly rate shall be equal to sixty-six and two-thirds percent of the state average weekly wage paid employees as determined by the Iowa department of job service under the provisions of section 96.3 and in effect at the time of the injury.

Payment under this section shall be made promptly out of appropriations which have been made for that purpose, if any. An amount or part thereof which cannot be paid promptly from the appropriation shall be paid promptly out of money in the state treasury not otherwise appropriated.

The time limit for commencing an original proceeding to determine entitlement to benefits under this section is the same as set forth in section 85.26. If an injury occurs to an inmate so as to qualify the inmate for benefits under this section, notwithstanding the fact that payments of weekly benefits are not commenced, an acknowledgment of compensability shall be filed with the industrial commissioner within thirty days of the time the responsible authority receives notice or knowledge of the injury as required by section 85.23.

If a dispute arises as to the extent of disability when an acknowledgment of compensability is on file or when an award determining liability has been made, an action to determine the extent of disability must be commenced within one year of the time of the release of the inmate from the institution. This does not bar the right to reopen the claim as provided by section 85.26, subsection 2.

Responsibility for the filings required by chapter 86 for injuries resulting in permanent disability or death and as modified by this section shall be made in the same manner as for other employees of the institution.

85 Acts, ch 67, §11 SF 121; 85 Acts, ch 177, §1 HF 130
See Code editor's note
Unnumbered paragraphs 2, 3 and 4 amended

85.61 Definitions.

In this and chapters 86 and 87, unless the context otherwise requires, the following definitions of terms shall prevail:

1. *"Employer"* includes and applies to any person, firm, association, or corporation, state, county, municipal corporation, school corporation, area education agency, township as an employer of volunteer fire fighters only, benefited fire district and the legal representatives of a deceased employer.

2. *"Worker"* or *"employee"* means a person who has entered into the employment of, or works under contract of service, express or implied, or apprenticeship, for an employer, every executive officer elected or appointed and empowered under and in accordance with the charter and bylaws of a corporation, including a person holding an official position, or standing in a representative capacity of the employer, and including officials elected or appointed by the state, counties, school districts, area education agencies, municipal corporations, or cities under any form of government, and including members of the Iowa highway safety patrol and conservation officers, except as hereinafter specified.

"Worker" or *"employee"* includes an inmate as defined in section 85.59.

3. The following persons shall not be deemed "workers" or "employees":

a. A person whose employment is purely casual and not for the purpose of the employer's trade or business except as otherwise provided in section 85.1.

b. An independent contractor.

c. Partners; directors of any corporation who are not at the same time employees of such corporation; or directors, trustees, officers or other managing officials of any nonprofit corporation or association who are not at the same time full-time employees of such nonprofit corporation or association.

4. The term *"worker"* or *"employee"* shall include the singular and plural. Any reference to a worker or employee who has been injured shall, when such worker or employee is dead, include the worker's or employee's dependents as herein defined

or the worker's or employee's legal representatives; and where the worker or employee is a minor or incompetent, it shall include the minor's or incompetent's guardian, next friend, or trustee. Notwithstanding any law prohibiting the employment of minors all minor employees shall be entitled to the benefits of this chapter and chapters 86 and 87 regardless of the age of such minor employee.

5. The words "*injury*" or "*personal injury*" shall be construed as follows:

a. They shall include death resulting from personal injury.

b. They shall not include a disease unless it shall result from the injury and they shall not include an occupational disease as defined in section 85A.8.

6. The words "*personal injury arising out of and in the course of the employment*" shall include injuries to employees whose services are being performed on, in, or about the premises which are occupied, used, or controlled by the employer, and also injuries to those who are engaged elsewhere in places where their employer's business requires their presence and subjects them to dangers incident to the business.

Personal injuries sustained by a volunteer fire fighter arise in the course of employment if the injuries are sustained at any time from the time the volunteer fire fighter is summoned to duty as a volunteer fire fighter until the time the volunteer fire fighter is discharged from duty by the chief of the volunteer fire department or the chief's designee.

7. The word "*court*" wherever used in this and chapters 86 and 87, unless the context shows otherwise, shall be taken to mean the district court.

8. "*Volunteer fire fighter*" means any active member of an organized volunteer fire department in this state and any other person performing services as a volunteer fire fighter for a municipality, township or benefited fire district at the request of the chief or other person in command of the fire department of the municipality, township or benefited fire district, or of any other officer of the municipality, township or benefited fire district having authority to demand such service, and who is not a full-time member of a paid fire department. A person performing such services shall not be classified as a casual employee.

9. "*Pay period*" means that period of employment for which the employer customarily or regularly makes payments to employees for work performed or services rendered.

10. "*Payroll taxes*" means an amount, determined by tables adopted by the industrial commissioner pursuant to chapter 17A, equal to the sum of the following:

a. An amount equal to the amount which would be withheld pursuant to withholding tables in effect on July 1 preceding the injury under the Internal Revenue Code of 1954, and regulations pursuant thereto, as amended, as though the employee had elected to claim the maximum number of exemptions for actual dependency, blindness and old age to which the employee is entitled on the date on which the employee was injured.

b. An amount equal to the amount which would be withheld pursuant to withholding tables in effect on July 1 preceding the injury under chapter 422, and any rules pursuant thereto, as though the employee had elected to claim the maximum number of exemptions for actual dependency, blindness and old age to which the employee is entitled on the date on which the employee was injured.

c. An amount equal to the amount required on July 1 preceding the injury by the Social Security Act of 1935 as amended, to be deducted or withheld from the amount of earnings of the employee at the time of the injury as if the earnings were earned at the beginning of the calendar year in which the employee was injured.

11. "*Spendable weekly earnings*" is that amount remaining after payroll taxes are deducted from gross weekly earnings.

12. "*Gross earnings*" means recurring payments by employer to the employee for employment, before any authorized or lawfully required deduction or withholding of funds by the employer, excluding irregular bonuses, retroactive pay, overtime,

penalty pay, reimbursement of expenses, expense allowances, and the employer's contribution for welfare benefits.

13. The words "*reserve peace officer*" shall mean a person defined as such by section 80D.1 who is not a full-time member of a paid law enforcement agency. A person performing such services shall not be classified as a casual employee.

85 Acts, ch 46, §1 SF 168; 85 Acts, ch 195, §9 SF 329
Subsections 1 and 8 amended
Subsection 6, NEW unnumbered paragraph 2

CHAPTER 87

COMPENSATION LIABILITY INSURANCE

87.4 Group and self-insured plans—tax exemption—plan approval.

For the purpose of complying with this chapter, groups of employers by themselves or in an association with any or all of their workers, may form insurance associations as hereafter provided, subject to such reasonable conditions and restrictions as may be fixed by the insurance commissioner; and membership in such mutual insurance organization as approved, together with evidence of the payment of premiums due, shall be evidence of compliance with this chapter.

A self-insurance association formed under this section and an association of cities or counties which enters into an agreement under chapter 28E for the purpose of establishing a self-insured group plan for the payment of workers' compensation and benefits are exempt from taxation under section 432.1.

A plan shall be submitted to the commissioner of insurance for review and approval prior to its implementation. The commissioner shall adopt rules for the review and approval of a self-insured group plan provided under this section. The rules shall include, but are not limited to, the following:

1. Procedures for submitting a plan for approval including the establishment of a fee schedule to cover the costs of conducting the review.
2. Establishment of minimum financial standards to ensure the ability of the plan to adequately cover the reasonably anticipated expenses.

85 Acts, ch 251, §1 SF 503
NEW unnumbered paragraphs 2 and 3 and subsections 1 and 2

CHAPTER 89

BOILERS AND UNFIRED STEAM PRESSURE VESSELS

89.3 Inspection made—certificate.

1. It shall be the duty of the commissioner, to inspect or cause to be inspected internally and externally, at least once every twelve months, except as otherwise provided in this section, in order to determine whether all such equipment is in a safe and satisfactory condition, and properly constructed and maintained for the purpose for which it is used, all boilers and unfired steam pressure vessels operating in excess of fifteen pounds per square inch, all low pressure heating boilers and unfired steam pressure vessels located in places of public assembly and other appurtenances used in this state for generating or transmitting steam for power, or for using steam under pressure for heating or steaming purposes.

2. The commissioner may enter any building or structure, public or private, for the purpose of inspecting any equipment covered by this chapter or gathering information with reference thereto.

3. Upon making an inspection of any equipment covered by this chapter, the commissioner shall issue to the owner or user thereof a certificate of inspection which certificate shall be posted at a place near the location of the equipment.

4. The owner or user of any equipment covered in this chapter, or persons in charge of same, shall not allow or permit a greater pressure in any unit than is stated in the certificate of inspection issued by the commissioner.

5. The commissioner may inspect boilers and tanks and other equipment stamped with the American Society of Mechanical Engineers code symbol for other than steam pressure, manufactured in Iowa, when requested by the manufacturer.

6. Each boiler of one hundred thousand pounds per hour or more capacity, unfired steam pressure vessel or regulated appurtenance used or proposed to be used within this state, which contains only water subject to internal continuous water treatment under the direct supervision of a graduate engineer or chemist, or one having equivalent experience in the treatment of boiler water where the water treatment is for the purpose of controlling and limiting serious corrosion and other deteriorating factors, and with respect to which vessel the commissioner has determined that the owner or user has complied with the record-keeping requirements prescribed in this chapter, shall be inspected at least once every two years internally and externally while not under pressure, and at least once every two years externally while under pressure. At any time a hydrostatic test is deemed necessary to determine the safety of a vessel, the tests shall be conducted by the owner or user of the equipment under the supervision of the commissioner.

7. The owner or user of a boiler of one hundred thousand pounds per hour or more capacity, unfired steam pressure vessel or regulated appurtenance desiring to qualify for biennial inspection shall keep available for examination by the commissioner accurate records showing the date and actual time the vessel is out of service and the reason it is out of service, and the chemical physical laboratory analyses of samples of the vessel water taken at regular intervals of not more than forty-eight hours of operation as will adequately show the condition of the water and any elements or characteristics of the water which are capable of producing corrosion or other deterioration of the vessel or its parts.

8. Internal inspections of sectional cast iron steam and cast iron hot water heating boilers shall be conducted only as deemed necessary by the commissioner. External operating inspections shall be conducted annually.

9. Internal inspections of steel hot water boilers shall be conducted once every six years. The initial inspection of all affected boilers shall be apportioned by the commissioner over the six-year period after July 1, 1978. External operating inspections shall be conducted annually.

10. All power boilers that are converted to low pressure boilers shall have a fifteen pound safety valve installed and be approved by the commissioner no later than thirty days after the expiration date of the certificate for the boiler.

85 Acts, ch 105, §1 HF 501
Subsections 6 and 7 amended

89.7 Insured equipment—certificate.

1. The inspection required by this chapter shall not be made by the commissioner if an owner or user of equipment specified by this chapter obtains an inspection by a representative of a reputable insurance company and obtains a policy of insurance upon the equipment from that insurance company. The representative conducting the inspection shall be commissioned by the commissioner as a special inspector for the year during which the inspection occurs and shall meet such other requirements as the commissioner may by rule establish. The commission shall be valid for one year and the special inspector shall pay a fee for the issuance of the commission. The commissioner shall establish the amount of the fee by rule.

2. The insurance company shall file a certificate of inspection on forms approved by the commissioner stating that the equipment is insured and that inspection shall be made in accordance with section 89.3.

3. Upon such showing and the payment of a fee, the commissioner shall issue a certificate of inspection by the bureau of labor, which shall be valid only for the

period specified in section 89.3. The commissioner shall establish the amount of the fee by rule.

4. The special inspector shall notify the user and the commissioner of any equipment or appurtenance found to be unsafe or unfit for operation in writing, setting forth the nature and extent of such defects and condition. The commissioner shall indicate to the user whether or not the equipment may be used without making repair or replacement of defective parts, or whether or how the equipment may be used in a limited capacity before repairs or replacements are made, and the commissioner may permit the user a reasonable time to make such repairs or replacements.

85 Acts, ch 102, §1 HF 359
Subsections 1 and 3 amended

89.8 Fees for inspection.

The commissioner shall adopt rules to charge and collect fees for inspection of boilers and pressure units by the boiler inspector. Fees may be set by rule not more than once each year. Fees established by the commissioner shall be based upon the costs of administering the provisions of this chapter, and shall give due regard to the time spent by bureau of labor personnel in performing duties, and to any travel expenses incurred.

85 Acts, ch 102, §2 HF 359
Section struck and rewritten

CHAPTER 91

BUREAU OF LABOR

91.2 Appointment.

Effective May 1, 1987, term of labor commissioner will be four years; 85 Acts, ch 51, §1, 2 HF 338

91.17 Acceptance of federal Act. Repealed by 85 Acts, ch 195, §67. SF 329

91.18 State agency. Repealed by 85 Acts, ch 195, §67. SF 329

CHAPTER 91A

WAGE PAYMENT COLLECTION

91A.2 Definitions.

As used in this chapter:

1. "*Commissioner*" means the labor commissioner or a designee.
2. "*Employer*" means a person, as defined in chapter 4, who in this state employs for wages a natural person. An employer does not include a client, patient, customer, or other person who obtains professional services from a licensed person who provides the services on a fee service basis or as an independent contractor.
3. "*Employee*" means a natural person who is employed in this state for wages by an employer. Employee also includes a commission salesperson who takes orders or performs services on behalf of a principal and who is paid on the basis of commissions but does not include persons who purchase for their own account for resale. For the purposes of this chapter, the following persons engaged in agriculture are not employees:
 - a. The spouse of the employer and relatives of either the employer or spouse residing on the premises of the employer.
 - b. A person engaged in agriculture as an owner-operator or tenant-operator and the spouse or relatives of either who reside on the premises while exchanging labor with the operator or for other mutual benefit of any and all such persons.

c. Neighboring persons engaged in agriculture who are exchanging labor or other services.

4. “Wages” means compensation owed by an employer for:

a. Labor or services rendered by an employee, whether determined on a time, task, piece, commission, or other basis of calculation.

b. Vacation, holiday, sick leave, and severance payments which are due an employee under an agreement with the employer or under a policy of the employer.

c. Any payments to the employee or to a fund for the benefit of the employee, including but not limited to payments for medical, health, hospital, welfare, pension, or profit-sharing, which are due an employee under an agreement with the employer or under a policy of the employer. The assets of an employee in a fund for the benefit of the employee, whether such assets were originally paid into the fund by an employer or employee, are not wages.

d. Expenses incurred and recoverable under a health benefit plan as defined in and as provided in chapter 91B.

5. “Days” means calendar days.

6. “Liquidated damages” means the sum of five percent multiplied by the amount of any wages that were not paid or of any authorized expenses that were not reimbursed on a regular payday or on another day pursuant to section 91A.3 multiplied by the total number of days, excluding Sundays, legal holidays, and the first seven days after the regular payday on which wages were not paid or expenses were not reimbursed. However, such sum shall not exceed the amount of the unpaid wages and shall not accumulate when an employer is subject to a petition filed in bankruptcy.

85 Acts, ch 119, §1 HF 164

Subsection 3, unnumbered paragraph 1 amended

CHAPTER 92

CHILD LABOR

92.17 Exceptions.

Nothing in this chapter shall be construed to prohibit:

1. Any part-time, occasional, or volunteer work for nonprofit organizations generally recognized as educational, charitable, religious, or community service in nature.

2. A child from working in or around any home before or after school hours or during vacation periods, provided such work is not related to or part of the business, trade, or profession of the employer.

3. Work in the production of seed, limited to removal of off-type plants, corn tassels and hand-pollinating during the months of June, July and August by persons fourteen years of age or over, and part-time work in agriculture, not including migratory labor.

4. A child from working in any occupation or business operated by the child's parents. For the purposes of this subsection, “child” and “parents” include a foster child and the child's foster parents who are licensed by the department of human services.

5. A child under sixteen years of age from being employed or permitted to work, with or without compensation, as a model, for a period of up to three hours in any day between the hours of 7 a.m. and 10 p.m., not exceeding twelve hours in any month, if the written permission of the parent, guardian or custodian of the child is obtained prior to the commencement of the modeling. However, if the child is of school age this exception allows modeling work only outside of school hours during the regular school year and does not allow modeling work during the summer term if the child is enrolled in summer school. This subsection does not allow modeling for an unlawful purpose or modeling that would violate any other law.

6. A juvenile court from ordering a child at least twelve years old to complete a work assignment of value to the state or to the public or to the victim of a crime committed by the child, in accordance with section 232.52, subsection 2, paragraph "a".

85 Acts, ch 59, §1 HF 124
NEW subsection 6

92.21 Committee on child labor.

There is hereby established a committee on child labor. The committee shall consist of the labor commissioner who shall act as chairperson, the commissioner of public instruction or a designee, director of the Iowa department of job service or a designee, and two persons representing the public and interested in child labor, to be appointed by the governor, without regard to political affiliation. The public representatives shall serve for a term of four years from July 1, 1970, and until their successors are appointed and qualify. The governor shall fill any public member's vacancy for any unexpired term. Public members shall receive a per diem of thirty dollars and actual and necessary expenses incurred in the performance of their official duties.

The committee shall adopt rules of procedure for its meetings and activities.

It shall be the duty of the committee to hold public hearings, to formulate rules more specifically defining the occupations and equipment permitted or prohibited herein, to determine occupations for which work permits shall be required, and to issue general and special orders prohibiting or allowing the employment of persons under eighteen years of age in any place of employment hazardous to the health, safety, and welfare of such persons as defined in this chapter.

85 Acts, ch 212, §21 HF 686
Section amended

CHAPTER 96

EMPLOYMENT SECURITY AND DEPARTMENT OF JOB SERVICE

Restrictions on South Africa-related investments and deposits by
department of job service; see ch 12A

96.5 Causes.

An individual shall be disqualified for benefits:

1. *Voluntary quitting.* If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other employment, which the individual did accept, and that the individual remained continuously in said new employment for not less than six weeks. Wages earned with the employer that the individual has left shall, for the purpose of computing and charging benefits, be deemed wages earned from the employer with whom the individual accepted other employment and benefits shall be charged to the employer with whom the individual accepted other employment. The department shall advise the chargeable employer of the name and address of the former employer, the period covered, and the extent of benefits which may be charged to the account of the chargeable employer. In those cases where the new employment is in another state, no employer's account shall be charged with benefits so paid except that employers who are required by law or by their election to reimburse the fund for benefits paid shall be charged with benefits under this paragraph. In those cases where the individual left employment in good faith for the sole purpose of accepting better employment, which the individual did accept and such employment is terminated by the employer, or the individual is laid off after one week but prior to the expiration of six weeks, the individual, provided the individual is otherwise eligible under this

chapter, shall be eligible for benefits and such benefits shall not be charged to any employer's account.

b. The individual has been laid off from the individual's regular employment and has sought temporary employment, and has notified the temporary employer that the individual expected to return to the individual's regular job when it became available, and the temporary employer employed the individual under these conditions, and the worker did return to the regular employment with the individual's regular employer as soon as it was available.

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

e. The individual left employment upon the advice of a licensed and practicing physician, for the sole purpose of taking a member of the individual's family to a place having a different climate, during which time the individual shall be deemed unavailable for work, and notwithstanding during such absence the individual secures temporary employment, and returned to the individual's regular employer and offered the individual's services and the individual's regular work or comparable work was not available, provided the individual is otherwise eligible.

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons (if so found by the department), and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

h. "Principal support" shall mean exclusive of the earnings of any child of the wage earner.

i. The individual has left employment in lieu of exercising a right to bump or oust a fellow employee with less seniority or priority from the fellow employee's job.

2. *Discharge for misconduct.* If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

b. Provided further, if gross misconduct is established, the department shall

cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

c. Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

3. *Failure to accept work.* If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the employment office or the department or to accept suitable work when offered that individual, or to return to customary self-employment, if any. The department in co-operation with the employment office shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department, unless the employers refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual from further benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

(1) One hundred percent, if the work is offered during the first five weeks of unemployment.

(2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

4. *Labor disputes.* For any week with respect to which the department finds that

the individual's total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which the individual is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the department that:

a. The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

b. The individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.

Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises.

5. *Other compensation.* For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

a. Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

b. Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

c. A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, if an individual's benefits are reduced due to the receipt of a payment under this paragraph, the reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made.

Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraphs "a", "b", or "c", were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service, by the beneficiary, with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual, otherwise qualified, from any of the benefits contemplated herein.

6. *Benefits from other state.* For any week with respect to which or a part of which an individual has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States, provided that if the appropriate agency of such other state or of the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply.

7. *Vacation pay.*

a. When an employer makes a payment or becomes obligated to make a payment to an individual for vacation pay, or for vacation pay allowance, or as pay in lieu of vacation, such payment or amount shall be deemed "wages" as defined in section 96.19, subsection 12, and shall be applied as provided in paragraph "c" hereof.

b. Whenever, in connection with any separation or layoff of an individual, the individual's employer makes a payment or payments to the individual, or becomes obligated to make such payment to the individual as, or in the nature of, vacation

pay, or vacation pay allowance, or as pay in lieu of vacation, and within seven calendar days after notification of the filing of the individual's claim, designates by notice in writing to the department the period to which such payment shall be allocated; provided, that if such designated period is extended by the employer, the individual may again similarly designate an extended period, by giving notice thereof in writing to the commission not later than the beginning of the extension of such period, with the same effect as if such period of extension were included in the original designation. The amount of any such payment or obligation to make payment, shall be deemed "wages" as defined in section 96.19, subsection 12, and shall be applied as provided in paragraph "c" of this subsection 7.

c. Of the wages described in paragraph "a" (whether or not the employer has designated the period therein described), or of the wages described in paragraph "b", if the period therein described has been designated by the employer as therein provided, a sum equal to the wages of such individual for a normal workday shall be attributed to, or deemed to be payable to the individual with respect to, the first and each subsequent workday in such period until such amount so paid or owing is exhausted. Any individual receiving or entitled to receive wages as provided herein shall be ineligible for benefits for any week in which the sums, so designated or attributed to such normal workdays, equal or exceed the individual's weekly benefit amount. If the amount so designated or attributed as wages is less than the weekly benefit amount of such individual, the individual's benefits shall be reduced by such amount.

d. Notwithstanding contrary provisions in paragraphs "a", "b" and "c", if an individual is separated from employment and is scheduled to receive vacation payments during the period of unemployment attributable to the employer and if the employer does not designate the vacation period pursuant to paragraph "b", then payments made by the employer to the individual or an obligation to make a payment by the employer to the individual for vacation pay, vacation pay allowance or pay in lieu of vacation shall not be deemed wages as defined in section 96.19, subsection 12, for any period in excess of one week and such payments or the value of such obligations shall not be deducted for any period in excess of one week from the unemployment benefits the individual is otherwise entitled to receive under this chapter. However, if the employer designates more than one week as the vacation period pursuant to paragraph "b", the vacation pay, vacation pay allowance, or pay in lieu of vacation shall be considered wages and shall be deducted from benefits.

e. If an employer pays or is obligated to pay a bonus to an individual at the same time the employer pays or is obligated to pay vacation pay, a vacation pay allowance, or pay in lieu of vacation, the bonus shall not be deemed wages for purposes of determining benefit eligibility and amount, and the bonus shall not be deducted from unemployment benefits the individual is otherwise entitled to receive under this chapter.

8. *Administrative penalty.* If the department finds that, with respect to any week of an insured worker's unemployment for which such person claims credit or benefits, such person has, within the thirty-six calendar months immediately preceding such week, with intent to defraud by obtaining any benefits not due under this chapter, willfully and knowingly made a false statement or misrepresentation, or willfully and knowingly failed to disclose a material fact; such person shall be disqualified for the week in which the department makes such determination, and forfeit all benefit rights under the unemployment compensation law for a period of not more than the remaining benefit period as determined by the department according to the circumstances of each case. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter.

9. *Athletes—disqualified.* Services performed by an individual, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two

successive sport seasons or similar periods, if such individual performs such services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such season or similar periods.

10. *Aliens—disqualified.* For services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for the purpose of performing such services or was permanently residing in the United States under color of law, including an alien who is lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of the individual's alien status shall be made except upon a preponderance of the evidence.

85 Acts, ch 99, §2 SF 224
 Subsection 1, paragraph f amended
 Subsection 10 editorially corrected

96.7A Expanding employment incentive.

1. An employer qualified for an experience rating with a positive balance in the employer's account shall receive a reduction in the employer's average annual payroll due to an increase in employment if the employer's numerical increase in employment is equal to or greater than one under both paragraphs "a" and "b" and if the increase in the employer's average annual payroll is not totally disregarded under subsection 2 due to an increase in taxable wages under section 96.19, subsection 20 or due to the fact that the employer is a successor employer.

a. The employer's increase in employment, calculated by number of employees, equals the average mid-month employment reported by the employer for the calendar year immediately preceding the computation date minus the four-year average mid-month employment reported by the employer for the four calendar years preceding the calendar year which immediately precedes the computation date.

b. The employer's increase in employment, calculated by amount of taxable wages, equals the taxable wages reported by the employer for the calendar year immediately preceding the computation date minus the four-year average of the taxable wages reported by the employer for the four calendar years preceding the calendar year which immediately precedes the computation date, divided by the taxable wage base for the calendar year immediately preceding the computation date.

2. The reduction in the current average annual payroll of an employer qualified under subsection 1 equals fifty percent of any increase in the employer's current average annual payroll over the employer's average annual payroll for the previous year. However, in calculating the increase in the employer's average annual payroll any portion of that increase due to an increase or decrease in taxable wages under section 96.19, subsection 20, or due to the fact that the employer is a successor employer shall be disregarded. The employer's average annual payroll for the next two consecutive years shall each be reduced by the amount of the reduction in the employer's current average annual payroll, unless the employer is entitled to a greater reduction in the employer's average annual payroll as calculated under this section, in which case the greater reduction is applicable for three years unless a yet greater reduction is applicable.

3. The department shall use the employer's average annual payroll to compute the employer's percentage of excess, shall compute the employer's percentage of excess rank by ranking the employer's percentage of excess relative to all other employers' percentages of excess, shall recompute the employer's percentage of

excess by using the employer's reduced average annual payroll, and shall assign the employer the contribution rate in the rate table which corresponds to the employer's reduced percentage of excess rank without adjusting the total taxable wages in each rank and without reranking employers in the rate table.

85 Acts, ch 224, §1 SF 383

Effective on first computation date after May 30, 1985 on which unemployment compensation fund's balance is positive; however, section is void if final decision of U.S. Dept. of Labor holds that it places Iowa's unemployment compensation law out of conformity with federal law; 85 Acts, ch 224, §2

NEW section

96.11 Duties, powers, rules—advisory council—privilege.

1. *Duties and powers of director.* It shall be the duty of the director to administer this chapter; and the director shall have power and authority to adopt, amend, or rescind pursuant to chapter 17A such rules, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as the director deems necessary or suitable to that end. Not later than the fifteenth day of December of each year, the director shall submit to the governor a report covering the administration and operation of this chapter during the preceding fiscal year and shall make such recommendations for amendments to this chapter as the director deems proper. Such report shall include a balance sheet of the moneys in the fund. Whenever the director believes that a change in contribution or benefits rates will become necessary to protect the solvency of the fund, the director shall promptly so inform the governor and the legislature, and make recommendations with respect thereto.

2. *General and special rules.* Each employer shall post and maintain printed statements of all rules of the department in places readily accessible to individuals in the employer's service, and shall make available to each such individual at the time the individual becomes unemployed a printed statement of such rules relating to the filing of claims for benefits. Such printed statements shall be supplied by the department to each employer without cost to the employer.

3. *Publications—press releases.* The director shall cause to be printed for distribution to the public the text of this chapter, the department's general rules, its annual reports to the governor, and any other material the director deems relevant and suitable and shall furnish the same to any person upon application therefor.

The department shall distribute monthly to the public a press release containing the most recent employment and unemployment statistics adjusted according to the current population survey and containing other statistics which the department determines are of interest to the public.

4. *Personnel.* The director shall provide for the employment of such personnel as are necessary to carry out the functions of the department. Personnel shall be employed under the provisions of chapter 19A. The director, a deputy director, a confidential secretary, the members of the appeal board, an administrative officer under the appeal board, and a secretary for each member if deemed necessary, shall be exempt from the merit system under the provisions of section 19A.3. If necessary to carry out its duties under this chapter, the appeal board shall employ an administrative officer whose qualifications and job responsibilities are determined by the appeal board.

The director may bond any employee handling moneys or signing checks.

5. Advisory council.

a. There is established a job service advisory council composed of nine members appointed by the governor subject to confirmation by the senate. Three members shall be appointed to represent employees; three members shall be appointed to represent employers; and three members shall be appointed to represent the general public. Not more than five members of the advisory council shall be members of the same political party. The members shall serve six-year staggered terms beginning and ending as provided in section 69.19. Members shall serve without compensation,

but shall be reimbursed for actual and necessary expenses, including travel, incurred for official meetings of the advisory council from funds appropriated to the department.

Vacancies shall be filled for the unexpired term in the same manner as the original appointment was made.

b. The advisory council shall meet with the director at least quarterly to discuss problems relating to the administration of this chapter and may meet more often upon the call of the director.

The advisory council annually shall elect a chairperson.

6. *Employment stabilization.* The director with the advice and aid of the advisory council, and through the appropriate divisions of the department, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the re-employment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

7. *Records and reports.*

a. Each employing unit shall keep true and accurate work records, containing such information as the department may prescribe. Such records shall be open to inspection and be subject to being copied by the department or its authorized representatives at any reasonable time and as often as necessary. The director or a duly authorized representative of the department may require from any employing unit any sworn or unsworn reports, with respect to persons employed by the employing unit, which the director deems necessary for the effective administration of this chapter.

b. (1) The department shall hold confidential the information obtained from an employing unit or individual in the course of administering this chapter and the initial determinations made by the department's representative under section 96.6, subsection 2 as to the benefit rights of an individual. The department shall not disclose or open this information for public inspection in a manner that reveals the identity of the individual or employing unit, except as provided in subparagraph (3) of this paragraph and paragraph "c" of this subsection.

(2) A report or statement, whether written or verbal, made by a person to the department or to a person administering this law is a privileged communication. A person is not liable for slander or libel on account of such a report or statement.

(3) Information obtained from an employing unit or individual in the course of administering this chapter and initial determinations made by the department's representative under section 96.6, subsection 2 as to benefit rights of an individual shall not be used in any action or proceeding except in a contested case proceeding or judicial review under chapter 17A. However, the department shall make information, which is obtained from an employing unit or individual in the course of administering this chapter and which relates to the employment and wage history of the individual, available to a county attorney for the county attorney's use in the performance of duties under section 331.756, subsection 5. Information in the department's possession that may affect a claim for benefits or a change in an employer's rating account shall be made available to the affected parties or their legal representatives. The information may be used by the affected parties in a proceeding under this chapter to the extent necessary for the proper presentation or defense of a claim.

c. Subject to conditions as the department by rule prescribes, information obtained from an employing unit or individual in the course of administering this chapter and initial determinations made by the department's representative under

section 96.6, subsection 2 as to benefit rights of an individual may be made available to any of the following:

(1) An agency of this or any other state, or a federal agency responsible for the administration of an unemployment compensation law or the maintenance of a system of public employment offices.

(2) The bureau of internal revenue of the United States department of the treasury.

(3) The Iowa department of revenue.

(4) The social security administration of the United States department of health, education and welfare.

(5) An agency of this or any other state or a federal agency responsible for the administration of public works or the administration of public assistance to unemployed workers.

(6) Colleges, universities and public agencies of this state for use in connection with research of a public nature, provided the department does not reveal the identity of any individual or employing unit.

Information released by the department shall only be used for purposes consistent with the purposes of this chapter.

d. Upon request of an agency of this or another state or of the federal government which administers or operates a program of public assistance or child support enforcement under either federal law or the law of this or another state, or which is charged with a duty or responsibility under any such program, and if that agency is required by law to impose safeguards for the confidentiality of information at least as effective as required under this section, then the department shall provide to the requesting agency, with respect to any named individual specified, any of the following information:

(1) Whether the individual is receiving, has received, or has made application for unemployment compensation under this chapter.

(2) The period, if any, for which unemployment compensation was payable and the weekly rate of compensation paid.

(3) The individual's most recent address.

(4) Whether the individual has refused an offer of employment, and, if so, the date of the refusal and a description of the employment refused, including duties, conditions of employment, and the rate of pay.

(5) Wage information. Paragraph "g" does not apply to information released under this paragraph.

e. The department may require an agency that is provided information under this section to reimburse the department for the costs of furnishing the information.

f. Any employee of the department or member of the appeal board who violates any provision of this section shall be guilty of a serious misdemeanor.

g. Information subject to the confidentiality of this section shall not be made available to any authorized agency prior to notification in writing to the individual involved, except in criminal investigations.

8. *Oaths and witnesses.* In the discharge of the duties imposed by this chapter, the chairperson of the appeal board and any duly authorized representative of the department shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter.

9. *Subpoenas.* In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the department, or any member or duly authorized representative thereof, shall have

jurisdiction to issue to such person an order requiring such person to appear before the department or any member or duly authorized representative thereof to produce evidence if so ordered or to give testimony touching the matter under investigation or in question; any failure to obey such order of the court may be punished by said court as a contempt thereof.

10. *Protection against self-incrimination.* No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the department, or the appeal board, or in obedience to a subpoena in any cause or proceeding provided for in this chapter, on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty for forfeiture; but no individual shall be prosecuted or subjected to any penalty of forfeiture for or on account of any transaction, matter, or thing concerning which the individual is compelled, after having claimed privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

11. *State-federal co-operation.* In the administration of this chapter, the department shall co-operate with the United States department of labor to the fullest extent consistent with the provisions of this chapter, and shall take such action, through the adoption of appropriate rules, regulations, administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the Social Security Act that relate to unemployment compensation, the federal Unemployment Tax Act, the Wagner-Peyser Act, and the Federal-State Extended Unemployment Compensation Act of 1970.

In the administration of the provisions of section 96.29 which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, the department shall take such action as may be necessary to insure that the provisions are so interpreted and applied as to meet the requirements of such federal Act as interpreted by the United States department of labor, and to secure to this state the full reimbursement of the federal share of extended benefits paid under this chapter that are reimbursable under the federal Act.

The department shall make such reports, in such form and containing such information as the United States department of labor may from time to time require, and shall comply with such provisions as the United States department of labor may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the United States department of labor governing the expenditures of such sums as may be allotted and paid to this state under Title III of the Social Security Act for the purpose of assisting in administration of this chapter.

The department may make its records relating to the administration of this chapter available to the railroad retirement board, and may furnish the railroad retirement board such copies thereof as the railroad retirement board deems necessary for its purposes. The department may afford reasonable co-operation with every agency of the United States charged with the administration of any unemployment insurance law. The railroad retirement board or any other agency requiring such services and reports from the department shall pay the department such compensation therefor as the department determines to be fair and reasonable.

12. *Destruction of records.* The Iowa department of job service may destroy or dispose of such original reports or records as have been properly recorded or summarized in the permanent records of the department and are deemed by the director and the state records commission to be no longer necessary to the proper administration of this chapter. Wage records of the individual worker or transcripts therefrom may be destroyed or disposed of, if approved by the state records

commission, two years after the expiration of the period covered by such wage records or upon proof of the death of the worker. Such destruction or disposition shall be made only by order of the director in consultation with the state records commission. Any moneys received from the disposition of such records shall be deposited to the credit of the employment security administration fund, subject to rules promulgated by the department.

13. *Purging uncollectible overpayments.* Notwithstanding any other provision of this chapter, the department shall review all outstanding overpayments of benefit payments annually. The department may determine as uncollectible and purge from its records any remaining unpaid balances of outstanding overpayments which are ten years or older from the date of the overpayment decision.

85 Acts, ch 244, §1 SF 435
 Subsection 3, NEW unnumbered paragraph 2
 Subsection 11 editorially corrected

96.15 Waiver—fees—assignments—penalties.

1. *Waiver of rights void.* Any agreement by an individual to waive, release, or commute the individual's rights to benefits or any other rights under this chapter shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this chapter from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from the employer, or require or accept any waiver of any right hereunder by any individual in the employer's employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be guilty of a serious misdemeanor.

2. *Limitation of fees.* An individual claiming benefits shall not be charged fees of any kind in any proceeding under this chapter by the department or its representatives or by a court or an officer of the court. An individual claiming benefits in a proceeding before the department, an appeal tribunal, or a court may be represented by counsel or other duly authorized agent. A person who violates a provision of this subsection is guilty of a serious misdemeanor for each violation.

3. *No assignment of benefits—exemptions.* Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be void, and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts. Any waiver of any exemption provided for in this subsection shall be void.

85 Acts, ch 54, §1 SF 63
 Subsection 2 amended

CHAPTER 97B

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

97B.7 Fund created—trustee's duties.

1. There is hereby created as a special fund, separate and apart from all other public moneys or funds of this state, the "Iowa Public Employees' Retirement Fund", hereafter called the "retirement fund". This fund shall consist of all moneys collected under this chapter, together with all interest, dividends and rents thereon, and shall also include all securities or investment income and other assets acquired by and through the use of the moneys belonging to this fund and any other moneys that have been paid into this fund.

2. The treasurer of the state of Iowa is hereby made the custodian and trustee of this fund and shall administer the same in accordance with the directions of the department. It shall be the duty of the trustee:

a. To hold said trust funds.

b. Invest, subject to chapter 12A, the portion of the retirement fund which in the judgment of the department is not needed for current payment of benefits under this chapter. The department shall determine the disposition and investment of moneys in the retirement fund. In the investment of the fund, the department shall exercise the judgment and care, under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs as provided in section 633.123, subsection 1.

The department shall give appropriate consideration to those facts and circumstances that the department knows or should know are relevant to the particular investment involved, including the role the investment plays in the total value of the retirement fund.

For the purposes of this paragraph, appropriate consideration includes, but is not limited to, a determination by the department that the particular investment is reasonably designed to further the purposes of the retirement system, taking into consideration the risk of loss and the opportunity for gain or other return associated with the investment and consideration of the following factors as they relate to the retirement fund:

(1) The composition of the retirement fund with regard to diversification.

(2) The liquidity and current return of the investments in the fund relative to the anticipated cash flow requirements of the retirement system.

(3) The projected return of the investments relative to the funding objectives of the retirement system.

Consistent with this paragraph, investments made under this paragraph shall be made in a manner that will enhance the economy of this state, and in particular, will result in increased employment of the residents of this state.

If there is loss on the redemption or sale of securities, where invested as prescribed by law, neither the treasurer nor the department is personally liable, but the loss shall be charged against the retirement fund and there is appropriated from the retirement fund an amount as required for the loss. Expenses incurred in the sale and purchase of securities belonging to the retirement fund shall be charged to the retirement fund and there is appropriated from the retirement fund an amount as required for the expenses incurred. Investment management expenses shall be charged to the investment income of the retirement fund and there is appropriated from the retirement fund an amount as required for the investment management expenses, subject to the limitations stated in this subparagraph. The amount appropriated for a fiscal year under this subparagraph shall not exceed one-half percent of the market value of the retirement fund. The department shall report the investment management expenses for a fiscal year as a percent of the market value of the retirement fund in the annual report to the governor required in section 97B.4. A person who has signed a contract with the department for investment management purposes shall meet the requirements for doing business in Iowa sufficient to be subject to tax under rules of the department of revenue.

c. Disburse such trust funds upon warrants drawn by the comptroller pursuant to the order of the department.

d. To sell any securities or other property in the trust fund and reinvest the proceeds in accordance with the direction of the department when such action may be deemed advisable by the department for the protection of the trust fund or the preservation of the value of the investment. Such sale of securities or other property of the trust fund shall only be made after advice from the advisory board in the manner and to the extent provided in this chapter in regard to the purchase of investments.

e. To subscribe, in accordance with the direction of the department, for the purchase of securities for future delivery in anticipation of future income. Such securities shall be paid for by such anticipated income or from funds from the sale of securities or other property held by the fund.

f. To pay for securities directed to be purchased by the department on the receipt of the purchasing bank's paid statement or paid confirmation of purchase.

3. All moneys which are paid or deposited into this fund are hereby appropriated and made available to the department to be used only for the purposes herein provided:

a. To be used by the department for the payment of retirement claims for benefits under this chapter, or such other purposes as may be authorized by the general assembly.

b. To be used by the department to pay refunds provided for in this chapter.

85 Acts, ch 190, §1 SF 27; 85 Acts, ch 227, §7 SF 110

See Code editor's note

Subsection 2, paragraph b, unnumbered paragraph 1 amended

Subsection 2, paragraph b, struck and rewritten

97B.8 Advisory investment board.

A board is established to be known as the "Advisory Investment Board of the Iowa Public Employees' Retirement System", hereinafter called the "board", whose duties are to advise and confer with the department in matters relating to the investment of the trust funds of the Iowa public employees' retirement system. At least annually the board shall review the investment policies and procedures used by the department under section 97B.7, subsection 2, paragraph "b", and shall hold a public meeting on the investment policies and investment performance of the fund. Following its review and the public meeting, the board shall make recommendations to the department. The powers of the board are advisory and the department is not bound in the making of an investment, or adoption of an investment policy or procedure, by the recommendations of the board.

The board shall consist of seven members. Five of the members shall be appointed by the governor, one of whom shall be an executive of a domestic life insurance company, one an executive of a state or national bank operating within the state of Iowa, one an executive of a major industrial corporation located within the state of Iowa, and two shall be active members of the system, one of whom shall be an employee of a school district, area education agency, or merged area and one of whom shall not be an employee of a school district, area education agency, or merged area. The president of the senate shall appoint one member from the membership of the senate and the speaker of the house of representatives shall appoint one member from the membership of the house. The two members appointed by the president of the senate and the speaker of the house of representatives and the two active members of the system appointed by the governor are ex officio members of the board.

The members who are executives of a domestic life insurance company, a state or national bank and a major industrial corporation shall be paid their actual expenses incurred in performance of their duties and shall receive in addition the sum of forty dollars for each day of service not exceeding forty days per year. Legislative members shall receive the sum of forty dollars for each day of service and their actual expenses incurred in the performance of their duties. The per diem and expenses of the legislative members shall be paid from funds appropriated under section 2.12. The members who are active members of the system shall be paid their actual expenses incurred in the performance of their duties as members of the board and performance of their duties as members of the board shall not affect their salaries, vacation or leaves of absence for sickness or injury. The appointive terms of the members appointed by the governor are for a period of six years beginning and ending as provided in section 69.19. If there is a vacancy in the membership of the board, the governor has the power of appointment. Appointees to this board are subject to confirmation by the senate.

85 Acts, ch 190, §2 SF 27

Unnumbered paragraph 1 amended

97B.49 Monthly payments of allowance.

Each member, upon retirement on or after the member's normal retirement date, is entitled to receive a monthly retirement allowance determined under this section. For an inactive vested member the monthly retirement allowance shall be determined on the basis of this section and section 97B.50 as they are in effect on the date of the member's retirement.

1. For each active member employed before January 1, 1976, and retiring on or after January 1, 1976, and for each member who was a vested member before January 1, 1976, with four or more complete years of service, a formula benefit shall be determined equal to the larger of the benefit determined under this subsection and subsection 3 of this section as applicable, or the benefit determined under subsection 5 of this section. The amount of the monthly formula benefit for each such active or vested member who retired on or after January 1, 1976, shall be equal to one-twelfth of one and fifty-seven hundredths percent per year of membership service multiplied by the member's average annual covered wages; but in no case shall the amount of monthly formula benefit accrued for membership service prior to July 1, 1967, be less than the monthly annuity at the normal retirement date determined by applying the sum of the member's accumulated contributions, the member's employer's accumulated contributions on or before June 30, 1967, and any retirement dividends standing to the member's credit on or before December 31, 1966, to the annuity tables in use by the department with due regard to the benefits payable from such accumulated contributions under sections 97B.52 and 97B.53.

2. For each active and vested member retiring with less than four complete years of service and who therefore cannot have a benefit determined under the formula benefit of subsection 1 or subsection 5 of this section a monthly annuity for membership service shall be determined by applying the member's accumulated contributions and the employer's matching accumulated contributions as of the effective retirement date and any retirement dividends standing to the member's credit on or before December 31, 1966, to the annuity tables in use by the department according to the member's age.

3. For each member employed before January 1, 1976, who has qualified for prior service credit in accordance with the first paragraph of section 97B.43, there shall be determined a benefit of eight-tenths of one percent per year of prior service credit multiplied by the monthly rate of the member's total remuneration not in excess of three thousand dollars annually during the twelve consecutive months of the member's prior service for which such total remuneration was the highest. An additional three-tenths of one percent of such remuneration not in excess of three thousand dollars annually shall be payable for prior service during each year in which the accrued liability for benefit payments created by the abolished system is funded by appropriation from the general fund of the state of Iowa as provided under section 97B.56.

4. For each active member retiring on or after June 30, 1973, and who has completed ten or more years of membership service, the total amount of monthly benefit payable at the normal retirement date for prior service and membership service shall not be less than fifty dollars per month. If benefits commence on an early retirement date, the amount of benefit shall be reduced in accordance with section 97B.50. If an optional allowance is selected under section 97B.51, the amount payable shall be the actuarial equivalent of the minimum benefit. An employee who is in employment on a school year or academic year basis, will be considered to be an active member as of June 30, 1973, if the employee completes the 1972-1973 school year or academic year.

5. For each active member retiring between January 1, 1976 and June 30, 1982, with four or more complete years of service, a monthly benefit shall be computed which is equal to one-twelfth of an amount equal to forty-seven percent of the five-year average covered wage multiplied by a fraction of years of service. For each

member retiring on or after July 1, 1982, with four or more complete years of service, the percent used in computing the monthly benefit is fifty. For the purposes of this subsection, "fraction of years of service" means a number, not to exceed one, equal to the sum of the years of membership service and the number of years of prior service divided by thirty years.

If benefits under this subsection commence on an early retirement date, the amount of benefit shall be reduced in accordance with section 97B.50.

6. On January 1, 1976, for each member who retired before January 1, 1976, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for December, 1975 is increased by ten percent for the first calendar year or portion of a calendar year the member was retired, and by an additional five percent for each calendar year after the first calendar year the member was retired through the calendar year beginning January 1, 1975. The total increase shall not exceed one hundred percent. There is appropriated from the general fund of the state to the Iowa department of job service from funds not otherwise appropriated an amount sufficient to fund the provisions of this subsection.

The benefit increases granted to members retired under the system on January 1, 1976 shall be granted only on January 1, 1976 and shall not be further increased for any year in which the member was retired after the calendar year beginning January 1, 1975.

7. Notwithstanding other provisions of this chapter, a member who is or has been employed as a conservation peace officer under section 107.13 and who retires between July 1, 1978 and June 30, 1982 and at the time of retirement is at least sixty years of age and has completed at least twenty-five years of membership service as a conservation peace officer, may elect to receive, in lieu of the receipt of any benefits under subsection 5 of this section, a monthly retirement allowance equal to one-twelfth of forty-seven percent of the member's five-year average covered wage as a conservation peace officer, with benefits payable during the member's lifetime. For each conservation peace officer eligible for benefits under this subsection who retires on or after July 1, 1982, the percent used in computing the monthly retirement allowance is fifty. There is appropriated from the general fund of the state to the Iowa department of job service from funds not otherwise appropriated an amount sufficient to pay eight and forty-three hundredths percent of the covered wages of each conservation peace officer, in addition to the contribution paid by the employer under section 97B.11, to finance increased benefits to conservation peace officers under this subsection.

8. a. Notwithstanding other provisions of this chapter, a member who is or has been employed as a county sheriff, as defined in section 39.17, or as a deputy sheriff appointed pursuant to section 341.1, Code 1981, or section 331.903, and who retires between January 1, 1978 and June 30, 1982, and at the time of retirement is at least sixty years of age and has completed at least twenty-five years of membership service as a county sheriff or deputy sheriff, may elect to receive, in lieu of the benefits under subsection 5 of this section, a monthly retirement allowance equal to one-twelfth of forty-seven percent of the member's five-year average covered wage as a sheriff or deputy sheriff, with benefits payable during the member's lifetime. For each sheriff and deputy sheriff eligible for benefits under this subsection who retires between July 1, 1982 and June 30, 1983, the percent used in computing the monthly retirement allowance is fifty.

Notwithstanding other provisions of this chapter, a member who is or has been employed as a peace officer, and who retires on or after July 1, 1983 and is sixty years of age and has completed twenty-five years of membership service may elect to receive a monthly retirement allowance equal to one-twelfth of fifty percent of the member's five-year average covered wage as a peace officer, with benefits payable during the member's lifetime.

A peace officer who retires on or after July 1, 1984 and has not completed twenty-five years of membership service as required under this subsection is eligible to receive a monthly retirement allowance equal to one-twelfth of fifty percent multiplied by a fraction of years of service as a peace officer. For the purpose of this subsection, "fraction of years of service" means a number, not to exceed one, equal to the sum of the years of membership service as a peace officer, divided by twenty-five years. On or after July 1, 1984, if the peace officer has not reached sixty years of age at retirement, the monthly retirement allowance shall be reduced by five-tenths of one percent per month for each month that the peace officer's retirement precedes the date on which the peace officer attains sixty years of age.

For the purpose of this subsection membership service as a peace officer means service under this system as any or all of the following:

- (1) As a county sheriff as defined in section 39.17.
- (2) As a deputy sheriff appointed pursuant to section 341.1, Code 1981, or section 331.903.
- (3) As a marshal or police officer in a city not covered under chapter 400.

b. Each county and applicable city and employee eligible for benefits under this section shall annually contribute an amount determined by the Iowa department of job service, as a percentage of covered wages, to be necessary to pay for the additional benefits provided by this section. The annual contribution in excess of the employer and employee contributions required by this chapter shall be paid by the employer and the employee in the same proportion that employer and employee contributions are made under section 97B.11. The additional percentage of covered wages shall be calculated separately by the department for service under paragraph "a", subparagraphs (1) and (2), and for service under paragraph "a", subparagraph (3), and each shall be an actuarially determined amount for that type of service which, if contributed throughout the entire period of active service, would be sufficient to provide the pension benefit provided in this section.

9. Effective July 1, 1978, for each member who retired from the system prior to January 1, 1976, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for June 1978 is increased as follows:

- a. For the first ten years of service, fifty cents per month for each complete year of service.
- b. For the eleventh through the twentieth years of service, two dollars per month for each complete year of service.
- c. For the twenty-first through the thirtieth years of service, three dollars per month for each complete year of service.

Effective July 1, 1979, the increases granted to members under this subsection shall be paid to contingent annuitants and to beneficiaries.

10. Notwithstanding sections of this chapter relating to eligibility for and determination of retirement benefits, a vested member who is or has been employed as a correctional officer by the Iowa department of corrections and who retires on or after July 1, 1983 and at the time of retirement is at least sixty years of age and has completed at least thirty years of membership service as a correctional officer, may elect to receive, in lieu of the receipt of benefits under subsection 5 of this section, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's five-year average covered wages as a correctional officer, with benefits payable during the member's lifetime.

The Iowa department of corrections and the department of merit employment shall jointly determine the applicable merit system job classifications of correctional officers.

The Iowa department of corrections shall pay to the Iowa department of job service, from funds appropriated to the Iowa department of corrections, an amount sufficient to pay one and seventy-one hundredths percent of the covered wages of

each correctional officer, in addition to the employer contributions required in section 97B.11 to pay for the lower retirement age for correctional officers provided in this subsection.

11. Effective July 1, 1980, for each member who retired from the system prior to January 1, 1976, and for each member who retired from the system on or after January 1, 1976 under subsection 1 of this section, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for June 1980 is increased as follows:

a. For the first ten years of service, fifty cents per month for each complete year of service.

b. For the eleventh through the twentieth years of service, one dollar per month for each complete year of service.

c. For the twenty-first through the thirtieth years of service, one dollar and fifty cents per month for each complete year of service.

d. The amount of monthly increase payable to a member under this subsection is also payable to a beneficiary and a contingent annuitant and shall be reduced by an amount based upon the actuarial equivalent of the option selected in section 97B.51 or section 97B.52 compared to the full monthly benefit provided in this section.

However, effective July 1, 1980 the monthly retirement allowance attributable to membership service and prior service of a member, contingent annuitant and beneficiary shall not be less than five dollars times the number of complete years of service of the member, not to exceed thirty, reduced by an amount based upon the actuarial equivalent of the option selected in section 97B.51 or section 97B.52, compared to the full monthly retirement benefit provided in this section.

12. Effective beginning July 1, 1982, for each member who retired from the system prior to January 1, 1976, and for each member who retired from the system on or after January 1, 1976 under subsection 1 of this section, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for June 1982 is increased as follows:

a. For the first ten years of service, fifty cents per month for each complete year of service.

b. For the eleventh through the twentieth years of service, one dollar per month for each complete year of service.

c. For the twenty-first through the thirtieth years of service, one dollar and fifty cents per month for each complete year of service.

d. The amount of monthly increase payable to a member under this subsection is also payable to a beneficiary and a contingent annuitant and shall be reduced by an amount based upon the actuarial equivalent of the option selected in section 97B.51 or section 97B.52 compared to the full monthly benefit provided in this section.

13. a. Each member who retired from the system between January 1, 1976 and June 30, 1982, or a contingent annuitant or beneficiary of such a member, shall receive with the November 1984 and the November 1985 monthly benefit payments a retirement dividend equal to fifty percent of the monthly benefit payment the member received for the preceding June. The retirement dividend does not affect the amount of a monthly benefit payment.

b. Each member who retired from the system between July 4, 1953 and December 31, 1975, or a contingent annuitant or beneficiary of such a member, shall receive with the November 1984 and the November 1985 monthly benefit payments a retirement dividend equal to seventy-five percent of the monthly benefit payment the member received for the preceding June. The retirement dividend does not affect the amount of a monthly benefit payment.

97B.57 Distribution of information.

The department shall prepare and distribute to the employees, at the expense of the retirement fund and in such a manner as it shall deem appropriate, information concerning the retirement system.

The information provided under this section shall include information on the investment policies and investment performance of the retirement fund. In providing this information, to the extent possible, the department shall include the total investment return for the entire fund, for portions of the fund managed by investment managers, and for internally-managed portions of the fund, and the cost of managing the fund per thousand dollars of assets. The performance shall be based upon market as well as book value, and shall be contrasted with relevant market indices and with performances of pension funds with similar investment policies and characteristics. This information shall be prepared and available to employees at least on an annual basis.

85 Acts, ch 190, §3 SF 27
NEW unnumbered paragraph 2

CHAPTER 98**CIGARETTE AND TOBACCO TAXES****98.6 Tax imposed.**

1. There is hereby levied, assessed, and imposed, and shall be collected and paid to the department, the following taxes on all cigarettes used or otherwise disposed of in this state for any purpose whatsoever:

Class A. On cigarettes weighing not more than three pounds per thousand, six and one-half mills on each such cigarette.

Class B. On cigarettes weighing more than three pounds per thousand, seven and one-half mills on each such cigarette.

2. Notwithstanding subsection 1, there is imposed and shall be collected and paid to the department a tax on all cigarettes used or otherwise disposed of in this state for any purpose at the rate of nine mills on each cigarette for the period beginning July 1, 1981 and ending September 30, 1985 and at the rate of thirteen mills on each cigarette beginning October 1, 1985.

3. The said tax shall be paid only once by the person making the "first sale" in this state, and shall become due and payable as soon as such cigarettes are subject to a "first sale" in Iowa, it being intended to impose the tax as soon as such cigarettes are received by any person in Iowa for the purpose of making a "first sale" of same. If the person making the "first sale" did not pay such tax, it shall be paid by any person into whose possession such cigarettes come until said tax has been paid in full. No person, however, shall be required to pay a tax on cigarettes brought into this state on or about the person in quantities of forty cigarettes or less, when such cigarettes have had the individual packages or seals thereof broken and when such cigarettes are actually used by said person and not sold or offered for sale.

4. Payment of such tax shall be evidenced by stamps purchased from the department and securely affixed to each individual package of cigarettes in amounts equal to the tax thereon as imposed by this chapter, or by the impressing of an indicium upon individual packages of cigarettes, under regulations prescribed by the director.

5. The tax imposed shall be in lieu of any other occupation or excise tax on cigarettes imposed by any political subdivision of the state.

85 Acts, ch 32, §1 SF 395
Inventory tax imposed on cigarettes and little cigars in distributor's inventory as of September 30, 1985; 85 Acts, ch 32, §119
Subsection 2 amended

98.8 Sale and exchange of stamps.

Inventory tax imposed on unused stamps in distributor's inventory as of September 30, 1985; 85 Acts, ch 32, §119
 Credit purchases during period beginning October 1, 1985 and ending November 15, 1985; 85 Acts, ch 32, §120

98.43 Tax on tobacco products.

1. A tax is imposed upon all tobacco products in this state and upon any person engaged in business as a distributor thereof, at the rate of fifteen percent of the wholesale sales price of the tobacco products, except little cigars as defined in section 98.42. Little cigars shall be subject to the same rate of tax imposed upon cigarettes in section 98.6, payable at the time and in the manner provided in section 98.6; and stamps shall be affixed as provided in division I of this chapter. The tax on tobacco products, excluding little cigars, shall be imposed at the time the distributor does any of the following:

- a. Brings, or causes to be brought, into this state from without the state tobacco products for sale.
- b. Makes, manufactures, or fabricates tobacco products in this state for sale in this state.
- c. Ships or transports tobacco products to retailers in this state, to be sold by those retailers.

2. A tax is imposed upon the use or storage by consumers of tobacco products in this state, and upon the consumers, at the rate of fifteen percent of the cost of the tobacco products.

The tax imposed by this subsection shall not apply if the tax imposed by subsection 1 on the tobacco products has been paid.

This tax shall not apply to the use or storage of tobacco products in quantities of:

- a. Less than 25 cigars.
- b. Less than 10 oz. snuff or snuff powder.
- c. Less than 1 lb. smoking or chewing tobacco or other tobacco products not specifically mentioned herein, in the possession of any one consumer.

3. Any tobacco product with respect to which a tax has once been imposed under this division shall not again be subject to tax under said division.

4. The tax imposed by this section shall not apply with respect to any tobacco product which under the Constitution and laws of the United States may not be made the subject of taxation by this state.

5. The tax imposed by this section shall be in addition to all other occupation or privilege taxes or license fees now or hereafter imposed by any city or county.

85 Acts, ch 32, §2 SF 395
 Inventory tax imposed on cigarettes and little cigars in distributor's inventory as of September 30, 1985; 85 Acts, ch 32, §119
 Subsections 1 and 2 amended

CHAPTER 99A

POSSESSION OF GAMBLING DEVICES—LICENSES REVOKED

99A.10 Manufacture of electronic gambling devices permitted.

A person may manufacture electronic or computerized gambling devices. This chapter does not prohibit such manufacturing activities.

85 Acts, ch 32, §117 SF 395
 NEW section

CHAPTER 99B

GAMES OF SKILL OR CHANCE, AND RAFFLES

99B.5 Raffles conducted at a fair.

1. Raffles lawfully may be conducted at a fair, but only if all of the following are complied with:

a. The raffle is conducted by the sponsor of the fair or a qualified organization licensed under section 99B.7 that has received permission from the sponsor of the fair to conduct the raffle.

b. The sponsor of the fair or the qualified organization has submitted a license application and a fee of fifteen dollars for each raffle, has been issued a license, and prominently displays the license at the drawing area of the raffle.

c. The raffle is posted.

d. Except as provided in paragraph "g", the cost of each chance in or ticket to the raffle does not exceed one dollar.

e. Cash prizes are not awarded and merchandise prizes are not repurchased.

f. The raffle is not operated on a pyramid or build-up basis.

g. The actual retail value of any prize does not exceed fifty dollars. If a prize consists of more than one item, unit or part, the aggregate retail value of all items, units or parts shall not exceed fifty dollars. However, a fair may hold one raffle per year at which a merchandise prize having a value not greater than ten thousand dollars as determined by the purchase price paid by the fair may be awarded.

h. The raffle is conducted in a fair and honest manner.

2. It is lawful for an individual other than a person conducting the raffle to participate in a raffle conducted at a fair, whether or not conducted in compliance with subsection 1.

85 Acts, ch 191, §1 SF 81

Subsection 1, paragraphs a and b amended

99B.7 Games conducted by qualified organizations—penalties.

1. Except as otherwise provided in section 99B.8, games of skill, games of chance and raffles lawfully may be conducted at a specified location meeting the requirements of subsection 2 of this section, but only if all of the following are complied with:

a. The person conducting the game or raffle has been issued a license pursuant to subsection 3 of this section and prominently displays that license in the playing area of the games.

b. No person receives or has any fixed or contingent right to receive, directly or indirectly, any profit, remuneration, or compensation from or related to a game of skill, game of chance, or raffle, except any amount which the person may win as a participant on the same basis as the other participants. A person conducting a game or raffle shall not be a participant in the game or raffle.

c. Cash prizes may be awarded in the game of bingo and shall not exceed one hundred dollars. Merchandise prizes may be awarded in the game of bingo, however, the actual retail value of the prize, or if the prize consists of more than one item, unit or part, the aggregate retail value of all items, units or parts, shall not exceed one hundred dollars. A jackpot bingo game may be conducted once during any twenty-four hour period in which the prize may be increased by not more than one hundred dollars after each day's game. However, the cost of play in a jackpot bingo game shall not be increased and the jackpot shall not amount to more than five hundred dollars in cash or actual retail value of merchandise prizes. A jackpot bingo game is not prohibited by paragraph "h". A bingo occasion shall not last for longer than four consecutive hours. A qualified organization shall not hold more than fourteen bingo occasions per month. Bingo occasions held under a limited license

shall not be counted in determining whether a qualified organization has conducted more than fourteen bingo occasions per month, nor shall bingo occasions held under a limited license be limited to four consecutive hours. With the exception of a limited license bingo, no more than three bingo occasions per week shall be held within a structure or building and only one person licensed to conduct games under this section may hold bingo occasions within a structure or building. However, a qualified organization, which is a senior citizens' center or a residents' council at a senior citizen housing project or a group home, may hold more than fourteen bingo occasions per month and more than three bingo occasions per week within the same structure or building, and bingo occasions conducted by such a qualified organization may last for longer than four consecutive hours, if the majority of the patrons of the qualified organization's bingo occasions also participate in other activities of the senior citizens' center or are residents of the housing project. At the conclusion of each bingo occasion, the person conducting the game shall announce both the gross receipts received from the bingo occasion and the use permitted under subsection 3, paragraph "b", to which the net receipts of the bingo occasion will be dedicated and distributed.

d. Cash prizes shall not be awarded in games other than bingo. The actual retail value of any merchandise prizes shall not exceed fifty dollars and merchandise prizes shall not be repurchased. However, one raffle may be conducted in a twelve-month period at which a merchandise prize having a value not greater than ten thousand dollars as determined by purchase price paid by the organization or donor may be awarded.

e. Except as provided in paragraph "d" of this subsection with respect to an annual raffle, the cost to a participant for each game shall not exceed one dollar.

f. No prize is displayed which cannot be won.

g. Merchandise prizes are not repurchased.

h. A game or raffle shall not be operated on a build-up or pyramid basis.

i. Concealed numbers or conversion charts shall not be used to play any game and a game or raffle shall not be adapted with any control device to permit manipulation of the game by the operator in order to prevent a player from winning or to predetermine who the winner will be, and the object of the game must be attainable and possible to perform under the rules stated from the playing position of the player.

j. The game must be conducted in a fair and honest manner.

k. Each game or raffle shall be posted.

l. During the entire time that games permitted by this section are being engaged in, no other gambling is engaged in at the same location and no free prize or other gift is given to a participant. However, one or more door prizes of a value not to exceed ten dollars each may be given by random drawing.

m. The person or organization conducting the game can show to the satisfaction of the department that the person or organization is eligible for exemption from federal income taxation under either section 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6), 501(c)(10) or 501(c)(19) of the Internal Revenue Code of 1954, as defined in section 422.3. However, this paragraph does not apply to a political party as defined in section 43.2, to a nonparty political organization that has qualified to place a candidate as its nominee for statewide office pursuant to chapter 44, or to a candidate committee as defined in section 56.2.

n. The person conducting the game does none of the following:

(1) Hold, currently, another license issued under this section.

(2) Own or control, directly or indirectly, any class of stock of another person who has been issued a license to conduct games under this section.

(3) Have, directly or indirectly, an interest in the ownership or profits of another person who has been issued a license to conduct games under this section.

o. Except as provided in subsection 6, paragraph "a", a person shall not conduct,

promote, administer, or assist in the conducting, promoting or administering of a bingo occasion, unless the person regularly participates in activities of the qualified organization other than conducting bingo occasions or participates in an educational, civic, public, charitable, patriotic, or religious organization to which the net receipts are dedicated by the qualified organization.

2. Games of skill, games of chance, and raffles may be conducted on premises owned or leased by the licensee, but shall not be conducted on rented premises unless the premises are rented from a person licensed under this section, and unless the net rent received is dedicated to one or more of the uses permitted under subsection 3 for dedication of net receipts. This subsection shall not apply where the rented premises are those upon which a qualified organization usually carries out a lawful business other than operating games of skill, games of chance or raffles. However, a qualified organization may rent premises other than from a licensed qualified organization to be used for the conduct of games of skill, games of chance and raffles, and the person from whom the premises are rented may impose and collect rent for such use of those premises, but only if all of the following are complied with:

a. The rent imposed and collected shall not be a percentage of or otherwise related to the amount of the receipts of the game or raffle.

b. The qualified organization shall have the right to terminate any rental agreement at any time without penalty and without forfeiture of any sum.

c. The person from whom the premises are rented shall not be a liquor control licensee or beer permittee with respect to those premises or with respect to adjacent premises.

The board of directors of a school district may authorize that public schools within that district, and the policymaking body of a nonpublic school, may authorize that games of skill, games of chance, bingo and raffles may be held at bona fide school functions, such as carnivals, fall festivals, bazaars and similar events. Each school shall obtain a license pursuant to this section prior to permitting the games or activities on the premises. However, the board of directors of a public school district may also be issued a license under this section. However, a board of directors of a public school shall not spend or authorize the expenditure of public funds for the purpose of purchasing a license. The department shall provide by rule a short form application for a license issued to a board of directors. Upon written approval by the board of directors, the license may be used by any school group or parent support group in the district to conduct activities authorized by this section. The board of directors shall not authorize a school group or parent support group to use the license more than twice in twelve months.

3. a. A person wishing to conduct games and raffles pursuant to this section as a qualified organization shall submit an application and a license fee of one hundred dollars. However, upon submission of an application accompanied by a license fee of fifteen dollars, a person may be issued a limited license which shall authorize the person to conduct all games and raffles pursuant to this section at a specified location and during a specified period of fourteen consecutive calendar days. A limited license shall not be issued more than once during any twelve-month period to the same person, or for the same location.

b. A person or the agent of a person submitting application to conduct games pursuant to this section as a qualified organization shall certify that the receipts of all games, less reasonable expenses, charges, fees, taxes, and deductions allowed by this chapter, either will be distributed as prizes to participants or will be dedicated and distributed to educational, civic, public, charitable, patriotic or religious uses in this state and that the amount dedicated and distributed will equal at least seventy-five percent of the net receipts. "Educational, civic, public, charitable, patriotic, or religious uses" means uses benefiting a society for the prevention of cruelty to animals or animal rescue league, or uses benefiting an indefinite number of persons either by bringing them under the influence of education or religion or

relieving them from disease, suffering, or constraint, or by erecting or maintaining public buildings or works, or otherwise lessening the burden of government, or uses benefiting any bona fide nationally chartered fraternal or military veterans' corporation or organization which operates in Iowa a clubroom, post, dining room, or dance hall, but do not include the erection, acquisition, improvement, maintenance, or repair of real, personal or mixed property unless it is used for one or more of the uses stated. "Public uses" specifically includes dedication of net receipts to political parties as defined in section 43.2. "Charitable uses" includes uses benefiting a definite number of persons who are the victims of loss of home or household possessions through explosion, fire, flood, or storm when the loss is uncompensated by insurance, and uses benefiting a definite number of persons suffering from a seriously disabling disease or injury, causing severe loss of income or incurring extraordinary medical expense when the loss is uncompensated by insurance.

Proceeds given to another charitable organization to satisfy the seventy-five percent dedication requirement shall not be used by the donee to pay any expenses in connection with the conducting of bingo by the donor organization, or for any cause, deed, or activity that would not constitute a valid dedication under this section.

c. A qualified organization shall distribute amounts awarded as prizes on the day they are won. A qualified organization shall dedicate and distribute the balance of the net receipts received within a quarter and remaining after deduction of reasonable expenses, charges, fees, taxes, and deductions allowed by this chapter, before the quarterly report required for that quarter under section 99B.2, subsection 4, is due. The amount dedicated and distributed must equal at least seventy-five percent of the net receipts. A person desiring to hold the net receipts for a period longer than permitted under this paragraph shall apply to the department for special permission and upon good cause shown the department may grant the request.

If permission is granted to hold the net receipts, the person shall, as a part of the quarterly report required by section 99B.2, report the amount of money currently being held and all expenditures of the funds. This report shall be filed even if the person no longer holds a gambling license.

4. It is lawful for an individual other than a person conducting games or raffles to participate in games or raffles conducted by a qualified organization, whether or not there is compliance with subsections 2 and 3: However, it is unlawful for the individual to participate where the individual has knowledge of or reason to know facts which constitute a failure to comply with subsection 1.

5. A political party or a political party organization is a qualified organization within the meaning of this chapter. Political parties or party organizations may contract with other qualified organizations to conduct the games of skill, games of chance, and raffles which may lawfully be conducted by the political party or party organization. A licensed qualified organization may promote the games of skill, games of chance, and raffles which it may lawfully conduct.

6. Proceeds coming into the possession of a person under this section are deemed to be held in trust for payment of expenses and dedication to charitable purposes as required by this section.

a. Except as provided in this paragraph, a person shall not be compensated for services rendered in connection with a game of skill, game of chance, or raffle conducted under this section. This section forbids payment of compensation to persons including, but not limited to, managers, callers, cashiers, floor workers, janitorial personnel, accountants and bookkeepers. The privilege of selling merchandise on the premises during a bingo occasion is deemed to be compensation. However, not more than four persons per one hundred players, participating in the bingo occasion may be employed. An employee under this paragraph need not be a member of the qualified organization or a regular participant in the activities of the qualified organization or in an educational, civic, public, charitable, patriotic, or

religious organization to which the net receipts are dedicated by the qualified organization. The wages of an employee shall not exceed the federal minimum wage. This section does not prohibit the employment of one or more individuals to serve as security officers. A person who knowingly pays or receives compensation in violation of this section commits a fraudulent practice.

b. A licensee or agent who willfully fails to dedicate the required amount of proceeds to charitable purposes as required by this section commits a fraudulent practice.

c. Violations of paragraphs "a" and "b" may be considered as a single fraudulent practice and the value may be the total value of all money, property and services involved.

85 Acts, ch 150, §1-3 SF 349
 Subsection 1, paragraph m amended
 Subsection 1, paragraph o amended
 Subsection 6, paragraph a amended

CHAPTER 99D

IOWA PARI-MUTUEL WAGERING ACT

Review of commission's funding mechanism; changes to budgeting process to be effective by July 1, 1987; 85 Acts, ch 255, §4 SF 269

99D.22 Native horses or dogs.

1. A licensee shall hold at least one race on each racing day limited to Iowa-foaled horses or Iowa-whelped dogs as defined by the department of agriculture using standards consistent with this section. However, if sufficient competition cannot be had among that class of horses or dogs on any day, another race for the day may be substituted. A sum equal to twelve percent of the purse won by an Iowa-foaled horse or Iowa-whelped dog shall be used to promote the horse and dog breeding industries. The twelve percent shall be withheld by the licensee from the breakage and shall be paid at the end of the race meeting to the state department of agriculture which in turn shall deposit it in a special fund to be known as the Iowa horse and dog breeders fund and pay it by December 31 of each calendar year to the breeder of the winning Iowa-foaled horse or Iowa-whelped dog. For the purposes of this section, the breeder of a thoroughbred horse shall be considered to be the owner of the brood mare at the time the foal is dropped.

2. For the purposes of this chapter, the following shall be considered in determining if a horse is an Iowa-foaled thoroughbred horse:

a. All thoroughbred horses foaled in Iowa prior to January 1, 1985, which are registered by the jockey club as Iowa foaled shall be considered to be Iowa foaled.

b. After January 1, 1985, eligibility for brood mare residence shall be achieved by meeting at least one of the following rules:

(1) Thirty days residency until the foal is inspected, if in foal to a registered Iowa stallion.

(2) Thirty days residency until the foal is inspected for brood mares which are bred back to registered Iowa stallions.

(3) Continuous residency from December 31 until the foal is inspected if the mare was bred by other than an Iowa registered stallion and is not bred back to an Iowa registered stallion.

c. To be eligible for registration as an Iowa thoroughbred stallion, the following requirements shall be met:

(1) A full-year stallion residency, January 1 through December 31 for the year of registration. However, horses going to stud for their first season shall be eligible upon registration with residency to continue through December 31.

(2) At least fifty-one percent of an Iowa registered stallion shall be owned by bona fide Iowa residents.

d. State residency shall not be required for owners of brood mares.

3. To facilitate the implementation of this section, the department of agriculture shall do all of the following:

a. Adopt standards to qualify thoroughbred stallions for Iowa breeding. A stallion shall stand for service in the state at the time of the foal's conception and shall not stand for service at any place outside the state during the calendar year in which the foal is conceived.

b. Provide for the registration of Iowa-foaled horses and that a horse shall not compete in a race limited to Iowa-foaled horses unless the horse is registered with the department of agriculture. The department may prescribe such forms as necessary to determine the eligibility of a horse.

c. The secretary of agriculture shall appoint investigators to determine the eligibility for registration of Iowa-foaled horses.

d. Adopt a schedule of fees to be charged to breeders of thoroughbreds to administer this subsection.

4. To qualify for the Iowa horse and dog breeders fund, a dog shall have been whelped in Iowa and raised for the first six months of its life in Iowa. In addition, the owner of the dog shall have been a resident of the state for at least two years prior to the whelping.

85 Acts, ch 67, §12 SF 121 .

Subsection 2, paragraph b, subparagraph (3) amended

CHAPTER 99E

IOWA LOTTERY ACT

Intent of general assembly that, effective July 1, 1990, this chapter be repealed; 85 Acts, ch 33, §129

99E.1 Title.

This chapter may be cited as the "Iowa Lottery Act".

85 Acts, ch 33, §101 HF 225

NEW section

99E.2 Definitions.

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

1. "*Commissioner*" means the commissioner of the lottery.
2. "*Director*" means the director of each of the three divisions of the lottery agency operating under the commissioner.
3. "*Lottery*" means the lottery created and operated under this chapter.
4. "*Board*" means the Iowa lottery board.
5. "*Licensee*" means the person issued a license by the commissioner to sell lottery tickets or shares. The licensee is responsible for the licensee's employees' conduct which is within the scope of this chapter.
6. "*Ticket*" means any tangible evidence issued by the Iowa lottery agency to prove participation in a game conducted by the state lottery agency.
7. "*Share*" means any intangible manifestation authorized by the Iowa lottery agency to prove participation in a game conducted by the state lottery agency.
8. "*On-line lotto*" means a lottery game hooked up to a central computer via telecommunications lines in which the player selects a specified group of numbers out of a predetermined range of numbers.
9. "*Instant lottery*" means a game that offers preprinted tickets that indicate immediately whether the player has won.

85 Acts, ch 33, §102 HF 225

NEW section

99E.3 Establishment of lottery—commissioner—employees.

1. A state agency is established to be known as the Iowa lottery agency. Except as provided in section 99E.9, subsection 3, paragraph "b", the Iowa lottery agency is subject to chapter 17A. It is a separate agency of state government whose head is the commissioner.

2. The commissioner shall be qualified by training and experience to direct the lottery. The commissioner shall be appointed by the governor within thirty days after May 3, 1985 subject to confirmation by the senate, and shall serve at the pleasure of the governor. A vacancy occurring in the office of the commissioner shall be filled in the same manner as the original appointment. Section 2.32 applies to the appointment of the commissioner. The commissioner shall devote time and attention solely to the duties of the office and shall not be engaged in any other profession or occupation. The commissioner shall receive a salary determined by the governor within salary range five as set by the general assembly.

3. The commissioner may employ clerks, stenographers, inspectors, agents, and other employees pursuant to chapter 19A as necessary to carry out this chapter, except as provided in section 99E.14, subsection 2.

85 Acts, ch 33, §103 HF 225
NEW section

99E.4 Commissioner's oath—bond—employees—bonding of employees.

1. Before taking office, the commissioner shall take an oath to faithfully execute the duties of the office according to the laws of the state, and shall give bond with sufficient surety to be approved by the governor in the sum of not less than twenty-five thousand dollars, conditioned upon faithful execution and performance of the duties of the office. The bond when fully executed and approved shall be filed in the office of the secretary of state. When in the governor's opinion the bond has become or is likely to become invalid or insufficient, the governor shall require the commissioner to renew the bond in an amount approved by the governor but not less than twenty-five thousand dollars. The cost of a bond given shall be part of the necessary expenses of the lottery.

2. The commissioner shall employ personnel necessary to implement this chapter. The commissioner may require lottery agency employees to give bond in an amount the commissioner determines. Each bond when fully executed and approved shall be filed in the office of the secretary of state. The cost of each bond given shall be part of the necessary expenses of the lottery. The commissioner may obtain a blanket bond to cover personnel of the lottery agency for which the commissioner requires a bond.

85 Acts, ch 33, §104 HF 225
NEW section

99E.5 Lottery board.

An Iowa lottery board is created to consist of five members, not more than three of whom shall be from the same political party, and who shall be appointed by the governor subject to confirmation by the senate. The governor shall appoint the board members within sixty days of May 3, 1985. The term of each member shall begin and end as provided in section 69.19. A vacancy on the board shall be filled in the same manner as regular appointments are made and the term shall be for the unexpired portion of the regular term.

85 Acts, ch 33, §105 HF 225
NEW section

99E.6 Board qualifications.

Board members shall be residents of this state. Except for the initial appointees, at least one member of the board shall be a person who has been a law enforcement officer for not less than five years, one member shall be an attorney admitted to the

practice of law in Iowa for not less than five years, and one member shall be a certified public accountant who has practiced accountancy in Iowa for not less than five years.

85 Acts, ch 33, §106 HF 225; 85 Acts, ch 256, §14 HF 642
NEW section
Section amended

99E.7 Board meetings.

The board shall hold at least one meeting each month and as often as necessary. The board shall select a chairperson from its membership at the first regular meeting of the board and shall thereafter select a chairperson at the first regular meeting of each fiscal year. Written notice of the time and place of each meeting shall be given to each member of the board. A majority of the board constitutes a quorum.

85 Acts, ch 33, §107 HF 225
NEW section

99E.8 Expenses—salary.

Members of the board shall be compensated at a rate of six thousand dollars per year. Members shall also be allowed the actual and necessary expenses incurred in the performance of their duties. The expenses incurred by members of the board and the salaries paid to members of the board are part of the necessary expenses of the lottery agency.

85 Acts, ch 33, §108 HF 225
NEW section

99E.9 Duties of the board and commissioner—contracts—rules.

1. The board and the commissioner shall supervise the lottery in order to produce the maximum amount of net revenues for the state in a manner which maintains the dignity of the state and the general welfare of the people.

2. Subject to the approval of the board, the commissioner may enter into contracts for the operation and marketing of the lottery, except that the board may by rule designate classes of contracts other than major procurements which do not require prior approval by the board. A major procurement shall be as the result of competitive bidding with the contract being awarded to the responsible vendor submitting the lowest and best proposal. However, before a contract for a major procurement is awarded, the division of criminal investigation of the department of public safety shall conduct a thorough background investigation of the vendor, any parent or subsidiary corporation of the vendor, all shareholders of five percent or more interest of the vendor or parent or subsidiary corporation of the vendor, and all officers and directors of the vendor or parent or subsidiary corporation of the vendor to whom the contract is to be awarded. The vendor shall submit to the division of criminal investigation appropriate investigation authorizations to facilitate this investigation. A contract for a major procurement awarded or entered into by the commissioner with an individual or business organization shall require that individual or business organization to establish a permanent office in this state. As used in this subsection, "major procurement" means consulting agreements and the major procurement contract with a business organization for the printing of tickets, or for purchase or lease of equipment or services essential to the operation of a lottery game.

3. Except as provided in paragraph "b", the board shall make rules in accordance with chapter 17A for implementing and enforcing this chapter. The rules shall include but are not limited to the following subject matters:

a. The fees charged for a license to sell lottery tickets or shares. Revenue received by the lottery from license fees shall be transferred to the lottery fund immediately after the cost of processing license applications is deducted.

b. The types of lottery games to be conducted. Rules governing the operation of a class of games are subject to chapter 17A. However, rules governing the particular features of specific games within a class of games are not subject to chapter 17A. Such

rules may include, but are not limited to, setting the name and prize structure of the game and shall be made available to the public prior to the time the games go on sale and shall be kept on file at the office of the commissioner. The board shall authorize instant lottery and on-line lotto games and may authorize the use of any type of lottery game that on May 3, 1985 has been conducted by a state lottery of another state in the United States, or any game that the board determines will achieve the revenue objectives of the lottery and is consistent with subsection 1. However, the board shall not authorize a game using electronic computer terminals or other devices if the terminals or devices dispense coins or currency upon the winning of a prize. In a game utilizing instant tickets, each ticket in the game shall bear a unique consecutive serial number distinguishing it from every other ticket in the game, and each lottery number or symbol shall be accompanied by a confirming caption consisting of a repetition of a symbol or a description of the symbol in words. In the game other than an instant game which uses tangible evidence of participation, each ticket shall bear a unique serial number distinguishing it from every other ticket in the game.

c. The price of tickets or shares in the lottery, including but not limited to authorization of sales of tickets or shares at a discount for marketing purposes.

d. The number and size of the prizes on the winning tickets or shares, including but not limited to prizes of free tickets or shares in lottery games conducted by the lottery and merchandise prizes. The lottery agency shall maintain and make available for public inspection at its offices during regular business hours a detailed listing of the estimated number of prizes of each particular denomination that are expected to be awarded in any game that is on sale or the estimated odds of winning the prizes and, after the end of the claim period, shall maintain and make available a listing of the total number of tickets or shares sold in a game and the number of prizes of each denomination which were awarded.

e. The method of selecting the winning tickets or shares and the manner of payment of prizes to the holders of winning tickets or shares. The rules may provide for payment by the purchase of annuities in the case of prizes payable in installments. Lottery employees shall examine claims and shall not pay any prize for altered, stolen, or counterfeit tickets or shares nor tickets or shares which fail to meet validation rules established for a lottery game. A prize shall not be paid more than once. If the commissioner determines that more than one person is entitled to a prize, the sole remedy of the claimants is to receive an equal share in the single prize. The rules may provide for payment of prizes directly by the licensee.

f. The methods of validation of the authenticity of winning tickets or shares.

g. The frequency of selection of winning tickets or shares. Drawings shall be held in public. Drawings shall be witnessed by an independent certified public accountant. Equipment used to select winning tickets or shares or participants for prizes shall be examined by lottery agency employees and an independent certified public accountant prior to and after each public drawing.

h. Requirements for eligibility for participation in runoff drawings, including but not limited to requirements for submission of evidence of eligibility.

i. The locations at which tickets or shares may be sold.

j. The method to be used in printing and selling tickets or shares. An elected official's name shall not be printed on the tickets. The overall estimated odds of winning a prize in a given game shall be printed on each ticket if the games have either preprinted winners or fixed odds. Estimated odds of winning a prize are not required to be printed on tickets in lottery games of a pari-mutuel nature. As used in this paragraph, "games of a pari-mutuel nature" means a game in which the amount of the winnings and the odds of winning are determined by the number of participants in the game.

k. The issuing of licenses to sell tickets or shares. In addition to any other rules made regarding the qualifications of an applicant for a license, a person shall not

be issued a license unless the person meets the criteria established in section 99E.16, subsection 7.

l. The compensation to be paid licensees including but not limited to provision for variable compensation based on sales volume or incentive considerations.

m. The form and type of marketing, informational, and educational material to be permitted. Marketing material and campaigns shall include the concept of investing in Iowa's economic development and show the economic development initiatives funded from lottery revenue.

n. Subject to section 99E.10, the apportionment of the annual revenues accruing from the sale of lottery tickets or shares and from other sources for the payment of prizes to the holders of winning tickets or shares and for the following:

(1) The payment of costs incurred in the operation and administration of the lottery and the lottery agency, including the expenses of the lottery and the cost resulting from contracts entered into for consulting or operational services, or for marketing.

(2) Actual and necessary expenses of all audits performed pursuant to section 99E.20, subsection 3.

(3) Incentive programs for lottery licensees and lottery employees.

(4) Payment of compensation to licensees necessary to provide for the adequate availability of tickets, shares, or services to prospective buyers and for the convenience of the public.

(5) The purchase or lease of lottery equipment, tickets, and materials.

4. The board and the commissioner may enter into written agreements or compacts with another state or states for the operation, marketing, and promotion of a joint lottery or joint lottery games.

5. Whenever possible when the lottery agency awards a contract under subsection 2, for the lease, purchase, or servicing of a machine to be used in the conducting of a lottery game including, but not limited to, a video lottery machine or machine used in lotto, the lottery agency shall give preference to awarding the contract to a person whose primary place of business is in Iowa.

85 Acts, ch 33, §109 HF 225

Commissioner to initiate and operate instant lottery games by September 15, 1985, and on-line lotto games by May 1, 1986; 85 Acts, ch 33, §128
NEW section

99E.10 Allocation and appropriation of funds generated—Iowa plan fund.

1. Upon receipt of any revenue, the commissioner shall deposit the moneys in the lottery fund created pursuant to section 99E.20. As nearly as is practicable, fifty percent of the projected annual revenue, after deduction of the amount of the sales tax and repayment to the general fund of the loan for start-up purposes of the Iowa lottery, computed on a year-round average basis for each type of lottery game accruing from the sale of tickets or shares is appropriated for payment of prizes to the holders of winning tickets. After the payment of prizes, all of the following shall be deducted from lottery revenue prior to disbursement:

a. An amount equal to one half of one percent of the gross lottery revenue shall be deposited in a gamblers assistance fund in the office of the treasurer of state. Moneys in the fund shall be administered by the commissioner of human services and used to provide assistance and counseling to individuals and families experiencing difficulty as a result of gambling losses and to promote awareness of gamblers anonymous and similar assistance programs.

b. An amount equal to four percent of the gross sales price of each ticket or share sold shall be deducted as the sales tax on the sale of that ticket or share, remitted to the treasurer of state and deposited into the state general fund.

c. The expenses of conducting the lottery including the reasonable expenses incurred by the attorney general's office in enforcing this chapter.

d. The contractual expenses required in this paragraph. The division of criminal

investigation shall be the primary state agency responsible for investigating criminal violations of the law under this chapter. The commissioner shall contract with the department of public safety for investigative services, including the employment of special agents and support personnel, and procurement of necessary equipment to carry out the responsibilities of the division of criminal investigation under the terms of the agreement and this chapter.

Lottery agency expenses for marketing, educational, and informational material shall not exceed four percent of the lottery revenue.

The Iowa plan fund for economic development, also to be known as the Iowa plan fund, is created in the office of the treasurer of state. Lottery revenue remaining after expenses are determined shall be transferred to the Iowa plan fund on a quarterly basis. However, upon the request of the commissioner and subject to approval by the treasurer of state, an amount sufficient to cover the foreseeable administrative expenses of the lottery for a period of twenty-one days may be retained from the lottery revenue. Prior to the quarterly transfer to the Iowa plan fund, the commissioner may direct that lottery revenue shall be deposited in the lottery fund and in interest bearing accounts designated by the treasurer of state in the financial institutions of this state or invested in the manner provided in section 452.10. Interest or earnings paid on the deposits or investments is considered lottery revenue and shall be transferred to the Iowa plan fund in the same manner as other lottery revenue. Money in the Iowa plan fund shall be deposited in interest bearing accounts in financial institutions in this state or invested in the manner provided in section 452.10. The interest or earnings on the deposits or investments shall be considered part of the Iowa plan fund and shall be retained in the fund unless appropriated by the general assembly.

2. Funds transferred to the Iowa plan fund shall be used for economic development initiatives. As used in this subsection "economic development initiatives" means initiatives which encourage development of capital, research and development of new products, and development of jobs in this state by expanding existing business and industry; upgrade academic institutions in order to maintain and attract business and industry, creating new businesses and industries; encourage the conservation of energy in order to create new jobs and attract new business and industry; develop alternate methods for the disposal of solid or hazardous waste; develop markets for products grown or produced or manufactured in the state including the promotion of Iowa and Iowa products; and make grants and loans available to local communities for local economic development initiatives. "Economic development initiatives" does not include providing loans, grants, bonds, or any other incentive or assistance for the construction of a racetrack or other facility where gambling will be permitted.

3. Funds equal to any initial appropriation from the general fund to the lottery shall be returned to the general fund from the receipts of the sale of tickets or shares not later than July 1, 1986. The comptroller shall not include lottery revenues in the comptroller's fiscal year revenue estimates. Moneys in the Iowa plan fund shall not be considered to be a part of the Iowa economic emergency fund.

85 Acts, ch 32, §114, 115 SF 395; 85 Acts, ch 33, §110 HF 225; 85 Acts, ch 256, §9 HF 642
Allotments from Iowa plan fund through fiscal year beginning July 1, 1989; 85 Acts, ch 33, §301-303; 85 Acts, ch 256, §10, 12

NEW section

Subsection 1, unnumbered paragraph 1 amended

Subsection 1, NEW paragraph b

99E.11 Reports.

1. The commissioner shall report quarterly to the governor, the treasurer of state, and the general assembly. The quarterly report shall include the total lottery revenue, prize disbursements, and other expenses for the preceding quarter. The fourth quarter report shall be included in the annual report made pursuant to subsection 2.

2. The commissioner also shall report annually to the governor, the treasurer of state, and the general assembly. The annual report shall include a complete statement of lottery revenues, prize disbursements, and other expenses, and recommendations for changes in the law which the commissioner deems necessary or desirable. The annual report shall be submitted within ninety days after the close of a fiscal year.

3. The commissioner shall report immediately to the governor, the treasurer of state, and the general assembly any matters that require immediate changes in the law in order to prevent abuses or evasions of this chapter or rules adopted or to rectify undesirable conditions in connection with the administration or operation of the lottery.

85 Acts, ch 33, §111 HF 225

Initial report to be filed by January 15, 1986; 85 Acts, ch 33, §127
NEW section

99E.12 Studies.

1. The commissioner shall make a continuous study of the lottery to ascertain any defects of this chapter or in the rules which could result in abuses in the administration and operation of the lottery or in any evasion of this chapter or the rules of the commissioner and make recommendations for improvement in this chapter.

2. The commissioner shall make a continuous study of the operation and the administration of similar laws in effect in other states, written material on the subject which is published or available, federal laws which may affect the operation of the lottery, and the reaction of citizens to existing and potential features of the lottery in order to recommend changes that will serve the purposes of this chapter.

3. The commissioner shall make a demographic study of lottery players.

4. The commissioner shall contract with the department of human services to conduct a study of the extent to which the lottery creates a compulsive gambling problem among lottery players and the impact of gambling on affected families.

85 Acts, ch 33, §112 HF 225

NEW section

99E.13 Conflict of interest—penalty.

1. A member of the board, the commissioner, or an employee of the lottery shall not directly or indirectly, individually, as a member of a partnership or other association, or as a shareholder, director, or officer of a corporation have an interest in a business which contracts for the operation and marketing of the lottery as authorized by section 99E.9, subsection 2.

2. A member of the board, the commissioner, an employee of the lottery, or a member of their immediate family shall not ask for, offer to accept, or receive a gift, gratuity, or other thing of more than fifty dollars in value from a person contracting or seeking to contract with the state to supply gaming equipment or materials for use in the operation of a lottery or from an applicant for a license to sell tickets or shares in the lottery or from a licensee.

3. A person contracting or seeking to contract with the state to supply gaming equipment or materials for use in the operation of a lottery, an applicant for a license to sell tickets or shares in the lottery, or a licensee shall not offer a member of the board, the commissioner, an employee of the lottery, or a member of their immediate family a gift, gratuity, or other thing of more than fifty dollars in value.

4. A board member, commissioner, or employee of the lottery who violates a provision of this section, or if a member of their immediate family violates a provision of this section, shall be immediately removed from the office or position.

5. A violation of this section is a serious misdemeanor.

6. As used in this section, "member of their immediate family" means a spouse, child, stepchild, brother, brother-in-law, stepbrother, sister, sister-in-law, stepsister, parent, parent-in-law, or stepparent of the board member, the commissioner, or the employee.

7. Enforcement of this section against a board member or commissioner shall be by the attorney general who upon finding a violation shall initiate an action to remove the board member or commissioner.

8. In addition to the prohibitions of this section, the prohibitions of sections 722.1 and 722.2 are applicable.

85 Acts, ch 33, §113 HF 225
NEW section

99E.14 Lottery divisions—directors.

1. The Iowa lottery agency has three divisions:
 - a. A security and licensing division.
 - b. An administrative division.
 - c. A marketing, education, and information division.
2. Each division is under the supervision of a director appointed by the commissioner and each director shall have expertise in the functions of the division. The position of director is exempt from the provisions of chapter 19A. The commissioner shall designate one of the directors to serve as acting commissioner during the commissioner's absence.
3. Departments, boards, commissions, or other agencies of this state shall provide reasonable assistance to the lottery upon the request of the commissioner.

85 Acts, ch 33, §114 HF 225
NEW section

99E.15 Power to administer oaths and take testimony—subpoena.

The commissioner or the commissioner's designee authorized to conduct an inquiry, investigation, or hearing under this chapter may administer oaths and take testimony under oath relative to the matter of inquiry, investigation, or hearing. At a hearing ordered by the commissioner, the commissioner or the designee may subpoena witnesses and require the production of records, papers, and documents pertinent to the hearing.

85 Acts, ch 33, §115 HF 225
NEW section

99E.16 Licensing—bonds.

1. The commissioner shall license persons to sell lottery tickets or shares to best serve public convenience. A licensee shall not engage in business exclusively to sell lottery tickets or shares. However, the board may approve a special license to permit a licensee or the lottery agency itself to sell lottery tickets or shares to the public at special events approved by the board. Before issuing a license the commissioner shall consider the financial responsibility and security of the applicant, the applicant's business or activity, the accessibility of the applicant's place of business or activity to the public, the sufficiency of existing licensees to serve the public convenience, and the volume of expected sales. A licensee shall cooperate with the lottery by using point-of-purchase materials, posters, and other educational, informational, and marketing materials when requested to do so by the lottery. Lack of cooperation is sufficient cause for revocation of a person's license.
2. A licensee shall sell tickets or shares only on the premises stated in the license. The licensee shall only sell a ticket or share in person and not over a telephone. The licensee shall accept payment in cash only. The licensee shall not extend or arrange credit for the purchase of a ticket or share. As used in this subsection "cash" means United States currency. "Cash" does not mean any other form of payment including, but not limited to, check, credit card, or a negotiable instrument.
3. A licensee shall display the license or a copy of the license together with the lottery rules wherever tickets or shares are sold. A license is not assignable or transferable. The commissioner may issue a temporary license when deemed necessary.
4. The commissioner may require a bond from a licensee in an amount as

provided in the rules graduated according to the volume of expected sales of lottery tickets or shares by the licensee, or may require a licensee to furnish evidence of financial responsibility.

5. A bond shall not be canceled by a surety on less than thirty days' notice in writing to the commissioner. If a bond is canceled and the licensee fails to file a new bond with the commissioner in the required amount on or before the effective date of cancellation, the licensee's license shall be automatically suspended. A suspended license shall be revoked if the requirements of this subsection are not met within thirty days of the license suspension. The total and aggregate liability of the surety on the bond is limited to the amount specified in the bond.

6. Subject to the approval of the board, the commissioner may authorize compensation to licensees in the manner and amounts and subject to the limitations the commissioner determines if the commissioner finds that compensation is necessary to assure adequate availability of lottery tickets or shares.

7. A license shall be granted only after the commissioner finds all of the following:

- a. The applicant is at least eighteen years of age.
- b. The person has not been convicted of a fraud or a felony.
- c. The person has not been convicted or found to have committed a violation of this chapter.
- d. The person has not previously had a license issued under this chapter revoked.
- e. The person has not had a license to sell lottery tickets or shares in another jurisdiction suspended or revoked by the authority regulating a lottery or by a court of that jurisdiction.
- f. The applicant has demonstrated financial responsibility sufficient to adequately meet the requirements of the proposed enterprise.

g. The applicant is the true owner of the proposed lottery business and that all persons holding at least a ten percent ownership interest in the applicant's business have been disclosed.

h. The applicant has not knowingly made a false statement of material fact to the commission.

8. If after a license is granted the commissioner finds that the licensee has violated this section, then the commissioner shall revoke the license.

85 Acts, ch 33, §116 HF 225
NEW section

99E.17 Suspension or revocation of license—hearings—hearing board.

1. The commissioner may suspend or revoke the license of a licensee who violates a provision of this chapter or a rule adopted pursuant to this chapter. If the commissioner suspends or revokes a license, or refuses to grant a license, the aggrieved party is entitled to a hearing by filing a written request with the commissioner. Upon receipt of the request for hearing, the commissioner shall set a hearing date within thirty days of receipt of the request, and shall notify the aggrieved party, in writing, at least seven days in advance of the hearing date. The commissioner may stay the revocation or suspension of a license pending the outcome of the hearing, when a stay is requested with the request for hearing.

2. A three-member hearing board for the purpose of conducting hearings relating to controversies concerning the issuance, suspension, or revocation of licenses is created. One member shall be a designee of the board, one member shall be the treasurer of state or a designee of the treasurer of state, and one member shall be the commissioner of public safety or a designee of the commissioner of public safety. The lottery board shall adopt rules and procedures for conducting the hearings.

3. A license shall be suspended for a period deemed appropriate by the commissioner. A former licensee whose license is revoked is not eligible to receive another license.

85 Acts, ch 33, §117 HF 225
NEW section

99E.18 Prohibited sales of tickets or shares—forgery—penalties.

1. A ticket or share shall not be sold at a price greater than that fixed by the board and the commissioner and a sale shall not be made other than by a licensee or an employee of the licensee who is authorized by the licensee to sell tickets or shares. A person who violates a provision of this subsection is guilty of a simple misdemeanor.

2. A ticket or share shall not be sold to a person who has not reached the age of eighteen. This does not prohibit the lawful purchase of a ticket or share for the purpose of making a gift to a person who has not reached the age of eighteen. A licensee or a licensee's employee who knowingly sells or offers to sell a lottery ticket or share to a person who has not reached the age of eighteen is guilty of a simple misdemeanor. In addition the license of a licensee shall be suspended. A prize won by a person who has not reached the age of eighteen but who purchases a winning ticket or share in violation of this subsection shall be forfeited.

3. A ticket or share shall not be purchased by and a prize shall not be paid to the commissioner, a board member or employee of the lottery agency, or to a spouse, child, stepchild, brother, brother-in-law, stepbrother, sister, sister-in-law, stepsister, parent, parent-in-law, or stepparent residing as a member of the same household in the principal residence of the commissioner, a board member, or an employee. A ticket or share purchased in violation of this subsection is void.

4. A person who, with intent to defraud, falsely makes, alters, forges, utters, passes, or counterfeits a lottery ticket or share is guilty of a class "D" felony.

85 Acts, ch 33, §118 HF 225
NEW section

99E.19 Distribution of prizes—unclaimed prizes.

1. The commissioner shall award the designated prize to the ticket or share holder upon presentation of the winning ticket or confirmation of a winning share.

All prizes awarded are Iowa earned income. All lottery winnings are subject to state and federal income tax laws. An amount deducted from the prize for payment of a state tax shall be transferred by the commissioner to the state department of revenue on behalf of the prize winner.

Unclaimed prize money for the prize on a winning ticket or share shall be retained for a period deemed appropriate by the commissioner, subject to approval by the board. If a valid claim is not made for the money within the applicable period, the prize money shall be added to future prize pools and given to holders of winning tickets or shares in addition to amounts already allocated.

2. The prize shall be given to the person who presents a winning ticket. A prize may be given to only one person per winning ticket. However, a prize shall be divided between holders of winning tickets if there is more than one winning ticket. Payment of a prize may be made to the estate of a deceased prize winner or to another person pursuant to an appropriate judicial order. The commissioner is discharged of all further liability upon payment of a prize pursuant to this subsection. This section does not prohibit the making of a gift of a lottery ticket or share to a person.

85 Acts, ch 33, §119 HF 225
NEW section

99E.20 Deposit of receipts—lottery fund—audits.

1. The board shall adopt rules for the deposit as soon as possible in the lottery fund of money received by licensees from the sale of tickets or shares less the amount of compensation, if any, authorized under section 99E.16, subsection 6. Subject to approval of the board, the commissioner may require licensees to file with the commissioner reports of receipts and transactions in the sale of tickets or shares. The reports shall be in the form and contain the information the commissioner requires.

2. A lottery fund is created in the office of the treasurer of state. The fund consists of all revenues received from the sale of lottery tickets or shares and all other moneys

lawfully credited or transferred to the fund. The commissioner shall certify quarterly that portion of the fund that is transferred to the Iowa plan fund under section 99E.10 and shall cause that portion to be transferred to the Iowa plan fund of the state.

3. The auditor of state or a certified public accounting firm appointed by the auditor shall conduct quarterly and annual audits of all accounts and transactions of the lottery and other special audits as the auditor of state, the general assembly, or the governor deems necessary. The auditor or a designee conducting an audit under this chapter shall have access and authority to examine any and all records of licensees necessary to determine compliance with this chapter and the rules adopted pursuant to this chapter.

85 Acts, ch 33, §120 HF 225
NEW section

99E.21 Liability and funding.

The board and the commissioner shall operate the lottery so that after the initial state appropriation, it shall be self-sustaining and self-funded. A claim for the payment of an expense of the lottery and the payment of a lottery prize shall not be made unless it is against the lottery fund or money collected from the sale of lottery tickets or shares. Except for the initial appropriation to the lottery, funds of the state shall not be used or obligated to pay the expenses of the lottery or prizes of the lottery.

85 Acts, ch 33, §121 HF 225
Submission of budgets; proposals for operations to be reviewed by legislative council; 85 Acts, ch 256, §8
NEW section

CHAPTER 103A

STATE BUILDING CODE

103A.8 Standards.

The state building code shall as far as practical:

1. Provide uniform standards and requirements for construction, construction materials, and equipment through the adoption by reference of applicable national codes where appropriate and providing exceptions when necessary. The rules adopted shall include provisions imposing requirements reasonably consistent with or identical to recognized and accepted standards contained in performance criteria as developed by nationally recognized model codes such as the model codes prepared by the Building Officials Conference of America, the International Conference of Building Officials, the Southern Building Codes Congress, the National Fire Protection Association, the American National Standards Institute, the American Insurance Association, the United States Department of Housing and Urban Development, the American Standards Association, and the International Association of Plumbing and Mechanical Officials.

2. Establish such standards and requirements in terms of performance objectives.

3. Establish as the test of acceptability, adequate performance for the intended use.

4. Permit the use of modern technical methods, devices, and improvements which tend to reduce the cost of construction without substantially affecting reasonable requirements for the health, safety, and welfare of the occupants or users of buildings and structures.

5. Encourage the standardization of construction practices, methods, equipment, material, and techniques.

6. Eliminate restrictive, obsolete, conflicting, and unnecessary regulations and

requirements which tend to unnecessarily increase construction costs or retard unnecessarily the use of new materials, or provide unwarranted preferential treatment to types or classes of materials or products or methods of construction.

7. Limit the application of thermal efficiency standards for energy conservation to new construction which will incorporate a heating or cooling system. Air exchange fans designed to provide ventilation shall not be considered a cooling system. The commissioner shall exempt any new construction from thermal efficiency standards for energy conservation if the commissioner determines that the standards are unreasonable as they apply to a particular building or class of buildings including farm buildings for livestock use. Lighting efficiency standards shall recognize variations in lighting intensities required for the various tasks performed within the building. The commissioner shall consult with the energy policy council regarding standards for energy conservation prior to the promulgation of the standards. However, the standards shall be consistent with the requirements of section 103A.8A.

8. Facilitate the development and use of solar energy.

85 Acts, ch 147, §1 HF 341
Subsection 7 amended

103A.8A Minimum energy efficiency standard.

The state building code commissioner shall adopt as a part of the state building code a requirement that new single-family or two-family residential construction shall meet an established minimum energy efficiency standard. The standard shall be stated in terms of the home heating index developed by the physics department at Iowa state university of science and technology. The minimum standard shall be the average energy consumption of new single-family or two-family residential construction as determined by a survey conducted by the energy policy council of the average actual energy consumption, as expressed in terms of the home heating index. The minimum standard shall only apply to single-family or two-family residential construction commenced after the adoption of the standard.

85 Acts, ch 147, §2 HF 341
NEW section

CHAPTER 106

WATER NAVIGATION REGULATIONS

106.5 Registration and identification number.

1. The owner of each vessel required to be numbered by this state shall register it every two years with the county recorder of the county in which the owner resides, or, if the owner is a nonresident, the owner shall register it in the county in which such vessel is principally used. The commission shall have supervisory responsibility over the registration of all vessels and shall provide each county recorder with registration forms and certificates and shall allocate identification numbers to each county.

The owner of the vessel shall file an application for registration with the appropriate county recorder on forms provided by the commission. The application shall be completed and signed by the owner of the vessel and shall be accompanied by the appropriate fee, and a writing fee of one dollar. Upon applying for registration the owner shall display a bill of sale, receipt, or other satisfactory proof of ownership as provided by the rules of the commission to the county recorder. Upon receipt of the application in approved form accompanied by the required fees, the county recorder shall enter it upon the records of the recorder's office and shall issue to the applicant a pocket-size registration certificate. The certificate shall be executed in triplicate, one copy to be delivered to the owner, one copy to the commission, and one copy to be retained on file by the county recorder. The registration certificate

shall bear the number awarded to the vessel, the passenger capacity of the vessel and the name and address of the owner. In the use of all vessels except nonpowered sailboats, nonpowered canoes and commercial vessels, the registration certificate shall be carried either in the vessel or on the person of the operator of the vessel when in use. In the use of nonpowered sailboats, nonpowered canoes or commercial vessels, the registration certificate may be kept on shore in accordance with rules adopted by the commission. The operator shall exhibit the certificate to a peace officer upon request, or, when involved in a collision or accident of any nature with another vessel or other personal property, to the owner or operator of the other vessel or personal property.

On all vessels except nonpowered sailboats the owner shall cause the identification number to be painted on or attached to each side of the bow of the vessel in such size and manner as may be prescribed by the rules of the commission. On non-powered boats the number may be placed at alternate locations as prescribed by the rules of the commission. All numbers shall be maintained in a legible condition at all times.

No number, other than the number awarded to a vessel under the provisions of this chapter or granted reciprocity pursuant to this chapter, shall be painted, attached or otherwise displayed on either side of the bow of such vessel.

The owner of each vessel must display and maintain, in a legible manner and in a prominent spot on the exterior of such vessel, other than the bow, the passenger capacity of the vessel which must conform with the passenger capacity designated on the registration certificate.

2. When an agency of the United States government shall have in force an overall system of identification numbering for vessels, the numbering system prescribed by the commission pursuant to this chapter, shall be in conformity therewith.

3. The registration fees for vessels subject to this chapter are as follows:

- a. For vessels of any length without motor or sail, five dollars.
- b. For motorboats or sailboats less than twelve feet in length, eight dollars.
- c. For motorboats or sailboats twelve feet or more, but less than fifteen feet in length, ten dollars.
- d. For motorboats or sailboats fifteen feet or more, but less than eighteen feet in length, twelve dollars.
- e. For motorboats or sailboats eighteen feet or more, but less than twenty-five feet in length, eighteen dollars.
- f. For motorboats or sailboats twenty-five feet in length or more, twenty-eight dollars.

Every registration certificate and number issued becomes delinquent at midnight April 30 of odd-numbered years unless terminated or discontinued in accordance with this chapter. After January 1 in odd-numbered years, an unregistered vessel and a renewal of registration may be registered for the two-year registration period beginning May 1 of that year. After January 1 in even-numbered years, unregistered vessels may be registered for the remainder of the current registration period at fifty percent of the appropriate registration fee.

If a timely application for renewal is made, the applicant shall receive the same registration number allocated to the applicant for the previous registration period. If the application for registration for the biennium is not made before May 1 of each odd-numbered year, the applicant shall be charged a penalty of two dollars for each six months, or any portion thereof, the applicant is delinquent. Provided that if a registration is not renewed for two consecutive registration periods, the number of the delinquent registration may be assigned to another person, and upon application for registration by the delinquent registrant, the delinquent registrant shall be assigned a new registration number and shall not be charged any penalties.

4. If a person, after registering a vessel, moves from the address shown on the registration certificate, the person shall, within ten days, notify the county recorder

in writing of the old and new address. If appropriate, the county recorder shall forward all past records of the vessel to the recorder of the county in which the owner resides.

If the name of a person, who has registered a vessel, is changed, the person shall, within ten days, notify the county recorder of the former and new name.

No fee shall be paid to the county recorder for making the changes mentioned in this subsection, unless the owner requests a new registration certificate showing the change, in which case a fee of one dollar plus a writing fee shall be paid to the recorder.

If a registration certificate is lost, mutilated or becomes illegible, the owner shall immediately make application for and obtain a duplicate registration certificate by furnishing information satisfactory to the county recorder.

A fee of one dollar plus a writing fee shall be paid to the county recorder for a duplicate registration certificate.

If a vessel, registered under this chapter, is destroyed or abandoned, the destruction or abandonment shall be reported to the county recorder and the registration certificate shall be forwarded to the office of the county recorder within ten days after the destruction or abandonment.

5. All records of the commission and the county recorder, other than those declared by law to be confidential for the use of the commission and the county recorder, shall be open to public inspection during office hours.

6. The owner of each vessel which has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto shall register it every two years with the county recorder in the same manner prescribed for undocumented vessels and shall cause the registration validation decal to be placed on the vessel in the manner prescribed by the rules of the commission. When the vessel bears the identification required in the documentation, it is exempt from the placement of the identification numbers as required on undocumented vessels. The fee for such registration is twenty-five dollars plus a writing fee.

7. If the owner of a currently registered vessel places the vessel in storage, the owner shall return the registration certificate to the county recorder with an affidavit stating that the vessel is placed in storage and the effective date of the storage. The county recorder shall notify the commission of each registered vessel placed in storage. When the owner of a stored vessel desires to renew the vessel's registration, the owner shall apply to the county recorder and pay the registration fees plus a writing fee as provided in subsections 1 and 3 without penalty. No refund of registration fees shall be allowed for a stored vessel.

85 Acts, ch 110, §1 HF 625

Subsection 1, unnumbered paragraph 2 amended

106.33 Driving over ice.

A craft or vehicle operating on the surface of ice on the lakes and streams of this state including boundary streams and lakes and propelled by sail or by machinery in whole or in part, except automobiles, motorcycles and trucks registered under chapter 321 or snowmobiles registered under chapter 321G when they are used without endangering public safety, shall not be operated without a permit issued by the commission for the operation. A permit may be revoked by the commission if the craft or vehicle is operated in a careless manner which endangers others. Except when authorized by a permit for a special event, automobiles, motorcycles, and trucks when used on the ice of waters under the jurisdiction of the commission shall not exceed fifteen miles per hour and shall be operated in a reasonable and prudent manner.

85 Acts, ch 67, §13 SF 121

Section amended

106.56 Certificate of origin. Repealed by 85 Acts, ch 110, §2. HF 625

CHAPTER 107

STATE CONSERVATION COMMISSION

107.16 Income tax refund checkoff for fish and game fund.

A person who files an individual or a joint income tax return with the department of revenue under section 422.13 may designate any amount to be paid to the state fish and game protection fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the state fish and game protection fund, the amount designated shall be reduced to the remaining amount of refund or the remaining amount remitted with the return.

The revenues received shall be used within the state of Iowa for habitat development and shall be deposited in the state fish and game protection fund. The revenue may be used for the matching of federal funds. The revenues and matched federal funds may be used for acquisition of land, leasing of land or obtaining of easements from willing sellers for use of land as wildlife habitats for game and nongame species. Not less than fifty percent of the funds derived from the checkoff shall be used for the purposes of preserving, protecting, perpetuating and enhancing nongame wildlife in this state. Nongame wildlife includes those animal species which are endangered, threatened or not commonly pursued or killed either for sport or profit. Notwithstanding the exemption in section 427.1, the land acquired with the revenues and matched federal funds is subject to the full consolidated levy of property taxes which shall be paid from those revenues. In addition the revenues may be used for the development and enhancement of wildlife lands and habitat areas and for research and management necessary to qualify for federal funds.

The director of revenue shall draft the income tax form to allow the designation of contributions to the state fish and game protection fund on the tax return.

The department of revenue on or before January 31 of the year following the preceding calendar year shall certify the total amount designated on the tax return forms due in the preceding calendar year and shall report the amount to the state treasurer. The state treasurer shall credit the amount to the state fish and game protection fund.

The general assembly shall appropriate annually from the state fish and game protection fund the amount credited to the fund from the checkoff to the division of fish and game of the commission for the purposes pursuant to this section.

The action taken by a person for the checkoff is irrevocable.

The department shall adopt rules to implement this section. However, before a checkoff pursuant to this section shall be permitted, all liabilities on the books of the department of revenue and accounts identified as owing under section 421.17 and the political contribution allowed under section 56.18 shall be satisfied.

85 Acts, ch 230, §2 SF 561

Amendment retroactive to January 1, 1985; 85 Acts, ch 230, §14

Unnumbered paragraph 3 amended

CHAPTER 108A

PROTECTED WATER AREA SYSTEM

108A.7 Management plan public hearing.

The commission shall hold a final public hearing on the completed management plan in the vicinity of the water area at least thirty days before permanent designation by the commission. Notice of the hearing shall be published at least twice, not less than seven days prior to the hearing, in a newspaper having general circulation in each county in which the water area is located.

85 Acts, ch 67, §14 SF 121
Section amended

CHAPTER 109

WILDLIFE CONSERVATION

109.56 Training dogs.

1. Except during the open gun season for hunting deer at which time no training of dogs is allowed, any person having a valid hunting license may train a bird dog on any game birds and a person having a valid fur harvester license may train a coon hound, fox hound, or trailing dog on any fur-bearing animals at any time of the year including during the closed season on such birds or animals, provided the animals when pursued to a tree or den shall not be further chased or removed in any manner from the tree or den. A person having a hunting license may train a dog on coyote or groundhog.

Only a pistol, revolver, or other gun shooting blank cartridges shall be used while training dogs during closed season except as provided in subsection 2 of this section.

2. Any pen-raised game bird may be used and may be shot in the training of bird dogs. Before any bird is released or used in the training of dogs, the bird shall have attached a band procured from the state conservation commission. The commission may charge a fee for such bands but the fee shall not exceed ten cents for each band.

3. A call back pen or live trap may be used for the purpose of retrieving banded birds when released in the wild for training purposes. Any bird not so banded when taken in a call back pen or trap shall be immediately returned unbanded to the wild. All call back pens or live traps when in use shall have attached a metal tag plainly labeled with the owner's name and address. Conservation officers shall have authority to confiscate such traps when found in use and not properly labeled.

4. The commission shall have the power to adopt rules prohibiting the training of any hunting dog on any game bird, game animal, or fur-bearing animal in the wild at any time when it has been determined that such training might have an adverse effect on the populations of these species.

85 Acts, ch 10, §1 SF 55
Subsection 1 amended

109.80 Minnows and other bait—violations—limitations.

For the purpose of taking minnows only, it shall be lawful for any person to use a minnow dip net not to exceed four feet in diameter or a minnow seine not to exceed fifteen feet in length and having a mesh not smaller than one-fourth inch bar measure or larger than one-half inch bar measure and on issuance of permit by the commission, licensed bait dealers may use minnow seines not exceeding fifty feet in length.

"Minnows" are defined as chubs, shiners, suckers, dace, stonerollers, mud-minnows, redhorse, blunt-nose, and fat-head minnows. Green sunfish and orange-spotted sunfish and gizzard shad may also be taken as bait.

“Commercial purposes” shall be construed to mean selling, giving, or furnishing to others.

It shall be unlawful for any person:

1. To take or attempt to take minnows for commercial purposes from any of the waters of the state, or transport the same without first procuring a bait dealer’s license therefor as provided by state law; provided, however, that no license other than a license to fish in the waters of this state shall be required of persons taking minnows for their individual use for bait.

2. To transport in any manner or for any purpose outside this state any minnows, dead or alive, taken in the state except that the director may transport for the purposes set out by state law.

3. To use minnows except for bait in hook and line fishing.

The commission shall have the power to designate the lakes and streams and parts of same from which minnows shall not be taken when investigation shows that the minnow population should be protected for the best management of the lake or stream and if such investigation shows that lakes or streams or any portion of them should be closed to taking minnows for such length of time as deemed advisable by the commission. Then in that case the director is hereby authorized to post such lakes and streams or portions of them with notices or signs which clearly state that the lake or stream or portion so posted is closed to the taking of minnows and it shall be unlawful for any person to take in any manner, minnows from such posted stream.

Minnow traps not exceeding thirty-six inches in length may be used wherever the taking of minnows is allowed. Each trap, when in use, shall have a metal tag attached plainly labeled with the owner’s name and address.

85 Acts, ch 103, §1 HF 428
 Unnumbered paragraph 2 amended

109.82 Prohibited bait.

It shall be unlawful to transport or to use or to sell or offer for bait or to place into any inland waters of the state or into any waters from which waters of the state may become stocked any fish of carp, quillback, gar, or dogfish, and any minnows or fish of any of these species taken shall not be returned to any such waters, but shall be destroyed.

A person shall not possess live gizzard shad at any lake.

85 Acts, ch 103, §2 HF 428
 NEW unnumbered paragraph 2

CHAPTER 110

FISHING, HUNTING, AND RELATED LICENSES, SEIZED PROPERTY, AND GUNS

110.5 Fur harvester license.

A fur harvester license is required to hunt and to trap any fur-bearing animal. A hunting license is not required when hunting furbearers with a fur harvester license. However, coyote and groundhog may be hunted with either a hunting or a fur harvester license.

85 Acts, ch 10, §2 SF 55
 Section amended

110.24 When license not required—special licenses.

Owners or tenants of land, and their children, may hunt, fish or trap upon such lands and may shoot ground squirrels, gophers or woodchucks upon adjacent roads without securing a license so to do; except, special licenses to hunt deer and wild turkey shall be required of owners and tenants but they shall not be required to have a special wild turkey license to hunt wild turkey on a game breeding and shooting preserve licensed under chapter 110A.

Upon written application to the state conservation commission, one of the following persons shall be issued a deer or a wild turkey hunting license:

1. The owner of a farm unit; or
2. One member of the family of the farm owner; or
3. The tenant residing on the farm unit; or
4. One member of the family of the tenant, who resides on the farm unit.

The deer or wild turkey hunting permit shall be valid only for hunting on the farm unit upon which the licensee to whom it is issued resides.

The application required for the deer or wild turkey hunting license shall be on forms furnished by the conservation commission and shall be without fee.

Deer or wild turkey hunting licenses issued under this section shall be subject to all other provisions of the laws and regulations pertaining to the taking of deer and wild turkey.

A resident of the state under sixteen years of age or a nonresident of the state under fourteen years of age is not required to have a license to fish in the waters of the state. However, residents under sixteen years of age and nonresidents under fourteen years of age must possess a valid trout stamp to possess trout or they must fish for trout with a licensed adult who possesses a valid trout stamp and limit their combined catch to the daily limit established by the commission.

No license shall be required of minor pupils of the state school for the blind, state school for the deaf, nor of minor residents of other state institutions under the control of a director of a division of the department of human services, nor shall any person who is on active duty with the armed forces of the United States, on authorized leave, and a legal resident of the state of Iowa, be required to have a license to hunt or fish in this state. No license shall be required of residents of county care facilities or any person who is receiving old-age assistance under chapter 249.

No resident of the state under sixteen years of age shall be required to have a license to hunt game if accompanied by the minor's parent or guardian or in company with any other competent adult with the consent of the said parent or guardian, if the said person accompanying said minor shall possess a valid hunting license, providing, however, that there is one licensed adult accompanying each person under sixteen years of age.

A person having a dog entered in a licensed field trial is not required to have a hunting license or fur harvester license to participate in the event or to exercise the person's dog on the area on which the field trial is to be held during the twenty-four hour period immediately preceding the trial.

The commission shall issue without charge a special fishing license to residents of Iowa sixteen years or more of age who the commission finds are mentally or physically severely handicapped. The commission is hereby authorized to prepare an application to be used by the person requesting handicapped status, which would require that the person's attending physician sign the form declaring the person handicapped and eligible for exempt status.

No person shall be required to have a special wild turkey license to hunt wild turkey on a game breeding and shooting preserve licensed under chapter 110A.

85 Acts, ch 10, §3 SF 55; 85 Acts, ch 67, §15 SF 121
Unnumbered paragraphs 1 and 9 amended

110.27 Hunter safety and ethics education program—license requirement.

1. A hunting license shall not be issued to a person born after January 1, 1967 by the commission, a county recorder, or a depositary authorized to issue hunting licenses, unless the person exhibits a certificate showing satisfactory completion of a hunter safety and ethics education course approved by the commission or a hunting license issued by this state after July 1, 1983. A certificate of completion from an approved hunter safety education course shall not be issued to a person under twelve years of age. A certificate of completion from an approved hunter safety and ethics

education course issued in this state since 1960, by another state or by a province of Canada, is valid for the requirements of this section, provided the applicant is twelve years of age or older.

2. A certificate of completion shall not be issued to a person who has not satisfactorily completed a minimum of ten hours of training in an approved hunter safety and ethics education course. The commission shall establish the curriculum for the first ten hours of an approved hunter safety and ethics education course offered in this state. Upon completion of the ten-hour curriculum, a certificate of completion shall be awarded to the applicant. An examination shall not be required for the award of the certificate.

3. The commission shall provide a manual on hunter safety education which shall be used by all instructors and persons receiving hunter safety and ethics education training in this state.

4. The commission shall provide for the certification of persons who wish to become hunter safety and ethics instructors. A person shall not act as an instructor in hunter safety and ethics education as provided in this section without first obtaining an instructor's certificate from the commission.

5. An officer of the commission or a certified instructor may issue a certificate to a person who has not completed the hunter safety and ethics education course but has demonstrated to that officer or instructor a satisfactory knowledge of hunter safety and ethics.

6. A public or private school or organization approved by the commission may co-operate with the commission in providing a course in hunter safety and ethics education as provided in this section.

7. A hunting license obtained under this section by a person who gave false information or presented a fraudulent certificate of completion shall be revoked and a new hunting license shall not be issued for at least two years from the date of conviction.

8. The state conservation commission shall adopt rules in accordance with chapter 17A as necessary to carry out the administration of this section.

85 Acts, ch 104, §1 HF 453
Subsections 1 and 2 amended

CHAPTER 111

CONSERVATION—PUBLIC LANDS AND WATERS

111.57 Penalties.

Any person violating any of the provisions of sections 111.35 to 111.56 and section 111.85 is guilty of a simple misdemeanor.

85 Acts, ch 206, §2 HF 183
1985 amendment effective January 1, 1986; 85 Acts, ch 206, §3
Section amended

USER PERMITS

111.85 User permits for certain state lands.

1. A person shall not park or permit to be parked a motor vehicle required to be registered under chapter 321 on state land under the jurisdiction of the conservation commission where a user permit is required by subsection 3, unless the vehicle has a user permit attached in accordance with this section.

2. This section does not apply to the following vehicles:

a. Official government vehicles, or vehicles operated by state, county, city, and federal employees and agents while in the performance of official government business.

b. Vehicles operated by family members and guests of a commission employee residing at an area subject to the user permit requirement. The commission shall provide for temporary devices to identify the vehicles of such guests.

c. A vehicle moving on highways within or that cross state land to which this section applies.

d. A vehicle transporting employees to or furnishing services or supplies to the conservation commission or designated concessionaire.

e. A vehicle displaying a handicapped identification device issued under chapter 601E.

3. The requirement of a user permit applies to developed campgrounds at the Shimek, Yellow River, and Stephens state forests, and all areas managed by the state parks section of the conservation commission except those excluded by rule. However, the requirement of a user permit shall not apply on any land acquired by gift if a condition of the gift was the free, public use of the land.

4. The user permit issued by the commission is valid for either the calendar year in which issued or for twenty-four hours from the time of purchase. The fee is ten dollars for the calendar year permit and two dollars for the daily permit.

5. User permits shall be issued without the permit fee by the county recorder to individuals who present a current medical assistance identification card provided by the department of human services or to individuals who show proof of age of sixty-five years or older or to individuals who declare themselves in writing to be current food stamp recipients and who sign a release allowing the department of human services to confirm or deny their eligibility status upon request of the county recorder or the conservation commission.

6. User permits shall be sold by the commission and county recorders and may be sold by depositaries designated by the recorders or the director under section 110.11. A writing fee may be charged for dispensing the user permits as provided under section 110.12 for licenses. Duplicate user permits shall not be issued.

7. A user permit is not transferable between vehicles and shall be displayed as the commission prescribes by rule.

8. a. An officer of the commission who observes a motor vehicle parked in violation of this section shall take the vehicle's registration number and may take other information displayed on the vehicle which may identify its user and deliver to the driver or conspicuously affix to the vehicle a notice of violation in writing on a form provided by the commission. A person who receives the notice or knows that a notice has been affixed to the motor vehicle owned or controlled by the person may pay a civil penalty of twenty dollars to the commission within twenty days. If the civil penalty is not timely paid, the commission may cause a complaint to be filed against the owner or operator of the motor vehicle before a magistrate for the violation of this section in the manner provided in section 804.1. Timely payment of the civil penalty shall be a bar to any prosecution for that violation of this section. All civil penalties collected under this subsection shall be deposited in the general fund of the state.

b. If a citation is issued for a violation of this section and a plea of guilty is entered on or before the time and date set for appearance, the fine shall be thirty dollars and court costs and the criminal penalty surcharge of section 911.2 shall not be imposed.

c. The commission shall provide to its officers sets of triplicate notices each identified by separate serial numbers on each copy of notice. One copy shall be used as a notice of violation and delivered to the person charged or affixed to the vehicle illegally parked, one copy shall be sworn to by the officer as a complaint and may be filed with the clerk of the court of the county if the civil penalty is not timely paid to the commission and one copy shall be retained by the commission for record purposes.

9. The county recorder shall remit to the commission all fees from the sale of user permits within ten days from the end of the month. The commission shall remit the

fees from sales of user permits to the treasurer of state who shall place the money in a state park, forest, and recreation area facilities improvement trust fund. Notwithstanding section 453.7, subsection 2, interest or earnings on investments or time deposits of the funds in the state park, forest and recreation area facilities improvement trust fund shall be credited to that fund. The money in that fund is appropriated to the commission solely for renovation, replacement, and improvement of facilities otherwise acquired in state parks, forests, and recreation areas. Notwithstanding chapters 96 and 97B, persons employed by the commission with the money from the trust fund are not eligible for membership in the Iowa public employees' retirement system or eligible to receive unemployment compensation benefits by virtue of this employment.

10. A person who receives a notice of violation under this section may, in lieu of paying the civil penalty, produce proof that the person has acquired a current calendar year permit. The proof shall be submitted to the commission in the same manner as the civil penalty.

85 Acts, ch 206, §1 HF 183
Effective January 1, 1986; 85 Acts, ch 206, §3
NEW section

CHAPTER 113

FENCES

113.18 "Lawful fence" defined.

A lawful fence shall consist of:

1. Three rails of good substantial material fastened in or to good substantial posts not more than ten feet apart.
2. Three boards not less than six inches wide and three-quarters of an inch thick, fastened in or to good substantial posts not more than eight feet apart.
3. Three wires, barbed with not less than thirty-six iron barbs of two points each, or twenty-six iron barbs of four points each, on each rod of wire, or of four wires, two thus barbed and two smooth, the wires to be firmly fastened to posts not more than two rods apart, with not less than two stays between posts, or with posts not more than one rod apart without such stays, the top wire to be not more than fifty-four nor less than forty-eight inches in height.
4. Wire either wholly or in part, substantially built and kept in good repair, the lowest or bottom rail, wire, or board not more than twenty nor less than sixteen inches from the ground, the top rail, wire, or board to be between forty-eight and fifty-four inches in height and the middle rail, wire, or board not less than twelve nor more than eighteen inches above the bottom rail, wire, or board.
5. Any other kind of fence which the fence viewers consider to be equivalent to a lawful fence or which meets standards established by the department of agriculture by rule as equivalent to a lawful fence.

85 Acts, ch 195, §11 SF 329
Subsection 5 amended

113.20 "Tight fence" defined.

All tight partition fences shall consist of:

1. Not less than twenty-six inches of substantial woven wire on the bottom, with three strands of barbed wire with not less than thirty-six barbs of at least two points to the rod, on top, the top wire to be not less than forty-eight inches, nor more than fifty-four inches high.
2. Good substantial woven wire not less than forty-eight inches nor more than fifty-four inches high with one barbed wire of not less than thirty-six barbs of two points to the rod, not more than four inches above said woven wire.

3. Any other kind of fence which the fence viewers consider to be equivalent to a tight partition fence or which meets standards established by the department of agriculture by rule as equivalent to a tight partition fence.

85 Acts, ch 195, §12 SF 329
Subsection 3 amended

CHAPTER 114

PROFESSIONAL ENGINEERS AND LAND SURVEYORS

114.11 Secretary—duties.

The secretary shall keep on file a record of all certificates of registration granted and shall make annual revisions of the record as necessary. In revising the record the secretary shall communicate biennially by mail with every professional engineer and surveyor registered under this chapter, as provided in section 114.18.

85 Acts, ch 68, §1 SF 154
Section amended

114.21 Suspension, revocation, or reprimand.

The board shall have the power by a five-sevenths vote of the entire board to suspend for a period not exceeding two years, or to revoke the certificate of registration of, or to reprimand any registrant who is found guilty of the following acts or offenses:

1. Fraud in procuring a certificate of registration.
2. Professional incompetency.
3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the registrant's profession or engaging in unethical conduct or practice harmful to the public. Proof of actual injury need not be established.
4. Habitual intoxication or addiction to the use of drugs.
5. Conviction of a felony related to the profession or occupation of the registrant or the conviction of any felony that would affect the registrant's ability to practice professional engineering or land surveying. A copy of the record of conviction or plea of guilty is conclusive evidence.
6. Fraud in representations as to skill or ability.
7. Use of untruthful or improbable statements in advertisements.
8. Willful or repeated violations of the provisions of this Act.*

85 Acts, ch 195, §13 SF 329
*See 67GA, ch 95, §10
Subsections 1 and 5 amended

CHAPTER 117

REAL ESTATE BROKERS AND SALESPERSONS

117.7 Acts excluded from provisions.

The provisions of this chapter shall not apply to the sale, exchange, purchase, rental, or advertising of any real estate in any of the following cases:

1. Owners or lessors, or to the regular employees thereof, with respect to the property owned and leased where such acts are performed in the regular course of or incident to the management of property owned and the investment therein.
2. By any person acting as attorney in fact under a duly executed and acknowledged power of attorney from the owner, authorizing the final consummation and execution of any contract for the sale, leasing, or exchange of real estate.
3. Nor shall the provisions of this chapter apply to an attorney admitted to practice in Iowa.

4. The acts of one while acting as a receiver, trustee in bankruptcy, administrator, executor, guardian, or under court order or while acting under authority of a deed of trust, trust agreement, or will.

5. The acts of an auctioneer in conducting a public sale or auction. The auctioneer's role must be limited to establishing the time, place, and method of an auction, advertising the auction including a brief description of the property for auction and the time and place for the auction, and crying the property at the auction. If the auctioneer closes or attempts to close the sale of the property or otherwise engages in acts defined in sections 117.3 and 117.6, then the requirements of this chapter do apply to the auctioneer.

6. An isolated real estate rental transaction by an owner's representative on behalf of said owner; such transaction not being made in the course of repeated and successive transactions of a like character.

7. The sale of time-share uses as defined in section 557A.2.

85 Acts, ch 155, §21 HF 484
NEW subsection 7

117.15 Qualifications.

Except as provided in section 117.20 an applicant for a real estate broker's or salesperson's license must be a person whose application has not been rejected for licensure in this or any other state within six months prior to the date of application, and whose real estate license has not been revoked in this or any other state within two years prior to date of application.

To qualify for a license as a real estate broker or salesperson a person shall be eighteen years or over. However, an applicant is not ineligible because of citizenship, sex, race, religion, marital status or national origin, although the application form may require citizenship information. The commission may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of real estate selling. Character references may be required but shall not be obtained from licensed real estate brokers or salespersons.

To qualify for a license as a real estate broker, a person shall complete at least sixty contact hours of commission approved real estate education within twenty-four months prior to taking the broker examination. This education shall be in addition to the required salesperson prelicense course. The applicant shall have been a licensed real estate salesperson actively engaged in real estate for a period of at least twenty-four months preceding the date of application, or shall have had experience substantially equal to that which a licensed real estate salesperson would ordinarily receive during a period of twenty-four months, whether as a former broker or salesperson, a manager of real estate, or otherwise. However, if the commission finds that an applicant could not acquire employment as a licensed real estate salesperson because of conditions existing in the area where the person resides, the experience requirement of this paragraph may be waived for that person by the commission.

A qualified applicant for a license as a real estate salesperson shall complete a commission approved short course in real estate education of at least thirty hours during the twelve months prior to taking the salesperson examination.

85 Acts, ch 82, §1 SF 407
1985 amendment effective July 1, 1986; 85 Acts, ch 82, §3
Unnumbered paragraphs 3 and 4 amended

117.46 Trust accounts.

1. Each real estate broker shall maintain a common trust account in a bank, a savings and loan association, savings bank, or credit union for the deposit of all down payments, earnest money deposits, or other trust funds received by the broker or the broker's salespersons on behalf of the broker's principal, except that a broker acting as a salesperson shall deposit these funds in the common trust account of the broker for whom the broker acts as salesperson. The account shall be an interest-bearing account. The interest on the account shall be transferred quarterly to the

treasurer of state and deposited in the title guaranty fund and used for public purposes and the benefit of the public pursuant to section 220.91 unless there is a written agreement between the buyer and seller to the contrary. The broker shall not benefit from interest received on funds of others in the broker's possession.

2. Each broker shall notify the commission of the name of each bank or savings and loan association in which a trust account is maintained and also the name of the account on forms provided therefor.

3. Each broker shall authorize the commission to examine each trust account and shall obtain the certification of the bank or savings and loan association attesting to each trust account and consenting to the examination and audit of each account by a duly authorized representative of the commission. The certification and consent shall be furnished on forms prescribed by the commission. This does not apply to an individual farm account maintained in the name of the owner or owners for the purpose of conducting ongoing farm business whether it is conducted by the farm owner or by an agent or farm manager when the account is part of a farm management agreement between the owner and agent or manager.

4. Each broker shall only deposit trust funds received on real estate or business opportunity transactions as defined in section 117.6 in said common trust account and shall not commingle the broker's personal funds or other funds in said trust account with the exception that a broker may deposit and keep a sum not to exceed one hundred dollars in said account from the broker's personal funds, which sum shall be specifically identified and deposited to cover bank service charges relating to said trust account.

5. A broker may maintain more than one trust account provided the commission is advised of said account as specified in subsections 2 and 3 above.

85 Acts, ch 252, §1 SF 577
Subsection 1 amended

CHAPTER 117A

SALES OF SUBDIVIDED LAND OUTSIDE OF IOWA

117A.1 Definitions.

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

1. "*Subdivided land*" means improved or unimproved land divided or proposed to be divided for the purpose of sale or lease into five or more lots or parcels, or additions thereto, or parts thereof; however, subdivided land does not apply to a subdivision subject to section 306.21 or chapter 409 nor to the leasing of apartments, offices, stores, or similar space within an apartment building, industrial building, or commercial building unless an undivided interest in the land is granted as a condition precedent to occupying space in the structure. Subdivided land does not include subdivisions of land located within the state of Iowa or time-share intervals as defined in section 557A.2.

2. "*Subdivider*" means any person, firm, partnership, company, corporation, or association engaging directly or through an agent in the business of selling or leasing subdivided land, or of offering such land for sale or lease, to the public in this state.

3. "*Commission*" means the Iowa real estate commission as established by chapter 117.

4. "*Advertisement*" means the attempt by, dissemination, solicitation, or circulation to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in land offered for sale or lease, to the public in this state.

5. "*Sale*" means any sale, offer for sale, or attempt to sell or lease any land, to the public in this state, for cash or on credit.

85 Acts, ch 155, §22 HF 484
Subsection 1 amended

CHAPTER 118A

LANDSCAPE ARCHITECTS

118A.15 Suspension, revocation, or reprimand.

The board may by a five-sevenths vote of the entire board, suspend for a period not exceeding two years, or revoke the certificate of registration of, or reprimand any registrant who is found guilty of the following acts or offenses:

1. Fraud in procuring a certificate of registration.
2. Professional incompetency.
3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the registrant's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
4. Habitual intoxication or addiction to the use of drugs.
5. Conviction of a felony related to the profession or occupation of the registrant that would affect the registrant's ability to practice professional landscape architecture. A copy of the record of conviction or plea of guilty is conclusive evidence.
6. Fraud in representations as to skill or ability.
7. Use of untruthful or improbable statements in advertisements.
8. Willful or repeated violations of the provisions of this Act.*

85 Acts, ch 195, §14 SF 329

*See 67GA, ch 95, § 14

Subsections 1 and 5 amended

CHAPTER 123

IOWA BEER, WINE, AND LIQUOR CONTROL ACT

123.1 Public policy declared.

This chapter shall be cited as the "Iowa Beer, Wine, and Liquor Control Act", and shall be deemed an exercise of the police power of the state, for the protection of the welfare, health, peace, morals, and safety of the people of the state, and all its provisions shall be liberally construed for the accomplishment of that purpose. It is declared to be public policy that the traffic in alcoholic liquors is so affected with a public interest that it should be regulated to the extent of prohibiting all traffic in them, except as provided in this chapter.

85 Acts, ch 32, §3 SF 395

Section amended

123.2 General prohibition.

It is unlawful to manufacture for sale, sell, offer or keep for sale, possess, or transport alcoholic liquor, wine, or beer except upon the terms, conditions, limitations, and restrictions enumerated in this chapter.

85 Acts, ch 32, §4 SF 395

Section amended

123.3 Definitions.

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

1. "Council" means the Iowa beer and liquor control council established by this chapter.
2. "Department" means the Iowa beer and liquor control department established by this chapter, or any division of such department.
3. "Director" means the director of the Iowa beer and liquor control department, appointed pursuant to the provisions of this chapter, or the director's designee.

4. "*Local authority*" means the city council of any incorporated city in this state, or the county board of supervisors of any county in this state, which is empowered by this chapter to approve or deny applications for retail beer or wine permits and liquor control licenses; empowered to recommend that such permits or licenses be granted and issued by the department; and empowered to take other actions reserved to them by this chapter.

5. "*Alcohol*" means the product of distillation of any fermented liquor rectified one or more times, whatever may be the origin thereof, and includes synthetic ethyl alcohol.

6. "*Spirits*" means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, including, but not limited to, brandy, rum, whisky, and gin.

7. "*Wine*" means any beverage containing more than five percent but not more than seventeen percent of alcohol by weight obtained by the fermentation of the natural sugar contents of fruits or other agricultural products but excluding any product containing alcohol derived from malt or by the distillation process from grain, cereal, molasses or cactus.

8. "*Alcoholic liquor*", "*alcoholic beverage*" or "*intoxicating liquor*" means the varieties of liquor defined in subsections 5 and 6, beverages made as described in subsection 9 which beverages contain more than five percent of alcohol by weight but which are not wine as defined in subsection 7, and every other liquid or solid, patented or not, containing spirits and every beverage obtained by the process described in subsection 7 containing more than seventeen percent alcohol by weight, and susceptible of being consumed by a human being, for beverage purposes. Alcohol manufactured in this state for use as fuel pursuant to an experimental distilled spirits plant permit or its equivalent issued by the federal bureau of alcohol, tobacco and firearms is not an "alcoholic liquor".

9. "*Beer*" means any liquid capable of being used for beverage purposes made by the fermentation of an infusion in potable water of barley, malt and hops, with or without unmalted grains or decorticated and degerminated grains or made by the fermentation of fruit, fruit extracts or other agricultural products, containing more than one-half of one percent of alcohol by volume but not more than five percent of alcohol by weight.

10. "*Person*" means any individual, association, partnership, corporation, club, hotel or motel, or municipal corporation owning or operating a bona fide airport, marina, park, coliseum, auditorium, or recreational facility in or at which the sale of alcoholic liquor, wine, or beer is only an incidental part of the ownership or operation.

11. "*Person of good moral character*" means any person who meets all of the following requirements:

a. The person has such financial standing and good reputation as will satisfy the director that the person will comply with this chapter and all laws, ordinances, and regulations applicable to the person's operations under this chapter.

b. The person does not possess a federal gambling stamp.

c. The person is not prohibited by section 123.40 from obtaining a liquor control license or a wine or beer permit.

d. Is a citizen of the United States and a resident of this state, or licensed to do business in this state in the case of a corporation. Notwithstanding paragraph "f," in the case of a partnership, only one partner need be a resident of this state.

e. The person has not been convicted of a felony. However, if the person's conviction of a felony occurred more than five years before the date of the application for a license or permit, and if the person's rights of citizenship have been restored by the governor, the director may determine that the person is of good moral character notwithstanding such conviction.

f. If such person is a corporation, partnership, association, club, or hotel or motel

the requirements of this subsection shall apply to each of the officers, directors, and partners of such person, and to any person who directly or indirectly owns or controls ten percent or more of any class of stock of such person or has an interest of ten percent or more in the ownership or profits of such person. For the purposes of this provision, an individual and the individual's spouse shall be regarded as one person.

12. "*Residence*" means the place where a person resides, permanently or temporarily.

13. "*Permit*" or "*license*" means an express written authorization issued by the department for the manufacture or sale, or both, of alcoholic liquor, wine, or beer.

14. "*Application*" means a formal written request for the issuance of a permit or license supported by a verified statement of facts.

15. "*Manufacture*" means to distill, rectify, ferment, brew, make, mix, concoct, or process any substance capable of producing a beverage containing more than one-half of one percent of alcohol by volume and includes blending, bottling, or the preparation for sale.

16. "*Package*" means any container or receptacle used for holding alcoholic liquor.

17. "*Distillery*", "*winery*", and "*brewery*" mean not only the premises where alcohol or spirits are distilled, wine is fermented, or beer is brewed, but in addition mean a person owning, representing, or in charge of such premises and the operations conducted there, including the blending and bottling or other handling and preparation of alcoholic liquor, wine, or beer in any form.

18. "*Brewer*" means any person who manufactures beer for the purpose of sale, barter, exchange, or transportation.

19. "*Importer*" means the person who transports or orders, authorizes, or arranges the transportation of alcoholic liquor, wine, or beer into this state whether the person is a resident of this state or not.

20. "*Import*" means the transporting or ordering or arranging the transportation of alcoholic liquor, wine, or beer into this state whether by a resident of this state or not.

21. "*State liquor store*" means a store established by the department under this chapter for the sale of alcoholic liquor in the original package for consumption off the premises.

22. "*Warehouse*" means any premises or place primarily constructed or used or provided with facilities for the storage in transit or other temporary storage of perishable goods or for the conduct of normal warehousing business.

23. "*Public place*" means any place, building, or conveyance to which the public has or is permitted access.

24. The terms "in accordance with the provisions of this chapter", "pursuant to the provisions of this title", or similar terms shall include all rules and regulations of the department adopted to aid in the administration or enforcement of those provisions.

25. The prohibited "sale" of alcoholic liquor, wine, or beer under this chapter includes soliciting for sales, taking orders for sales, keeping or exposing for sale, delivery or other trafficking for a valuable consideration promised or obtained, and procuring or allowing procurement for any other person.

26. "*Wholesaler*" means any person, other than a vintner, brewer or bottler of beer or wine, who shall sell, barter, exchange, offer for sale, have in possession with intent to sell, deal or traffic in alcoholic liquor, wine, or beer. A wholesaler shall not sell for consumption upon the premises.

27. "*Retailer*" means any person who shall sell, barter, exchange, offer for sale, or have in possession with intent to sell any alcoholic liquor for consumption on the premises where sold, or beer or wine for consumption either on or off the premises where sold.

28. "*Air common carrier*" means a person engaged in transporting passengers for

hire in interstate or foreign commerce by aircraft and operating regularly scheduled flights under a certificate of public convenience issued by the civil aeronautics board.

29. “*Club*” means any nonprofit corporation or association of individuals, which is the owner, lessee, or occupant of a permanent building or part thereof, membership in which entails the prepayment of regular dues and is not operated for a profit other than such profits as would accrue to the entire membership.

30. “*Commercial establishment*” means a place of business which is at all times equipped with sufficient tables and seats to accommodate twenty-five persons at one time, and the licensed premises of which conform to the standards and specifications of the department.

31. “*Licensed premises*” or “*premises*” means all rooms, enclosures, contiguous areas, or places susceptible of precise description satisfactory to the director where alcoholic beverages, wine, or beer is sold or consumed under authority of a liquor control license, wine permit, or beer permit. A single licensed premise may consist of multiple rooms, enclosures, areas or places if they are wholly within the confines of a single building or contiguous grounds.

32. “*Hotel*” or “*motel*” means a premise licensed by the state department of agriculture and regularly or seasonally kept open in a bona fide manner for the lodging of transient guests, and with twenty or more sleeping rooms.

33. “*Legal age*” means nineteen years of age or more.

34. “*Retail beer permit*” means a class “B” or class “C” beer permit issued under the provisions of this chapter.

35. “*Retail wine permit*” means a class “B” wine permit issued under this chapter.

85 Acts, ch 32, §5-8 SF 395
Subsections 4, 7, 8 and 10 amended
Subsection 11, paragraph c amended
Subsections 13; 17, 19, 20, 25, 26, 27, and 31 amended
NEW subsection 35

123.4 Department created—place of business.

An Iowa beer and liquor control department is created to administer and enforce the laws of this state concerning beer, wine, and alcoholic liquor. The principal place of business of the department shall be provided the department by the authority designated by law to provide such quarters or offices to state departments or agencies.

85 Acts, ch 32, §9 SF 395
Section amended

123.6 Appointment—term—qualifications—compensation.

Appointments shall be for five-year staggered terms beginning and ending as provided by section 69.19 and shall be made by the governor, subject to confirmation by the senate. Members of the council shall be chosen on the basis of managerial ability and experience as business executives. One member of the council may be the holder of or have an interest in a permit or license to manufacture alcoholic liquor, wine, or beer or sell alcoholic liquor, wine, or beer at wholesale or retail. Members may be reappointed for one additional term. Each member appointed shall receive compensation for the member’s services of forty dollars per diem in addition to reasonable and necessary expenses while attending meetings.

85 Acts, ch 32, §10 SF 395
Section amended

123.14 Beer, wine, and liquor law enforcement.

1. The division of beer and liquor law enforcement of the department of public safety, created pursuant to section 80.25, is the primary beer, wine, and liquor law enforcement authority for this state.

2. The other law enforcement divisions of the department of public safety, the county attorney, the county sheriff and the sheriff’s deputies, and the police department of every city, including the day and night marshal of any city, shall be

supplementary aids to the division of beer and liquor law enforcement. Any neglect, misfeasance, or malfeasance shown by any peace officer included in this section shall be sufficient cause for the peace officer's removal as provided by law. Nothing in this section shall be construed to affect the duties and responsibilities of any county attorney or peace officer with respect to law enforcement.

3. The division of beer and liquor law enforcement shall have full access to all records, reports, audits, tax reports and all other documents and papers in the department pertaining to liquor licensees and wine and beer permittees and their business.

85 Acts, ch 32, §11 SF 395
Subsections 1 and 3 amended

123.15 Hearing board created.

A three-member hearing board is created for the purpose of conducting departmental hearings relating to controversies concerning the issuance, suspension, or revocation of special liquor permits, liquor control licenses, wine permits, and beer permits authorized under this chapter. One member shall be appointed by the council from its membership, which member may be periodically replaced by appointment of another council member; one member shall be the attorney general or the attorney general's designee; and one member shall be the commissioner of public safety or the commissioner's designee. The hearing board shall establish and adopt rules and procedures for conducting departmental hearings under this chapter.

85 Acts, ch 32, §12 SF 395
Section amended

123.16 Functions of council and director.

1. The council shall, in addition to the duties specifically enumerated in this chapter, act as a department policy-making body and serve in an advisory capacity to the director. The director shall be responsible for supervising the daily operations of the department and shall execute the policies of the department as determined by the council.

2. The council may review and affirm, reverse, or amend all actions of the director, including but not limited to the following instances:

- a. Purchases of alcoholic liquor for resale by the department.
- b. The granting or refusing of liquor licenses and permits, wine permits, and beer permits, and the suspension or revocation of the licenses and permits.
- c. The establishment of retail prices of alcoholic liquor.
- d. The establishment or discontinuance of state liquor stores.

85 Acts, ch 32, §13 SF 395
Subsection 2, paragraph b amended

123.18 Favors from licensee or permittee.

A person responsible for the administration or enforcement of this chapter shall not accept or solicit donations, gratuities, political advertising, gifts, or other favors, directly or indirectly, from any liquor control licensee, wine permittee, or beer permittee.

85 Acts, ch 32, §14 SF 395
Section amended

123.19 Distiller's certificate of compliance—injunction—penalty.

1. Any manufacturer, distiller or importer of alcoholic beverages shipping, selling, or having alcoholic beverages brought into this state for resale by the state shall, as a condition precedent to the privilege of so trafficking in alcoholic liquors in this state, annually make application for and hold a distiller's certificate of compliance which shall be issued by the director for that purpose. No brand of alcoholic liquor shall be sold by the department in this state unless the manufacturer, distiller,

importer, and all other persons participating in the distribution of that brand in this state have obtained a certificate. The certificate of compliance shall expire at the end of one year from the date of issuance and shall be renewed for a like period upon application to the director unless otherwise suspended or revoked for cause. Each application for a certificate of compliance or renewal shall be made in a manner and upon forms prescribed by the director and shall be accompanied by a fee of fifty dollars payable to the department. However, this subsection need not apply to a manufacturer, distiller, or importer who ships or sells in this state no more than eleven gallons or its case equivalent during any fiscal year as a result of "special orders" which might be placed, as defined and allowed by departmental rules adopted under this chapter.

2. At the time of applying for a certificate of compliance, each applicant shall file with the department the name and address of its authorized agent for service of process which shall remain effective until changed for another and a list of names and addresses of all representatives, employees, or attorneys whom they may have appointed in the state of Iowa to represent them for any purpose. The listing of such representatives, employees, or attorneys shall be amended from time to time by the certificate holder as necessary to keep such listing current with the department.

3. The director and the attorney general are authorized to require any certificate holder or person listed as the certificate holder's representative, employee, or attorney to disclose such financial and other records and transactions as may be considered relevant in discovering violations of this chapter or of rules and regulations of the department or of any other provision of law by any person.

4. Any violation of the requirements of this section, except subsection 3, shall subject the violator to the general penalties provided in this chapter and in addition thereto shall be grounds for suspension or revocation of the certificate of compliance, after notice and hearing before the department hearing board. Willful failure to comply with requirements which may be imposed under subsection 3 shall be grounds for suspension or revocation of the certificate of compliance only. Decisions of the hearing board concerning such suspension or revocation shall be binding upon all parties.

5. This section shall not require the listing of those persons who are employed on premises where alcoholic beverages are manufactured, processed, bottled or packaged in Iowa or to persons who are thereafter engaged in the transporting of such alcoholic beverages to the department.

6. The attorney general may also proceed pursuant to the provisions of section 714.16 in order to gain compliance with subsection 3 of this section and may obtain an injunction prohibiting any further violations of this chapter or other provisions of law. Any violation of that injunction shall be punished as contempt of court pursuant to chapter 665 except that the maximum fine that may be imposed shall not exceed fifty thousand dollars.

85 Acts, ch 32, §15 SF 395
Subsection 1 amended

123.20 Powers.

The director, in executing departmental functions, shall have the following duties and powers:

1. To purchase alcoholic liquors for resale by the department in the manner set forth in this chapter.

2. To establish, maintain, or discontinue state liquor stores and to determine the cities in which such stores shall be located. However, no liquor store shall be established within three hundred feet of any public or private educational institution, except that local authorities may by ordinance reduce such minimum distance.

3. To rent, lease, or equip any building or any land necessary to carry out the provisions of this chapter.

4. To lease all plants and lease or buy equipment necessary to carry out the provisions of this chapter.

5. To appoint vendors, clerks, agents, or other employees required for carrying out the provisions of this chapter; to dismiss employees for cause; to assign employees to divisions as created by the director within the department; and to designate their title, duties, and powers. All employees of the department are subject to chapter 19A unless exempt under section 19A.3.

6. To grant and issue beer permits, special permits, liquor control licenses, and other licenses; and to suspend or revoke all such permits and licenses for cause under this chapter.

7. To license, inspect, and control the manufacture of beer and alcoholic liquors and regulate the entire beer and liquor industry in the state.

8. To accept intoxicating liquors ordered delivered to the Iowa beer and liquor control department pursuant to section 127.8, subsection 1, and offer such intoxicating liquors for sale through the state liquor stores, unless the director determines that such intoxicating liquors may be adulterated or contaminated. If the director determines that such intoxicating liquors may be adulterated or contaminated the director shall order their destruction.

9. To appoint a designee to conduct a public hearing upon the establishment or discontinuance of a state liquor store within the city affected.

85 Acts, ch 90, §2 SF 445
Subsection 5 amended

123.21 Rules.

The director may, with the approval of the council and subject to the provisions of chapter 17A, make such rules as are necessary to carry out the provisions of this chapter. Such authority shall extend to but not be limited to the following:

1. Prescribing the duties of officers, vendors, clerks, agents, or other employees of the department and regulating their conduct while in the discharge of their duties.

2. Regulating the management, equipment, and merchandise of state liquor stores and warehouses in and from which alcoholic liquors are transported, kept, or sold and prescribing the books and records to be kept therein.

3. Regulating the purchase of alcoholic liquor generally and the furnishing of such liquor to state liquor stores established under this chapter, determining the classes, varieties, and brands of alcoholic liquors to be kept in state warehouses or for sale at any state liquor store.

4. Prescribing forms or information blanks to be used for the purposes of this chapter. The department shall prepare, print, and furnish all forms and information blanks required under this chapter.

5. Prescribing the nature and character of evidence which shall be required to establish legal age.

6. Providing for the issuance and distribution of price lists which show the price to be paid by purchasers for each brand, class, or variety of liquor kept for sale under this chapter, providing for the filing or posting of prices charged in sales between class "A" beer and class "A" wine permit holders and retailers, as provided in this chapter, and establishing or controlling the prices based on minimum standards of fill, quantity, or alcoholic content for each individual sale of intoxicating liquor or beer as deemed necessary for retail or consumer protection. However, the department does not have the authority to regulate markups, prices, discounts, allowances, or other terms of sale at which wine may be purchased and sold by class "A" and retail wine permittees, or change, nullify, or vary the terms of any agreement between a holder of a vintner certificate of compliance and a class "A" wine permittee.

7. Prescribing the official seals, labels, or other markings which shall be attached to or stamped on packages of alcoholic liquor sold under this chapter.

8. Prescribing, subject to this chapter, the days and hours during which state liquor stores shall be kept open for the purpose of the sale of alcoholic liquors.

9. Prescribing the place and the manner in which alcoholic liquor may be lawfully kept or stored by the licensed manufacturer under this chapter.

10. Prescribing the time, manner, means, and method by which distillers, vendors, or others authorized under this chapter may deliver or transport alcoholic liquors and prescribing the time, manner, means, and methods by which alcoholic liquor may be lawfully conveyed, carried, or transported.

11. Prescribing, subject to the provisions of this chapter, the conditions and qualifications necessary for the obtaining of licenses and permits and the books and records to be kept and the remittances to be made by those holding licenses and permits and providing for the inspection of the records of all such licensees and permittees.

12. Providing for the issuance of combination licenses and permits with fees consistent with individual license and permit fees as may be necessary for the efficient administration of this chapter.

85 Acts, ch 32, §16, 17 SF 395
Subsections 6 and 10 amended
NEW subsection 12

123.22 State monopoly.

The department has the exclusive right of importation into the state of all forms of alcoholic liquor, except as otherwise provided in this chapter, and a person shall not import alcoholic liquor, except that an individual of legal age may import and have in the individual's possession an amount of alcoholic liquor not exceeding one quart or, in the case of alcoholic liquor personally obtained outside the United States, one gallon for personal consumption only in a private home or other private accommodation. No distillery shall sell any alcoholic liquor within the state to any person but only to the department, except as otherwise provided in this chapter. It is the intent of this section to vest in the department exclusive control within the state both as purchaser and vendor of all alcoholic liquor sold by distilleries within the state or imported, except beer and wine, and except as otherwise provided in this chapter. The department may continue to purchase wine from persons holding a vintner's certificate of compliance or a class "A" wine permit for resale in state liquor stores.

No person, acting individually or through another acting for the person shall directly or indirectly, or upon any pretense, or by any device, manufacture, sell, exchange, barter, dispense, give in consideration of the purchase of any property or of any services or in evasion of this chapter, or keep for sale, or have possession of any intoxicating liquor, except as provided in this chapter; or own, keep, or be in any way concerned, engaged, or employed in owning or keeping, any intoxicating liquor with intent to violate any provision of this chapter, or authorize or permit the same to be done; or manufacture, own, sell, or have possession of any manufactured or compounded article, mixture or substance, not in a liquid form, and containing alcohol which may be converted into a beverage by a process of pressing or straining the alcohol therefrom, or any instrument intended for use and capable of being used in the manufacture of intoxicating liquor; or own or have possession of any material used exclusively in the manufacture of intoxicating liquor; or use or have possession of any material with intent to use it in the manufacture of intoxicating liquors; however, alcohol may be manufactured for industrial and nonbeverage purposes by persons who have qualified for that purpose as provided by the laws of the United States and the laws of this state. Such alcohol, so manufactured, may be denatured, transported, used, possessed, sold, and bartered and dispensed, subject to the limitations, prohibitions and restrictions imposed by the laws of the United States and this state. Any person may manufacture, sell, or transport ingredients and devices other than alcohol for the making of home-made wine.

85 Acts, ch 32, §18 SF 395
Unnumbered paragraph 1 amended

123.23 State liquor stores.

The department shall establish and maintain in any city which the director deems advisable, a state liquor store or stores for storage and sale of alcoholic liquor and wine in accordance with this chapter. The department may, from time to time, as determined by the director, fix the prices of the different classes, varieties, or brands of alcoholic liquor and wine to be sold. Prior to a decision to establish, relocate or discontinue a state liquor store, the director shall appoint a designee to conduct a public hearing on the decision within the city affected.

85 Acts, ch 32, §19 SF 395
Section amended

123.27 Sales and deliveries prohibited.

It is unlawful to transact the sale or delivery of alcoholic liquor in, on, or from the premises of a state liquor store or warehouse:

1. After the closing hour as established by the director.
2. On any legal holiday except those designated by the director and approved by the executive council.
3. On any Sunday.
4. During other periods or days as designated by the director.

85 Acts, ch 32, §20 SF 395
Subsection 2 struck and preceding subsection renumbered

123.28 Restrictions on transportation of open or unsealed receptacles.

It is lawful to transport, carry, or convey alcoholic liquors from the place of purchase by the department to a state warehouse, store, or depot established by the department or from one such place to another and, when so permitted by this chapter, it is lawful for a common carrier or other person to transport, carry, or convey alcoholic liquor sold by a vendor from a state warehouse, store, depot or point of purchase by the state to any place to which the liquor may be lawfully delivered under this chapter. Notwithstanding section 321.230, sections 321.225 and 321.226 do not apply to department employees in the regular course of their employment. A common carrier or other person shall not break or open or allow to be broken or opened a container or package containing alcoholic liquor or use or drink or allow to be used or drunk any alcoholic liquor while it is being transported or conveyed, but this section does not prohibit a private person from transporting individual bottles or containers of alcoholic liquor exempted pursuant to section 123.22 and individual bottles or containers bearing the identifying mark prescribed in section 123.26 which have been opened previous to the commencement of the transportation. This section does not affect the right of a special permit or liquor control license holder to purchase, possess, or transport alcoholic liquors subject to the provisions of this chapter.

A person driving a motor vehicle shall not knowingly possess in a motor vehicle upon a public street or highway an open or unsealed bottle, can, jar, or other receptacle containing an alcoholic beverage or beer with the intent to consume the alcoholic beverage or beer while the motor vehicle is upon a public street or highway. Evidence that an open or unsealed receptacle containing an alcoholic beverage or beer was found during an authorized search in the glove compartment, utility compartment, console, front passenger seat, or any unlocked portable device and within the immediate reach of the driver while the motor vehicle is upon a public street or highway is evidence from which the court or jury may infer that the driver intended to consume the alcoholic beverage or beer while upon the public street or highway if the inference is supported by corroborative evidence. However, an open or unsealed receptacle containing an alcoholic beverage or beer may be transported at any time in the trunk of the motor vehicle or in some other area of the interior of the motor vehicle not designed or intended to be occupied by the driver and not

readily accessible to the driver while the motor vehicle is in motion. A person convicted of a violation of this paragraph is guilty of a simple misdemeanor.

85 Acts, ch 196, §1 SF 295
Unnumbered paragraph 2 amended

123.29 Special permits.

A special permit for the purchase, possession, or transportation of alcoholic liquors for the purposes specified in those permits may be issued by the director upon application being made to the department in the form and manner prescribed by the director, accompanied by payment of the prescribed fee, and upon the director being satisfied that the applicant has complied with departmental rules established for the issuance of such permit. Such special permits may be issued to the following persons and for the following purposes:

1. To a physician, pharmacist, dentist, or veterinarian, entitling the holder to purchase and import alcohol from distillers and wholesalers or from the state liquor stores for use medicinally and in compounding prescriptions and to sell the same for use medicinally in the compounded prescription only upon the prescription of a licensed physician or surgeon, or to use such alcohol in manufacturing or compounding lotions, compounds, and like commodities not susceptible for beverage purposes, and to sell the same for public use.

2. To a veterans home, sanitarium, hospital, college, or home for the aged which will entitle the holder to purchase and import alcohol from distillers and wholesalers or from the state liquor stores for use for medicinal, laboratory, and scientific purposes only.

3. To any minister, priest, or rabbi of any church or denomination which uses vinous liquor in its sacramental ceremonies. The holder of such a permit may purchase, have shipped by interstate or intrastate common carrier, and possess vinous liquor for sacramental purposes.

4. To manufacturers of patent and proprietary medicines, tinctures, food products, extracts, toilet articles and perfumes, and like commodities, none of which are susceptible of use as a beverage, but which contain alcoholic liquor as one of their ingredients. Any individual, or member of a firm, or officer of a corporation, desiring such permit shall file an affidavit with the department stating the following facts:

a. The name, place of business, and post-office address of the person desiring such permit.

b. The business in which said person is engaged and the articles manufactured in such business which require in their manufacture the use of alcoholic liquors.

c. That neither the applicant, if the applicant is an individual, nor any members of the firm or officers of the corporation, if the applicant is not an individual, has been convicted of any violation of the laws of this state with reference to the sale of alcoholic liquors, wine, or beer within the three years preceding the date of the affidavit.

If the director is satisfied that the facts stated in such affidavit are true and that the applicant is a person fit and proper to be entrusted with the permit applied for, it shall be issued upon the filing by the applicant of a bond in the penal sum of two thousand dollars, with approved sureties, conditioned that the applicant will faithfully observe the provisions of this chapter.

Such special permit shall entitle the holder to import into the state, or purchase from licensed distillers within the state or from the department, alcoholic liquors for use in manufacture in accordance with the terms of said permit, and to sell the product of such manufacture.

It shall be the duty of every manufacturer holding a special permit under the provisions of this subsection, whenever such manufacturer purchases alcoholic liquor from any source other than the department, to immediately file with the department a report of the receipt of such liquor in accordance with rules adopted by the director.

Every person holding a special liquor permit under this chapter shall fill out in duplicate, on forms furnished by the department, the amount and kinds of liquors purchased, and shall retain one copy in the person's establishment for a period of two years. The vendor of the state liquor store at which the purchase was made shall monthly forward the other copy to the department.

Nothing in this section shall prohibit the legitimate sale of patent and proprietary medicines, tinctures, food products, extracts, toilet articles and perfumes, and like commodities, none of which are susceptible of use as a beverage but which contain alcoholic liquor as one of their ingredients, through the ordinary retail or wholesale channels.

85 Acts, ch 32, §21 SF 395
Subsection 4, paragraph c amended

123.30 Liquor control licenses.

1. Upon posting bond in the penal sum of five thousand dollars with surety and conditions prescribed by the director, which bond shall be conditioned upon the payment of all taxes payable to the state under the provisions of this chapter and compliance with all provisions of this chapter, a liquor control license may be issued to any person who, or whose officers, in the case of a club or corporation, or whose partners, in the case of a partnership, is of good moral character as defined by this chapter.

As a further condition for issuance of a liquor control license, the applicant must give consent to members of the fire, police and health departments and the building inspector of cities; the county sheriff, deputy sheriff, and state agents, and any official county health officer to enter upon the premises without a warrant to inspect for violations of the provisions of this chapter or ordinances and regulations that cities and boards of supervisors may adopt.

2. No liquor control license shall be issued for premises which do not conform to all applicable laws, ordinances, resolutions, and health and fire regulations. Nor shall any licensee have or maintain any interior access to residential or sleeping quarters unless permission is granted by the director in the form of a living quarters permit.

3. Liquor control licenses issued under this chapter shall be of the following classes:

a. *Class "A"*. A class "A" liquor control license may be issued to a club and shall authorize the holder to purchase alcoholic liquors from only the department, wine from the department or class "A" wine permittees, and native wines from native wine manufacturers, and to sell liquors, wine, and beer, to bona fide members and their guests by the individual drink for consumption on the premises only.

b. *Class "B"*. A class "B" liquor control license may be issued to a hotel or motel and shall authorize the holder to purchase alcoholic liquors from only the department, wine from the department or class "A" wine permittees, and native wines from native wine manufacturers, and to sell liquors, wine, and beer, to patrons by the individual drink for consumption on the premises only, however, beer may also be sold for consumption off the premises. Each license shall be effective throughout the premises described in the application.

c. *Class "C"*. A class "C" liquor control license may be issued to a commercial establishment but must be issued in the name of the individuals who actually own the entire business and shall authorize the holder to purchase alcoholic liquors from only the department, wine from the department or class "A" wine permittees, and native wines from native wine manufacturers, and to sell liquors, wine, and beer, to patrons by the individual drink for consumption on the premises only, however, beer may also be sold for consumption off the premises.

A special class "C" liquor control license may be issued and shall authorize the holder to purchase wine from the department or class "A" wine permittees only, and to sell wine and beer to patrons by the individual drink for consumption on the

premises only, however, beer may also be sold for consumption off the premises. The license issued to holders of a special class "C" license shall clearly state on its face that the license is limited.

d. *Class "D"*. A class "D" liquor control license may be issued to a railway corporation, to an air common carrier, and to passenger-carrying boats or ships for hire with a capacity of twenty-five persons or more operating in inland or boundary waters, and shall authorize the holder to sell or furnish alcoholic beverages, wine, and beer to passengers for consumption only on trains, watercraft as described in this section, or aircraft, respectively. Each license is valid throughout the state. Only one license is required for all trains, watercraft, or aircraft operated in the state by the licensee.

85 Acts, ch 32, §22 SF 395
Subsection 3, paragraphs a, b, c and d amended

123.32 Action by authorities on applications for liquor control licenses and wine and beer permits.

1. *Filing of application*. An application for a class "A", class "B", or class "C" liquor control license, for a retail beer permit as provided in sections 123.128 and 123.129, or for a class "B" retail wine permit as provided in section 123.176, accompanied by the required fee and bond, shall be filed with the appropriate city council if the premises for which the license or permit is sought are located within the corporate limits of a city, or with the board of supervisors if the premises for which the license or permit is sought are located outside the corporate limits of a city. An application for a class "D" liquor control license and for a class "A" beer or class "A" wine permit, accompanied by the required fee and bond, shall be filed with the department, which shall proceed in the same manner as in the case of an application approved by local authorities.

2. *Action by local authorities*. The local authority shall either approve or disapprove the issuance of a liquor control license, retail wine permit, or retail beer permit, shall endorse its approval or disapproval on the application and shall forward the application along with the required fee and bond to the department. Upon the initial application for a liquor control license, retail wine permit, or retail beer permit, the fact that the local authority determines that no liquor control license, retail wine permit, or retail beer permit shall be issued shall not be held to be arbitrary, capricious, or without reasonable cause. There is no limit upon the number of liquor control licenses, retail wine permits, or retail beer permits which may be approved for issuance by local authorities.

3. *Action by director*. Upon receipt of an application having been disapproved by the local authority, the director shall disapprove the application, so notify the applicant by registered mail, and return the fee and bond to the applicant. Upon receipt of an application having been approved by the local authority, the director shall make such investigation as the director deems necessary and may require the applicant to appear before the director and be examined under oath regarding any matters pertinent to the application, in which case a record shall be made of all testimony or evidence and the same shall become a part of the application. If the application is approved by the director, the license or permit applied for shall be issued. If the application is disapproved by the director, the applicant and the appropriate local authority shall be so notified by restricted certified mail, and the fee and bond returned to the applicant.

4. *Appeal to hearing board*. Any applicant for a liquor control license, wine permit, or beer permit may appeal from the director's disapproval of an application for a license or permit to the department hearing board, established pursuant to section 123.15. If upon appeal the hearing board determines that the local authority acted arbitrarily, capriciously, or without reasonable cause in disapproving the application, or that, where the local authority approved the application, the director's own disapproval should be reversed, it shall order issuance of a license or

permit. The same right of appeal to the hearing board shall be afforded a liquor control licensee, wine permittee, or beer permittee, whose license or permit has been suspended or revoked under this chapter, and the hearing board shall reduce the period of suspension or order reinstatement of the license or permit for good cause shown.

5. *Judicial review.* Judicial review of the action of the department hearing board may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county wherein the premises covered by the application are situated.

Where the hearing board on an appeal by an applicant finds that the local authority acted arbitrarily, capriciously, or without reasonable cause in disapproving an application and the director issues a license or permit, the local authority may seek judicial review of such decision according to the terms of the Iowa administrative procedure Act within thirty days.

85 Acts, ch 32, §23 SF 395
Subsections 1, 2 and 4 amended

123.33 Records.

Every holder of a liquor control license shall keep a daily record of the gross receipts of the holder's business. The records required and the premises of the licensee shall be open to agents of the division of beer and liquor law enforcement of the department of public safety during normal business hours of the licensee.

85 Acts, ch 196, §2 SF 295
Section amended

123.34 Expiration—seasonal or fourteen-day license or permit.

1. Liquor control licenses, wine permits, and beer permits, unless sooner suspended or revoked, expire one year from date of issuance. The director shall give sixty days' written notice of the expiration to each licensee or permittee. However, the director may issue six-month or eight-month seasonal licenses, class "B" wine permits, or class "B" beer permits for a proportionate part of the license or permit fee or may issue fourteen-day liquor licenses, wine permits, or beer permits as provided in subsection 2. No refund shall be made for seasonal licenses or permits or for fourteen-day liquor licenses, wine permits, or beer permits. No seasonal license or permit shall be renewed except after a period of two months.

2. The director may issue fourteen-day class "A", class "B", class "C", and class "D" liquor control licenses, fourteen-day class "B" wine permits, and fourteen-day class "B" beer permits. A fourteen-day license or permit, if granted, is valid for fourteen consecutive days, but the holder shall not sell on the two Sundays in the fourteen-day period unless the holder qualifies for and obtains the privilege to sell on Sundays contained in sections 123.36, subsection 6 and 123.134, subsection 5.

3. The fee for a fourteen-day liquor license, wine permit, or beer permit is one-quarter of the annual fee for that class of liquor license or beer permit. The fee for the privilege to sell on the two Sundays in the fourteen-day period is twenty percent of the price of the fourteen-day liquor license, wine permit, or beer permit.

85 Acts, ch 32, §24 SF 395
Section amended

123.35 Simplified renewal procedure.

The director shall prescribe simplified application forms for the renewal of liquor control licenses, wine permits, and beer permits which may be filed by licensees and permittees in lieu of a detailed renewal application form when qualifications and qualification information have not changed since the original issuance of the license or permit. The simplified form shall require the licensee or permittee to verify under oath that the information contained in the original application remains current, and that no reason exists for the department's refusal to renew the license or permit as originally issued.

Such application, accompanied by the required fee and bond, shall be filed in the same manner as is provided for filing the initial application.

85 Acts, ch 32, §25 SF 395
Unnumbered paragraph 1 amended

123.36 Liquor fees—Sunday sales.

The following fees shall be paid to the department annually for special liquor permits and liquor control licenses issued under sections 123.29 and 123.30 respectively:

1. Special liquor permits, the sum of five dollars.
2. Class "A" liquor control licenses, the sum of six hundred dollars, except that for class "A" licenses in cities of less than two thousand population, and for clubs of less than two hundred fifty members, the license fee shall be four hundred dollars; however, the fee shall be two hundred dollars for any club which is a post, branch, or chapter of a veterans organization chartered by the Congress of the United States, if the club does not sell or permit the consumption of alcoholic beverages, wine, or beer on the premises more than one day in any week, and if the application for a license states that the club does not and will not sell or permit the consumption of alcoholic beverages, wine, or beer on the premises more than one day in any week.
3. Class "B" liquor control licenses, the sum as follows:
 - a. Hotels or motels located within the corporate limits of cities of ten thousand population and over, one thousand three hundred dollars.
 - b. Hotels and motels located within the corporate limits of cities of over three thousand and less than ten thousand population, one thousand fifty dollars.
 - c. Hotels and motels located within the corporate limits of cities of three thousand population and less, eight hundred dollars.
 - d. Hotels and motels located outside the corporate limits of any city, a sum equal to that charged in the incorporated city located nearest the premises to be licensed, and in case there is doubt as to which of two or more differing corporate limits is the nearest, the license fee which is the largest shall prevail.
4. Class "C" liquor control licenses, the sum as follows:
 - a. Commercial establishments located within the corporate limits of cities of ten thousand population and over, one thousand three hundred dollars.
 - b. Commercial establishments located within the corporate limits of cities of over fifteen hundred and less than ten thousand population, nine hundred fifty dollars.
 - c. Commercial establishments located within the corporate limits of cities of fifteen hundred population or less, six hundred dollars.
 - d. Commercial establishments located outside the corporate limits of any city, a sum equal to that charged in the incorporated city located nearest the premises to be licensed, and in case there is doubt as to which of two or more differing corporate limits are the nearest, the license fee which is the larger shall prevail.
5. Class "D" liquor control licenses, the following sums:
 - a. For watercraft, one hundred fifty dollars.
 - b. For trains, five hundred dollars.
 - c. For air common carriers, each company shall pay a base annual fee of five hundred dollars and, in addition, shall quarterly remit to the department an amount equal to seven dollars for each gallon of alcoholic liquor sold, given away, or dispensed in or over this state during the preceding calendar quarter. The class "D" license fee and tax for air common carriers is in lieu of any other fee or tax collected from the carriers in this state for the possession and sale of alcoholic liquor, wine, and beer.
6. Any club, hotel, motel, or commercial establishment holding a liquor control license for whom the sale of goods and services other than alcoholic liquor, wine, or beer constitutes fifty percent or more of the gross receipts from the licensed premises, subject to section 123.49, subsection 2, paragraph "b", may sell and dispense alcoholic liquor and wine to patrons on Sunday for consumption on the

premises only, and beer for consumption on or off the premises between the hours of ten a.m. and twelve midnight on Sunday. For the privilege of selling beer, wine, and alcoholic liquor on the premises on Sunday the liquor control license fee of the applicant shall be increased by twenty percent of the regular fee prescribed for the license pursuant to this section, and the privilege shall be noted on the liquor control license. The department shall prescribe the nature and the character of the evidence required of the applicant under this subsection.

7. Special class "C" liquor control licenses, a sum as follows:

a. Commercial establishments located within the corporate limits of cities of ten thousand population and over, four hundred fifty dollars.

b. Commercial establishments located within the corporate limits of cities of over fifteen hundred and less than ten thousand population, three hundred dollars.

c. Commercial establishments located within the corporate limits of cities of fifteen hundred population or less, one hundred fifty dollars.

d. Commercial establishments located outside the corporate limits of any city, a sum equal to that charged in the incorporated city located nearest the premises to be licensed, and in case there is doubt as to which of two or more differing corporate limits are the nearest, the license fee which is the larger shall prevail.

8. The department shall credit all fees to the beer and liquor control fund. The department shall remit to the appropriate local authority, a sum equal to sixty-five percent of the fees collected for each class "A", class "B", or class "C" license except special class "C" licenses, covering premises located within the local authority's jurisdiction. The department shall remit to the appropriate local authority a sum equal to seventy-five percent of the fees collected for each special class "C" license covering premises located within the local authority's jurisdiction. Those fees collected for the privilege authorized under subsection 6 shall be credited to the beer and liquor control fund.

85 Acts, ch 32, §26-29 SF 395
 Subsection 2 amended
 Subsection 5, paragraph c amended
 Subsection 6 amended
 Subsection 7, unnumbered paragraph 1 amended

123.37 Exclusive power to license and levy taxes.

The power to establish licenses and permits and levy taxes as imposed in title VI of the Code is vested exclusively with the state. Unless specifically provided, no local authority shall levy a local tax on the sale of alcoholic beverages, wine, or beer, require the obtaining of a special license or permit for such sale at any establishment, or require the obtaining of a license by any person as a condition precedent to the person's employment in the sale, serving, or handling of alcoholic beverages, wine, or beer, within an establishment operating under a license or permit.

85 Acts, ch 32, §30 SF 395
 Section amended

123.38 Nature of permit or license—surrender—transfer.

A special liquor permit, liquor control license, wine permit, or beer permit is a personal privilege and is revocable for cause. It is not property nor is it subject to attachment and execution nor alienable nor assignable, and it shall cease upon the death of the permittee or licensee. However, the director may in the director's discretion allow the executor or administrator of a permittee or licensee to operate the business of the decedent for a reasonable time not to exceed the expiration date of the permit or license. Every permit or license shall be issued in the name of the applicant and no person holding a permit or license shall allow any other person to use it.

Any licensee or permittee, or the licensee's or permittee's executor or administrator, or any person duly appointed by the court to take charge of and administer the property or assets of the licensee or permittee for the benefit of the licensee's or

permittee's creditors, may voluntarily surrender a license or permit to the department. When a license or permit is surrendered the department shall notify the local authority, and the department or the local authority shall refund to the person surrendering the license or permit, a proportionate amount of the fee received by the department or the local authority for the license or permit as follows: If a license or permit is surrendered during the first three months of the period for which it was issued, the refund shall be three-fourths of the amount of the fee; if surrendered more than three months but not more than six months after issuance, the refund shall be one-half of the amount of the fee; if surrendered more than six months but not more than nine months after issuance, the refund shall be one-fourth of the amount of the fee. No refund shall be made, however, for any special liquor permit, nor for a liquor control license, wine permit, or beer permit surrendered more than nine months after issuance. For purposes of this paragraph, any portion of license or permit fees used for the purposes authorized in section 331.424, subsection 1, paragraphs "a", "b", "c", "d", "e", "f", "g", and "h", shall not be deemed received either by the department or by a local authority. No refund shall be made to any licensee or permittee, upon the surrender of the license or permit, if there is at the time of surrender, a complaint filed with the department or local authority, charging the licensee or permittee with a violation of this chapter. If upon a hearing on a complaint the license or permit is not revoked or suspended, then the licensee or permittee is eligible, upon surrender of the license or permit, to receive a refund as provided in this section; but if the license or permit is revoked or suspended upon hearing the licensee or permittee is not eligible for the refund of any portion of the license or permit fee.

The local authority may in its discretion authorize a licensee or permittee to transfer the license or permit from one location to another within the same incorporated city, or within a county outside the corporate limits of a city, provided that the premises to which the transfer is to be made would have been eligible for a license or permit in the first instance and such transfer will not result in the violation of any law. All transfers authorized, and the particulars of same, shall be reported to the director by the local authority. The director may by rule establish a uniform transfer fee to be assessed by all local authorities upon licensees or permittees to cover the administrative costs of such transfers, such fee to be retained by the local authority involved.

85 Acts, ch 32, §31 SF 395
Unnumbered paragraphs 1 and 2 amended

123.39 Suspension or revocation of license or permit.

Any liquor control license, wine permit, or beer permit issued under this chapter may, after notice in writing to the license or permit holder and reasonable opportunity for hearing, and subject to section 123.50 where applicable, be suspended for a period not to exceed one year or revoked by the local authority or the director for any of the following causes:

1. Misrepresentation of any material fact in the application for the license or permit.
2. Violation of any of the provisions of this chapter.
3. Any change in the ownership or interest in the business operated under a class "A", class "B", or class "C" liquor control license, or any wine or beer permit, which change was not previously reported to and approved by the local authority and the department.
4. An event which would have resulted in disqualification from receiving the license or permit when originally issued.
5. Any sale, hypothecation, or transfer of the license or permit.
6. The failure or refusal on the part of any licensee or permittee to render any report or remit any taxes to the department under this chapter when due.

Local authorities may suspend any retail wine or beer permit or liquor control

license for a violation of any ordinance or regulation adopted by the local authority. Local authorities may adopt ordinances or regulations for the location of the premises of retail wine or beer and liquor control licensed establishments and local authorities may adopt ordinances, not in conflict with this chapter and that do not diminish the hours during which beer, wine, or alcoholic beverages may be sold or consumed at retail, governing any other activities or matters which may affect the retail sale and consumption of beer, wine, and alcoholic liquor and the health, welfare and morals of the community involved.

When a liquor license or wine or beer permit is suspended after a hearing as a result of violations of this chapter by the licensee, permittee or the licensee's or permittee's agents or employees, the premises which were licensed by the license or permit shall not be relicensed for a new applicant until the suspension has terminated or time of suspension has elapsed, or ninety days have elapsed since the commencement of the suspension, whichever occurs first. However, this section does not prohibit the premises from being relicensed to a new applicant before the suspension has terminated or before the time of suspension has elapsed or before ninety days have elapsed from the commencement of the suspension, if the premises prior to the time of the suspension had been purchased under contract, and the vendor under that contract had exercised the person's rights under chapter 656 and sold the property to a different person who is not related to the previous licensee or permittee by marriage or within the third degree of consanguinity or affinity and if the previous licensee or permittee does not have a financial interest in the business of the new applicant.

85 Acts, ch 32, §32 SF 395
Section amended

123.40 Effect of revocation.

Any liquor control licensee, wine permittee, or beer permittee whose license or permit is revoked under this chapter shall not thereafter be permitted to hold a liquor control license, wine permit, or beer permit in the state of Iowa for a period of two years from the date of revocation. A spouse or business associate holding ten percent or more of the capital stock or ownership interest in the business of a person whose license or permit has been revoked shall not be issued a liquor control license, wine permit, or beer permit, and no liquor control license, wine permit, or beer permit shall be issued which covers any business in which such person has a financial interest for a period of two years from the date of revocation. If a license or permit is revoked, the premises which had been covered by the license or permit shall not be relicensed for one year.

85 Acts, ch 32, §33 SF 395
Section amended

123.44 Gift of liquors prohibited.

A manufacturer or wholesaler shall not give away any alcoholic liquor of any kind or description at any time in connection with the manufacturer's or wholesaler's business except for testing or sampling purposes only. A manufacturer, vintner, wholesaler, or importer, organized as a corporation pursuant to the laws of this state or any other state, who deals in alcoholic liquor, wine, or beer subject to this chapter shall not offer or give anything of value to any council member, official or employee of the department, or directly or indirectly contribute in any manner any money or thing of value to any person seeking a public or appointive office or any recognized political party or a group of persons seeking to become a recognized political party.

85 Acts, ch 32, §34 SF 395
Section amended

123.45 Limitations on business interests.

Except as provided in section 123.6, a council member or department employee shall not, directly or indirectly, individually, or as a member of a partnership or shareholder in a corporation, have any interest in dealing in or in the manufacture

of alcoholic liquor, wine, or beer, and shall not receive any kind of profit nor have any interest in the purchase or sale of alcoholic liquor, wine, or beer by persons so authorized under this chapter. However, this provision does not prohibit any member or employee from lawfully purchasing and keeping alcoholic liquor, wine, or beer in the member's or employee's possession for personal use.

A person engaged in the business of manufacturing, bottling, or wholesaling alcoholic beverages, wine, or beer, or any jobber or agent of such person, shall not directly or indirectly supply, furnish, give, or pay for any furnishings, fixtures, or equipment used in the storage, handling, serving, or dispensing of alcoholic beverages, wine, beer, or food within the place of business of a licensee or permittee authorized under this chapter to sell at retail; nor shall the person directly or indirectly extend any credit for alcoholic beverages or beer or pay for any such license or permit, nor directly or indirectly be interested in the ownership, conduct, or operation of the business of another licensee or permittee authorized under this chapter to sell at retail, except that a person engaged in the business of manufacturing beer may sell beer at retail for consumption on or off the premises of the manufacturing facility and, notwithstanding any other provision of this chapter or the fact that such a person may be the holder of a class "A" beer permit, may be granted not more than one class "B" permit as defined in section 123.124 for such purpose. Any licensee or permittee who permits or assents to or is a party in any way to any such violation or infringement of this section is guilty of a violation of this section.

85 Acts, ch 32, §35 SF 395
Section amended

123.46 Consumption in public places—intoxication.

It is unlawful for any person to use or consume alcoholic liquors, wine, or beer upon the public streets or highways, or alcoholic liquors in any public place, except premises covered by a liquor control license, or to possess or consume alcoholic liquors, wine, or beer on any public school property or while attending any public or private school related functions, and a person shall not be intoxicated nor simulate intoxication in a public place. As used in this section, "school" means a school or that portion of a school, which provides teaching for any grade from kindergarten through grade twelve. Any person violating any provision of this section is guilty of a simple misdemeanor.

85 Acts, ch 32, §36 SF 395
Section amended

123.47 Persons under legal age.

A person shall not sell, give, or otherwise supply alcoholic liquor, wine, or beer to any person knowing or having reasonable cause to believe that person to be under legal age, and a person or persons under legal age shall not individually or jointly have alcoholic liquor, wine, or beer in their possession or control; except in the case of liquor, wine, or beer given or dispensed to a person under legal age within a private home and with the knowledge and consent of the parent or guardian for beverage or medicinal purposes or as administered to the person by either a physician or dentist for medicinal purposes and except to the extent that a person under legal age may handle alcoholic beverages, wine, and beer during the regular course of the person's employment by a liquor control licensee, or wine or beer permittee under this chapter.

85 Acts, ch 32, §37 SF 395
Section amended

123.49 Miscellaneous prohibitions.

1. A person shall not sell, dispense, or give to any intoxicated person, or one simulating intoxication, any alcoholic liquor, wine, or beer.
2. A person or club holding a liquor control license or retail wine or beer permit

under this chapter, and the person's or club's agents or employees, shall not do any of the following:

a. Knowingly permit any gambling, except in accordance with chapter 99B, or knowingly permit solicitation for immoral purposes, or immoral or disorderly conduct on the premises covered by the license or permit.

b. Sell or dispense any alcoholic beverage or beer on the premises covered by the license or permit, or permit its consumption thereon between the hours of two a.m. and six a.m. on a weekday, and between the hours of two a.m. on Sunday and six a.m. on the following Monday, however, a holder of a liquor control license or retail beer permit granted the privilege of selling alcoholic liquor or beer on Sunday may sell or dispense alcoholic liquor or beer between the hours of ten a.m. and twelve midnight on Sunday.

c. Sell alcoholic beverages, wine, or beer to any person on credit, except with a bona fide credit card. This provision does not apply to sales by a club to its members nor to sales by a hotel or motel to bona fide registered guests.

d. Keep on premises covered by a liquor control license any alcoholic liquor in any container except the original package purchased from the department, and except mixed drinks or cocktails mixed on the premises for immediate consumption. This prohibition does not apply to common carriers holding a class "D" liquor control license.

e. Reuse for packaging alcoholic liquor or wine any container or receptacle used originally for packaging alcoholic liquor or wine; or adulterate, by the addition of any substance, the contents or remaining contents of an original package of an alcoholic liquor or wine; or knowingly possess any original package which has been so reused or adulterated.

f. Employ a person under eighteen years of age in the sale or serving of alcoholic liquor, wine, or beer for consumption on the premises where sold.

g. Allow any person other than the licensee, permittee, or employees of the licensee or permittee, to use or keep on the licensed premises any alcoholic liquor in any bottle or other container which is designed for the transporting of such beverages, except as permitted in section 123.95. This paragraph does not apply to the lodging quarters of a class "B" liquor control licensee or wine or beer permittee, or to common carriers holding a class "D" liquor control license.

h. Sell, give, or otherwise supply any alcoholic beverage, wine, or beer to any person, knowing or having reasonable cause to believe the person to be under legal age, or permit any person, knowing or having reasonable cause to believe the person to be under legal age, to consume any alcoholic beverage, wine, or beer.

i. In the case of a retail beer or wine permittee, knowingly allow the mixing or adding of alcohol or any alcoholic beverage to beer, wine, or any other beverage in or about the permittee's place of business.

j. Knowingly permit or engage in any criminal activity on the premises covered by the license or permit.

k. Sell or dispense any wine on the premises covered by the permit or permit the consumption on the premises between the hours of two a.m. and six a.m. on a weekday, and between the hours of two a.m. on Sunday and six a.m. on the following Monday, however, a holder of a wine permit authorized to sell wine on Sunday may sell or dispense wine between the hours of ten a.m. and twelve midnight on Sunday.

3. No person under legal age shall misrepresent the person's age for the purpose of purchasing or attempting to purchase any alcoholic beverage, wine, or beer from any licensee or permittee. If any person under legal age misrepresents the person's age, and the licensee or permittee establishes that the licensee or permittee made reasonable inquiry to determine whether the prospective purchaser was over legal age, the licensee or permittee is not guilty of selling alcoholic liquor, wine, or beer to minors.

4. No privilege of selling alcoholic liquor, wine, or beer on Sunday as provided

in sections 123.36, subsection 6, and 123.134, subsection 5, shall be granted to a club or other organization which places restrictions on admission or membership in the club or organization on the basis of sex, race, religion, or national origin. However, the privilege may be granted to a club or organization which places restrictions on membership on the basis of sex, if the club or organization has an auxiliary organization open to persons of the other sex.

85 Acts, ch 32, §38-42 SF 395
 Subsection 1 amended
 Subsection 2, unnumbered paragraph 1 amended
 Subsection 2, paragraphs c through i amended
 Subsection 2, NEW paragraph k
 Subsections 3 and 4 amended

123.50 Penalties.

1. Any person who violates any of the provisions of section 123.49 shall be guilty of a simple misdemeanor.

2. The conviction of any liquor control licensee, wine permittee, or beer permittee for a violation of any of the provisions of section 123.49, subject to subsection 3 of this section, is grounds for the suspension or revocation of the license or permit by the department or the local authority. However, if any liquor control licensee is convicted of any violation of subsection 2, paragraphs "a", "d" or "e", of that section, or any wine or beer permittee is convicted of a violation of paragraph "a" or "e" of that section, the liquor control license, wine permit, or beer permit shall be revoked and shall immediately be surrendered by the holder, and the bond of the license or permit holder shall be forfeited to the department.

3. If any licensee, wine permittee, beer permittee, or employee of a licensee or permittee is convicted of a violation of section 123.49, subsection 2, paragraph "h", or if a retail wine or beer permittee is convicted of a violation of paragraph "i" of that subsection, the director or local authority shall, in addition to the other penalties fixed for such violations by this section, assess a penalty as follows:

a. Upon a first conviction, the violator's liquor control license, wine permit, or beer permit shall be suspended for a period of fourteen days.

b. Upon a second conviction within a period of two years, the violator's liquor control license, wine permit, or beer permit shall be suspended for a period of thirty days.

c. Upon a third conviction within a period of five years, the violator's liquor control license, wine permit, or beer permit shall be suspended for a period of sixty days.

d. Upon a fourth conviction within a period of five years, the violator's liquor control license, wine permit, or beer permit shall be revoked.

4. A person, other than a licensee or permittee or a minor, who violates section 123.47 is guilty of a serious misdemeanor punishable by a minimum fine of one hundred dollars for a first offense, two hundred and fifty dollars for a second offense, and five hundred dollars for a third and subsequent offense, and a maximum fine for any offense of not more than one thousand dollars.

5. Upon the conviction of a person acting as a vendor, as defined in section 123.24, subsection 1, for a violation of section 123.47 while in the course of the person's employment at the state liquor store, the director shall dismiss the person from the position as vendor if the person has failed to follow procedures developed by the director to prevent sales to minors.

85 Acts, ch 32, §43 SF 395
 Subsections 2 and 3 amended

123.51 Advertisements for alcoholic liquor, wine, or beer.

1. Except as permitted by federal statute and regulations, there shall be no public advertisement or advertising of alcoholic liquors in any manner or form within the state.

2. No person shall publish, exhibit, or display or permit to be displayed any other

advertisement or form of advertisement, or announcement, publication, or price list of, or concerning any alcoholic liquors, or where, or from whom the same may be purchased or obtained, unless permitted so to do by the regulations adopted by the department and then only in strict accordance with such regulations. This subsection shall not apply, however:

- a. To the department.
 - b. To the correspondence, or telegrams, or general communications of the department, or its agents, servants, and employees.
 - c. To the receipt or transmission of a telegram or telegraphic copy in the ordinary course of the business of agents, servants, or employees of any telegraph company.
3. No signs or other matter advertising any brand of beer or wine shall be erected or placed upon the outside of any premises occupied by a licensee or permittee authorized to sell beer or wine at retail. This subsection does not prohibit the use of signs or other matter inside a fence or similar enclosure which wholly or partially surrounds the licensed premises.
4. Violation of this section shall be a simple misdemeanor.

85 Acts, ch 32, §44 SF 395
Subsection 3 amended

123.53 Beer and liquor control fund—allocations to cities, military service tax, and substance abuse.

1. There shall be established within the office of the treasurer of state a fund to be known as the beer and liquor control fund. The fund shall consist of any moneys appropriated by the general assembly for deposit in the fund and moneys received from the sale of alcoholic liquors by the department, from the issuance of permits and licenses, and of moneys and receipts received by the department from any other source.

2. The state comptroller shall periodically transfer from the beer and liquor control fund to the general fund of the state those revenues of the department which are not necessary for the purchase of liquor for resale by the department, or for remittances to local authorities or other sources as required by this chapter, or for other obligations and expenses of the department which are paid from such fund.

All moneys received by the department from the issuance of vintner's certificates of compliance and wine permits shall be transferred by the state comptroller to the general fund of the state.

3. The treasurer of state shall semiannually distribute a sum of money equal to at least ten percent of the gross sales made by the state liquor stores but not less than six million four hundred thousand dollars to the cities of the state. Such amount shall be distributed to the cities of the state in proportion to the population that each incorporated city bears to the total population of all incorporated cities of the state as computed by the latest federal census. A city may have one special federal census taken each decade, and the population figure thus obtained shall be used in apportioning amounts under this subsection beginning the calendar year following the year in which the special census is certified by the secretary of state. Such apportionment shall be made semiannually as of July 1 and January 1 of each year. Warrants for the same shall be issued by the state comptroller upon certification of the treasurer of state and mailed to the city clerk of each incorporated city of the state and shall be made payable to such incorporated city and shall be subject to expenditure under the direction of the city council or other governing bodies of such incorporated city for any lawful municipal purpose. It shall be a lawful municipal purpose for cities to allocate a portion of the above funds for the purpose of financing the activities of a city commission or committee on alcoholism, such commission or committee to be appointed by the mayor or by the council or both. The commission or committee may use any funds so allocated for the treatment, rehabilitation, and education of alcoholics in Iowa.

4. In any case where a city has been incorporated since the last federal census,

the mayor and council shall certify to the treasurer of state the actual population of such incorporated city as of date of incorporation and its apportionment of funds under this section shall be based upon such certification until the next federal census enumeration. Any community which has dissolved its corporation shall not receive any apportionment of funds under this section for any period after said corporation has been dissolved.

5. In any case where a city has annexed any territory since the last available federal census or special federal census, the mayor and council shall certify to the treasurer of state the actual population of such annexed territory as determined by the last certified federal census of said territory and the apportionment of funds under this section shall be based upon the population of said city as modified by the certification of the population of the annexed territory until the next federal or special federal census enumeration.

6. In any case where two or more cities have consolidated, the apportionment of funds under this section shall be based upon the population of the city resulting from said consolidation and shall be determined by combining the population of all cities involved in the consolidation as determined by the last available federal or special federal census enumeration for said consolidating city.

7. The treasurer of state shall credit to the military service tax fund described in chapter 426A, a sum of money equal to at least five percent of the gross amount of sales made by the state liquor stores in the cities of the state but not less than six million four hundred thousand dollars. Any amount thus credited shall be allocated to the various taxing districts of the state as reimbursement for losses of revenue due to exemption or remission of property taxes which would be imposed upon property upon which soldiers' exemptions or soldiers' tax credits are provided under such terms as the general assembly may provide.

8. The treasurer of state shall transfer into a special revenue account in the general fund of the state, a sum of money at least equal to seven percent of the gross amount of sales made by the state liquor stores in the cities of the state from the beer and liquor control fund on a monthly basis but not less than nine million dollars annually, and any amounts so transferred shall be used by the department of substance abuse for substance abuse treatment and prevention programs in an amount determined by the general assembly and any amounts received in excess of the amounts appropriated to the department of substance abuse shall be considered part of the general fund balance. This subsection is repealed June 30, 1987.

85 Acts, ch 32, §45-47 SF 395
See Code editor's note
Subsection 2 amended, NEW unnumbered paragraph 2
Subsections 3 and 7 amended
NEW subsection 8

123.55 Annual report.

The council shall cause to be prepared an annual report to the governor of the state, ending with June 30 of each year, showing fully the results of the operations of the department covering the period since the last previous report. Such report shall show:

1. Amount of profit or loss from state liquor store operations.
2. Number of state liquor stores opened, the number closed, and the number operating on last day included in report.
3. Amount of fees received from such stores, separately and in gross.
4. The current balance of the beer and liquor control fund, and the amount transferred from such fund to the treasurer of state during the period covered by the report.
5. All other funds on hand and the source from which derived.
6. The total quantity and particular kind of alcoholic liquor sold.
7. The increase or decrease of liquor sales from the previous reporting period.
8. The number of liquor control licenses, wine permits, and beer permits issued,

by class, the number in effect on the last day included in the report, and the number which have been suspended or revoked during the period covered by the report.

9. Amount of fees paid to the department from liquor control licenses, wine permits, and beer permits, in gross, and the amount of liquor control license fees returned to local subdivisions of government as provided under this chapter.

85 Acts, ch 32, §48 SF 395
Subsections 8 and 9 amended

123.56 Native wines.

1. Subject to rules of the department, manufacturers of native wines from grapes, cherries, other fruits or other fruit juices, vegetables, vegetable juices, dandelions, clover, honey, or any combination of these ingredients, holding a class "A" wine permit as required by this chapter, may sell, keep, or offer for sale and deliver the wine. Sales may be made at retail for off-premises consumption when sold on the premises of the manufacturer, or in a retail establishment operated by the manufacturer which is no closer than five miles from an existing native winery. Sales may also be made to class "A" or retail wine permittees or liquor control licensees as authorized by the class "A" wine permit.

2. A manufacturer of native wines shall not sell the wines other than as permitted in this chapter and shall not allow wine sold to be consumed upon the premises of the manufacturer. However, prior to sale native wines may be sampled on the premises where made, when no charge is made for the sampling. A person may manufacture native wine for consumption on the manufacturer's premises, when the wine or any part of it is not manufactured for sale.

3. A manufacturer of native wines may ship wine in closed containers to individual purchasers inside and outside this state. The manufacturer shall label the package containing the wine with the words "deliver to adults only".

4. Notwithstanding section 123.179, subsection 1, a class "A" wine permit for a native wine manufacturer shall be issued and renewed annually upon payment of a fee of twenty-five dollars which shall be in lieu of any other license fee required by this chapter. The class "A" permit shall only allow the native wine manufacturer to sell, keep, or offer for sale and deliver the manufacturer's native wines as provided under this section.

5. For the purposes of this section, "manufacturer" includes only those persons who process in Iowa the fruit, vegetables, dandelions, clover, honey, or any combination of these ingredients, by fermentation into wines.

85 Acts, ch 32, §49 SF 395; 85 Acts, ch 198, §1 SF 583
Subsection 1 amended
Section struck and rewritten

123.59 Bootlegging.

Any person who, acting individually, or through another acting for the person, keeps or carries on the person, or in a vehicle, or leaves in a place for another to secure, any alcoholic liquor, wine, or beer, with intent to sell or dispense the liquor, wine, or beer, by gift or otherwise in violation of law, or who, within this state, in any manner, directly or indirectly, solicits, takes, or accepts an order for the purchase, sale, shipment, or delivery of alcoholic liquor, wine, or beer in violation of law, or aids in the delivery and distribution of alcoholic liquor, wine, or beer so ordered or shipped, or who in any manner procures for, sells, or gives alcoholic liquor, wine, or beer to a person under legal age, for any purpose except as authorized and permitted in this chapter, is a bootlegger and subject to the general penalties provided by this chapter.

85 Acts, ch 32, §50 SF 395; 85 Acts, ch 67, §16 SF 121
See Code editor's note
Section amended

123.60 Nuisances.

The premises where the unlawful manufacture or sale, or keeping with intent to sell, use or give away, of alcoholic liquors, wine, or beer is carried on, and any vehicle or other means of conveyance used in transporting liquor, wine, or beer in violation of law, and the furniture, fixtures, vessels and contents, kept or used in connection with such activities are nuisances and shall be abated as provided in this chapter.

85 Acts, ch 32, §51 SF 395
Section amended

123.71 Conditions on injunction proceeding.

A bootlegger injunction proceeding, as provided in this chapter, shall not be maintained unless it is shown to the court that efforts in good faith have been made to discover the base of supplies or place where the defendant charged as a bootlegger conducts an unlawful business or receives or manufactures the alcoholic liquor, wine, or beer, which the defendant is charged with bootlegging.

85 Acts, ch 32, §52 SF 395
Section amended

123.72 Order of abatement of nuisance.

If the existence of a nuisance is established in a civil or criminal action, an order of abatement shall be entered as a part of the judgment in the case. The order shall direct the confiscation of all alcoholic liquor, wine, or beer by the state; the removal from the premises involved of all fixtures, furniture, vessels, or movable property used in any way in conducting the unlawful business; the sale of all removed property as well as any vehicle or other means of conveyance which has been abated, the sale to be conducted in the manner provided for the sale of chattels under execution; and the effective closing of the premises against use for the purpose of manufacture, sale, or consumption of alcoholic liquor, wine, or beer for a period of one year, unless sooner released by the court.

85 Acts, ch 32, §53 SF 395
Section amended

123.81 Forfeiture of bond.

If the owner of a property who has filed an abatement bond as provided in this chapter fails to abate the liquor, wine, or beer nuisance on the premises covered by the bond, or fails to prevent the maintenance of any liquor, wine, or beer nuisance on the premises at any time within a period of one year after entry of the abatement order, the court shall, after a hearing in which such fact is established, direct an entry of the violation of the terms of the owner's bond to be made on the record and the undertaking of the owner's bond shall be forfeited.

85 Acts, ch 32, §54 SF 395
Section amended

123.84 Judgment.

If the court after a hearing finds a liquor, wine, or beer nuisance has been maintained on the premises covered by the abatement bond and that liquor, wine, or beer has been sold or kept for sale on the premises contrary to law within one year from the date of the giving of the bond, then the court shall order the forfeiture of the bond and enter judgment for the full amount of the bond against the principal and sureties on the bond, and the lien on the real estate created pursuant to section 123.79 shall be decreed foreclosed and the court shall provide for a special and general execution for the enforcement of the decree and judgment.

85 Acts, ch 32, §55 SF 395
Section amended

123.91 Second and subsequent conviction.

Any person who has been convicted, in a criminal action, in any court of record, of a violation of a provision of this chapter, a provision of the prior laws of this state relating to intoxicating liquors, wine, or beer which was in force prior to the enactment of this chapter, or a provision of the laws of the United States or of any other state relating to intoxicating liquors, wine, or beer, and who is thereafter convicted of a subsequent criminal offense against any provision of this chapter is guilty of the following offenses:

1. For the second conviction, a serious misdemeanor.
2. For the third and each subsequent conviction, an aggravated misdemeanor.

85 Acts, ch 32, §56 SF 395
Section amended

123.92 Civil liability for sale or gift of beer, wine, or intoxicating liquor (Dramshop Act).

Every husband, wife, child, parent, guardian, employer or other person who is injured in person or property or means of support by any intoxicated person or resulting from the intoxication of any person, has a right of action for all damages actually sustained, severally or jointly, against any licensee or permittee, who sells or gives any beer, wine, or intoxicating liquor to a person while the person is intoxicated, or serves a person to a point where the person is intoxicated. If the injury was caused by an intoxicated person, a permittee or licensee may establish as an affirmative defense that the intoxication did not contribute to the injurious action of the person.

Every liquor control licensee and class "B" beer permittee shall furnish proof of financial responsibility either by the existence of a liability insurance policy or by posting bond in such amount as determined by the department.

85 Acts, ch 32, §57 SF 395
Unnumbered paragraph 1 amended

123.95 Premises must be licensed—exception as to conventions and social gatherings.

It is unlawful for any person to allow the dispensing or consumption of intoxicating liquor, except wines and beer, in any establishment unless the establishment is licensed under this chapter.

However, bona fide conventions or meetings may bring their own legal liquor onto the licensed premises if the liquor is served to delegates or guests without cost. All other provisions of this chapter shall be applicable to such premises. The provisions of this section shall have no application to private social gatherings of friends or relatives in a private home or a private place which is not of a commercial nature nor where goods or services may be purchased or sold nor any charge or rent or other thing of value is exchanged for the use of such premises for any purpose other than for sleeping quarters.

85 Acts, ch 32, §58 SF 395
Unnumbered paragraph 1 amended

123.96 Tax on beverages sold for consumption on the premises.

1. There is imposed on every person licensed to sell alcoholic beverages for consumption on the premises where sold, a special tax equivalent to fifteen percent of the price established by the department on all alcoholic beverages for general sale to the public. The tax shall be paid by all licensees at the point of purchase from the state on all alcoholic beverages intended or used for resale for consumption on the premises of retail establishments. The tax is in lieu of any other sales tax applied at the state store and shall be shown as a separate item on special sales slips provided by the department for purchases by licensees.

2. Except as allowed under section 123.95, a licensee shall not knowingly keep on the licensed premises nor use for resale purposes any alcoholic liquor on which

the special tax has not been paid to the state. The conviction of a violation of this section shall cause the license held to automatically be revoked and the license shall immediately be surrendered by the holder, and the bond of the license holder shall be forfeited to the department.

3. Each bottle of alcoholic liquor purchased by a licensee shall bear an identification marker applied at the place of purchase.

85 Acts, ch 32, §59 SF 395
Subsections 1 and 2 amended

123.121 Venue.

In any prosecution under this chapter for the unlawful sale of alcoholic liquor, wine, or beer, a sale of alcoholic liquor, wine, or beer which requires a shipment or delivery of the liquor, wine, or beer, shall be deemed to be made in the county in which the delivery is made by the carrier to the consignee, or the consignee's agent or employee.

In any prosecution under this chapter for the unlawful transportation of intoxicating liquor, the offense shall be held to have been committed in any county in which such liquor is received for transportation, through which it is transported, or in which it is delivered.

85 Acts, ch 32, §60 SF 395
Unnumbered paragraph 1 amended

123.143 Distribution of funds.

The revenues obtained from permit fees and the barrel tax collected under the provisions of this chapter shall be distributed as follows:

1. All retail beer permit fees collected by any local authority at the time application for the permit is made shall be retained by the local authority. A certified copy of the receipt for the permit fee shall be submitted to the department with the application and the local authority shall be notified at the time the permit is issued. Those amounts collected for the privilege authorized under section 123.134, subsection 5, shall be deposited in the beer and liquor control fund.

2. All permit fees and taxes collected by the department under this division shall accrue to the state general fund, except as otherwise provided.

3. Barrel tax revenues collected on beer manufactured in this state from a class "A" permittee which owns and operates a brewery located in Iowa shall be credited to the barrel tax fund hereby created in the office of the treasurer of state.

85 Acts, ch 198, §2 SF 583
NEW subsection 3

123.146 Barrel tax rebate. Repealed by 85 Acts, ch 198, §3. SF 583

123.150 Sunday sales before New Years Day.

Notwithstanding section 123.36, subsection 6, section 123.49, subsection 2, paragraph "b", and section 123.134, subsection 5, a holder of any class of liquor control license or the holder of a class "B" beer permit may sell or dispense such liquor or beer to patrons for consumption on the premises between the hours of ten a.m. on Sunday and two a.m. on Monday when that Monday is New Years Day and beer for consumption off the premises between the hours of ten a.m. Sunday and midnight Sunday when that Sunday is the day before New Years Day. The liquor control license fee or beer permit fee of licensees and permittees permitted to sell or dispense such liquor or beer on a Sunday when that Sunday is the day before New Years Day shall not be increased because of this privilege.

It is the intent of this section that the special privileges granted shall be in force only during the specified times provided in this section.

85 Acts, ch 195, §15 SF 329
Unnumbered paragraph 1 amended

DIVISION IV
WINE PROVISIONS

123.171 Wine certificate, permit, or license required.

A person shall not cause the manufacture, importation, or sale of wine in this state unless a certificate or permit as provided in this division, or a liquor control license as provided in division I of this chapter, is first obtained which authorizes that manufacture, importation, or sale.

85 Acts, ch 32, §62 SF 395
NEW section

123.172 Effect on liquor control licensees.

All applicable provisions of this division relating to class "B" wine permits apply to liquor control licensees in the purchasing, storage, handling, serving and sale of wine.

85 Acts, ch 32, §63 SF 395
NEW section

123.173 Wine permits—classes.

Permits exclusively for the sale or manufacture and sale of wine shall be divided into two classes, and shall be known as class "A" or "B" wine permits.

A class "A" wine permit allows the holder to manufacture and sell, or sell at wholesale, in this state, wine as defined in section 123.3, subsection 7. The holder of a class "A" wine permit may manufacture in this state wine having an alcoholic content greater than seventeen percent by weight for shipment outside this state or for sale to the department. A class "B" wine permit allows the holder to sell wine at retail for consumption off the premises.

A class "A" wine permittee shall be required to deliver wine to a class "B" wine permittee, and a class "B" wine permittee shall be required to accept delivery of wine from a class "A" wine permittee, only at the licensed premise of the class "B" wine permittee. Except as specifically permitted by the department upon good cause shown, delivery or transfer of wine from an unlicensed premise to a licensed "B" wine permittee's premise, or from one licensed "B" wine permittee's premise to another licensed "B" wine permittee's premise, even where there is common ownership of all of the premises by one class "B" wine permittee, is prohibited.

85 Acts, ch 32, §64 SF 395
NEW section

123.174 Issuance of wine permits.

The director shall issue class "A" and "B" wine permits as provided in this chapter, and may suspend or revoke a wine permit for cause as provided in this chapter.

85 Acts, ch 32, §65 SF 395
NEW section

123.175 Class "A" application.

Except as otherwise provided in this chapter, a class "A" wine permit shall be issued to a person who complies with all of the following:

1. Submits a written application for the permit and states on the application under oath:
 - a. The name and place of residence of the applicant and the length of time the applicant has lived at the place of residence.
 - b. That the applicant is a citizen of the state of Iowa, or if a corporation, that the applicant is authorized to do business in Iowa.
 - c. The place of birth of the applicant, and if the applicant is a naturalized citizen, the time and place of naturalization, or if a corporation, the state of incorporation.
 - d. The location of the premises where the applicant intends to use the permit.
 - e. The name of the owner of the premises, and if that owner is not the applicant, that the applicant is the actual lessee of the premises.

2. Establishes all of the following:

a. That the applicant meets the test of good moral character as provided in section 123.3, subsection 11.

b. That the premises where the applicant intends to use the permit conform to all applicable laws, health regulations, and fire regulations, and constitute a safe and proper place or building.

3. Submits a bond in the amount of five thousand dollars in the form prescribed and furnished by the department with good and sufficient sureties to be approved by the department conditioned upon compliance with this chapter.

85 Acts, ch 32, §66 SF 395
NEW section

123.176 Class "B" application.

Except as otherwise provided in this chapter, a class "B" wine permit shall be issued to a person who complies with all of the following:

1. Submits a written application for the permit and states on the application under oath:

a. The name and place of residence of the applicant, and the length of time the applicant has lived at the place of residence.

b. That the applicant is a citizen of the state of Iowa, or if a corporation, that the applicant is authorized to do business in Iowa.

c. The place of birth of the applicant, and if the applicant is a naturalized citizen, the time and place of naturalization, or if a corporation, the place of incorporation.

d. The location of the premises where the applicant intends to use the permit.

e. The name of the owner of the premises, and if that owner is not the applicant, that the applicant is the actual lessee of the premises.

2. Establishes all of the following:

a. That the applicant is a person of good moral character as provided in section 123.3, subsection 11.

b. That the premises where the applicant intends to use the permit conform to all applicable laws, health regulations, and fire regulations, and constitute a safe and proper place or building.

3. Submits a bond in the amount of one thousand dollars in the form prescribed and furnished by the department with good and sufficient sureties to be approved by the department conditioned upon compliance with this chapter. The bond shall be further conditioned as a part of the permit granted to the effect that the permittee and each surety shall consent to forfeiture of the principal sum of the bond in event of suspension or revocation of the permit pursuant to this chapter.

85 Acts, ch 32, §67 SF 395
NEW section

123.177 Authority under class "A" permit.

1. A person holding a class "A" wine permit may manufacture and sell, or sell at wholesale, wine for consumption off the premises. Sales within the state may be made only to the department or to persons holding a class "A" or "B" wine permit and to persons holding a class "A", "B", "C" or "D" liquor control license. A class "A" wine permittee having more than one place of business shall obtain a separate permit for each place of business where wine is to be stored, warehoused, or sold.

2. A class "A" wine permit holder may purchase and resell only those brands of wine which are manufactured, fermented, bottled, shipped, or imported by a person holding a certificate of compliance issued pursuant to section 123.180.

85 Acts, ch 32, §68 SF 395
NEW section

123.178 Authority under class "B" permit.

1. A person holding a class "B" wine permit may sell wine at retail for consumption off the premises. Wine shall be sold for consumption off the premises in original containers only.

2. A class "B" wine permittee having more than one place of business where wine is sold shall obtain a separate permit for each place of business.

3. A person holding a class "B" wine permit may purchase wine for resale only from the department or from a person holding a class "A" wine permit.

85 Acts, ch 32, §69 SF 395
NEW section

123.179 Permit fees.

1. The annual permit fee for a class "A" wine permit is seven hundred fifty dollars.

2. The annual permit fee for a class "B" wine permit is five hundred dollars.

85 Acts, ch 32, §70 SF 395
NEW section

123.180 Vintner's certificate of compliance—wholesale and retail restrictions—penalty.

1. A manufacturer, vintner, bottler, importer, or vendor of wine or an agent thereof desiring to ship, sell, or have wine brought into this state for resale by the department or for sale at wholesale by a class "A" permittee shall first make application for and shall be issued a vintner's certificate of compliance by the director for that purpose. The vintner's certificate of compliance shall expire at the end of one year from the date of issuance and shall be renewed for a like period upon application to the director unless otherwise revoked for cause. Each application for a vintner's certificate of compliance or renewal of a certificate shall be accompanied by a fee of one hundred dollars payable to the department. Each holder of a vintner's certificate of compliance shall furnish the information required by the director in the form the director requires. A vintner or wine bottler whose plant is located in Iowa and who otherwise holds a class "A" wine permit to sell wine at wholesale is exempt from the fee, but not the other terms and conditions. The holder of a vintner's certificate of compliance may also hold a class "A" wine permit.

2. At the time of applying for a vintner's certificate of compliance, each applicant shall file with the department a list of all class "A" wine permittees with whom it intends to do business and shall designate the geographic area in which its products are to be distributed by the permittees. Vintner's certificate holders may appoint more than one class "A" wine permittee to service the same geographic territory. The listing of class "A" wine permittees and geographic areas as filed with the department may be amended from time to time by the holder of the certificate of compliance.

3. All class "A" wine permit holders shall sell only those brands of wine which are manufactured, bottled, fermented, shipped, or imported by a person holding a current vintner's certificate of compliance. An employee or agent working for or representing the holder of a vintner's certificate of compliance within this state shall register the employee's or agent's name and address with the department. These names and addresses shall be filed with the department's copy of the certificate of compliance issued except that this provision does not require the listing of those persons who are employed on the premises of a bottling plant, or winery where wine is manufactured, fermented, or bottled in Iowa or the listing of those persons who are thereafter engaged in the transporting of the wine.

4. It is unlawful for a holder of a vintner's certificate of compliance or the holder's agent, or any class "A" wine permittee or the permittee's agent, to discriminate between class "B" wine permittees authorized to sell wine at retail.

5. It is unlawful for a holder of a vintner's certificate of compliance or the vintner's agent who is engaged in the business of selling wine to class "A" wine permittees to discriminate between class "A" wine permittees authorized to sell wine at wholesale.

6. Regardless of any other penalties provided by this chapter, any holder of a certificate of compliance relating to wine, class "A" or retail wine permittee or retail

liquor licensee, who violates any of the provisions of this section is subject to a civil fine not to exceed one thousand dollars or subject to suspension of the certificate of compliance, license, or permit for a period not to exceed thirty days or to both civil fine and suspension.

85 Acts, ch 32, §71 SF 395
NEW section

123.181 Prohibited acts.

1. A holder of any class "B" wine permit shall not sell wine except wine which is purchased from a person holding a class "A" wine permit and on which the tax imposed by section 123.183 has been paid or wine purchased from a manufacturer of native wines.

2. A class "A" wine permittee shall not sell wine on credit to a retail liquor licensee or wine permittee for a period exceeding thirty days from date of delivery.

3. A holder of a vintner's certificate of compliance or class "A" wine permit shall not offer to any purchaser of wine at retail any rebate or coupon as an incentive to purchase wine.

85 Acts, ch 32, §72 SF 395
NEW section

123.182 Labels—point of origin—conclusive evidence.

All imported bulk wines to be bottled and distributed in the state shall have the point of origin stated on the label. The print size for the point of origin shall be at least half the print size of the brand name on the label.

The label on a bottle or other container in which wine is offered for sale in this state, which label represents the alcoholic content of the wine as being in excess of seventeen per cent by weight, is conclusive evidence of the alcoholic content of that wine.

85 Acts, ch 32, §73 SF 395
NEW section

123.183 Wine gallonage tax.

In addition to the annual permit fee to be paid by each class "A" wine permittee, there shall be levied and collected from each class "A" wine permittee on all wine manufactured for sale and sold in this state at wholesale and on all wine imported into this state for sale at wholesale and sold in this state at wholesale, a tax of one dollar and fifty cents for every wine gallon and a like rate for the fractional parts of a wine gallon. A tax shall not be levied or collected on wine sold by one class "A" wine permittee to another class "A" wine permittee. Revenue derived from the wine tax collected on wine manufactured for sale and sold in this state shall be deposited in the gallonage tax fund hereby created in the office of the treasurer of state. All other revenue derived from the wine tax shall be deposited in the liquor control fund established by section 123.53 and shall be transferred by the state comptroller to the general fund of the state. The price of wine sold or offered for sale in state liquor stores which was not purchased by the department from a class "A" wine permittee shall include a markup over the wholesale price at least equal to the tax levied under this section.

85 Acts, ch 32, §74 SF 395; 85 Acts, ch 198, §4,5 SF 583
NEW section
Section amended

123.184 Report of gallonage sales—penalty.

Each class "A" wine permit holder on or before the tenth day of each calendar month commencing on the tenth day of the calendar month following the month in which the person is issued a permit, shall make a report under oath to the department upon forms to be furnished by the department showing the exact number of gallons of wine and fractional parts of gallons, sold by that permit holder during the preceding calendar month. The report also shall state whatever reasonable addition-

al information the director requires. The permit holder at the time of filing this report shall pay to the department the amount of tax due at the rate fixed in section 123.183. A penalty of ten percent of the amount of the tax shall be assessed and collected if the report is not filed and the tax paid within the time required by this section.

85 Acts, ch 32, §75 SF 395
NEW section

123.185 Records required.

Each class "A" wine permittee shall keep books of account and records showing each sale of wine, which shall be at all times open to inspection by the director and agents of the department. Each class "B" wine permittee shall keep proper books of account and records showing each purchase of wine and the date and the amount of each purchase and the name of the person from whom each purchase was made, which shall be open to inspection by the director and agents of the department during normal business hours of the permittee.

85 Acts, ch 32, §76 SF 395
NEW section

123.186 Federal regulations adopted as rules.

The department shall adopt as rules the substance of the federal regulations 27 C.F.R. pt. 6, 27 C.F.R. pt. 8, 27 C.F.R. pt. 10, and 27 C.F.R. pt. 11 as they relate to transactions between wholesalers and retailers.

85 Acts, ch 32, §77 SF 395
NEW section

CHAPTER 127

SEIZURE AND FORFEITURE OF CONTRABAND AND CONVEYANCES

127.20 Sale of conveyance.

Prior to placing the conveyance for sale to the general public, the sheriff shall permit any owner or lien holder having a property interest of fifty percent or more in the conveyance the opportunity to purchase the property interest forfeited. If such an owner or lien holder does not exercise an option under this section or if no such owner or lien holder exists, the conveyance shall be sold at public auction with the proceeds first being applied to the owners and lien holders who have not had their property interest forfeited and then applied to the expenses of keeping the conveyance and court costs, and any remaining funds shall be conveyed by the clerk of the district court to the treasurer of state for deposit in the general fund of the state.

85 Acts, ch 195, §16 SF 329
Section amended

CHAPTER 135

STATE DEPARTMENT OF HEALTH

135.93 Scope of license—duration.

Licenses for hospice programs shall be issued only for the premises, person, hospital, or facility named in the application and are not transferable or assignable. A license, unless sooner suspended or revoked, shall expire two years after the date of issuance and shall be renewed biennially upon an application by the licensee. Application for renewal shall be made in writing to the department, accompanied by the fee required to cover the cost of administering the program, at least thirty days prior to the expiration of the license. The fee for a license renewal shall be

determined by the department. Licensed hospice programs which have allowed their licenses to lapse through failure to make timely application for renewal shall pay an additional fee of twenty-five percent of the biennial license fee.

85 Acts, ch 67, §17 SF 121

Department not to begin hospice licensure procedure until July 1, 1987; 85 Acts, ch 261, §2(2) HF 571
Section amended

CHAPTER 135B

LICENSURE AND REGULATION OF HOSPITALS

135B.7 Rules and enforcement.

The state department of health with the advice of the hospital licensing board, shall adopt and enforce rules and standards for the different types of hospitals to be licensed under this chapter, to further the purposes of the chapter. Rules or standards shall not be adopted or enforced which would have the effect of denying a license to a hospital or other institution required to be licensed, solely by reason of the school or system of practice employed or permitted to be employed by physicians in the hospital if the school or system of practice is recognized by the laws of this state.

The rules shall state that a hospital shall not deny clinical privileges to physicians and surgeons, podiatrists, osteopaths or osteopathic surgeons, or dentists licensed under chapter 148, 149, 150, 150A, or 153, solely by reason of the license held by the practitioner.

85 Acts, ch 169, §1 HF 308

NEW unnumbered paragraph 2

CHAPTER 135C

HEALTH CARE FACILITIES

135C.2 Purpose—rules—special classifications.

1. The purpose of this chapter is to promote and encourage adequate and safe care and housing for individuals who are aged or who, regardless of age, are infirm, convalescent, or mentally or physically dependent, by both public and private agencies by providing for the adoption and enforcement of rules and standards:

- a. For the housing, care and treatment of individuals in health care facilities, and
- b. For the location, construction, maintenance, renovation, and sanitary operation of such health care facilities which will promote safe and adequate care of individuals in such homes so as to further the health, welfare and safety of such individuals.

2. Rules and standards prescribed, promulgated and enforced under this chapter shall not be arbitrary, unreasonable or confiscatory and the department or agency prescribing, promulgating or enforcing such rules or standards shall have the burden of proof to establish that such rules or standards meet such requirements and are consistent with the economic problems and conditions involved in the care and housing of persons in health care facilities.

3. The department shall establish by administrative rule, within the intermediate care facility category, a special classification for facilities intended to serve mentally retarded individuals, and within the residential care facility category, a special classification for residential facilities intended to serve mentally ill individuals. The department may also establish by administrative rule other classifications within that category, or special classifications within the residential care facility or skilled nursing facility categories, for facilities intended to serve individuals who

have special health care problems or conditions in common. Rules establishing a special classification shall define the problem or condition to which the classification is relevant and establish requirements for an approved program of care commensurate with the problem or condition, and may grant special variances or considerations to facilities licensed within the classification so established.

85 Acts, ch 114, §1 SF 524

Advisory committee on standards of care for mentally ill; 85 Acts, ch 114, §2
Subsection 3 amended

135C.6 License required.

1. A person or governmental unit acting severally or jointly with any other person or governmental unit shall not establish or operate a health care facility in this state without a license for the facility. A community, supervised apartment living arrangement, as defined in section 225C.19, is not required to be licensed under this chapter, but is subject to approval under section 225C.19 in order to receive public funding.

2. A health care facility suitable for separation and operation with distinct parts may, where otherwise qualified in all respects, be issued multiple licenses authorizing various parts of such facilities to be operated as health care facilities of different license categories.

3. No change in a health care facility, its operation, program, or services, of a degree or character affecting continuing licensability shall be made without prior approval thereof by the department. The department may by rule specify the types of changes which shall not be made without its prior approval.

4. No department, agency, or officer of this state or of any of its political subdivisions shall pay or approve for payment from public funds any amount or amounts to a health care facility under any program of state aid in connection with services provided or to be provided an actual or prospective resident in a health care facility, unless the facility has a current license issued by the department and meets such other requirements as may be in effect pursuant to law.

5. No health care facility established and operated in compliance with law prior to January 1, 1976, shall be required to change its corporate or business name by reason of the definitions prescribed in section 135C.1, provided that no health care facility shall at any time represent or hold out to the public or to any individual that it is licensed as, or provides the services of, a health care facility of a type offering a higher grade of care than such health care facility is licensed to provide. Any health care facility which, by virtue of this section, operates under a name not accurately descriptive of the type of license which it holds shall clearly indicate in any printed advertisement, letterhead, or similar material, the type of license or licenses which it has in fact been issued. No health care facility established or renamed after January 1, 1976, shall use any name indicating that it holds a different type of license than it has been issued.

85 Acts, ch 141, §2 HF 631

Subsection 1 amended

135C.37 Complaints alleging violations—confidentiality.

A person may request an inspection of a health care facility by filing with the department, care review committee of the facility, or the long-term care resident's aide as defined in section 249B.32, subsection 3, a complaint of an alleged violation of applicable requirements of this chapter or the rules adopted pursuant to this chapter. A copy of a complaint filed with the care review committee or the long-term care resident's aide shall be forwarded to the department. The complaint shall state in a reasonably specific manner the basis of the complaint, and a statement of the nature of the complaint shall be delivered to the facility involved at the time of or prior to the inspection. The name of the person who files a complaint with the department, care review committee, or the long-term care resident's aide shall be kept confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than department employees involved in the investigation of the complaint.

85 Acts, ch 186, §2 HF 398

Section amended

CHAPTER 135D

MOBILE HOMES AND PARKS

135D.24 Collection of tax.

1. The semiannual tax is due and payable to the county treasurer semiannually on January 1 and July 1 in each year; and is delinquent April 1 and October 1 in each year, at which time a penalty of one percent shall be added each month until paid except that the limitation in section 445.20 applies. Both semiannual payments of taxes may be paid at one time if so desired. A mobile home put to use at any time after January 1 or July 1 is subject to the taxes prorated for the remaining unexpired months of the tax period. Taxes prorated on or after April 1 are due July 1 and must be paid at the same time and in the same manner as the September payment of property taxes. Taxes prorated on or after October 1 are due January 1 and must be paid at the same time and in the same manner as the March payment of property taxes. The semiannual tax periods for mobile home tax are January 1 through June 30 and July 1 through December 31. On May 1 of each year, the county treasurer shall send, by mail, a statement to each delinquent mobile home taxpayer to notify the taxpayer that the mobile home will be offered at the next annual tax sale for nonpayment of one or more semiannual tax payments.

2. Mobile home owners upon issuance of a certificate of title or upon transporting to a new site shall file the address, township, and school district, of the location where the mobile home is parked with the county treasurer's office. Failure to comply is punishable as set out in section 135D.18.

3. Each mobile home park licensee shall notify the county treasurer concerning any mobile home or manufactured home arriving in or departing from the park without a tax clearance statement. The records of the licensee shall be open to inspection by a duly authorized representative of any law enforcement agency. Any property owner, manager or tenant shall report to the county treasurer mobile homes parked upon any property owned, managed, or rented by that person.

4. The tax is a lien on the vehicle senior to any other lien upon it. The mobile home bearing a current registration issued by any other state and remaining within this state for an accumulated period not to exceed ninety days in any twelve-month period is not subject to Iowa tax. However, when one or more persons occupying a mobile home bearing a foreign registration are employed in this state, there is no exemption from the Iowa tax. This tax is in lieu of all other taxes general or local on a mobile home.

5. A modular home as defined by this chapter is not subject to or assessed the semiannual tax pursuant to this section, but shall be assessed and taxed as real estate pursuant to chapter 427.

6. Before a mobile home may be moved from its present site, a tax clearance statement in the name of the owner must be obtained from the county treasurer of the county where the present site is located certifying that taxes are not owing under this section for previous years and that the taxes have been paid for the current tax period. However, a tax clearance statement shall not be required for a mobile home in a manufacturer's or dealer's stock which is not used as a place for human habitation. If a dealer acquires a mobile home from a person other than a manufacturer, the person shall provide a tax clearance statement in the name of the owner of record to the dealer. The tax clearance statement shall be provided by the county treasurer and shall be made out in quadruplicate. Two copies are to be provided to the company or person transporting the mobile home with one copy to be carried in the vehicle transporting the mobile home. One copy is to be forwarded to the county treasurer of the county in which the mobile home is to be relocated and one copy is to be retained by the county treasurer issuing the tax clearance statement.

135D.26 Conversion to real property.

No mobile home shall be assessed for property tax nor be eligible for homestead tax credit or military service tax credit unless:

1. The mobile home owner intends to convert the mobile home to real estate and does so by:

- a. Attaching the mobile home to a permanent foundation.
- b. Modification of the vehicular frame for placement on a permanent foundation.
- c. If a security interest is noted on the certificate of title, tendering to the secured party a mortgage on the real estate upon which the mobile home is to be located in the unpaid amount of the secured debt, and with the same priority as or a higher priority than the secured party's security interest, or obtaining written consent of the secured party to the conversion.

2. After complying with subsection 1, the owner shall notify the assessor who shall inspect the new premises for compliance. If a security interest is noted on the certificate of title, the assessor shall require an affidavit, as defined in section 622.85, from the mobile home owner, declaring that the owner has complied with subsection 1, paragraph "c", and shall send notice of the proposed conversion to the secured party by regular mail not less than ten days before the conversion becomes effective. When the mobile home is properly converted, the assessor shall then collect the mobile home vehicle title and enter the property upon the tax rolls.

85 Acts, ch 98, §2 SF 452

Subsection 1, paragraph b struck and rewritten

135D.27 Conversion to mobile home.

1. A mobile home converted to real estate under section 135D.26 may be reconverted to a mobile home as provided in this section.

2. If the vehicular frame of the former mobile home can be modified to return it to the status of a mobile home, the owner may apply to the county treasurer as provided in section 321.20 for a certificate of title for the mobile home. If a mortgage exists on the real estate, a security interest in the mobile home shall be given to the secured party and noted on the certificate of title with the same priority or a higher priority than the secured party's mortgage interest. A reconversion shall not occur without the written consent of the mortgagee.

3. After complying with subsection 2 and receipt of the title, the owner shall notify the assessor of the reconversion. The assessor shall remove the assessed valuation of the mobile home from assessment rolls as of the succeeding January 1 when the mobile home becomes subject to taxation as provided under section 135D.24.

85 Acts, ch 98, §1 SF 452

NEW section

135D.29 Civil penalty.

The owner of a mobile home who moves the mobile home without having obtained a tax clearance statement as provided in section 135D.24 shall pay a civil penalty of one hundred dollars. The penalty money shall be credited to the general fund of the county.

85 Acts, ch 70, §2 SF 194

NEW section

CHAPTER 135F

RESPIRATORY CARE PRACTITIONERS

135F.1 Definitions.

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

1. "*Respiratory care practitioner*" or "*practitioner*" means a person who has qualified as a respiratory therapist or respiratory therapy technician. Neither term refers to a person currently working in the field of respiratory care who does not become certified under this chapter.

2. "*Respiratory care*" includes "respiratory therapy" or "inhalation therapy".

3. "*Respiratory therapist*" means a respiratory care practitioner who has successfully completed a respiratory therapy training program, passed the registry examination for respiratory therapists administered by the national board for respiratory care and passed a respiratory therapy certification examination approved by the state department of health. Two years of supervised clinical experience in an acceptable location for the practice of respiratory care, as described in section 135F.4, may be substituted for the completion of a respiratory therapy training program.

4. "*Respiratory therapy technician*" means a respiratory care practitioner who has successfully completed a respiratory therapy training program, passed the certification examination for respiratory therapy technicians administered by the national board for respiratory care and passed a respiratory therapy technicians' certification examination approved by the state department of health. Two years of supervised clinical experience in an acceptable location for the practice of respiratory care, as described in section 135F.4, may be substituted for the completion of a respiratory therapy training program.

5. "*Medical director*" means a licensed physician or surgeon who is a member of a hospital's or health care facility's active medical staff and who should be certified or eligible for certification by the American board of internal medicine or the American board of anesthesiology.

6. "*Respiratory therapy training program*" means a program accredited by the American medical association's committee on allied health education and accreditation in cooperation with the joint review committee for respiratory therapy education and approved by the committee.

7. "*Department*" means the state department of health.

85 Acts, ch 151, §1 SF 433
NEW section

135F.2 Respiratory care as a practice defined.

"*Respiratory care as a practice*" means a health care profession, under medical direction, employed in the therapy, management, rehabilitation, diagnostic evaluation, and care of patients with deficiencies and abnormalities which affect the pulmonary system and associated aspects of cardiopulmonary and other systems' functions, and includes all of the following:

1. Direct and indirect pulmonary care services that are safe and of comfort, aseptic, preventative, and restorative to the patient.

2. Direct and indirect respiratory care services, including but not limited to, the administration of pharmacological and diagnostic and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, pulmonary rehabilitative, or diagnostic regimen prescribed by a licensed physician or surgeon.

3. Observation and monitoring of signs and symptoms, general behavior, reactions, general physical response to respiratory care treatment and diagnostic testing.

4. Determination of whether the signs, symptoms, behavior, reactions, or general response exhibit abnormal characteristics.

5. Implementation based on observed abnormalities, of appropriate reporting, referral, or respiratory care protocols or changes in treatment regimen.

"*Respiratory care protocols*" as used in this section means policies and procedures developed by an organized health care system through consultation, when appropriate, with administrators, licensed physicians and surgeons, certified registered nurses, licensed physical therapists, licensed respiratory care practitioners, and other licensed health care practitioners.

85 Acts, ch 151, §2 SF 433
NEW section

135F.3 Performance of respiratory care.

The performance of respiratory care shall be in accordance with the prescription of a licensed physician or surgeon and includes, but is not limited to, the diagnostic and therapeutic use of the following:

1. Administration of medical gases, aerosols, and humidification, not including general anesthesia.
2. Environmental control mechanisms and paramedical therapy.
3. Pharmacologic agents relating to respiratory care procedures.
4. Mechanical or physiological ventilatory support.
5. Bronchopulmonary hygiene.
6. Cardiopulmonary resuscitation.
7. Maintenance of the natural airways.
8. Insertion without cutting tissues and maintenance of artificial airways.
9. Specific diagnostic and testing techniques employed in the medical management of patients to assist in diagnosis, monitoring, treatment, and research of pulmonary abnormalities, including measurement of ventilatory volumes, pressures, and flows, collection of specimens of blood, and collection of specimens from the respiratory tract.
10. Analysis of blood gases and respiratory secretions.
11. Pulmonary function testing.
12. Hemodynamic and physiologic measurement and monitoring of cardiac function as it relates to cardiopulmonary pathophysiology.
13. Invasive procedures that relate to respiratory care.

A respiratory care practitioner may transcribe and implement a written or verbal order from a licensed physician or surgeon pertaining to the practice of respiratory care.

This chapter does not authorize a respiratory care practitioner to practice medicine, surgery, or other medical practices except as provided in this section.

85 Acts, ch 151, §3 SF 433
NEW section

135F.4 Location of respiratory care.

The practice of respiratory care may be performed in a hospital as defined in section 135B.1, subsection 1, and other settings where respiratory care is to be provided in accordance with a prescription of a licensed physician or surgeon. Respiratory care may be provided during transportation of a patient and under circumstances where an emergency necessitates respiratory care.

85 Acts, ch 151, §4 SF 433
NEW section

135F.5 Respiratory care students.

Respiratory care services may be rendered by a student enrolled in a respiratory therapy training program when these services are incidental to the student's course of study.

A student enrolled in a respiratory therapy training program who is employed in an organized health care system may render services defined in sections 135F.2 and 135F.3 under the direct and immediate supervision of a respiratory care practitioner

for a limited period of time as determined by rule. The student shall be identified as a "student respiratory care practitioner".

A graduate of an approved respiratory care training program employed in an organized health care system may render services as defined in sections 135F.2 and 135F.3 under the direct and immediate supervision of a respiratory care practitioner for one year. The graduate shall be identified as a "respiratory care practitioner-certification applicant".

85 Acts, ch 151, §5 SF 433
NEW section

135F.6 Department duties.

The department shall administer and implement this chapter. The department's duties in these areas shall include, but are not limited to the following:

1. The adoption, publication and amendment of rules, in accordance with chapter 17A, necessary for the administration and enforcement of this chapter.
2. The establishment and collection of fees for the registration of respiratory care practitioners. The fees charged shall be sufficient to defray the costs of administration of this chapter and all fees collected shall be deposited with the treasurer of state who shall deposit them in the general fund of the state.
3. The designation of certification examinations for respiratory care practitioners.

85 Acts, ch 157, §6 SF 433
NEW section

135F.7 Representation.

A person who is qualified as a respiratory care practitioner and is registered with the department may use the title "respiratory care practitioner" or the letters R.C.P. after the person's name to indicate that the person is a qualified respiratory care practitioner registered with the department. No other person is entitled to use the title or letters or any other title or letters that indicate or imply that the person is a respiratory care practitioner, nor may a person make any representation, orally or in writing, expressly or by implication, that the person is a registered respiratory care practitioner. A person working in the field of respiratory care on July 1, 1985 shall be permitted to continue to do so except that the person shall not be entitled to designate or refer to themselves as a "respiratory care practitioner" or use the letters R.C.P. after the person's name.

85 Acts, ch 151, §7 SF 433
NEW section

135F.8 Penalty.

A person who violates a provision of this chapter is guilty of a simple misdemeanor.

85 Acts, ch 151, §8 SF 433
NEW section

135F.9 Injunction.

The department may apply to a court for the issuance of an injunction or other appropriate restraining order against a person who is engaging in a violation of this chapter.

85 Acts, ch 151, §9 SF 433
NEW section

135F.10 Liability.

A respiratory care practitioner who in good faith renders emergency care at the scene of an emergency is not liable for civil damages as a result of acts or omissions by the person rendering the emergency care. This section does not grant immunity from liability for civil damages when the respiratory care practitioner is grossly negligent.

85 Acts, ch 151, §10 SF 433
NEW section

135F.11 Continuing education.

After July 1, 1988, a practitioner shall submit evidence satisfactory to the department that during the year of certification the practitioner has completed continuing education courses as prescribed by the department. In lieu of the continuing education, a person may successfully complete the most current version of the certification examination.

85 Acts, ch 151, §11 SF 433
NEW section

135F.12 Suspension and revocation of certificates.

The department may suspend, revoke or impose probationary conditions upon a certificate issued pursuant to rules adopted in accordance with section 135F.6.

85 Acts, ch 151, §12 SF 433
NEW section

135F.13 Advisory committee.

A respiratory care advisory committee is established to provide advice to the department regarding approval of continuing education programs and drafting of rules pursuant to section 135F.6.

The members of the advisory committee shall include two licensed physicians with recognized training and experience in respiratory care, two respiratory care practitioners, and one public member. Not more than a simple majority of the advisory committee shall be of one gender. Members shall be appointed by the governor, subject to confirmation by the senate, and shall serve three-year terms beginning and ending in accordance with section 69.19. Members shall also be compensated for their actual and necessary expenses incurred in the performance of their duties. All per diem and expense moneys paid to the members shall be paid from funds appropriated to the department.

85 Acts, ch 151, §13 SF 433
Initial appointments; 85 Acts, ch 151, §14
NEW section

CHAPTER 136B**RADIOACTIVE MATERIAL—INTERAGENCY COUNCIL****136B.2 Council created.**

The interagency co-ordinating council on radiation safety is created. The following state agencies are members of the council and shall be represented by the chief executive officer or a designee unless otherwise provided:

1. Department of water, air and waste management.
2. State department of health.
3. State department of transportation.
4. Department of agriculture.
5. Department of public defense.
6. Department of public safety.
7. State conservation commission.
8. Bureau of labor.
9. State board of regents.
10. Office for planning and programming.

Each member of the council is entitled to one vote. The Iowa representative to the midwest interstate low-level radioactive waste compact is an ex officio, nonvoting member of the council.

85 Acts, ch 12, §1 SF 241
Section amended

CHAPTER 136C

RADIATION MACHINES AND RADIOACTIVE MATERIALS

136C.14 Qualified operators—display of credentials.

1. A person, other than a licensed professional, shall not operate a radiation machine or use radioactive materials for medical treatment or diagnostic purposes unless that person has completed a course of instruction approved by the department or has otherwise met the minimum training requirement established by the department.

2. A person, other than a licensed professional, who operates a radiation machine or uses radioactive materials for medical treatment or diagnostic purposes shall display the credentials which indicate that person's qualification to operate the machine or use the materials in the immediate vicinity of the machine or where the materials are stored. A person who owns or controls the machine or materials is also responsible for the proper display of credentials of those who operate the machine or use the materials and shall not employ a person to operate the machine or use the materials for medical treatment or diagnostic purposes except as provided in this section.

85 Acts, ch 195, §17 SF 329
Section amended

CHAPTER 139

CONTAGIOUS AND INFECTIOUS DISEASES

139.9 Immunization of children.

1. Every parent or legal guardian shall assure that the person's minor children residing in the state have been adequately immunized against diphtheria, pertussis, tetanus, poliomyelitis, rubeola, and rubella according to recommendations provided by the state department of health subject to the provisions of subsections 3 and 4.

2. No person shall be enrolled in any licensed child care center, elementary or secondary school in Iowa without evidence of adequate immunization against diphtheria, pertussis, tetanus, poliomyelitis, rubeola, and rubella, except as provided in subsections 3 and 4.

3. Subject to the provision of subsection 4 the state board of health may modify or delete any of the immunizations in subsection 1.

4. Immunization is not required for a person's enrollment in any elementary or secondary school or licensed child care center if that person submits to the admitting official either of the following:

a. A statement signed by a doctor, who is licensed by the state board of medical examiners, in which it is stated that, in the doctor's opinion, the immunizations required would be injurious to the health and well-being of the applicant or any member of the applicant's family or household; or

b. An affidavit signed by the applicant or, if a minor, by a legally authorized representative, stating that the immunization conflicts with the tenets and practice of a recognized religious denomination of which the applicant is an adherent or member; however, this exemption does not apply in times of emergency or epidemic as determined by the state board of health and as declared by the commissioner of health.

5. A person may be provisionally enrolled in an elementary or secondary school or licensed child care center if the person has begun the required immunizations and if the person continues to receive the necessary immunizations as rapidly as is medically feasible. The state department of health shall promulgate rules relating

to the provisional admission of persons to an elementary or secondary school or licensed child care center.

6. The local board of health shall furnish the state department of health sixty days after the first official day of school evidence that each person enrolled in any elementary or secondary school has been immunized as required in this section subject to subsection 4. The state department of health shall promulgate rules pursuant to chapter 17A relating to the reporting of evidence of immunization.

7. The local boards of health shall provide the required immunizations to children in areas where no local provision exists to provide these services.

8. The state department of health in consultation with the commissioner of public instruction shall promulgate rules for the implementation of this section and shall provide those rules to local school boards and local boards of health.

85 Acts, ch 212, §21 HF 686
Subsection 8 amended

139.33 Blood donation or sale—penalty.

A person suffering from a communicable disease dangerous to the public health who knowingly gives false information regarding the person's infected state on a blood plasma sale application to blood plasma taking personnel commits a serious misdemeanor.

85 Acts, ch 193, §1 SF 374
NEW section

CHAPTER 144

VITAL STATISTICS

144.13A Registration fee.

The local registrar and state registrar shall charge the parent a ten dollar fee for the registration of a certificate of birth. If the person responsible for the filing of the certificate of birth under section 144.13 is not the parent, the person shall collect the fee from the parent. The fee shall be remitted to the appropriate registrar. If the expenses of the birth are reimbursed under the medical assistance program established by chapter 249A or paid for under the statewide indigent patient care program established by chapter 255, or if the parent is indigent and unable to pay the expenses of the birth and no other means of payment is available to the parent, the registration fee is waived. If the person responsible for the filing of the certificate is not the parent, the person is discharged from the duty to collect and remit the fee under this section if the person has made a good faith effort to collect the fee from the parent. The fees collected by the local registrar and state registrar shall be remitted to the treasurer of state for deposit in the general fund of the state. It is the intent of the general assembly that the funds generated from the registration fees be appropriated and used for primary and secondary child abuse prevention programs.

85 Acts, ch 173, §1 HF 451
See Code editor's note
NEW section

144.36 Marriage certificate filed—prohibited information.

1. A certificate recording each marriage performed in this state shall be filed with the state registrar. The clerk of the district court shall prepare the certificate on the form furnished by the state registrar upon the basis of information obtained from the parties to be married, who shall attest to the information by their signatures. The clerk of the district court in each county shall keep a record book for marriages. The form of marriage record books shall be uniform throughout the state. A properly indexed permanent record of marriage certificates upon microfilm, electronic computer, or data processing equipment may be kept in lieu of marriage record books.

2. Every person who performs a marriage shall certify the fact of marriage and return the certificate to the clerk of the district court within fifteen days after the ceremony. The certificate shall be signed by the witnesses to the ceremony and the person performing the ceremony.

3. The certificate of marriage shall not contain information concerning the race of the married persons, previous marriages of the married persons, or the educational level of the married persons.

4. The clerk of the district court shall record and forward to the state registrar on or before the tenth day of each calendar month the original certificates of marriages filed with the clerk during the preceding calendar month.

85 Acts, ch 195, §18 SF 329

Counties to provide marriage record books until July 1, 1986; see chapter 602, article 11, and Temporary Court Transition Rule 6.15

Subsection 1 amended

144.37 Dissolution and annulment records.

For each dissolution or annulment of marriage granted by any court in this state, a record shall be prepared by the clerk of court or by the petitioner or the petitioner's legal representative if directed by the clerk and filed by the clerk of court with the state registrar. The information necessary to prepare the report shall be furnished with the petition, to the clerk of court by the petitioner or the petitioner's legal representative, on forms supplied by the state registrar.

The clerk of the district court in each county shall keep a record book for dissolutions. The form of dissolution record books shall be uniform throughout the state. A properly indexed record of dissolutions upon microfilm, electronic computer, or data processing equipment may be kept in lieu of dissolution record books.

On or before the tenth day of each calendar month, the clerk of court shall forward to the state registrar the record of each dissolution and annulment granted during the preceding calendar month and related reports required by regulations issued under this chapter.

85 Acts, ch 195, §19 SF 329

Counties to provide dissolution record books until July 1, 1986; see chapter 602, article 11, and Temporary Court Transition Rule 6.15

Unnumbered paragraph 2 amended

CHAPTER 144A

LIFE-SUSTAINING PROCEDURES ACT

Policy statement; see 85 Acts, ch 3, §1 SF 25

144A.1 Short title.

This chapter may be cited as the "Life-sustaining Procedures Act."

85 Acts, ch 3, §2 SF 25

NEW section

144A.2 Definitions.

Except as otherwise provided, as used in this chapter:

1. "Adult" means an individual eighteen years of age or older.
2. "Attending physician" means the physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.
3. "Declaration" means a document executed in accordance with the requirements of section 144A.3.
4. "Health care provider" means a health care facility licensed pursuant to chapter 135C, a hospice program licensed pursuant to chapter 135, or a hospital licensed pursuant to chapter 135B.
5. "Life-sustaining procedure" means any medical procedure, treatment or intervention which meets both of the following requirements:

a. Utilizes mechanical or artificial means to sustain, restore, or supplant a spontaneous vital function.

b. When applied to a patient in a terminal condition, would serve only to prolong the dying process.

“Life-sustaining procedure” does not include the provision of sustenance or the administration of medication or performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain.

6. “Physician” means a person licensed to practice medicine and surgery, osteopathy or osteopathic medicine and surgery in this state.

7. “Qualified patient” means a patient who has executed a declaration in accordance with this chapter and who has been determined by the attending physician to be in a terminal condition.

8. “Terminal condition” means an incurable or irreversible condition that, without the administration of life-sustaining procedures, will, in the opinion of the attending physician, result in death within a relatively short time.

85 Acts, ch 3, §3 SF 25
NEW section

144A.3 Declaration relating to use of life-sustaining procedures.

1. Any competent adult may execute a declaration at any time directing that life-sustaining procedures be withheld or withdrawn. The declaration may be given operative effect only if the declarant’s condition is determined to be terminal and the declarant is not able to make treatment decisions. The declaration must be signed by the declarant or another at the declarant’s direction in the presence of two persons who shall sign the declaration as witnesses. An attending physician or health care provider may presume, in the absence of actual notice to the contrary, that the declaration complies with this chapter and is valid.

2. It is the responsibility of the declarant to provide the declarant’s attending physician with the declaration.

3. A declaration executed pursuant to this chapter may, but need not, be in the following form:

DECLARATION

If I should have an incurable or irreversible condition that will cause my death within a relatively short time, it is my desire that my life not be prolonged by administration of life-sustaining procedures. If my condition is terminal and I am unable to participate in decisions regarding my medical treatment, I direct my attending physician to withhold or withdraw procedures that merely prolong the dying process and are not necessary to my comfort or freedom from pain.

Signed this day of

Signature

City, County and State of Residence

The declarant is known to me and voluntarily signed this document in my presence.

Witness

Address

Witness

Address

144A.4 Revocation of declaration.

1. A declaration may be revoked at any time and in any manner by which the declarant is able to communicate the declarant's intent to revoke, without regard to mental or physical condition. A revocation is only effective as to the attending physician upon communication to such physician by the declarant or by another to whom the revocation was communicated.

2. The attending physician shall make the revocation a part of the declarant's medical record.

85 Acts, ch 3, §5 SF 25
NEW section

144A.5 Determination of terminal condition.

When an attending physician who has been provided with a declaration determines that the declarant is in a terminal condition, this decision must be confirmed by another physician. The attending physician must record that determination in the declarant's medical record.

85 Acts, ch 3, §6 SF 25
NEW section

144A.6 Treatment of qualified patients.

1. A qualified patient has the right to make decisions regarding use of life-sustaining procedures as long as the qualified patient is able to do so. If a qualified patient is not able to make such decisions, the declaration shall govern decisions regarding use of life-sustaining procedures.

2. The declaration of a qualified patient known to the attending physician to be pregnant shall not be in effect as long as the fetus could develop to the point of live birth with continued application of life-sustaining procedures. However, the provisions of this subsection do not impair any existing rights or responsibilities that any person may have in regard to the withholding or withdrawal of life-sustaining procedures.

85 Acts, ch 3, §7 SF 25
NEW section

144A.7 Procedure in absence of declaration.

1. Life-sustaining procedures may be withheld or withdrawn from a patient who is in a terminal condition and who is comatose, incompetent, or otherwise physically or mentally incapable of communication and has not made a declaration in accordance with this chapter if there is consultation and written agreement for the withholding or the withdrawal of life-sustaining procedures between the attending physician and any of the following individuals, who shall be guided by the express or implied intentions of the patient, in the following order of priority if no individual in a prior class is reasonably available, willing, and competent to act:

a. The attorney in fact designated to make treatment decisions for the patient should such person be diagnosed as suffering from a terminal condition, if the designation is in writing and complies with section 633.705.

b. The guardian of the person of the patient if one has been appointed. This paragraph does not require the appointment of a guardian in order for a treatment decision to be made under this section.

c. The patient's spouse.

d. An adult child of the patient or, if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation.

e. A parent of the patient, or parents if both are reasonably available.

f. An adult sibling.

2. When a decision is made pursuant to this section to withhold or withdraw life-sustaining procedures, there shall be a witness present at the time of the consultation when that decision is made.

3. Subsections 1 and 2 shall not be in effect for a patient who is known to the

attending physician to be pregnant with a fetus that could develop to the point of live birth with continued application of life-sustaining procedures. However, the provisions of this subsection do not impair any existing rights or responsibilities that any person may have in regard to the withholding or withdrawal of life-sustaining procedures.

85 Acts, ch 3, §8 SF 25
NEW section

144A.8 Transfer of patients.

1. An attending physician who is unwilling to comply with the requirements of section 144A.5 or who is unwilling to comply with the declaration of a qualified patient in accordance with section 144A.6 or who is unwilling to comply with the provisions of section 144A.7 shall take all reasonable steps to effect the transfer of the patient to another physician.

2. If the policies of a health care provider preclude compliance with the declaration of a qualified patient under this chapter or preclude compliance with the provisions of section 144A.7, the provider shall take all reasonable steps to effect the transfer of the patient to a facility in which the provisions of this chapter can be carried out.

85 Acts, ch 3, §9 SF 25
NEW section

144A.9 Immunities.

1. In the absence of actual notice of the revocation of a declaration, the following, while acting in accordance with the requirements of this chapter, are not subject to civil or criminal liability or guilty of unprofessional conduct:

a. A physician who causes the withholding or withdrawal of life-sustaining procedures from a qualified patient.

b. The health care provider in which such withholding or withdrawal occurs.

c. A person who participates in the withholding or withdrawal of life-sustaining procedures under the direction of or with the authorization of a physician.

2. A physician is not subject to civil or criminal liability for actions under this chapter which are in accord with reasonable medical standards.

3. Any person, institution or facility against whom criminal or civil liability is asserted because of conduct in compliance with this chapter may interpose this chapter as an absolute defense.

85 Acts, ch 3, §10 SF 25
NEW section

144A.10 Penalties.

1. Any person who willfully conceals, withholds, cancels, destroys, alters, defaces, or obliterates the declaration of another without the declarant's consent or who falsifies or forges a revocation of the declaration of another is guilty of a serious misdemeanor.

2. Any person who falsifies or forges the declaration of another, or willfully conceals or withholds personal knowledge of or delivery of a revocation as provided in section 144A.4, with the intent to cause a withholding or withdrawal of life-sustaining procedures, is guilty of a serious misdemeanor.

85 Acts, ch 3, §11 SF 25
NEW section

144A.11 General provisions.

1. Death resulting from the withholding or withdrawal of life-sustaining procedures pursuant to a declaration and in accordance with this chapter does not, for any purpose, constitute a suicide or homicide.

2. The making of a declaration pursuant to section 144A.3 does not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall

it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance is legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures pursuant to this chapter, notwithstanding any term of the policy to the contrary.

3. A physician, health care provider, health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital plan shall not require any person to execute a declaration as a condition for being insured for, or receiving, health care services.

4. This chapter creates no presumption concerning the intention of an individual who has not executed a declaration with respect to the use, withholding, or withdrawal of life-sustaining procedures in the event of a terminal condition.

5. This chapter shall not be interpreted to increase or decrease the right of a patient to make decisions regarding use of life-sustaining procedures as long as the patient is able to do so, nor to impair or supersede any right or responsibility that any person has to effect the withholding or withdrawal of medical care in any lawful manner. In that respect, the provisions of this chapter are cumulative.

6. This chapter shall not be construed to condone, authorize or approve mercy killing or euthanasia, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

85 Acts, ch 3, §12 SF 25
NEW section

CHAPTER 145

HEALTH DATA COMMISSION

Commission terminates July 1, 1989; see §145.6

145.3 Powers and duties.

1. The health data commission shall enter into an agreement with the health policy corporation of Iowa or any other corporation, association, or entity it deems appropriate to provide staff for the commission, to provide staff for the compilation, correlation, and development of the data collected by the commission, to conduct or contract for studies on health-related questions which will further the purpose and intent expressed in section 145.1. The agreement may provide for the corporation, association, or entity to prepare and distribute or make available data to health care providers, health care subscribers, third-party payers, and the general public.

2. a. The commission may require that the state departments of health, insurance, and human services obtain for and make available to the commission data needed to carry out its purpose including but not limited to the data specified in this section. This data may be acquired from health care providers, third-party payers, the state medicaid program, and other appropriate sources.

b. The data collected by and furnished to the commission pursuant to this section shall not be public records under chapter 22. The compilations prepared for release or dissemination from the data collected shall be public records under chapter 22, which are not subject to section 22.7, subsection 2, to the extent provided in section 145.4. The confidentiality of patients is to be protected and the laws of this state in regard to patient confidentiality apply, except to the extent provided in section 145.4.

3. The commission shall require that:

a. The commissioner of insurance and the commissioner of health encourage and assist third-party payers and hospitals to voluntarily implement the use of a uniform hospital billing form, and require that all third-party payers and all hospitals use, by July 1, 1984, the uniform hospital billing form designated or established by the commission. Uniform definitions for the billing form shall be established by the commission.

b. The commissioner of insurance require that all third-party payers, including but not limited to licensed insurers, medical and hospital service corporations, health maintenance organizations, and self-funded employee health plans, provide hospital inpatient and outpatient claims data and corresponding physician claims data to the commission pursuant to section 505.8. This data shall include the patient's age, sex, zip code, third-party coverage, date of admission, procedure and discharge date, principal and other diagnoses, principal and other procedures, total charges and components of those charges, attending physician identification number and hospital identification number. Prior to July 1, 1984, the commissioner of insurance may limit the data collection to major third-party payers and a sample of those third-party payers with low market penetration; to more frequent diagnoses and procedures; and to hospital inpatient claims.

c. The corporation, association, or other entity providing research for the commission shall compile and disseminate comparative information on average charges, total and ancillary charge components, and length of stay on diagnosis-specific and procedure-specific cases on a hospital basis from the data defined in paragraph "b". The data as collected by the commission shall not be public records under chapter 22. The compilations prepared for release or dissemination from the data collected shall be public records under chapter 22, which are not subject to section 22.7, subsection 2, to the extent provided in section 145.4. Prior to the release or dissemination of the compilations, the commission or the corporation, association, or other entity under agreement with the commission pursuant to section 145.3, subsection 1, shall permit providers an opportunity to verify the accuracy of any information pertaining to the provider. The providers may submit to the commission any corrections of errors in the compilations of the data with any supporting evidence and comments the provider may submit. The commission shall correct data found to be in error.

d. If the data required by the commission or the members of the commission is available on computer or electronic tape, that a copy of this tape shall be provided when requested.

e. The commissioner of health and the commissioner of insurance establish a system which creates the use of a common identification number between the uniform hospital billing form and the hospital discharge abstract.

f. The commissioner of health establish a system of uniform physician identification numbers for use on the hospital discharge abstract forms.

g. The commissioner of human services make available to the commission data and information on the medicaid program similar to that required of other third-party payers.

h. The commissioner of insurance and the commissioner of public health require the collection of physicians billing information from third-party payers as specified by the health data commission by July 1, 1986.

i. The commissioner of insurance and the commissioner of public health encourage health care providers, as defined in section 514.1, except licensed physicians and chiropractors, and third-party payers to use a common reporting form.

4. The commission may require that:

a. The commissioner of health require that the uniform discharge abstract form designated or established by the commission be used by all hospitals by July 1, 1984.

b. The commissioner of insurance require corporations regulated by the commissioner who provide health care insurance or service plans to provide health care policyholder or subscriber data by geographic area or other demographics.

c. The commissioner of health require hospitals to submit annually to the commissioner and to post notification in a public area that there is available for public examination in each facility the established charges for services, where applicable including but not limited to, routine daily room service, special care daily room service, delivery room service, operating room service, emergency room service

and anesthesiology services, and as enumerated by the commission, for each of the twenty-five most common laboratory services, radiology services, and pharmacy prescriptions. In addition to the posting of the notification, the hospital shall post in each facility next to the notification, the established charges for routine daily room service, special care daily room service, delivery room service, operating room service, and emergency room service.

d. Additional or alternative information related to the intent and purpose of this chapter as outlined in section 145.1 be submitted to the commission.

e. The health policy corporation of Iowa or any other corporation, association, or entity or state agency deemed appropriate begin exploring the feasibility of collecting data for long-term health care and home health care relating to cost and utilization information.

85 Acts, ch 11, §1, 2 SF 113
Subsection 3, NEW paragraphs h and i
Subsection 4, NEW paragraph e

145.6 Reports and termination of commission.

The commission shall submit an annual report on the actions taken by the commission to the legislature not later than January 15 of each year. The commission shall be terminated July 1, 1989. If the legislature does not extend the date for termination, a final report shall be submitted to the legislature by July 1, 1989.

85 Acts, ch 11, §3 SF 113
Section amended

CHAPTER 145A

AREA HOSPITALS

145A.2 Definitions.

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

1. "Political subdivision" means any county, township, school district or city.
2. "Officials" means the respective governing bodies of political subdivisions.
3. "Merged area" means a public corporation formed by the residents of two or more contiguous or noncontiguous political subdivisions which have merged resources to establish and operate an area hospital.
4. "Area hospital" means a hospital established and operated by a merged area.
5. "Board" means the board of trustees of an area hospital.

85 Acts, ch 123, §1, 2 HF 746
Unnumbered paragraph 1 amended
Subsection 3 amended

145A.3 Official planning—maximum levy.

The officials of a political subdivision may plan the formation of a public corporation as a merged area to establish and operate an area hospital. In planning for an area hospital, a county board of supervisors may exclude from the merged area any township of the county which the board of supervisors determines would not sufficiently benefit by the merger and the portion of the county not so excluded shall constitute one public corporation for the purposes of this chapter. Plans for an area hospital shall include the maximum amount to be levied for debt service and operation and maintenance of the area hospital in the portion of the merged area within each political subdivision taking part in the merger. However, the maximum tax rates for the various political subdivisions may vary as the officials determine, based upon the need for hospital service of the residents of each political subdivision, the proximity of the residents to the proposed location of the hospital, the property values within the subdivision, and the expected service benefits to the residents of each subdivision by the proposed area hospital.

85 Acts, ch 123, §3 HF 746
Section amended

145A.5 Order of approval.

When a plan is approved, the officials approving the plan shall jointly issue an order of approval. The order shall specify the area to be merged, the maximum rate of tax to be levied for debt service and operation and maintenance of the proposed area hospital in the portion of the merged area within each political subdivision, the proposed location of the hospital building, the estimated cost of the establishment of the hospital, and any other details concerning the establishment and operation of the hospital the officials deem pertinent. The order shall be published in one or more newspapers which have general circulation within the merged area once each week for three consecutive weeks, but the newspapers selected need not be published in the merged area. The published order shall contain a notice to the residents of each subdivision of the proposed merged area that if the residents fail to protest as provided in this chapter, the order shall be deemed approved upon the expiration of a sixty-day period following the date of the last published notice.

85 Acts, ch 123, §4 HF 746
Section amended

145A.12 Operation and management.

The board shall govern the operation and management of the area hospital and may do all things necessary to establish and operate the hospital. The board has all the general powers, duties, and responsibilities of the trustees of county public hospitals as set out in sections 347.13 and 347.14 and may enter into contracts for the operation and management of area hospital facilities.

85 Acts, ch 123, §5 HF 746
Section amended

145A.13 Political status.

A merged area as a public corporation formed under this chapter may exercise the powers granted under this chapter, and may sue and be sued, purchase and sell property, incur indebtedness in accordance with constitutional limitations, and exercise all the powers granted by law and other powers incident to public corporations of like character and not inconsistent with the laws of this state.

85 Acts, ch 123, §6 HF 746
Section amended

145A.14 Budget for operation.

The board shall prepare an annual budget designating the proposed expenditures for operation of the area hospital and payment of bonded indebtedness, and the amount to be raised by taxation, following the requirements of chapter 24. The board shall prorate the amount to be raised for operations by local taxation among the respective political subdivisions forming a part of the merged area in the proportion that the product of the value of taxable property and the maximum tax levy rate in each political subdivision bears to the total product of the value of taxable property and the maximum tax levy rate in the entire merged area, as set out in the published order of merger. The board of hospital trustees shall certify the amount so determined to the respective levying officials of the affected counties, and the officials shall levy a tax sufficient to raise the annual budget. Taxes collected pursuant to the levy shall be paid by the respective county treasurers to the treasurer of the area hospital in the same manner that school taxes are paid to local school districts.

85 Acts, ch 123, §7 HF 746
Section amended

145A.17 Indebtedness and bonds.

Boards of hospital trustees may by resolution acquire sites and buildings by purchase, lease, construction, or otherwise, for use by area hospitals and may by resolution contract indebtedness on behalf of the merged area and issue bonds

bearing interest at a rate not exceeding the rate of interest permitted by chapter 74A, to raise funds in accordance with chapter 75 for the purpose of acquiring the sites and buildings.

85 Acts, ch 123, §8 HF 746
Section amended

145A.18 Taxes.

Taxes for the payment of bonds issued under section 145A.17 shall be levied in accordance with chapter 76 and in the same proportion as provided in section 145A.14. Any indebtedness incurred shall not be considered an indebtedness incurred for general and ordinary purposes.

85 Acts, ch 123, §9 HF 746
Section amended

145A.20 Revenue bonds.

In addition to any other provisions of this chapter and for the purpose of acquiring, constructing, equipping, enlarging, or improving a hospital building or any part of a hospital building, merged areas may issue revenue bonds and the board has all the powers and duties of a county board of supervisors as provided in chapter 331, division IV, part 4 and section 347A.3.

85 Acts, ch 123, §10 HF 746
Section amended

145A.21 Amendment of plan of merger—procedures—qualifications.

A plan of merger once approved may be amended. An amendment shall be formulated and approved in the same manner and subject to the same limitations as provided in sections 145A.3 through 145A.9 for the formulation and approval of an original plan of merger. However, an amendment to a plan of merger shall not in any way impair the obligation of or source of payment for bonds or other indebtedness duly contracted prior to the effective date of the amendment to the plan of merger.

85 Acts, ch 123, §11 HF 746
NEW section

145A.22 Actions subject to contest of elections—filing actions—limitation.

A special election called to approve or reject an original plan of merger or an amendment to an approved plan of merger is subject to the provisions for contest of elections for public measures set forth in chapter 57. Except as provided with respect to election contests, after one hundred twenty days following the third and final publication of the order of approval of the plan or amendment to the plan of merger, an action shall not be filed to contest the regularity of the proceedings with respect to a plan of merger or amendment to a plan of merger. After one hundred twenty days the organization of the merged area is conclusively presumed to have been lawful.

85 Acts, ch 123, §12 HF 746
NEW section

CHAPTER 147

GENERAL PROVISIONS REGULATING PRACTICE PROFESSIONS

147.1 Definitions.

For the purpose of this and the following chapters of this title:

1. "Examining board" shall mean one of the boards appointed by the governor to give examinations to applicants for licenses.

2. "Licensed" or "certified" when applied to a physician and surgeon, podiatrist, osteopath, osteopathic physician and surgeon, psychologist or associate psychologist, chiropractor, nurse, dentist, dental hygienist, optometrist, speech pathologist, audiologist, pharmacist, physical therapist, occupational therapist, practitioner of cosmetology, practitioner of barbering, funeral director, dietitian, or social worker means a person licensed under this title.

3. "Profession" means medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, psychology, chiropractic, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, pharmacy, physical therapy, occupational therapy, cosmetology, barbering, mortuary science, social work or dietetics.

4. "Department" shall mean the state department of health.

5. "Peer review" means evaluation of professional services rendered by a person licensed to practice a profession.

6. "Peer review committee" means one or more persons acting in a peer review capacity who also serve as an officer, director, trustee, agent, or member of any of the following:

a. A state or local professional society of a profession for which there is peer review.

b. Any organization approved to conduct peer review by a society as designated in paragraph "a" of this subsection.

c. The medical staff of any licensed hospital.

d. An examining board.

85 Acts, ch 168, §1 HF 730
Subsections 2 and 3 amended

147.2 License required.

No person shall engage in the practice of medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, psychology, chiropractic, physical therapy, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, occupational therapy, pharmacy, cosmetology, barbering, dietetics, or mortuary science as defined in the following chapters of this title, unless the person has obtained from the state department of health a license for that purpose.

85 Acts, ch 168, §2 HF 730
Section amended

147.3 Qualifications.

An applicant for a license to practice a profession under this title is not ineligible because of age, citizenship, sex, race, religion, marital status or national origin, although the application form may require citizenship information. A board may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of medicine, podiatry, osteopathy, osteopathy and surgery, chiropractic, nursing, psychology, optometry, speech pathology, audiology, pharmacy, physical therapy, occupational therapy, cosmetology, barbering, mortuary science, social work or dietetics for which the applicant requests to be licensed. Character references may be required, but shall not be obtained from licensed members of the profession.

85 Acts, ch 168, §3 HF 730
Section amended

147.13 Designation of boards.

The examining boards provided in section 147.12 shall be designated as follows: For medicine and surgery, and osteopathy, and osteopathic medicine and surgery, medical examiners; for psychology, psychology examiners; for podiatry, podiatry examiners; for chiropractic, chiropractic examiners; for physical therapists and occupational therapists, physical and occupational therapy examiners; for nursing, board of nursing; for dentistry and dental hygiene, dental examiners; for optometry, optometry examiners; for speech pathology and audiology, speech pathology and

audiology examiners; for cosmetology, cosmetology examiners; for barbering, barber examiners; for pharmacy, pharmacy examiners; for mortuary science, mortuary science examiners; for social workers, social work examiners; for dietetics, dietetic examiners.

85 Acts, ch 168, §4 HF 730
Section amended

147.14 Composition of boards.

The boards of examiners shall consist of the following:

1. For podiatry, cosmetology, barbering, mortuary science, and social work, three members each, licensed to practice the profession for which the board conducts examinations, and two members who are not licensed to practice the profession for which the board conducts examinations and who shall represent the general public. A quorum shall consist of a majority of the members of the board.

2. For medical examiners, five members licensed to practice medicine and surgery, two members licensed to practice osteopathic medicine and surgery, and two members not licensed to practice either medicine and surgery or osteopathic medicine and surgery, and who shall represent the general public. A majority of members of the board shall constitute a quorum.

3. For nursing examiners, one registered nurse representing the colleges and universities, one registered nurse representing the hospital conducted schools of nursing, one registered nurse representing the area community and vocational technical nursing department, one registered nurse practitioner, one licensed practical nurse practitioner, and two members not registered nurses or licensed practical nurses and who shall represent the general public. The representatives of the general public shall not be members of health care delivery systems. A majority of the members of the board shall constitute a quorum.

4. For dental examiners, five members shall be licensed to practice dentistry, two members shall be licensed to practice dental hygiene and two members not licensed to practice dentistry or dental hygiene and who shall represent the general public. A majority of the members of the board shall constitute a quorum. No member of the dental faculty of the school of dentistry at the state University of Iowa shall be eligible to be appointed.

5. For pharmacy examiners, five members licensed to practice pharmacy and two members who are not licensed to practice pharmacy and who shall represent the general public. A majority of the members of the board shall constitute a quorum.

6. For optometry examiners, five members licensed to practice optometry and two members who are not licensed to practice optometry and who shall represent the general public. A majority of the members of the board shall constitute a quorum.

7. Five members who are licensed to practice psychology and two members not licensed to practice psychology and who shall represent the general public. Of the five members who are licensed to practice psychology, one member shall be primarily engaged in graduate teaching in psychology, two members who render services in psychology, one member representing areas of applied psychology who may be affiliated with training institutions and who devote a major part of their time in rendering service in psychology, and one member primarily engaged in research psychology. A majority of the members of the board shall constitute a quorum.

8. For chiropractic examiners, five members licensed to practice chiropractic and two members who are not licensed to practice chiropractic and who shall represent the general public. A majority of the members of the board shall constitute a quorum.

9. For speech pathology and audiology examiners, five members licensed to practice speech pathology or audiology at least two of which shall be licensed to practice speech pathology and at least two of which shall be licensed to practice audiology, and two members who are not licensed to practice speech pathology or audiology and who shall represent the general public. A majority of the members of the board shall constitute a quorum.

10. For physical therapy and occupational therapy, three members licensed to practice physical therapy, two members licensed to practice occupational therapy, and two members who are not licensed to practice physical therapy or occupational therapy and who shall represent the general public. A quorum shall consist of a majority of the members of the board.

11. For dietetic examiners, one licensed dietitian representing the approved or accredited dietetic education programs, one licensed dietitian representing clinical dietetics in hospitals, one licensed dietitian representing community nutrition services and two members who are not licensed dietitians and who shall represent the general public. A majority of the members of the board constitute a quorum.

85 Acts, ch 168, §5 HF 730
NEW subsection 11

147.19 Terms of office.

Initial terms for board of dietetic examiners; 85 Acts, ch 168, §12 HF 730

147.25 System of health personnel statistics—fee.

The division for records and statistics within the state department of health shall establish and maintain a system of health personnel statistics which shall include the collection, preservation, revision and dissemination of statistical data to enable the department or other agencies concerned with delivery of health care services in this state to determine the total number, employment status, location of practice or place of employment, areas of professional specialization and ages of licensed health care practitioners and other pertinent information bearing on the availability of trained and licensed personnel in health care fields to provide services in this state. The statistical data shall be computed and available upon request at least biannually in the form of a report to agencies, both public and private, which are concerned with the delivery of health care in this state.

The department shall enter into co-operative arrangements with and seek the technical expertise of agencies collecting and producing health personnel statistics in order to eliminate duplication in the collection of health personnel information and to assist in the standardization and co-ordination of procedures relating to the collection of health personnel statistics.

Examining boards collecting information necessary for the division for records and statistics to carry out the provisions of this section shall provide the department with the information which may be gathered by means including, but not limited to, questionnaires forwarded to applicants for a license or renewal of a license.

In addition to any other fee provided by law, a fee may be set by the respective examining boards for each license and renewal of a license to practice medicine, surgery, podiatry, osteopathy, osteopathic medicine and surgery, chiropractic, nursing, dentistry, dental hygiene, optometry, pharmacy, physical therapy, occupational therapy, social work, veterinary medicine, or dietetics, which fee shall be based on the annual cost of collecting information for use by the department of health in the administration of the system of health personnel statistics established by this section. The fee shall be collected, transmitted to the treasurer of state and deposited in the general fund of the state in the manner in which license and renewal fees of the respective professions are collected, transmitted, and deposited in the general fund.

85 Acts, ch 168, §6 HF 730
Unnumbered paragraph 4 amended

147.80 License—examination—fees.

An examining board shall set the fees for the examination of applicants, which fees shall be based upon the annual cost of administering the examinations. An examining board shall set the annual fees, except renewal fees which need not be annual, required for any of the following based upon the cost of sustaining the board and the actual costs of licensing:

1. License to practice dentistry issued upon the basis of an examination given by the board of dental examiners, license to practice dentistry issued under a reciprocal agreement, resident dentist's license, renewal of a license to practice dentistry.

2. License to practice pharmacy issued upon the basis of an examination given by the board of pharmacy examiners, license to practice pharmacy issued under a reciprocal agreement, renewal of a license to practice pharmacy.

3. License to practice medicine and surgery or osteopathic medicine and surgery issued upon the basis of an examination given by the board of medical examiners, license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy issued by endorsement or under a reciprocal agreement, renewal of a license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy.

4. Certificate to practice psychology or associate psychology issued on the basis of an examination given by the board of psychology examiners, or certificate to practice psychology or associate psychology issued under a reciprocity agreement or by endorsement, renewal of a certificate to practice psychology or associate psychology.

5. License to practice chiropractic issued on the basis of an examination given by the board of chiropractic examiners. License to practice chiropractic issued by endorsement or under a reciprocal agreement, renewal of a license to practice chiropractic.

6. License to practice podiatry issued upon the basis of an examination given by the board of podiatry examiners, license to practice podiatry issued under a reciprocal agreement, renewal of a license to practice podiatry.

7. License to practice physical therapy issued upon the basis of an examination given by the board of physical and occupational therapy examiners, license to practice physical therapy issued under a reciprocal agreement, renewal of a license to practice physical therapy.

8. For a license to practice optometry issued upon the basis of an examination given by the board of optometry examiners, license to practice optometry issued under a reciprocal agreement, renewal of a license to practice optometry.

9. License to practice dental hygiene issued upon the basis of an examination given by the board of dental examiners, license to practice dental hygiene issued under a reciprocal agreement, renewal of a license to practice dental hygiene.

10. License to practice mortuary science issued upon the basis of an examination given by the board of mortuary science examiners, license to practice mortuary science issued under a reciprocal agreement, renewal of a license to practice mortuary science.

11. License to practice nursing issued upon the basis of an examination given by the board of nurse examiners, license to practice nursing based on an endorsement from another state, territory or foreign country, renewal of a license to practice nursing.

12. A nurse who does not engage in nursing during the year succeeding the expiration of the license shall notify the board to place the nurse upon the inactive list and the nurse shall not be required to pay the renewal fee so long as the nurse remains inactive and so notifies the board. To resume nursing, the nurse shall notify the board and remit the renewal fee for the current period.

13. License to practice cosmetology issued upon the basis of an examination given by the board of cosmetology examiners, license to practice cosmetology under a reciprocal agreement, renewal of a license to practice cosmetology, temporary permit to practice as a cosmetology trainee, original license to conduct a school of cosmetology, renewal of license to conduct a school of cosmetology, original license to operate a beauty salon, renewal of a license to operate a beauty salon, original license and examination to practice electrolysis, renewal of a license to practice

electrolysis, annual inspection of a school of cosmetology, annual inspection of a beauty salon, original cosmetology school instructor's license, renewal of cosmetology school instructor's license.

14. License to practice barbering on the basis of an examination given by the board of barber examiners, license to practice barbering under a reciprocal agreement, renewal of a license to practice barbering, annual inspection by the state department of health of barber school and annual inspection of barber shop, an original barber school license, renewal of a barber school license, transfer of license upon change of ownership of a barber shop or barber school, inspection by the department and an original barber shop license, renewal of a barber shop license, original barber school instructor's license, renewal of a barber school instructor's license, original barber assistant's license, renewal of a barber assistant's license.

15. License to practice speech pathology or audiology issued on the basis of an examination given by the board of speech pathology and audiology, or license to practice speech pathology or audiology issued under a reciprocity agreement, renewal of a license to practice speech pathology or audiology.

16. License to practice occupational therapy issued upon the basis of an examination given by the board of physical and occupational therapy examiners, license to practice occupational therapy issued under a reciprocal agreement, renewal of a license to practice occupational therapy.

17. License to assist in the practice of occupational therapy issued upon the basis of an examination given by the board of physical and occupational therapy examiners, license to assist in the practice of occupational therapy issued under a reciprocal agreement, renewal of a license to assist in the practice of occupational therapy.

18. License to practice social work issued on the basis of an examination by the board of social work examiners, or license to practice social work issued under a reciprocity agreement, or renewal of a license to practice social work.

19. License to practice dietetics issued upon the basis of an examination given by the board of dietetic examiners, license to practice dietetics issued under a reciprocal agreement, or renewal of a license to practice dietetics.

20. For a certified statement that a licensee is licensed in this state.

21. Duplicate license, which shall be so designated on its face, upon satisfactory proof the original license issued by the department has been destroyed or lost.

The licensing and certification division shall prepare estimates of projected revenues to be generated by the licensing, certification, and examination fees of each board as well as a projection of the fairly apportioned administrative costs and rental expenses attributable to each board. Each board shall annually review and adjust its schedule of fees so that, as nearly as possible, projected revenues equal projected costs and any imbalance in revenues and costs in a fiscal year is offset in a subsequent fiscal year.

85 Acts, ch 168, §7 HF 730; 85 Acts, ch 246, §1 SF 589
NEW subsection 19 and subsequent subsections renumbered

CHAPTER 147A

ADVANCED EMERGENCY MEDICAL CARE—PARAMEDICS

147A.12 Registered nurse exception.

1. This chapter does not restrict a registered nurse, licensed pursuant to chapter 152, from staffing an authorized ambulance service or rescue squad service provided the registered nurse can document equivalency through education and additional skills training essential in the delivery of prehospital emergency care. The equivalency shall be accepted when:

a. Documentation has been reviewed and approved at the local level by the

medical director of the ambulance or rescue squad service in accordance with the rules of the board of nursing developed jointly with the board of medical examiners.

b. Authorization has been granted to that ambulance or rescue squad service by the council.

2. Section 147A.10 applies to a registered nurse in compliance with this section.

85 Acts, ch 129, §1 HF 160
Section amended

CHAPTER 148C

PHYSICIANS' ASSISTANTS

148C.5 Advisory committee created.

There is established an advisory committee on physicians' assistant programs which shall be advisory to the board on matters pertaining to the education of physicians' assistants and approval of applicants to supervise a physician's assistant. The committee shall consist of eight members appointed by the governor. The members of the committee shall include one representative of the medical board who shall be chairperson of the committee, a representative of an Iowa medical school, an educator with experience in the development of health personnel programming, one physician, and one registered nurse. Each member of the committee shall receive a per diem and expenses within the limits prescribed by section 147.24. Per diem and expense payments shall be made from the state board of medical examiners fund.

85 Acts, ch 67, §18 SF 121
Section amended

CHAPTER 152A

DIETETICS

152A.1 Definitions.

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

1. "*Licensed dietitian*" or "*dietitian*" means a person who holds a valid license to practice dietetics pursuant to this chapter.
2. "*Board*" means the board of dietetic examiners.

85 Acts, ch 168, §8 HF 730
NEW section

152A.2 License requirements.

1. An applicant shall be issued a license to practice dietetics by the board when the applicant satisfies all of the following:

a. Possesses a baccalaureate degree or postbaccalaureate degree with a major course of study in human nutrition, food and nutrition, dietetics, or food systems management, or in an equivalent major course of study which meets minimum academic requirements as established by the American dietetic association and approved by the board.

b. Completes an internship or preplanned professional experience program approved by the American dietetic association and approved by the board.

c. Satisfactorily completes an examination designed by the board.

2. Renewal of a license granted under this chapter shall not be approved unless the applicant has satisfactorily completed the continuing education requirements for the license as prescribed by the board.

85 Acts, ch 168, §9 HF 730
Waiver of examination requirement in certain cases until July 1, 1986; 85 Acts, ch 168, §11
NEW section

152A.3 Exemptions.

The following are not subject to this chapter:

1. Licensed physicians and surgeons, nurses, chiropractors, dentists, dental hygienists, pharmacists or physical therapists who make dietetic or nutritional assessments, or give dietetic or nutritional advice in the normal practice of their profession or as otherwise authorized by law.
2. Dietetics students who engage in clinical practice under the supervision of a dietitian as part of a dietetic education program approved or accredited by the American dietetic association.
3. Dietitians who serve in the armed forces or the public health service of the United States or are employed by the veterans administration, provided their practice is limited to that service or employment.
4. Dietitians who are licensed in another state, United States possession, or country, or have received at least a baccalaureate degree and are in this state for the purpose of:
 - a. Consultation, provided the practice in this state is limited to consultation.
 - b. Conducting a teaching clinical demonstration in connection with a program of basic clinical education, graduate education, or postgraduate education which is sponsored by a dietetic education program or accredited by the American dietetic association and carried out in an educational institution or its affiliated clinical facility or health care agency, or before a group of licensed dietitians.
5. Individuals who do not call themselves dietitians but routinely, in the course of doing business, market or distribute weight loss programs or sell nutritional products and provide explanations for customers regarding the use of the programs or products relative to normal nutritional needs.
6. Individuals who provide routine education and advice regarding normal nutritional requirements and sources of nutrients, including, but not limited to, persons who provide information as to the use and sale of food and food materials including dietary supplements.

85 Acts, ch 168, §10 HF 730
NEW section

CHAPTER 154

OPTOMETRY

154.1 Optometry—certified licensed optometrists—therapeutically certified optometrists.

For the purpose of this title the following classes of persons shall be deemed to be engaged in the practice of optometry:

1. Persons employing any means other than the use of drugs, medicine or surgery for the measurement of the visual power and visual efficiency of the human eye; the prescribing and adapting of lenses, prisms and contact lenses, and the using or employing of visual training or ocular exercise, for the aid, relief or correction of vision.
2. Persons who allow the public to use any mechanical device for such purpose.
3. Persons who publicly profess to be optometrists and to assume the duties incident to said profession.

Certified licensed optometrists may employ cycloplegics, mydriatics and topical anesthetics as diagnostic agents topically applied to determine the condition of the human eye for proper optometric practice or referral for treatment to a person licensed under chapter 148 or 150A. A certified licensed optometrist is an optometrist who is licensed to practice optometry in this state and who is certified by the board of optometry examiners to use diagnostic agents. A certified licensed optometrist shall be provided with a distinctive certificate by the board which shall be displayed for viewing by the patients of the optometrist.

Therapeutically certified optometrists may employ the following pharmaceuticals; topical antimicrobial agents, topical and oral antihistamines, topical anti-inflammatory agents, topical analgesic agents and topical anesthetic agents. Superficial foreign bodies may be removed from the human eye and adnexa. These therapeutic efforts are intended for the purpose of examination, diagnosis, and treatment of visual defects, abnormal conditions and diseases of the human eye and adnexa, except glaucoma, for proper optometric practice or referral for consultation or treatment to persons licensed under chapter 148 or 150A. A therapeutically certified optometrist is an optometrist who is licensed to practice optometry in this state and who is certified by the board of optometry examiners to use the agents and procedures listed above. A therapeutically certified optometrist shall be provided with a distinctive certificate by the board which shall be displayed for viewing by the patients of the optometrist.

85 Acts, ch 248, §1 SF 438
NEW unnumbered paragraph 3

154.3 License.

1. Every applicant for a license to practice optometry shall:
 - a. Present satisfactory evidence of a preliminary education equivalent to at least four years study in an accredited high school or other secondary school.
 - b. Present a diploma from an accredited school of optometry.
 - c. Pass an examination prescribed by the optometry examiners in the subjects of physiology of the eye, optical physics, anatomy of the eye, ophthalmology, and practical optometry.
2. A person applying to be licensed as an optometrist after January 1, 1980, shall also apply to be a certified licensed optometrist and shall, in addition to satisfactorily completing all requirements for a license to practice optometry, satisfactorily complete a course consisting of at least one hundred contact hours in pharmacology and receive clinical training as it applies to optometry with particular emphasis on the topical application of diagnostic agents to the human eye for the purpose of examination of the human eye, and the diagnosis of conditions of the human eye, at an institution accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or the United States office of education.
3. A person licensed as an optometrist prior to January 1, 1980 who applies to be a certified licensed optometrist shall first satisfactorily complete a course consisting of at least one hundred contact hours in pharmacology as it applies to optometry including clinical training as it applies to optometry with particular emphasis on the topical application of diagnostic agents to the human eye and possible adverse reactions thereto, for the purpose of examination of the human eye and the diagnosis of conditions of the human eye, provided by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or the United States office of education, and approved by the board of optometry examiners.
4. In addition to the examination required by subsection 1, paragraph "c", a person applying to be a certified licensed optometrist shall also pass an examination prescribed by the optometry examiners in the subjects of physiology and pathology appropriate to the use of diagnostic pharmaceutical agents and diagnosis of conditions of the human eye, and pharmacology including systemic effects of ophthalmic diagnostic pharmaceutical agents and the possible adverse reactions thereto, authorized for use by optometrists by section 154.1.
5. A person applying to be licensed as an optometrist after January 1, 1986, shall also apply to be a therapeutically certified optometrist and shall, in addition to satisfactorily completing all requirements for a license to practice optometry, satisfactorily complete a course as defined by rule of the state board of optometry examiners with particular emphasis on the examination, diagnosis and treatment of

conditions of the human eye and adnexa provided by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation of the United States office of education, and approved by the board of optometry examiners. The rule of the board shall require a course including a minimum of forty hours of didactic education and sixty hours of approved supervised clinical training in the examination, diagnosis and treatment of conditions of the human eye and adnexa. The board may also, by rule, provide a procedure by which an applicant who has received didactic education meeting the requirements of rules adopted pursuant to this subsection at an approved school of optometry may apply to the board for a waiver of the didactic education requirements of this subsection.

6. A person licensed in any state as an optometrist prior to January 1, 1986, who applies to be a therapeutically certified optometrist shall first satisfactorily complete a course as defined by rule of the board of optometry examiners with particular emphasis on the examination, diagnosis and treatment of conditions of the human eye and adnexa provided by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation of the United States office of education, and approved by the board of optometry examiners. The rule of the board shall require a course including a minimum of forty hours of didactic education and sixty hours of approved supervised clinical training in the examination, diagnosis, and treatment of conditions of the human eye and adnexa.

7. Persons licensed in any state as an optometrist prior to January 1, 1986, who apply to be a therapeutically certified optometrist shall also be required to qualify as a certified licensed optometrist as defined in subsections 2, 3, and 4.

8. In addition to the examination required by subsection 1, paragraph "c", a person applying to be a therapeutically certified optometrist shall also pass an examination prescribed by the board of optometry examiners in the examination, diagnosis, and treatment of diseases of the human eye and adnexa.

85 Acts, ch 248, §2 SF 438
NEW subsections 5 through 8 and subsections renumbered

154.10 Standard of care.

A certified licensed optometrist employing diagnostic pharmaceutical agents as authorized by section 154.1 shall be held to the same standard of care in the use of such agents and in diagnosis as is common to persons licensed under chapter 148 or 150A in this state.

A therapeutically certified optometrist employing pharmaceutical agents as authorized by section 154.1 shall be held to the same standard of care in the use of such agents and in diagnosis and treatment as is common to persons licensed under chapter 148 or 150A in this state.

85 Acts, ch 248, §3 SF 438
NEW unnumbered paragraph 2

CHAPTER 155

PHARMACISTS, WHOLESALE DRUGGISTS, AND PRESCRIPTION DRUGS

155.1 Persons engaged in.

For the purpose of this title the following classes of persons shall be deemed to be engaged in the practice of pharmacy:

1. Persons who engage in the business of selling, or offering or exposing for sale, drugs and medicines.
2. Persons who compound or dispense drugs and medicines or fill the prescrip-

tions of licensed physicians and surgeons, dentists, podiatrists, therapeutically certified optometrists or veterinarians.

85 Acts, ch 248, §4 SF 438
Subsection 2 amended

155.3 Definitions.

For the purposes of this chapter:

1. "*Drugs and medicines*" shall include all medicinal substances and preparations for internal or external use recognized in the United States Pharmacopoeia or National Formulary, and any substance or mixture of substances intended to be used for the diagnosis, cure, mitigation, or prevention of disease of either humans or animals.

2. "*Pharmacy*" means every store or other place of business where prescription drugs are compounded, dispensed, or sold by a pharmacist and where prescription orders for prescription drugs are received or processed in accordance with the pharmacy laws.

3. The term "*board*" shall mean the board of pharmacy examiners established by chapter 147.

4. The term "*person*" means any individual, firm, partnership, corporation or association.

5. The term "*wholesaler*" shall mean any person operating or maintaining, either within or outside this state, a manufacturing plant, wholesale distribution center, wholesale business or any other business in which prescription drugs, medicinal chemicals, medicines or poisons, are sold, manufactured, compounded, dispensed, stocked, exposed or offered for sale at wholesale in this state. The term "*wholesaler*" shall not include those wholesalers who sell only the products defined in subsection 7. Nothing contained in this subsection shall in any way affect the exemptions provided in section 155.25.

6. The term "*wholesale salesperson*" includes any individual who takes a purchase order for any prescription drug, medicinal chemical, medicines or poisons. The term "*wholesale salesperson*" shall not apply to those salespersons who sell only the products defined in subsection 7. Nothing contained in this subsection shall in any way affect the exemptions provided in section 155.25.

7. For the purpose of this chapter, the term "*proprietary medicines*" or "*domestic remedies*" means and includes completely compounded packaged drugs, medicines and nonbulk chemicals which are not in themselves poisonous or in violation of the law relative to intoxicating liquors which are sold, offered, promoted and advertised by the manufacturer or primary distributor directly to the general public under a trademark, trade name, or other trade symbol privately owned, whether or not registered in the United States patent office, and the labeling of which bears (a) a statement specifying affections, symptoms or purposes for which the product is recommended, (b) adequate directions for use and such cautions as may be necessary for the protection of users, (c) an accurate statement of the quantity of the contents in terms of weight, measure or numerical count, (d) a statement of the active ingredients, and (e) the name and address of the manufacturer or primary distributor: Provided, however, this definition shall not apply to the sale, or offering for sale, of any drug for use by humans which is only advertised or promoted professionally to licensed physicians, dentists or veterinarians by the manufacturer or primary distributor, or to any prescription drug.

8. The provisions of this chapter shall not apply to persons selling, offering or exposing for sale, the preparations referred to in subsections 1, 2 and 3 of section 155.2 or persons licensed to practice veterinary medicine under the provisions of chapter 169 who dispense or sell veterinary drugs, or medicines for animal use only, or the holder of an itinerant vendor's license as defined in chapter 203 which persons shall not be required to have a license under this chapter while operating under the provisions of subsection 1, 2 or 3 of section 155.2 or licensed under the provisions

of chapter 169 or 203 or to hospitals licensed under chapter 135B or to persons licensed under chapter 148, 150 or 153.

9. "*Prescription*" means a written order, or an oral order later reduced to writing, of a medical practitioner for a prescription drug or medicine.

10. "*Prescription drug*" means (a) any drug or medicine the label of which is required by federal law to bear the statement: "Caution: federal law prohibits dispensing without a prescription", (b) any drug or medicine which, because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to prescribe, administer, or dispense such drug or medicine, or (c) a new drug or medicine which is limited under state law to use under the professional supervision of a practitioner licensed by law to prescribe, administer, or dispense such drug or medicine.

11. "*Medical practitioner*" means a physician, dentist, podiatrist, therapeutically certified optometrist, veterinarian or any other person authorized by law to treat sick and injured humans or animals and to use prescription drugs in the treatment.

12. "*Demonstrated bioavailability*" is a term used to refer to the rate and extent of absorption of a drug or drug ingredient from a specified dosage form, as reflected by the time-concentration curve of the drug or drug ingredient in the systemic circulation.

13. "*Manufacturer*" means a person who prepares, compounds, processes or fabricates any prescription drug.

14. "*Packer*" or "*distributor*" means a person who repackages or otherwise changes the container, wrapper or labeling of any prescription drug in furtherance of the distribution of the drug, but does not include a retailer who repackages a prescription drug at the time of sale to its ultimate consumer.

15. "*Brand name*" or "*trade name*" means the registered trademark name given to a drug product or ingredient by its manufacturer, labeler or distributor.

16. "*Generic name*" means the official title of a drug or drug ingredient published in an official compendium as defined in section 203A.2, subsection 6.

17. The "*finished dosage form*" of a prescription drug is that form of the drug which is or is intended to be dispensed or administered to the patient, and which requires no further manufacturing or processing other than packaging, reconstituting and labeling.

85 Acts, ch 248, §5 SF 438

Gender references changed in subsections 1 and 6

Subsection 11 amended

155.9 Approved colleges—graduates of foreign colleges.

A college of pharmacy shall not be approved by the pharmacy examiners unless the college is accredited by the American council on pharmaceutical education.

An applicant who is a graduate of a school or college of pharmacy located outside the United States but who is otherwise qualified to apply for a license to practice pharmacy in this state may be deemed to have satisfied the requirements of section 155.5, subsection 1, by verification to the board of the applicant's academic record and graduation status, and by meeting other requirements which the board may establish by rule. The board may require the applicant to pass an examination or examinations given or approved by the board to establish proficiency in English and shall require the applicant to pass an examination to establish the equivalency of the applicant's education with qualified graduates of a degree program defined in section 155.5, subsection 1, as a prerequisite for taking the licensure examination provided in section 155.5, subsection 3.

85 Acts, ch 89, §1, 2 SF 328

Unnumbered paragraph 1 amended

NEW unnumbered paragraph 2

155.22 Exceptions.

Sections 155.20 and 155.21 do not apply to sales by wholesalers of drugs and medicines to licensed physicians, dentists, podiatrists or veterinarians or to sales by wholesalers to certified licensed optometrists and therapeutically certified optometrists of those diagnostic and therapeutic pharmaceutical agents which are authorized for use by certified licensed optometrists and therapeutically certified optometrists pursuant to section 154.1.

85 Acts, ch 248, §6 SF 438
Section amended

155.26 Possession of prescription drugs.

A person found in possession of a drug or medicine limited by law to dispensation by a prescription, unless the drug or medicine was so lawfully dispensed, is guilty of a serious misdemeanor. This section does not apply to a licensed pharmacy, licensed wholesaler, physician, veterinarian, dentist, podiatrist, or therapeutically certified optometrist, or to a nurse acting under the direction of a physician or the board of pharmacy examiners, its officers, agents, inspectors, and representatives, nor to a common carrier or messenger when transporting such a drug or medicine in the same unbroken package in which the drug or medicine was delivered to that person for transportation.

This section does not apply to the possession by a certified licensed optometrist or therapeutically certified optometrist of those diagnostic or therapeutic agents which are authorized for use by certified licensed optometrists or therapeutically certified optometrists pursuant to section 154.1. The dispensing by pharmacists to certified licensed optometrists or therapeutically certified optometrists of those diagnostic or therapeutic agents which are authorized for their use pursuant to section 154.1 shall be permitted.

85 Acts, ch 248, §7, 8 SF 438
Unnumbered paragraphs 1 and 2 amended

CHAPTER 160

STATE APIARIST

160.14 Penalties—injunctions.

1. A person who knowingly sells, barter, gives away, or moves or allows to be moved, a diseased colony or colonies of bees without the consent of the state apiarist, or exposes infected honey or infected appliances to the bees, or who willfully fails or neglects to give proper treatment to diseased colonies, or who interferes with the state apiarist or the apiarist's assistants in the performance of their official duties or who refuses to permit the examination of bees or their destruction as provided in this chapter or violates another provision of this chapter, except as provided in subsection 2, is guilty of a simple misdemeanor.

2. A person who knowingly moves or causes to be moved into this state a colony of bees without a valid certificate of inspection from the state of origin or a permit to enter issued by the state apiarist pursuant to section 160.5, is guilty of a serious misdemeanor.

3. The attorney general or persons designated by the attorney general may institute suits on behalf of the state apiarist to obtain injunctive relief to restrain and prevent violations of this chapter.

85 Acts, ch 48, §1 SF 342
Section amended

CHAPTER 161

FRUIT-TREE AND FOREST RESERVATIONS

161.12 Application—inspection—continuation of exemption—recapture of tax.

It shall be the duty of the assessor to secure the facts relative to fruit-tree and forest reservations by taking the sworn statement, or affirmation, of the owner or owners making application under this chapter; and to make special report to the county auditor of all reservations made in the county under the provisions of this chapter.

The board of supervisors shall designate the county conservation board or the assessor who shall inspect the area for which an application is filed for a fruit-tree or forest reservation tax exemption before the application is accepted. Use of aerial photographs may be substituted for on-site inspection when appropriate. The application can only be accepted if it meets the criteria established by the state conservation commission to be a fruit-tree or forest reservation. Once the application has been accepted, the area shall continue to receive the tax exemption during each year in which the area is maintained as a fruit-tree or forest reservation without the owner having to refile. If the property is sold or transferred, the buyer or transferee does not have to refile for the tax exemption. The tax exemption shall continue to be granted for the remainder of the eight-year period for fruit-tree reservation and for the following years for forest reservation or until the property no longer qualifies as a fruit-tree or forest reservation. The area may be inspected each year by the county conservation board or the assessor to determine if the area is maintained as a fruit-tree or forest reservation. If the area is not maintained or is used for economic gain other than as a fruit-tree reservation during any year of the eight-year exemption period and any year of the following five years or as a forest reservation during any year for which the exemption is granted and any of the five years following those exemption years, the assessor shall assess the property for taxation at its fair market value as of January 1 of that year and in addition the area shall be subject to a recapture tax. However, the area shall not be subject to the recapture tax if the owner, including one possessing under a contract of sale, and the owner's direct antecedents or descendants have owned the area for more than ten years. The tax shall be computed by multiplying the consolidated levy for each of those years, if any, of the five preceding years for which the area received the exemption for fruit-tree or forest reservation times the assessed value of the area that would have been taxed but for the tax exemption. This tax shall be entered against the property on the tax list for the current year and shall constitute a lien against the property in the same manner as a lien for property taxes. The tax when collected shall be apportioned in the manner provided for the apportionment of the property taxes for the applicable tax year.

85 Acts, ch 75, §1 SF 509

Amendments to unnumbered paragraph 2 retroactive to January 1, 1985, for valuations established for assessment years beginning on or after that date; 85 Acts, ch 75, §2

Unnumbered paragraph 2 amended

CHAPTER 174

COUNTY AND DISTRICT FAIRS

174.13 County aid.

The board of supervisors of the county in which a society is located may appropriate moneys to be used for fitting up or purchasing fairgrounds for the society or for aiding 4-H club work and payment of agricultural and livestock premiums in connection with the fair, if the society owns or leases at least ten acres of land for the fairground and owns or leases buildings and improvements on the land of at least eight thousand dollars in value. A society may meet the requirement of owning or leasing land, buildings, and improvements through ownership by a joint entity under chapter 28E, of which the society is a part.

85 Acts, ch 67, §19 SF 121
Section amended

CHAPTER 175

FAMILY FARM DEVELOPMENT

175.2 Definitions.

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

1. "*Agricultural land*" means land suitable for use in farming.
2. "*Agricultural improvements*" means any improvements, buildings, structures or fixtures suitable for use in farming which are located on agricultural land. "Agricultural improvements" includes a single-family dwelling located on agricultural land which is or will be occupied by the beginning farmer and structures attached to or incidental to the use of the dwelling.
3. "*Authority*" means the Iowa family farm development authority established in section 175.3.
4. "*Bankhead-Jones Farm Tenant Act*" means the Act cited as 50 Stat. 522 (1937), formerly codified as 7 U.S.C. §1000 et seq., repealed by Pub. L. No. 87-128 (1961).
5. "*Beginning farmer*" means an individual or partnership with a low or moderate net worth that engages in farming or wishes to engage in farming.
6. "*Bonds*" means bonds issued by the authority pursuant to this chapter.
7. "*Depreciable agricultural property*" means personal property suitable for use in farming for which an income tax deduction for depreciation is allowable in computing federal income tax under the Internal Revenue Code of 1954 as defined in section 422.3.
8. "*Farming*" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing, the production of livestock, aquaculture, hydroponics, the production of forest products, or other activities designated by the authority by rules subject to chapter 17A.
9. "*Low or moderate net worth*" means:
 - a. For an individual, an aggregate net worth of the individual and the individual's spouse and minor children of less than two hundred thousand dollars.
 - b. For a partnership, an aggregate net worth of all partners, including each partner's net capital in the partnership, and each partner's spouse and minor children of less than four hundred thousand dollars. However, the aggregate net worth of each partner and that partner's spouse and minor children shall not exceed two hundred thousand dollars.
10. "*Mortgage*" means a mortgage, mortgage deed, deed of trust, or other instru-

ment creating a first lien, subject only to title exceptions and encumbrances acceptable to the authority, including any other mortgage liens of equal standing with or subordinate to the mortgage loan retained by a seller or conveyed to a mortgage lender, on a fee interest in agricultural land and agricultural improvements.

11. "*Mortgage lender*" means a bank, trust company, mortgage company, national banking association, savings and loan association, life insurance company, any state or federal governmental agency or instrumentality, including without limitation the federal land bank or any of its local associations, or any other financial institution or entity authorized to make mortgage loans or secured loans in this state.

12. "*Mortgage loan*" means a financial obligation secured by a mortgage.

13. "*Net worth*" means total assets minus total liabilities as determined in accordance with generally accepted accounting principles with appropriate exceptions and exemptions reasonably related to an equitable determination of the family's or partnership's net worth. Assets shall be valued at fair market value.

14. "*Note*" means a bond anticipation note issued by the authority pursuant to this chapter.

15. "*Secured loan*" means a financial obligation secured by a chattel mortgage, security agreement or other instrument creating a lien on an interest in depreciable agricultural property.

16. "*State agency*" means any board, commission, department, public officer, or other agency or authority of the state of Iowa.

17. "*Permanent soil and water conservation practices*" and "*temporary soil and water conservation practices*" have the same meaning as defined in section 467A.42.

18. "*Conservation farm equipment*" means the specialized planters, cultivators, and tillage equipment used for reduced tillage or no-till planting of row crops.

The authority may establish by rule further definitions applicable to this chapter and clarification of the definitions in this section, as necessary to assure eligibility for funds, insurance or guarantees available under federal laws and to carry out the public purposes of this chapter.

85 Acts, ch 15, §1, 2 SF 117
Subsections 5, 9 and 13 amended
Subsection 8 struck and rewritten

175.3 Establishment of authority.

1. The Iowa family farm development authority is established, and constituted a public instrumentality and agency of the state exercising public and essential governmental functions. The authority is established to undertake programs which assist beginning farmers in purchasing agricultural land and agricultural improvements and depreciable agricultural property for the purpose of farming, and programs which provide financing to farmers for permanent soil and water conservation practices on agricultural land within the state or for the acquisition of conservation farm equipment. The powers of the authority are vested in and exercised by a board of eleven members with nine members appointed by the governor subject to confirmation by the senate. The treasurer of state or the treasurer's designee and the secretary of agriculture or the secretary's designee are ex officio nonvoting members. No more than five appointed members shall belong to the same political party. As far as possible the governor shall include within the membership persons who represent financial institutions experienced in agricultural lending, the real estate sales industry, farmers, beginning farmers, average taxpayers, local government, and other persons specially interested in family farm development.

2. The appointed members of the authority shall be appointed by the governor for terms of six years except that, of the first appointments, three members shall be appointed for terms of two years and three members shall be appointed for a term of four years. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. An appointed member of the authority may be removed from office by the governor for misfeasance,

malfeasance or willful neglect of duty or other just cause, after notice and hearing, unless the notice and hearing is expressly waived in writing. An appointed member of the authority may also serve as a member of the Iowa finance authority.

3. Five voting members of the authority constitute a quorum and the affirmative vote of a majority of the voting members is necessary for any substantive action taken by the authority. The majority shall not include any member who has a conflict of interest and a statement by a member that the member has a conflict of interest is conclusive for this purpose. A vacancy in the membership does not impair the right of a quorum to exercise all rights and perform all duties of the authority.

4. The appointed members of the authority are entitled to receive forty dollars per diem for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

5. The appointed members of the authority and the executive director shall give bond as required for public officers in chapter 64.

6. Meetings of the authority shall be held at the call of the chairperson or whenever two members so request.

7. The appointed members shall elect a chairperson and vice chairperson annually, and other officers as they determine, but the executive director shall serve as secretary to the authority.

8. The net earnings of the authority, beyond that necessary for retirement of its notes, bonds or other obligations or to implement the public purposes and programs authorized, shall not inure to the benefit of any person other than the state. Upon termination of the existence of the authority, title to all property owned by the authority including any net earnings shall vest in the state.

85 Acts, ch 15, §3 SF 117
Subsections 1 and 3 amended

175.12 Beginning farmer program.

1. The authority shall develop a beginning farmer loan program to facilitate the acquisition of agricultural land and improvements and depreciable agricultural property by beginning farmers. The authority shall exercise the powers granted to it in this chapter in order to fulfill the goal of providing financial assistance to beginning farmers in the acquisition of agricultural land and agricultural improvements and depreciable agricultural property. The authority may participate in and co-operate with programs of the farmers home administration, federal land bank or any other agency or instrumentality of the federal government or with any program of any other state agency in the administration of the beginning farmer loan program and in the making or purchasing of mortgage or secured loans pursuant to this chapter.

2. The authority may participate in any federal programs designed to assist beginning farmers or in any related federal or state programs.

3. The authority shall provide in a beginning farmer loan program that a mortgage or secured loan to or on behalf of a beginning farmer shall be provided only if the following criteria are satisfied:

a. The beginning farmer is a resident of the state. If the beginning farmer is a partnership, all partners shall be residents of the state.

b. The agricultural land and agricultural improvements or depreciable agricultural property the beginning farmer proposes to purchase will be located in the state.

c. The beginning farmer has sufficient education, training, or experience in the type of farming for which the beginning farmer requests the mortgage or secured loan. If the beginning farmer is a partnership, all partners shall have sufficient education, training, or experience in the type of farming for which the beginning farmer requests the mortgage or secured loan.

d. A loan to a beginning farmer for the acquisition of agricultural land and agricultural improvements does not exceed five hundred thousand dollars. A loan

to a beginning farmer for the acquisition of depreciable agricultural property does not exceed one hundred twenty-five thousand dollars.

e. If the loan is for the acquisition of agricultural land, the beginning farmer has or will have access to adequate working capital, farm equipment, machinery or livestock. If the loan is for the acquisition of depreciable agricultural property, the beginning farmer has or will have access to adequate working capital or agricultural land.

f. The beginning farmer will materially and substantially participate in farming. If the beginning farmer is a partnership, each partner shall materially and substantially participate in farming.

g. If the beginning farmer is an individual, the agricultural land and agricultural improvements shall only be used for farming by the individual, the individual's spouse, the individual's minor children, or any of them. If the beginning farmer is a partnership, the agricultural land and agricultural improvements shall only be used for farming by the partners, each partner's spouse, each partner's minor children, or any of them.

h. The beginning farmer has not previously received financing under the program for the acquisition of property similar in nature to the property for which the loan is sought. However, this restriction shall not apply if the amount previously received plus the amount of the loan sought does not exceed five hundred thousand dollars in the case of agricultural land and improvements or one hundred twenty-five thousand dollars in the case of depreciable agricultural property.

i. Other criteria as the authority prescribes by rule.

4. The authority may provide in a mortgage or secured loan made or purchased pursuant to this chapter that the loan may not be assumed or any interest in the agricultural land or improvements or depreciable agricultural property may not be leased, sold or otherwise conveyed without its prior written consent and may provide a due-on-sale clause with respect to the occurrence of any of the foregoing events without its prior written consent. The authority may provide by rule the grounds for permitted assumptions of a mortgage or for the leasing, sale or other conveyance of any interest in the agricultural land or improvements. However, the authority shall provide and state in a mortgage or secured loan that the authority has the power to raise the interest rate of the loan to the prevailing market rate if the mortgage or secured loan is assumed by a farmer who is already established in that field at the time of the assumption of the loan. This provision controls with respect to a mortgage loan made or purchased pursuant to this chapter notwithstanding the provisions of chapter 535.

5. The authority may participate in any interest in any mortgage or secured loan made or purchased pursuant to this chapter with a mortgage lender. The participation interest may be on a parity with the interest in the mortgage or secured loan retained by the authority, equally and ratably secured by the mortgage or securing agreement securing the mortgage or secured loan.

85 Acts, ch 15, §4, 5 SF 117

Subsection 3, paragraphs a, c and g amended and paragraphs d and f struck and rewritten

CHAPTER 175A

ECONOMIC PROTECTIVE AND INVESTMENT AUTHORITY

175A.1 Legislative findings—purpose.

The general assembly finds and declares as follows:

1. The establishment of the authority is in all respects for the benefit of the people of the state of Iowa, for the improvement of their health and welfare and for the promotion of the economy, which are public purposes.

2. The authority will be performing an essential governmental function in the exercise of the powers and duties conferred upon it by this chapter.

3. There exists a serious problem in this state regarding the ability of farmers and small businesses to obtain adequate affordable operating loans and to service the debt on existing operating, machinery, and land loans.

4. Farming and the operation of small regionally owned businesses are principal pursuits of the inhabitants of this state. Many other industries and pursuits are wholly dependent upon farming and small business.

5. The inability of farmers and small businesses to obtain adequate affordable operating loans and to service the debt on existing operating, machinery, and land loans is conducive to economic decline and poverty and impairs the economic value of vast areas of the state, which are characterized by depreciated property values, impaired investments, and reduced capacity to pay taxes.

6. These conditions result in a loss of population and further economic deterioration, accompanied by added costs to communities for creation of new public facilities and services.

7. A major cause of the unavailability of adequate affordable operating loans and the inability to service the debt on existing operating, machinery, and land loans is the unstable economic condition of the state, due in part to unanticipated high interest rates.

8. A stable economic condition is necessary to encourage and facilitate the availability of adequate affordable operating loans and to enable farmers and small businesses to service the debt on existing operating, machinery, and land loans, and it is necessary to create a state economic protective and investment authority to administer programs to stabilize the economic condition.

9. The public purpose of this chapter is to maximize the economic potential of the state and to thereby stabilize the economic condition of the state.

85 Acts, ch 252, §2 SF 577
NEW section

175A.2 Definitions.

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

1. "*Authority*" means the Iowa economic protective and investment authority established in section 175A.3.
2. "*Farmer*" means a person engaged in farming.
3. "*Farming*" means as defined in section 172C.1.
4. "*Lending institution*" means a bank, trust company, mortgage company, national banking association, savings and loan association, savings bank, or another state financial institution or entity authorized to make farm or small business operating loans or loans to farmers or small businesses to acquire real or personal property.
5. "*Operating loan*" means a loan made by a lending institution to a borrower in an amount sufficient to enable the borrower to pay the reasonably necessary expenses and cash flow requirements of farming or of operating a small business.
6. "*Cash flow requirements*" includes but is not limited to the availability of money adequate to provide for obligations which become due during the term of the operating loan for operating expenses, family living expenses, principal and interest installments on loans for real or personal property, and rent.
7. "*Small business*" means as defined in section 220.1, except as further defined by the authority by rule.

85 Acts, ch 252, §3 SF 577
NEW section

175A.3 Establishment of authority.

1. The Iowa economic protective and investment authority is established and constituted a public instrumentality and agency of the state exercising public and essential governmental functions. The authority is established to undertake programs which provide assistance for farming and for small businesses, and other

programs the authority deems necessary to carry out the purpose identified in section 175A.1. The powers of the authority are vested in and exercised by a board of five members appointed by a committee composed of the majority and minority floor leaders of the senate, the speaker of the house of representatives, and the minority floor leader of the house of representatives. No more than three members appointed pursuant to this subsection shall belong to the same political party. As far as possible the board shall include within the membership persons who represent lending institutions experienced in agricultural or small business lending, agricultural suppliers, farmers, operators of small businesses, average citizens, and other persons specially interested in the availability of funds for farm operating loans.

2. The members of the authority appointed pursuant to subsection 1 shall serve terms of three years, except that, of first appointments, one member shall be appointed for a term of one year and two members shall be appointed for terms of two years. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. A member of the authority appointed pursuant to subsection 1 may be removed from office by the committee for misfeasance, malfeasance, willful neglect of duty, or other just cause after notice and hearing, unless the notice and hearing is expressly waived in writing. A member of the authority appointed pursuant to subsection 1 may also serve as a member of the Iowa family farm development authority.

3. Three members of the authority constitute a quorum and the affirmative vote of a majority of the members of the authority is necessary for substantive action to be taken by the authority. The majority shall not include a member who has a conflict of interest and a statement by a member of a conflict of interest is conclusive for this purpose. A vacancy in the membership does not impair the right of a quorum to exercise all rights and perform all duties of the authority.

4. The members of the authority appointed pursuant to subsection 1 are entitled to receive forty dollars per diem for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

5. The members of the authority appointed pursuant to subsection 1 and the executive director shall give bond as required for public officers in chapter 64.

6. Meetings of the authority shall be held at the call of the chairperson or when two members so request.

7. The members appointed pursuant to subsection 1 shall elect a chairperson and vice chairperson annually, and other officers as they determine, but the executive director, appointed pursuant to section 175A.5, is a nonvoting ex officio member of the board and shall serve as secretary to the authority.

8. The net earnings of the authority, beyond those necessary for retirement of its notes, bonds or other obligations, or to implement the authorized public purposes and programs, shall not inure to the benefit of any person other than the state. Upon termination of the existence of the authority, title to all property owned by the authority, including any such net earnings of the authority, shall vest in the state.

85 Acts, ch 252, §4 SF 577
NEW section

175A.4 Advisory panel.

The state comptroller or the comptroller's designee, the treasurer of state or the treasurer's designee, the secretary of agriculture or the secretary's designee, the director of the development commission or the director's designee, the executive director of the family farm development authority or the director's designee, and the superintendent of banking or the superintendent's designee are constituted as an advisory panel to the authority. The panel shall provide advice and assistance to the authority in the performance of the authority's functions, but shall not vote in board decisions.

85 Acts, ch 252, §5 SF 577
NEW section

175A.5 Executive director—staff.

1. The governor, subject to confirmation by the senate, shall appoint an executive director of the authority, who shall serve a four-year term at the pleasure of the governor. The term shall begin and end as provided in section 69.19. The executive director shall be selected primarily for administrative ability and knowledge in the field, without regard to political affiliation. The executive director shall not, directly or indirectly, exert influence to induce other officers or employees of the state to adopt a political view, or to favor a political candidate for office.

2. The executive director is a nonvoting ex officio member of the board, and shall advise the authority on matters relating to finance, carry out all directives from the authority, and hire and supervise the authority's staff pursuant to its directions and under chapter 19A, except that principal administrative assistants with responsibilities in operating loan programs, accounting, and processing of applications for interest reduction are exempt from that chapter.

3. The executive director, as secretary of the authority, shall be custodian of all books, documents and papers filed with the authority and of its minute book and seal. The executive director may cause copies to be made of all minutes and other records and documents of the authority and give certificates under the seal of the authority to the effect that the copies are true copies and all persons dealing with the authority may rely upon the certificates.

85 Acts, ch 252, §6 SF 577

Term of initial executive director; 85 Acts, ch 252, §53

NEW section

175A.6 General powers.

The authority has all of the general powers needed to carry out its purposes and duties, and to exercise its specific powers, including but not limited to the power to:

1. Sue and be sued in its own name.
2. Have and alter a corporate seal.
3. Make and alter bylaws for its management consistent with this chapter.
4. Make and execute agreements, contracts and other instruments, with any public or private entity, including but not limited to, any federal governmental agency or instrumentality. The authority may make and execute contracts with a firm of independent certified public accountants to prepare an annual report on behalf of the authority. All political subdivisions, other public agencies and state agencies may enter into contracts and otherwise cooperate with the authority.
5. Procure insurance against any loss in connection with its operations.
6. Accept appropriations, gifts, grants, loans, or other aid from public or private entities. A record of all gifts or grants, stating the type, amount and donor, shall be clearly set out in the authority's annual report along with the record of other receipts.
7. Provide to public and private entities technical assistance and counseling related to the authority's purposes.
8. In cooperation with other local, state or federal governmental agencies or instrumentalities, conduct studies of farm and small business operational expense needs, and gather and compile data useful to facilitate decision making.
9. Facilitate and encourage the maximized use of available federal farm and small business aid.
10. Contract with attorneys, accountants, finance experts, and other advisors or enter into contracts or agreements for these services with local, state or federal governmental agencies.
11. Issue its negotiable bonds, notes, debentures, capital stock, or other obligations as provided in sections 175A.9 to 175A.13 in order to directly or indirectly finance its programs.
12. Fix and collect fees and charges for its services.
13. Subject to agreements with holders of its obligations, invest or deposit moneys of the authority in a manner determined by the authority by rule, notwithstanding chapter 452 or 453.

14. Organize, administer, and participate in real or personal property investment trusts with farmers and small businesses for the purpose of reducing the debt service requirements of farm and small business machinery and land loans, subject to rules provided by the authority.

15. Make, alter and repeal rules consistent with this chapter and subject to chapter 17A.

85 Acts, ch 252, §7 SF 577
NEW section

175A.7 Annual report.

1. The authority shall submit to the governor and to the members of the general assembly who request it, not later than January 15 of each year, a complete and economically designed and reproduced report setting forth:

- a. Its operations and accomplishments.
- b. Its receipts and expenditures during the fiscal year, in accordance with the classifications it establishes for its operating and capital accounts.
- c. Its assets and liabilities at the end of its fiscal year and the status of reserve, special and other funds.
- d. A statement of its proposed and projected activities.
- e. Recommendations to the general assembly, as it deems necessary.
- f. An analysis of operating loan needs for farms and small businesses in the state.
- g. A schedule of its obligations outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and issued during its fiscal year.

2. The annual report shall identify performance goals of the authority, and clearly indicate the extent of progress during the reporting period, in attaining the goals. Where possible, results shall be expressed in terms of number of farm units and small business units assisted. The report shall state the median, mean, range, and total of the dollar amount of the individual grants, the debt-to-asset ratio of borrowers assisted, and the resulting interest rates on farm and small business operating loans. The report shall also state the median, mean, and range of the size of farm units assisted, expressed in acres, and the median, mean, and range of the size of small businesses assisted, expressed in the amount of annual gross income.

85 Acts, ch 252, §8 SF 577
NEW section

175A.8 Operating assistance program.

1. The authority shall establish and develop an operating assistance program to facilitate the availability of affordable operating capital to as many farmers and small businesses as possible by providing grants to lending institutions as provided in this section.

2. Lending institutions shall make available to borrowers a lender-borrower eligibility application form prepared by the authority for the operating assistance program. Application to the authority for assistance under this section shall be executed jointly by the lending institution and the borrower upon an approved form.

3. The authority shall provide in the operating assistance program that the grant will be provided in conjunction with a borrower's operating loan only if the following criteria are satisfied as evidenced on a lender-borrower eligibility application:

- a. The borrower is a resident of the state.
- b. The farming operation or small business for which the borrower seeks the operating assistance is located in the state.
- c. The operating loan, if a new loan, will be used, and if an existing loan, was used by the borrower for the reasonably necessary expenses and cash flow requirements of farming or of the operation of a small business.
- d. The borrower has made full disclosure of the borrower's finances to the lending institution.
- e. Requirements prescribed by the authority by rule, which may include but are

not limited to participation in federal crop insurance programs, where available, a consideration of the borrower's agreement to maintain farm management techniques and standards established by the authority, participation in federal farm programs, where applicable, and the maximized use of available loan guarantees including small business administration programs, where applicable.

4. The authority shall provide in the operating assistance program that the authority may, upon approval by the board of an application, enter into an agreement with the lending institution in which the lending institution shall agree to reduce for one year the interest rate on the borrower's operating loan, whether the loan is a new loan or is an existing and unpaid loan, to a rate at least five percent below the base rate, which is the maximum lawful rate of interest as determined by the superintendent of banking pursuant to section 535.2 for the calendar month in which the application was approved by the authority. However, the authority may lower the base rate if necessary to accommodate regional financial conditions. The authority shall agree to give to each lending institution which has agreed with the authority to the interest reduction a grant in the amount, as determined by the authority, necessary to reimburse the lending institution for the reduction of the interest rate on the borrower's operating loan by two percent for the term of the loan or for one year, whichever is less. The grant shall be paid to the lending institution within sixty days after the date the application is approved.

5. The authority shall require each lending institution to which the authority has approved an application for a grant on an operating loan to submit to the authority evidence satisfactory to the authority of a reduction in the interest rate as required by an agreement pursuant to subsection 4, and in that connection, the board members, employees or agents of the authority may inspect the books and records of a lending institution.

6. Compliance by a lending institution with the terms of an agreement with the authority pursuant to subsection 4 may be enforced by decree of a district court of this state. The authority may require, as a condition of a payment to a national banking association or a federally chartered savings and loan association or savings bank on an operating loan, the consent of the association to the jurisdiction of courts of this state over an enforcement proceeding. The authority may also require, as a condition for approval of an application for a grant to a lending institution on an operating loan, that the lending institution agree to the payment of penalties to the authority for violation by the lending institution of its agreement with the authority pursuant to subsection 4, and the penalties are recoverable at the suit of the authority.

7. If a lending institution refuses a borrower's request to apply for an operating assistance grant under this section, the borrower may provide the authority with a written statement regarding the lending institution's refusal. A borrower who has provided the authority with a written statement may be provided with an opportunity for a hearing on the refusal before the board or persons designated by the authority. The procedure established in this subsection is not a contested case under chapter 17A.

8. Funds allocated by the authority for the operating assistance program which have not been committed for authority for interest rate reduction on operating loans by the end of the fiscal year, may be used for other economic assistance programs, as provided by the authority by rule, for farming or small businesses. However, applications for grants for interest rate reduction on operating loans made after the close of the fiscal year are given first priority in the use of the uncommitted funds.

85 Acts, ch 252, §9 SF 577
NEW section

175A.9 Obligations issued by the authority.

1. The authority may issue its negotiable obligations in principal amounts as, in the opinion of the authority, are necessary to provide sufficient funds for achieve-

ment of its corporate purposes, the payment of interest on its obligations, the establishment of reserves to secure its obligations, and all other expenditures of the authority incident to and necessary or convenient to carry out its purposes and powers. The obligations shall be deemed to be investment securities and negotiable instruments within the meaning of and for all purposes of chapter 554, the uniform commercial code.

2. Obligations issued by the authority are payable solely and only out of the moneys, assets, or revenues of the authority, and as provided in agreements with holders of its obligations pledging any particular moneys, assets or revenues. Taxes or appropriations shall not be pledged for the payment of the obligations. Obligations are not an obligation of this state or any political subdivision of this state other than the authority within the meaning of any constitutional or statutory debt limitations, but are special obligations of the authority payable solely and only from the sources provided in this chapter, and the authority shall not pledge the general credit or taxing power of this state or any political subdivision of this state other than the authority, or make its debts payable out of any moneys except those of the authority.

3. Obligations must be authorized by a resolution of the authority. However, a resolution authorizing the issuance of obligations may delegate to an officer of the authority the power to negotiate and fix the details of an issue of bonds or notes by an appropriate certificate of the authorized officer.

4. Obligations shall:

a. State the date and series of the issue, be consecutively numbered, and state on their face that they are payable both as to principal and interest solely out of the assets of the authority and do not constitute an indebtedness of this state or any political subdivision of this state other than the authority within the meaning of any constitutional or statutory debt limit.

b. Be registered, issued in denominations as the authority prescribes, fully negotiable instruments under the laws of this state, signed on behalf of the authority with the manual or facsimile signature of the chairperson or vice chairperson, attested by the manual or facsimile signature of the secretary, have impressed or imprinted on the obligations the seal of the authority or a facsimile of it, be payable as to interest at rates and at times as the authority determines, be payable as to principal at times over a period not to exceed thirty years from the date of issuance, at places, and with reserved rights of prior redemption, as the authority prescribes, be sold at prices, at public or private sale, and in a manner as the authority prescribes, and the authority may pay all expenses, premiums and commissions which it deems necessary or advantageous in connection with the issuance and sale, and be issued under and subject to the terms, conditions and covenants providing for the payment of the principal, redemption premiums, if any, interest and other terms, conditions, covenants and protective provisions safeguarding payment, not inconsistent with this chapter, as are found to be necessary by the authority for the most advantageous sale, which may include, but are not limited to, covenants with the holders of the obligations as to:

(1) Pledging or creating a lien, to the extent provided by the resolution, on moneys or property of the authority or moneys held in trust or otherwise by others to secure the payment of the obligations.

(2) Providing for the custody, collection, securing, investment and payment of any moneys of or due to the authority.

(3) The setting aside of reserves or sinking funds and the regulation or disposition of them.

(4) Limitations on the purpose to which the proceeds of sale of an issue of obligations then or thereafter to be issued may be applied.

(5) Limitations on the issuance of additional obligations and on the refunding of outstanding or other obligations.

(6) The procedure by which the terms of a contract with the holders of obligations may be amended or abrogated, the amount of obligations the holders of which must consent to the contract, and the manner in which consent may be given.

(7) The creation of special funds into which moneys of the authority may be deposited.

(8) Vesting in a trustee properties, rights, powers and duties in trust as the authority determines, which may include the rights, powers and duties of the trustee appointed for the holders of any issue of obligations pursuant to section 175A.10, in which event the provisions of that section authorizing appointment of a trustee by the holders of obligations shall not apply, or limiting or abrogating the right of the holders of obligations to appoint a trustee under that section, or limiting the rights, duties and powers of the trustee.

(9) Defining the acts or omissions which constitute a default in the obligations and duties of the authority and providing for the rights and remedies of the holders of obligations in the event of a default. However, rights and remedies shall be consistent with the laws of this state.

(10) Any other matters which affect the security and protection of the obligations and the rights of the holders or which the authority deems necessary and advisable in furtherance of its purposes.

c. Include other information and be subject to other terms and conditions as the authority deems necessary and provides by rule.

5. The authority may issue its obligations for the purpose of refunding any obligations of the authority then outstanding, including the payment of any redemption premiums on the obligations and any interest accrued or to accrue to the date of redemption of the outstanding obligations. Until the proceeds of obligations issued for the purpose of refunding outstanding obligations are applied to the purchase or retirement of outstanding obligations or the redemption of outstanding obligations, the proceeds may be placed in escrow and be invested and reinvested in accordance with this chapter. The interest, income and profits earned or realized on an investment may also be applied to the payment of the outstanding obligations to be refunded by purchase, retirement or redemption. After the terms of the escrow have been fully satisfied and carried out, any balance of proceeds and interest earned or realized on the investments may be returned to the authority for use by it in any lawful manner. All refunding obligations shall be issued and secured and subject to the provisions of this chapter in the same manner and to the same extent as other obligations issued pursuant to this chapter.

6. The authority may issue negotiable obligation anticipation notes and may renew them from time to time but the maximum maturity of the notes, including renewals, shall not exceed ten years from the date of issue of the original notes. Notes are payable from any available moneys of the authority not otherwise pledged, or from the proceeds of the sale of obligations of the authority in anticipation of which the notes were issued. Notes may be issued for any corporate purpose of the authority. Notes shall be issued in the same manner as other obligations, and the resolution authorizing them may contain any provisions, conditions or limitations, not inconsistent with the provisions of this subsection, which the obligation or a resolution of the authority may contain. Notes may be sold at public or private sale. In case of default on its notes or violation of any obligations of the authority to the noteholders, the noteholders shall have all the remedies provided in this chapter for holders of its obligations. Notes shall be as fully negotiable as other obligations of the authority.

7. A copy of each pledge agreement by or to the authority, including without limitation each obligation resolution, indenture of trust or similar agreement, or any revisions or supplements to it shall be filed with the secretary of state and no further filing or other action under sections 554.9101 to 554.9507, article 9 of the uniform commercial code, or any other law of the state shall be required to perfect the security

interest in the collateral or any additions to it or substitutions for it, and the lien and trust so created shall be binding from and after the time made against all parties having claims of any kind in tort, contract, or otherwise against the pledgor.

8. Neither the members of the authority nor any person executing its obligations are liable personally on the obligations or are subject to any personal liability or accountability by reason of the issuance of the authority's obligations.

9. The authority may create and establish one or more special funds, to be known as "reserve funds", and shall pay into each reserve fund any proceeds of sale of obligations to the extent provided in the resolutions of the authority authorizing their issuance, and any other moneys which may be available to the authority for the purpose of the fund from any other sources. All moneys held in a reserve fund, except as otherwise provided in this chapter, shall be used as required solely for the payment of the principal of obligations secured in whole or in part by the fund or of the sinking fund payments with respect to the obligations, the purchase or redemption of the obligations, the payment of interest on the obligations or the payments of any redemption premium required to be paid when the obligations are redeemed prior to maturity.

85 Acts, ch 252, §10 SF 577
NEW section

175A.10 Remedies of holders of obligations.

1. If the authority defaults in the payment of principal or interest on an issue of obligations after they become due, whether at maturity or upon call for redemption, and the default continues for a period of thirty days, or if the authority fails or refuses to comply with this chapter, or defaults in an agreement made with the holders of an issue of obligations, the holders of twenty-five percent in aggregate principal amount of obligations of the issue then outstanding may appoint a trustee to represent the holders of the obligations for the purposes provided in this section by filing an instrument in the office of the clerk of the county in which the principal office of the authority is located. The instrument shall be proved or acknowledged in the same manner as a deed to be recorded.

2. The authority or any trustee appointed under the indenture under which the obligations are issued may, and upon written request of the holders of twenty-five percent in aggregate principal amount of the issue of obligations then outstanding shall:

a. Enforce all rights of the holders of the obligations, including the right to require the authority to carry out its agreements with the holders and to perform its duties under this chapter.

b. Bring suit upon the obligations.

c. By action require the authority to account as if it were the trustee of an express trust for the holders.

d. By action enjoin any acts or things which are unlawful or in violation of the rights of the holders.

e. Declare all the obligations due and payable and if all defaults are made good then with the consent of the holders of twenty-five percent of the aggregate principal amount of the issue of obligations then outstanding, annul the declaration and its consequences.

The holders of obligations, to the extent provided in the resolution by which the obligations were issued or in their agreement with the authority, may enforce any of the remedies in paragraphs "a" to "e" or the remedies provided in those agreements for and on their own behalf.

3. The trustee shall also have all powers necessary or appropriate for the exercise of functions specifically set forth or incident to the general representation of the holders of obligations in the enforcement and protection of their rights.

4. Before declaring the principal of obligations due and payable, the trustee shall first give thirty days' notice in writing to the governor, to the authority and to the attorney general of the state.

5. The district court has jurisdiction of any action by the trustee on behalf of the holders of obligations. The venue of the action shall be in the county in which the principal office of the authority is located.

85 Acts, ch 252, §11 SF 577
NEW section

175A.11 Obligations as legal investments.

Obligations of the authority are securities in which public officers, state departments and agencies, political subdivisions, insurance companies, and other persons carrying on an insurance business, banks, trust companies, savings and loan associations, savings banks, investment companies and other persons carrying on a banking business, administrators, executors, guardians, conservators, trustees and other fiduciaries, and other persons authorized to invest in bonds or other obligations of this state, may properly and legally invest funds including capital in their control or belonging to them. The obligations are also securities which may be deposited with and may be received by public officers, state departments and agencies, and political subdivisions, for any purpose for which the deposit of bonds or other obligations of this state is authorized.

85 Acts, ch 252, §12 SF 577
NEW section

175A.12 Notice—limitation of action.

The authority may publish a notice of its intention to issue obligations in a newspaper published in and with general circulation in the state. The notice shall include a statement of the maximum amount of obligations proposed to be issued, and in general, what funds or revenues will be pledged to pay the obligations and interest on the obligations. An action which questions the legality of obligations or the power of the authority to issue the obligations or the effectiveness of any proceedings adopted for the authorization or issuance of the obligations shall not be brought after sixty days from the date of publication of the notice.

85 Acts, ch 252, §13 SF 577
NEW section

175A.13 Moneys of the authority.

1. Moneys of the authority shall be paid to the authority and shall be deposited in a bank or other financial institution designated by the authority. The moneys shall be withdrawn on the order of the person authorized by the authority. Deposits shall be secured in the manner determined by the authority. The auditor of state or the auditor's legally authorized representatives may periodically examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, investments and other records and papers relating to its financial standing, and the authority shall not be required to pay a fee for the examination.

2. The authority shall submit to the governor, the auditor of state and the state comptroller, within thirty days of its receipt, a copy of the report of every external examination of the books and accounts of the authority other than copies of the reports of examinations made by the auditor of state.

85 Acts, ch 252, §14 SF 577
NEW section

175A.14 Limitation of liability—no pledge of state credit.

1. Members of the authority and persons acting in its behalf, while acting within the scope of their employment or agency, are not subject to personal liability resulting from carrying out the powers and duties given in this chapter.

2. The obligations of the authority are not obligations of this state or any political subdivision of this state other than the authority within the meaning of any constitutional or statutory debt limitations, but are obligations of the authority payable solely and only from the authority's funds, and the authority shall not pledge

the credit or taxing power of this state or any political subdivision of this state other than the authority or make its debts payable out of any moneys except for those of the authority.

85 Acts, ch 252, §15 SF 577
NEW section

175A.15 Assistance by state officers, agencies and departments.

State officers and state departments and agencies may render services to the authority within their respective functions as requested by the authority.

85 Acts, ch 252, §16 SF 577
NEW section

175A.16 Conflicts of interest.

1. If a member or employee other than the executive director of the authority has an interest, either direct or indirect, in a contract to which the authority is or is to be a party or in a lending institution which is seeking a payment for a reduction in the interest rate on a borrower's farm operating loan, the interest shall be disclosed to the authority in writing and shall be set forth in the minutes of the authority. The member or employee having the interest shall not participate in action by the authority with respect to that contract or lending institution.

2. This section does not limit the right of a member, officer or employee of the authority other than the executive director to have an interest in a bank or other financial institution in which the funds of the authority are deposited.

3. The executive director shall not have an interest in a bank or other financial institution in which the funds of the authority are deposited. The executive director shall not receive, in addition to fixed salary or compensation, money or anything valuable, either directly or indirectly, or through a substantial interest in another corporation or business unit, for negotiating, procuring, recommending or aiding in a payment made by the authority under section 175A.8, subsection 4, nor shall the executive director be pecuniarily interested, either as principal, coprincipal, agent or beneficiary, either directly or indirectly or through any substantial interest in another corporation or business unit, in a payment made by the authority under section 175A.8, subsection 4.

85 Acts, ch 252, §17 SF 577
NEW section

175A.17 Exemption from competitive bid laws.

The authority and contracts made by it in carrying out its public and essential governmental functions are exempt from the laws of the state which provide for competitive bids in connection with the contracts.

85 Acts, ch 252, §18 SF 577
NEW section

175A.18 Lending institution obligations.

1. The authority shall collect from each lending institution participating in the operating assistance program and each participating lending institution shall pay an amount equal to eight percent of the equity capital of each participating stock-owned lending institution and five percent of the surplus of each participating mutually owned lending institution.

2. The amount collected by the authority shall become moneys of the authority and shall be deposited in a special trust fund held in the name of and for the benefit of the authority by a state bank or national banking association with trust powers. The amount collected by the authority shall be invested while on deposit in the special trust fund and shall remain invested and on deposit in the special trust fund until the final maturity of the authority's obligations issued to fund the particular operating assistance program in which the lending institutions are participating. At the time of the final maturity the amount on deposit, including a pro rata share of

any investment earnings not already used in accordance with subsection 3, shall be returned to the lending institution making the initial deposit.

3. All investment earnings from the amount on deposit in the special trust fund shall be deposited when earned into a separate account of the special trust fund and pledged to the payment of principal of and interest on the authority's obligations issued to fund the operating assistance program in which the lending institutions are participating pursuant to the resolution under which the obligations were issued. All investment earnings not used to pay principal of and interest on the authority's obligations shall be commingled with other moneys on deposit in the special trust fund and reinvested with such moneys.

4. Neither the authority nor the holders of any of the authority's obligations shall have any claim or right to the amount on deposit in the special trust fund other than to the investment earnings held in the separate account of the special trust fund. The authority shall not use the amount on deposit in the special trust fund, other than the earnings in the separate account, to pay principal of and interest on its obligations.

85 Acts, ch 252, §19 SF 577

Effective March 1, 1986; 85 Acts, ch 252, §54

NEW section

175A.19 Lending institutions incentives.

The superintendent of banking shall certify that a state bank or national banking association which participates in the operating assistance program is meeting its obligations to meet the credit needs of its community as provided in the federal Community Reinvestment Act of 1977, 12 U.S.C. §§2901-2905.

A lending institution participating in the operating assistance program may value on its books the amount collected from it by the authority and held by the authority at the full face amount thereof.

85 Acts, ch 252, §20 SF 577

NEW section

175A.20 Lending institution write-off of bought-down interest.

A lending institution participating in the operating assistance program under this chapter may write off the interest bought down under the program over a period not to exceed five years, rather than writing off the entire amount during the year in which the interest is bought down.

85 Acts, ch 252, §21 SF 577

NEW section

175A.21 Agricultural land valuation.

Agricultural land which is valued by a lending institution for the purpose of determining the debt-to-asset ratio of a borrower in conjunction with the borrower's application for an operating loan or a loan for the acquisition of real or personal property shall be valued by determining the per acre average of the valuations for the current year and the four previous years for agricultural land in the county in which the agricultural land is located as published by Iowa state university of science and technology. If an appraisal conducted by an independent real estate appraiser is available for the current year, the five-year county average shall be adjusted by either adding or subtracting from the five-year average the percentage by which the particular farm's current appraised value exceeds or is less than the current year's county average value. To the extent permitted by federal law, national banks may value agricultural land on the same basis as state banks. The value determined pursuant to this section shall be recomputed using the method provided in this section each year a loan subject to this chapter remains in existence and unpaid.

85 Acts, ch 252, §22 SF 577

NEW section

175A.22 Liberal interpretation.

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

85 Acts, ch 252, §23 SF 577
NEW section

CHAPTER 179**DAIRY INDUSTRY COMMISSION****179.1 Definitions.**

As used in this chapter:

1. "Collection period" means a calendar year.
2. The term "commission" shall mean the Iowa dairy industry commission.
3. "First purchaser" means a person who buys milk from a producer and resells that milk or products made from the milk to another person.
4. "Nutrition education" means activities intended to broaden the understanding of sound nutritional principles including the role of milk in a balanced diet.
5. The term "person" shall mean individuals, corporations, partnerships, trusts, associations, co-operatives, and any and all other business units.
6. "Producer" means a person who produces milk from cows and thereafter sells the same as milk.
7. "Promotion" means actions including but not limited to advertising, sales, promotion, and publicity to advance the image and sales of and demand for milk.
8. "Research" means studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of milk and to product utilization, and other related efforts to expand demand for milk.

85 Acts, ch 126, §1-4 HF 692
Subsections 1 and 6 amended
Subsection 3 struck and rewritten
NEW subsection 4, 7 and 8
Subsections renumbered to alphabetize definitions

179.2 Commission created—suspension during national order—re-activation.

1. There is created an Iowa dairy industry commission, referred to in this chapter as the commission. The commission shall be composed of the secretary of agriculture or the secretary's designee, the dean of agriculture at Iowa state university of science and technology or the dean's designee, and sixteen members appointed by the secretary of agriculture as provided in this section.

2. Commissioners shall serve until their successors are duly appointed and qualify. Vacancies occurring in the membership of the commission resulting from death, inability or refusal to serve, or failure to meet the definition of a producer, shall be filled within three months of the time the vacancy occurs in the manner provided by the commission. Vacancy appointments shall be only for the remainder of the unexpired term. A commissioner shall not serve more than two consecutive full terms.

3. Appointive members of the commission shall receive forty dollars for each day spent on official business of the commission, not to exceed six hundred dollars per annum, and their actual necessary expenses, while engaged in commission activity.

4. When a national promotional order is established by the United States department of agriculture pursuant to the Dairy Product Stabilization Act of 1983, collection of the excise tax in section 179.5 shall be suspended for the period in which the national order is in effect. The commission shall continue to operate thereafter for only the period of time necessary to pay refunds and disburse the funds remaining in the dairy industry fund for the purposes enumerated in this chapter. Upon

completion of these acts, the existence of the Iowa dairy industry commission shall be suspended. The secretary of agriculture shall certify the suspension of the commission as of a date certain to the Iowa dairy industry commission and the Iowa state dairy association. When the existence of the commission is suspended, the terms of office being served by individual commissioners shall terminate.

5. When the national promotional order expires, the period of suspension of the excise tax in section 179.5 shall terminate and the secretary of agriculture shall take the steps necessary to collect that excise tax and otherwise fulfill the duties of the commission, except that of expending funds collected under the excise tax, until those duties can be resumed by the reactivated commission. When the national promotional order expires, the period of suspension of the commission shall terminate. The secretary of agriculture shall call the first meeting of the reactivated commission. Upon reactivation, the commission shall reimburse the secretary of agriculture for expenses incurred in carrying out the duties provided in this subsection.

6. When the national dairy promotion program expires and the suspension of the Iowa dairy industry commission terminates pursuant to subsection 5, all first purchasers shall, in a manner designed to reflect their proportionate contributions to the national dairy promotion program in its most recently completed fiscal year, nominate two resident producers for each of the sixteen offices of the commission. The secretary of agriculture shall then appoint one nominee from each set of two nominees as commissioners of the reactivated Iowa dairy industry commission. The secretary of agriculture shall stagger the terms of the reactivated commission resulting in as nearly as possible one third of the commissioners serving for one year, one third of the commissioners serving for two years, and one third of the commissioners serving for three years. After the initial staggering of terms by the secretary, commissioners shall be appointed to three-year terms.

7. After the reactivated commission has been formed, nominations for commissioners shall be made by first purchasers in a manner designed to reflect their proportionate contributions to the Iowa dairy industry commission in its most recently completed fiscal year.

85 Acts, ch 126, §5-8 HF 692

Unnumbered paragraph 1 amended and numbered as subsection 1

Unnumbered paragraphs 2 and 3 struck

Unnumbered paragraphs 4, 5, 6 and 7 amended and numbered as subsections 2 through 5

NEW subsections 6 and 7

179.3 Powers and duties.

The powers and duties of the commission shall include the following:

1. To elect a chairperson, a secretary, and from time to time such other officers as it may deem advisable, and from time to time to adopt, rescind, modify and amend all proper and necessary rules, regulations and orders for the exercise of its power and the performance of its duties, which rules and orders shall have the force and effect of law when not inconsistent with existing laws.

2. To administer and enforce this chapter, and do and perform all acts and exercise all powers reasonably necessary to effectuate the purpose of this chapter.

3. To employ at its pleasure and discharge at its pleasure such attorneys, advertising counsel, advertising agencies, clerks and employees as it deems necessary, and to prescribe their duties and powers and fix their compensation.

4. To establish offices and incur any and all expense, and to enter into any and all contracts and agreements for the proper administration and enforcement of this chapter.

5. To report alleged violations of this chapter to the attorney general of the state of Iowa.

6. To conduct scientific research for the purpose of developing and discovering the health, food, therapeutic, dietetic, and industrial uses for products of milk or its derivatives.

7. To make in the name of the commission such advertising contracts and other agreements as it deems necessary to promote the sale and consumption of dairy products on either a state or national basis.

8. To keep accurate books, records, and accounts of all its dealings, which books, records, and accounts shall be audited annually by the auditor of state.

9. To receive, administer, disburse and account for, in addition to the funds received from the excise tax hereinafter imposed by section 179.5, all such other funds as may be voluntarily contributed to said commission for the purpose of promoting dairy products.

85 Acts, ch 126, §9 HF 692
Subsection 8 amended

179.4 Expenditure of funds.

Funds collected through the excise tax are to be used for purposes of advertising and promotion, product, process, and nutrition, dietetics, and physiology research, nutrition education, public relations, research and development, and for other activities that contribute to producer efficiency and productivity. In addition, the commission shall use these funds to maintain existing markets, to make contributions to organizations working toward the purposes of this section, and to assist in the development of new or enlarged markets for milk, both domestic and foreign. The primary purpose for use of these funds is to increase consumption of milk. The commission may contract for advertising, publicity, sales promotion, research, and educational services the committee deems appropriate to further the objectives of this section.

85 Acts, ch 126, §10 HF 692
Struck and rewritten

179.5 Excise tax.

1. There is levied and imposed an excise tax on all producers within the state of three fourths of one percent of the gross value of milk produced in the state.

2. All taxes levied and imposed under this chapter shall be deducted from the price received by the producer and shall be collected by the first purchaser, except as follows:

a. If the producer produces milk from cows and sells the milk directly to the consumer, the taxes shall be remitted by that producer.

b. If the producer sells milk to a first purchaser outside the state, the taxes are due and payable by that producer before the shipment is made, except that the commission may make agreements with extra state purchasers for the keeping of records and the collection of the taxes as necessary to secure the payment of the taxes within the time fixed by this chapter.

3. All taxes levied and imposed under this chapter and other contributions made to the dairy industry commission, shall be paid to and collected by the commission within thirty days after the end of the month during which the milk was marketed. The commission shall remit the taxes and other contributions to the treasurer of the state each quarter, and at the same time render to the state comptroller an itemized and verified report showing the source from which the taxes and voluntary contributions were obtained. All taxes and voluntary contributions received, collected and remitted shall be placed in a special fund by the treasurer of state and the state comptroller, to be known as the "Dairy Industry Fund" to be used by the Iowa dairy industry commission for the purposes set out in this chapter and to administer and enforce the laws relative to this chapter. Funds deposited in the dairy industry fund are appropriated for the purpose of carrying out the provisions of this chapter.

4. A person from whom the excise tax provided in this chapter is collected may, by application filed with the commission within thirty days after the collection of the tax, have the tax refunded to that person by the commission.

85 Acts, ch 126, §11 HF 692
Section amended

179.6 Records of producers, first purchasers.

Every producer shipping milk to a first purchaser outside of Iowa who is not by agreement with the commission collecting the tax imposed by this chapter, and every first purchaser within the state and every producer distributing milk directly to the consumer, shall keep a complete and accurate record of all milk produced by the person during the period for which an excise tax levy is imposed under this chapter. The records shall be in the form and contain the information prescribed by the commission, shall be preserved by the person charged with their making for a period of two years, and shall be offered or submitted for inspection at any time upon written or oral request by the commission or its duly authorized agent or employee.

85 Acts, ch 126, §12 HF 692
Section amended

179.7 Returns filed with commission.

Every person charged by this chapter or by agreement with the commission with the keeping of records provided for in this chapter shall at the times the commission may by rule require, file with the commission a return on forms to be prescribed and furnished by the commission. Producers shall state the quantity of milk produced. First purchasers shall state the quantity of milk handled, bottled, processed, distributed, delivered to, or purchased by the person from the producers of dairy products or their agents in the state, and as a result of a referendum. Returns shall contain other information as the commission may require, and shall be made in triplicate, one copy of which shall be for the files of the person making the return, one copy available at the office of the person for the use of the person's patrons, and the original filed with the commission.

85 Acts, ch 126, §13 HF 692
Section amended

179.8 Payment of expenses—limitation.

No part of the expense incurred by the commission shall be paid out of any funds in the state treasury except said dairy industry fund which shall be subject at all times to the warrant of the state comptroller, drawn upon written requisition of the chairperson of the commission and attested by the secretary for the payment of all salaries, and other expenses necessary, to carry out the provisions of this chapter, but in no event shall the total expenses therefor exceed the total taxes collected and deposited to the credit of said fund.

No more than five percent of the excise tax collected and received by the commission pursuant to section 179.5 shall be utilized for administrative expenses of the commission.

85 Acts, ch 126, §14 HF 692
NEW unnumbered paragraph 2

179.10 Report.

The commission shall on or before the first day of March of each year make a full and complete report of its doings for the previous calendar year to the secretary of agriculture. The report shall show the amount of money received and the expenditures, and shall be printed in the annual agricultural yearbook issued by the secretary of agriculture.

85 Acts, ch 126, §15 HF 692
Section amended

179.13 Referendum.

At a time designated by the commission within eighteen months after termination of the national promotional order made pursuant to the Dairy Product Stabilization Act of 1983, the commission shall conduct a referendum under administrative procedures prescribed by the department of agriculture.

Upon signing a statement certifying to the department that the person is a bona

fide producer as defined in this chapter, each producer is entitled to one vote in each referendum. When the secretary is required to determine the approval or disapproval of producers under this section, the secretary shall consider the approval or disapproval of a cooperative association of producers, engaged in a bona fide manner in marketing milk, as the approval or disapproval of the producers who are members of or contract with the cooperative association of producers. If a cooperative association elects to vote on behalf of its members, the cooperative association shall provide each producer on whose behalf the cooperative association is expressing approval or disapproval with a description of the question presented in the referendum together with a statement of the manner in which the cooperative association intends to cast its vote on behalf of the membership. The information shall inform the producer of procedures to follow to cast an individual ballot if the producer chooses to do so within the period of time established by the secretary for casting ballots. The notification shall be made at least thirty days prior to the referendum and shall include an official ballot. The ballots shall be tabulated by the secretary and the vote of the cooperative association shall be adjusted to reflect the individual votes.

The department shall count and tabulate the ballots filed during the referendum within thirty days of the close of the referendum. If from the tabulation the department determines that a majority of the total number of producers voting in the referendum favors the proposal, the excise tax provided for in this chapter shall be continued. The ballots cast pursuant to this section constitute complete and conclusive evidence for use in determinations made by the department under this chapter.

The secretary may conduct a referendum at any time after the Iowa dairy industry commission is reactivated, and shall hold a referendum on request of a representative group comprising ten percent or more of the number of producers eligible to vote, to determine whether the producers favor the termination or suspension of the excise tax. The secretary shall suspend or terminate collection of the excise tax within six months after the secretary determines that suspension or termination of the excise tax is favored by a majority of the producers voting in the referendum, and shall terminate the excise tax in an orderly manner as soon as practicable after the determination.

85 Acts, ch 126, §16 HF 692
Struck and rewritten

CHAPTER 182

IOWA SHEEP AND WOOL PROMOTION BOARD

182.1 Definitions.

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

1. "*Affected producer*" means a person defined as a producer who is subject to the assessment pursuant to section 182.14.
2. "*Board*" means the Iowa sheep and wool promotion board established pursuant to section 182.5.
3. "*District*" means an official crop reporting district formed by the United States department of agriculture and set out in the annual farm census published by the Iowa department of agriculture.
4. "*Eligible voter*" means a person who has been a producer for the three hundred sixty-five days preceding the date of a referendum conducted pursuant to section 182.4.
5. "*First purchaser*" means a person who resells sheep or wool purchased from a producer or offers for sale a product produced from the sheep or wool for any purpose.
6. "*Producer*" means a person who is actively engaged within this state in the

business of producing or marketing sheep or wool and who receives income from the production of sheep or wool.

7. "Sale" or "sold" means a transaction in which the property in or to sheep or wool is transferred from the producer to a first purchaser for full or partial consideration.

8. "Secretary" means the secretary of agriculture.

9. "Sheep" means an animal of the ovine species, regardless of age, produced or marketed in this state for slaughter.

10. "Wool" means the natural fiber produced by sheep.

85 Acts, ch 207, §1 HF 677
NEW section

182.2 Petition for referendum election.

Upon receipt of a petition signed by at least fifty producers in each district requesting a referendum election to determine whether to establish an Iowa sheep and wool promotion board and to impose an assessment not to exceed two cents on every pound of wool produced and sold by a producer and ten cents per head on all sheep sold for slaughter by a producer, the secretary shall call a referendum to be conducted within sixty days following receipt of the petition.

85 Acts, ch 207, §2 HF 677
NEW section

182.3 Notice of referendum.

The secretary shall give notice of the referendum on the question of whether to establish an Iowa sheep and wool promotion board and to impose the assessment by publishing the notice for a period of not less than five days in at least one newspaper of general circulation in the state. The notice shall state the voting places, period of time for voting, and other information deemed necessary by the secretary.

A referendum shall not be commenced until five days after the last date of publication.

85 Acts, ch 207, §3 HF 677
NEW section

182.4 Establishment of sheep and wool promotion board—assessment—termination.

1. Each producer who signs a statement certifying that the producer is a bona fide producer is entitled to one vote. At the close of the referendum, the secretary shall count and tabulate the ballots cast. If a majority of voters favor establishing an Iowa sheep and wool promotion board and imposing an assessment, an Iowa sheep and wool promotion board shall be established. The assessment shall be imposed commencing not more than sixty days following the referendum as determined by the Iowa sheep and wool promotion board, and shall continue until terminated by a referendum as provided in subsection 2. If a majority of the voters do not favor establishing an Iowa sheep and wool promotion board and imposing the assessment, the assessment shall not be imposed and the board shall not be established until another referendum is held under this chapter and a majority of the voters favor establishing a board and imposing the assessment. If a referendum fails, another referendum shall not be held within one hundred eighty days.

2. Upon receipt of a petition signed by at least twenty-five producers in each district requesting a referendum election to determine whether to terminate the establishment of the Iowa sheep and wool promotion board and to terminate the imposition of the assessment, the secretary shall call a referendum to be conducted within sixty days following the receipt of the petition. The petitioners shall guarantee the payment of the costs of a referendum held under this subsection. If the majority of the voters of a referendum do not favor termination, an additional referendum may be held when the secretary receives a petition signed by at least twenty-five producers in each district. However, the additional referendum shall not be held within one hundred eighty days.

85 Acts, ch 207, §4 HF 677
NEW section

182.5 Composition of board.

The Iowa sheep and wool promotion board established under this chapter shall be composed of nine producers, one from each district. The dean of the college of agriculture of Iowa state university of science and technology or the dean's representative and the secretary or the secretary's designee shall serve as ex officio nonvoting members of the board. The board shall annually elect a chairperson from its membership.

85 Acts, ch 207, §5 HF 677
NEW section

182.6 Nominations for initial board.

Candidates for positions on the initial board are nominated by filing a petition with the secretary containing the signatures of at least twenty-five producers in the candidate's district qualified to vote on the referendum. Candidates shall be resident producers of the district from which they are nominated. The secretary shall receive the nominations, and shall call an election for members of the initial board within thirty days following passage of the question at the referendum election.

85 Acts, ch 207, §6 HF 677
NEW section

182.7 Notice of election for directors.

Notice of the initial election for directors of the board shall be given by the secretary by publication in a newspaper of general circulation in the state at least five days prior to the date of the election and in any other reasonable manner as determined by the secretary. The notice shall set forth the period of time for voting, voting places, and other information as the secretary deems necessary.

Notice of subsequent elections for the membership position for a district shall be given by the board by publication in a newspaper of general circulation in the district and in any other reasonable manner as determined by the board and shall set forth the period of time for voting, voting places, and other information as the board deems necessary.

85 Acts, ch 207, §7 HF 677
NEW section

182.8 Terms.

The term of office for members of the board shall be three years and no member shall serve more than two complete consecutive terms. The producers on the initial board shall determine their terms by lot, so that three producers shall serve a one-year term, three producers shall serve a two-year term, and three producers shall serve a three-year term.

85 Acts, ch 207, §8 HF 677
NEW section

182.9 Subsequent membership—nominations—election.

After the appointment of the initial board, the board shall administer subsequent elections for members of the board with the assistance of the secretary. Before the expiration of a member's term of office, the board shall appoint a nominating committee for the district represented by the member. The nominating committee shall consist of five producers who are residents of the district from which a member must be elected. The nominating committee shall nominate two resident producers as candidates for the membership position for which an election is to be held. Additional candidates may be nominated by a written petition of twenty-five resident producers. The board shall provide by rule and shall publish procedures governing the time and place of filing the nominations.

85 Acts, ch 207, §9 HF 677
NEW section

182.10 Vacancies.

The board shall by appointment fill an unexpired term if a vacancy occurs on the board. The appointee shall be a resident producer in the district having a vacancy.

85 Acts, ch 207, §10 HF 677
NEW section

182.11 Purposes of board.

The purposes of the board shall be to:

1. Enter into contracts or agreements with or make grants to recognized and qualified agencies, individuals, or organizations for the development and carrying out of research and education programs directed toward better and more efficient production, marketing, and utilization of sheep and wool and their products.
2. Provide methods and means, including, but not limited to, public relations and other promotion techniques for the maintenance of present markets.
3. Assist in development of new or larger markets, both domestic and foreign, for sheep and wool and their products.

85 Acts, ch 207, §11 HF 677
NEW section

182.12 Powers and duties.

The board may:

1. Administer and enforce this chapter and perform acts reasonably necessary to effectuate the purposes of this section.
2. Employ and discharge assistants and professional counsel as necessary, prescribe their duties and powers, and fix their compensation.
3. Establish offices, incur expenses, and enter into any contracts or agreements necessary to carry out the purposes of this chapter.
4. Adopt, rescind, and amend all proper and necessary rules for the exercise of its powers and duties.
5. Enter into arrangements for collection of the assessment on sheep and wool.
6. Formulate and execute assessment procedures and methods of collection.
7. Receive and investigate complaints and violations of this chapter and take necessary action.
8. Confer and cooperate with legally constituted authorities of other states and the United States.
9. Establish accounts in adequately protected financial institutions to receive, hold, and disburse board moneys.

85 Acts, ch 207, §12 HF 677
NEW section

182.13 Compensation—meetings.

Members of the board may receive payment for their actual expenses and travel in performing official board functions. Payment shall be made from amounts collected from the assessment. No member of the board shall be a salaried employee of the board or any organization or agency receiving funds from the board. The board shall meet at least once every three months, and at other times it deems necessary.

85 Acts, ch 207, §13 HF 677
NEW section

182.14 Assessment.

If approved by a majority of voters at a referendum, an assessment to be set by the board at not more than two cents for each pound of wool produced and sold by a producer and not more than ten cents per head on sheep sold for slaughter by a producer shall be imposed on the producer at the time of delivery to the first purchaser who will deduct the assessment from the price paid to the producer at the time of sale. If the producer sells, ships, or otherwise disposes of wool or sheep for slaughter to a first purchaser or other person outside the state of Iowa, the producer

shall deduct the assessment from the amount received from the sale and shall forward the amount deducted to the board within thirty days following each calendar quarter. If the producer and the first purchaser are the same person, then that person shall pay the assessment to the board within thirty days following each calendar quarter.

85 Acts, ch 207, §14 HF 677
NEW section

182.15 Invoice required.

At the time of sale, the first purchaser shall sign and deliver to the producer separate invoices for each purchase. The invoices shall show:

1. The name and address of the producer and the seller, if different from the producer.
2. The name and address of the first purchaser.
3. The pounds of wool or head of sheep for slaughter sold.
4. The date of the purchase.
5. The rate of withholding and the total amount of the assessment withheld.

Invoices shall be legibly written and shall not be altered.

85 Acts, ch 207, §15 HF 677
NEW section

182.16 Remittance to board—deposit and disbursement of funds.

Subject to section 182.14, the assessment imposed by this chapter shall be remitted by the purchaser to the Iowa sheep and wool promotion board not later than thirty days following each calendar quarter during which the assessment was collected. Amounts collected from the assessment shall be deposited in an account established pursuant to section 182.12, subsection 9. Expenses and disbursements incurred and made pursuant to this chapter shall be made by voucher, draft, or check bearing the signature of a person designated by majority vote of the board.

85 Acts, ch 207, §16 HF 677
NEW section

182.17 Refunds.

A producer who has paid the assessment may, by application in writing to the board, secure a refund of all or part of the amount paid. The refund shall be payable only when the application has been made to the board within sixty days after the deduction has been made by the producer or within sixty days after the remittance has been made by the first purchaser. Each application for refund by a producer shall have attached proof that the assessment was paid. The proof of the assessment paid may be in the form of a duplicate or certified copy of the purchase invoice by the purchaser.

85 Acts, ch 207, §17 HF 677
NEW section

182.18 Use of moneys.

Moneys collected under this chapter are subject to audit by the auditor of state and shall be used by the Iowa sheep and wool promotion board first for the payment of collection and refund expenses, second for payment of the costs and expenses arising in connection with conducting referendums, and third for the purposes identified in section 182.11. Moneys of the board remaining after a referendum is held at which a majority of the voters favor termination of the board and the assessment shall continue to be expended in accordance with this chapter until exhausted.

The board shall not engage in any political activity, and it shall be a condition of any allocation of funds that any organization receiving funds shall not expend the funds on political activity or on any attempt to influence legislation.

85 Acts, ch 207, §18 HF 677
NEW section

182.19 Bond required.

All persons holding positions of trust under this chapter shall give bond in the amount required by the board. The premiums for bond costs shall be paid from the moneys of the board.

85 Acts, ch 207, §19 HF 677
NEW section

182.20 Examination of records.

Persons subject to this chapter shall furnish on forms provided by the board information needed to enable the board to effectuate the policies of this chapter. For the purpose of ascertaining the correctness of a report made to the board under this chapter, the secretary may examine books, papers, records, copies of tax returns not confidential by law, and accounts, which are in the control of any person. The secretary may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas in connection with the administration of this chapter.

85 Acts, ch 207, §20 HF 677
NEW section

182.21 Penalty.

A person who willfully violates a provision of this chapter, willfully gives a false report, statement, or record required by the board, or willfully fails to furnish or render a report, statement or record required by the secretary is guilty of a simple misdemeanor.

85 Acts, ch 207, §21 HF 677
NEW section

182.22 Purchasers outside Iowa.

The secretary may enter into arrangements with first purchasers from outside Iowa for payment of the assessment.

85 Acts, ch 207, §22 HF 677
NEW section

182.23 Report.

During the period of collection of the assessment, the board in cooperation with the auditor of state shall make an annual report which shall show all income, expenses and other relevant information.

85 Acts, ch 207, §23 HF 677
NEW section

CHAPTER 183**SWINE PRODUCERS ASSOCIATION**

Repealed by 85 Acts, ch 199, §15 SF 581; see ch 183A

CHAPTER 183A**IOWA PORK PRODUCERS COUNCIL****183A.1 Definitions.**

As used in this chapter:

1. "*First purchaser*" means a person who buys porcine animals from a producer in the first instance.
2. "*Porcine animals*" means swine raised for slaughter, feeder pigs, or swine seedstock.
3. "*Producer*" means a person engaged in this state in the business of producing and marketing porcine animals in the previous calendar year.

4. "*Pork*" means porcine animals and all parts of porcine animals.

5. "*Market development*" means research and education programs directed at better and more efficient production, marketing, and utilization of pork; public relations and other promotion techniques for the maintenance of existing markets for pork, including but not limited to contributions to organizations working toward the purposes of this subsection; development of new or larger markets for pork both domestic and foreign, and adoption, prevention, modification, or elimination of trade barriers which bear on the flow of pork in commercial channels.

6. "*Assessment*" means an excise tax on the sale of porcine animals as provided in this chapter.

7. "*Secretary*" means the secretary of agriculture.

8. "*Iowa pork producers council*" or "*council*" means the body established under section 183A.2.

85 Acts, ch 199, §1 SF 581
NEW section

183A.2 Iowa pork producers council.

The Iowa pork producers council is established. The council shall consist of the immediate past president and the current president of the Iowa pork producers association, two members appointed by the Iowa pork producers association from its board of directors, and three pork producers appointed by the secretary, one from each of three districts of the state designated by the secretary. The Iowa pork producers association shall nominate three producers from each of these three districts. The secretary, the dean of the college of agriculture of Iowa state university of science and technology, and the state veterinarian, or their designees, shall serve on the council as nonvoting ex officio members.

The immediate past president of the Iowa pork producers association shall serve as chair of the council.

85 Acts, ch 199, §2 SF 581
NEW section

183A.3 Terms.

The immediate past president and the current president of the Iowa pork producers association shall serve as long as they hold those respective offices. The other voting members shall serve terms of three years; and shall not serve for more than two complete consecutive terms. On the initial council, one voting member shall serve an initial term of one year, two shall serve initial terms of two years, and two shall serve initial terms of three years.

85 Acts, ch 199, §3 SF 581
NEW section

183A.4 Vacancies.

A vacancy in the office of either the immediate past president or current president of the Iowa pork producers association shall be filled by the president-designate of the Iowa pork producers association. The council shall by appointment fill an unexpired term if a vacancy occurs in any other voting membership.

85 Acts, ch 199, §4 SF 581
NEW section

183A.5 Duties, objects and powers of the council.

The council shall:

1. Aid in the promotion of the pork industry of the state.
2. Make an annual report of its proceedings and expenditures to the secretary.
3. Elect a secretary and other officers it deems advisable.
4. Administer and enforce this chapter, and do and perform all acts and exercise all powers reasonably necessary to effectuate the purposes and requirements of this chapter.

5. Hire and discharge employees and professional counsel as necessary, prescribe their duties and powers, and fix their compensation.
6. Establish offices, incur expenses, and enter into any contracts or agreements necessary to carry out the purposes of this chapter.
7. Report alleged violations of this chapter to the attorney general or appropriate county attorney.
8. Keep accurate books, records, and accounts of all its dealings.
9. Receive, administer, disburse and account for, in addition to the funds received from the assessment provided in this chapter, other funds voluntarily contributed to the council for the purpose of promoting the pork industry.

The council may enter into arrangements with persons purchasing Iowa produced pork outside Iowa, for collection of the assessment from such buyers.

The council is a state agency only for the purposes of chapters 21 and 22. Chapter 17A does not apply to the council.

85 Acts, ch 199, §5 SF 581
NEW section

183A.6 Assessment.

The council shall make an assessment of not less than point zero zero two nor more than point zero zero three of the gross sale price of all porcine animals. The assessment shall be point zero zero two five of the gross sale price of porcine animals until consent to an assessment has been given through the initial referendum referred to in this chapter. After approval of the initial referendum, the rate of assessment shall be determined by the council. The assessment shall be made at the time of delivery of the animals for sale, and shall be deducted by the first purchaser from the price paid to the producer. The first purchaser, at the time of sale, shall make and deliver to the producer an invoice for each purchase showing the names and addresses of the producer and the first purchaser, the number and kind of animals sold, the date of sale, and the assessment made on the sale.

Assessments shall be paid to the Iowa pork producers council by first purchasers at a time prescribed by the council, but not later than the last day of the month following the month in which the animals were purchased.

85 Acts, ch 199, §6 SF 581
NEW section

183A.7 Fund.

Assessments imposed under this chapter paid to and collected by the Iowa pork producers council shall be deposited in the pork promotion fund which is established in the office of the treasurer of state.

From the moneys collected, the council shall first pay the costs of referendums held pursuant to this chapter. Of the funds remaining at least ten percent shall be remitted to the national livestock and meat board and the pork industry group thereof, at least twenty-five percent shall be remitted to the national pork producers council, and at least fifteen percent shall be remitted to the Iowa pork producers association in the proportion the committee determines, for use by recipients in a manner not inconsistent with market development as defined in section 183A.1. Moneys remaining in the fund shall be spent as found necessary by the council to further carry out the provisions and purposes of this chapter.

The pork promotion fund shall be subject at all times to warrants by the state comptroller, drawn upon the written requisition of the chair of the council attested to by its secretary, for payment of expenditures of the council, which shall, at no time, exceed the amount deposited in the fund.

85 Acts, ch 199, §7 SF 581
NEW section

183A.8 Refund of assessment.

A producer from whom the assessment has been deducted, upon written application filed with the council within thirty days after its collection, shall have that amount refunded by the council. Application forms shall be given by the council to each first purchaser when requested and the first purchaser shall make the applications available to any producer. Each application for a refund by a producer shall have attached a proof of assessment deducted. The proof of assessment deducted shall be in the form of the original purchase invoice by the first purchaser. The council shall have thirty days from the date the application for refund is received to remit the refund to the producer.

85 Acts, ch 199, §8 SF 581
NEW section

183A.9 Referendum.

At a time designated by the council within eighteen months after July 1, 1985, the secretary shall conduct a referendum under administrative procedures prescribed by the department of agriculture.

Upon signing a statement certifying to the secretary that the person is a bona fide producer as defined in this chapter, each producer is entitled to one vote in each referendum. The secretary shall determine the qualification of producers under this section.

The secretary shall count and tabulate the ballots filed during the referendum within thirty days of the close of the referendum. If from the tabulation the secretary determines that a majority of the total number of producers voting in the referendum favors the assessment, the assessment provided for in the referendum shall be levied. The ballots cast pursuant to this section constitute complete and conclusive evidence for use in determinations made by the secretary under this chapter.

The secretary shall hold subsequent referendums on request of ten percent or more of the number of producers eligible to vote, to determine whether the producers favor the termination or suspension of the assessment. The secretary shall suspend or terminate collection of the assessment within six months after the secretary determines that suspension or termination of the assessment is favored by a majority of the producers voting in the referendum, and shall terminate the assessment in an orderly manner as soon as practicable after the determination.

85 Acts, ch 199, §9 SF 581
NEW section

183A.10 Expenses of members.

The members of the council shall receive forty dollars for each day spent on official business of the council, not to exceed six hundred dollars per annum, and their actual necessary expenses, while engaged in council activity.

85 Acts, ch 199, §10 SF 581
NEW section

183A.11 Audit.

Moneys collected under authority of this chapter shall be supervised by a certified public accountant employed by the council using generally accepted accounting principles and shall be subject to audit by the auditor of state.

85 Acts, ch 199, §11 SF 581
NEW section

183A.12 Examination of books.

Persons subject to this chapter and first purchasers shall furnish any information needed to enable the council and secretary to carry out the provisions of this chapter. For the purpose of ascertaining the correctness of any information given to the council or the secretary under this chapter, the secretary may examine books, papers, records, copies of tax returns, accounts, correspondence, contracts, or other docu-

ments and memoranda the secretary deems relevant which are in the control of any person and which are not otherwise confidential as provided by law. The secretary may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas duces tecum in connection with the administration of this chapter.

85 Acts, ch 199, §12 SF 581
NEW section

183A.13 Misdemeanors.

A person who violates or assists in the violation of any of the provisions of this chapter is guilty of a simple misdemeanor.

85 Acts, ch 199, §13 SF 581
NEW section

183A.14 Influencing legislation.

Neither council members nor employees of the council shall attempt in any manner to influence legislation affecting any matters pertaining to the council's activities. No portion of the pork promotion fund shall be used, directly or indirectly, to influence legislation, to support any candidate for public office, or to support any political party.

85 Acts, ch 199, §14 SF 581
NEW section

CHAPTER 189

GENERAL PROVISIONS

189.2 Duties.

The department of agriculture shall:

1. Execute and enforce this title, except chapters 203, 203A, 204, 204A and 205.
2. Make and publish all necessary rules, not inconsistent with law, for enforcing the provisions of this title.
3. Provide such educational measures and exhibits, and conduct such educational campaigns as are deemed advisable in fostering and promoting the production and sale of the articles dealt with in this title in accordance with the regulations herein prescribed.
4. Issue from time to time, bulletins showing the results of inspections, analyses, and prosecutions under this title. These bulletins shall be printed in such numbers as may be approved by the superintendent of printing and shall be distributed to the newspapers of the state and to all interested persons.

85 Acts, ch 67, §20 SF 121
Subsection 1 amended

CHAPTER 194

GRADES OF MILK

194.6 Bacterial test.

At least once every thirty days an estimate of the bacterial quality shall be made of each producer's milk by use of a standard plate count or an equivalent plate counting procedure in an officially designated laboratory.

For the purpose of quality improvement and payment, the following classifications of milk for bacterial estimate are applicable:

Bacterial Estimate Classification	Standard Plate Count or Equivalent
Class 1	Not over 300,000 per Milliliter
Class 2	Not over 1,000,000 per Milliliter
Undergrade	Over 1,000,000 per Milliliter

84 Acts, ch 1120, §1 SF 2189
1984 amendment effective July 1, 1986; 84 Acts, ch 1120, §4
Unnumbered paragraph 2 amended

194.8 Unacceptable milk.

Milk acceptable from the standpoint of organoleptic examination, containing no excessive extraneous matter and classified in excess of one million for bacterial estimate, may be used in the processing and manufacturing of dairy products for human consumption for a period of seven consecutive days.

After a week another quality test must be run on this producer's milk, and if the milk has not improved to class 2 or better, similar tests must be made at least one day per week for three successive weeks. If after the fourth weekly test the milk from the producer has not improved to class 2 or better, no plant shall accept milk from this producer for the manufacture of dairy products for human consumption until the secretary has authorized the producer's reinstatement. Any further acceptance of milk from this producer shall be on the basis of testing the first shipment for extraneous matter and bacterial estimate to determine if the milk is class 2 or better.

84 Acts, ch 1120, §2 SF 2189
1984 amendment effective July 1, 1986; 84 Acts, ch 1120, §4
Unnumbered paragraph 1 amended

194.9 Unlawful milk.

Milk, which from the standpoint of organoleptic examination is not acceptable, or which contains excessive extraneous matter or which by four weekly bacterial estimate tests is classified in excess of one million, or which contains material evidencing production from a mastitic cow, or which contains chemicals, medicines, or radioactive agents deleterious to health, is unlawful for the manufacture of dairy products for human consumption.

84 Acts, ch 1120, §3 SF 2189
1984 amendments effective July 1, 1986; 84 Acts, ch 1120, §4
Section amended

CHAPTER 196

EGG HANDLERS

196.1 Definitions.

Unless the context otherwise requires:

1. "Retailer" means a person who sells eggs directly to consumers except a producer who sells eggs under the provisions of section 196.4.
2. "Egg handler" or "handler" means a person who buys or sells eggs, or uses eggs in the preparation of human food. "Egg handler" or "handler" does not include a retailer, a consumer, an establishment, or a producer who sells eggs as provided in section 196.4.
3. "Nest run eggs" means eggs which have not been denatured, candled, graded, processed or labeled.
4. "Producer" means a person who owns layer type chickens.
5. "Establishment" means any place in which eggs are offered or sold as human food for consumption by its employees, students, patrons, customers, residents, inmates or patients or as an ingredient in food offered or sold in a form ready for immediate consumption.

6. "*Candling*" means the careful examination of each shell egg and the elimination of those eggs determined unfit for human consumption.

7. "*Grading*" means classifying each shell egg by weight and grading in accordance with egg grading standards approved by the United States government as of July 1, 1985, pursuant to the Agricultural Marketing Act of 1946, 7 U.S.C. § 1621 et seq.

8. "*Secretary*", "*department*", and "*package*" have the meanings ascribed to them in section 189.1.

9. "*Consumer*" means a person who buys eggs for personal consumption.

85 Acts, ch 195, §20 SF 329
Subsection 7 amended

196.2 Enforcement.

The secretary shall enforce the provisions of this chapter, and may make rules pursuant to chapter 17A and consistent with regulations of the United States government as they exist on July 1, 1985, pursuant to the Agricultural Marketing Act of 1946, 7 U.S.C. § 1621 et seq., and the Egg Products Inspection Act of 1970, 21 U.S.C. § 1044 et seq.

85 Acts, ch 195, §21 SF 329
Section amended

196.9 Eggs unfit for human food.

Eggs determined to be unfit for human food under title 21, section 1034 of the United States Code as amended to July 1, 1985 shall not be bought or sold or offered for purchase or sale by any person unless the eggs are denatured so that they cannot be used for human food.

85 Acts, ch 195, §22 SF 329
Section amended

CHAPTER 199

AGRICULTURAL SEEDS

199.10 Testing methods—co-operation of facilities.

1. *Testing methods when seed is for sale.* Seed lots of all kinds of agricultural seed intended for sale in this state shall be tested in accordance with the association of official seed analysts' rules for testing seed or the regulations under the federal Seed Act. The tests required shall be:

- a. Purity analysis.
- b. Noxious weed examination.
- c. Germination.

2. *Charges for testing.* Charges for seed testing by the Iowa State University or department of agriculture seed laboratory shall be determined by the Iowa State University laboratory. Separate fee schedules shall be published for:

- a. Tests for seed dealers, permit holders and farmers who plan to sell seed.
- b. Tests for out-of-state persons.

3. *Co-operation between the Iowa State University and the state department of agriculture.* To furnish farmers and seed dealers with information as to seed quality and guide them in the proper labeling of seed for sale, these organizations shall:

- a. Integrate seed testing so as to avoid unnecessary duplication of personnel and equipment. The state department of agriculture seed laboratory shall be primarily concerned with seed testing for seed law enforcement purposes. The Iowa State University seed laboratory shall promote seed education and research and shall conduct service testing for farmers and seed dealers.

- b. Exchange information which will be mutually beneficial to both agencies in matters pertaining to agricultural seed.

c. Guide seed testing by all individuals or organizations so as to promote uniformity of seed testing in Iowa.

85 Acts, ch 67, §21, 22 SF 121

Subsection 2, paragraph a amended

Subsection 3, unnumbered paragraph 1 and paragraphs a and c amended

199.16 Permit holder's bond.

It is unlawful for the permit holder to enter into a contract with a grower who purchases agricultural seed in which the permit holder agrees to repurchase the seed crop produced from the purchased seed at a price in excess of the current market price, unless the permit holder has on file with the department a bond, in a penal sum of twenty-five thousand dollars running to the state of Iowa, with sureties approved by the secretary, for the use and benefit of a person holding a repurchase contract who might have a cause of action of any nature arising from the purchase or contract. However, the aggregate liability of the surety to all purchasers of seed holding repurchase contracts shall not exceed the sum of the bond.

85 Acts, ch 84, §1 SF 466

Section amended

CHAPTER 200

FERTILIZERS AND SOIL CONDITIONERS

200.8 Inspection fees.

1. There shall be paid by the licensee to the secretary for all commercial fertilizers and soil conditioners sold, or distributed in this state, an inspection fee to be fixed annually by the secretary of agriculture at not more than twenty cents per ton: Except sales for manufacturing purposes only are hereby exempted from fees but must still be reported showing manufacturer who purchased same. Payment of said inspection fee by any licensee shall exempt all other persons, firms or corporations from the payment thereof.

On individual packages of specialty fertilizer containing twenty-five pounds or less, there shall be paid in lieu of the annual license fee and the semiannual inspection fee as set forth in this chapter, an annual registration and inspection fee of twenty-five dollars for each brand and grade sold or distributed in the state. In the event that any person sells specialty fertilizer in packages of twenty-five pounds or less and also in packages of more than twenty-five pounds, this annual registration and inspection fee shall apply only to that portion sold in packages of twenty-five pounds or less, and that portion sold in packages of more than twenty-five pounds shall be subject to the same inspection fee as fixed by the secretary of agriculture as provided in this chapter.

2. Every licensee and any person required to pay an annual registration and inspection fee under this chapter in this state shall:

a. File not later than the last day of January and July of each year, on forms furnished by secretary, a semiannual statement setting forth the number of net tons of commercial fertilizer or soil conditioners distributed in this state by grade for each county during the preceding six months' period; and upon filing such statement shall pay the inspection fee at the rate stated in subsection 1 of this section. However, in lieu of the semiannual statement by grade for each county, as hereinabove provided for, the registrant, on individual packages of commercial fertilizer containing twenty-five pounds or less, shall file not later than the last day of July of each year, on forms furnished by the secretary, an annual statement setting forth the number of net tons of commercial fertilizer distributed in this state by grade during the preceding twelve-month period, but no inspection fee shall be due thereon.

b. If the tonnage report is not filed or the payment of inspection fees, or both,

is not made within ten days after the last day of January and July of each year as required in paragraph "a" of this subsection, a penalty amounting to ten percent of the amount due, if any, shall be assessed against the licensee. In any case, the penalty shall be no less than fifty dollars. The amount of fees due, if any, and penalty shall constitute a debt and become the basis of a judgment against the licensee.

3. If there is an unencumbered balance of funds in the fertilizer fund on June 30 of any fiscal year equal to or exceeding three hundred fifty thousand dollars, the secretary of agriculture shall reduce the per ton fee provided for in subsection 1 and the annual license fee established pursuant to section 201.3 for the next fiscal year in such amount as will result in an ending estimated balance for the June 30 of the next fiscal year of three hundred fifty thousand dollars.

85 Acts, ch 142, §1 SF 465
Subsection 3 amended

CHAPTER 201

AGRICULTURAL LIME

201.3 Fee.

The annual license fee shall be determined by the secretary but shall not exceed forty dollars.

85 Acts, ch 142, §2 SF 465
Section amended

201.13 Moneys to fertilizer fund—periodic report.

The moneys received under this chapter shall be deposited in the fertilizer fund as established pursuant to chapter 200, to be used by the department of agriculture only for the purpose of inspection, sampling, analyzing, preparing and publishing of reports, and other expenses necessary for the administration of this chapter. The secretary shall issue an annual report showing a statement of moneys received from license and testing fees, and a biennial report which shall be made available to the public showing the certifications of the effective calcium carbonate equivalent for all agricultural lime, limestone, or aglime certified as provided in this chapter. The report shall list the manufacturers and producers and their locations. Copies of all reports issued by the secretary pursuant to this section shall be sent to the members of the house of representatives and senate standing committees on agriculture.

85 Acts, ch 142, §3 SF 465
Section struck and rewritten

CHAPTER 204

UNIFORM CONTROLLED SUBSTANCES (DRUGS)

204.204 Schedule I—substances included.

1. The controlled substances listed in this section are included in schedule I.
2. *Opiates*. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:
 - a. Acetylmethadol.
 - b. Allylprodine.
 - c. Alphacetylmethadol.
 - d. Alphameprodine.

- e. Alphamethadol.
- f. Alpha-Methylfentanyl(N-(1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl) propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido)piperidine).
- g. Benzethidine.
- h. Betacetylmethadol.
- i. Betameprodine.
- j. Betamethadol.
- k. Betaprodine.
- l. Clonitazene.
- m. Dextromoramide.
- n. Difenoxin.
- o. Diampromide.
- p. Diethylthiambutene.
- q. Dimenoxadol.
- r. Dimepheptanol.
- s. Dimethylthiambutene.
- t. Dioxaphetyl butyrate.
- u. Dipipanone.
- v. Ethylmethylthiambutene.
- w. Etonitazene.
- x. Etoxidine.
- y. Furethidine.
- z. Hydroxypethidine.
- aa. Ketobemidone.
- ab. Levomoramide.
- ac. Levophenacymorphan.
- ad. Morpheridine.
- ae. Noracymethadol.
- af. Norlevorphanol.
- ag. Normethadone.
- ah. Norpipanone.
- ai. Phenadoxone.
- aj. Phenampromide.
- ak. Phenomorphan.
- al. Phenoperidine.
- am. Piritramide.
- an. Proheptazine.
- ao. Properidine.
- ap. Propiram.
- aq. Racemoramide.
- ar. Tilidine.
- as. Trimeperidine.

3. *Opium derivatives.* Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers and salts of isomers, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- a. Acetorphine.
- b. Acetyldihydrocodeine.
- c. Benzylmorphine.
- d. Codeine methylbromide.
- e. Codeine-N-Oxide.
- f. Cyprenorphine.
- g. Desomorphine.
- h. Dihydromorphine.
- i. Etorphine (except hydrochloride salt).

- j. Heroin.
- k. Hydromorphenol.
- l. Methyldesorphine.
- m. Methyldihydromorphine.
- n. Morphine methylbromide.
- o. Morphine methylsulfonate.
- p. Morphine-N-Oxide.
- q. Myrophine.
- r. Nicocodeine.
- s. Nicomorphine.
- t. Normorphine.
- u. Phoclodine.
- v. Thebacon.
- w. Drotebanol.

4. *Hallucinogenic substances.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

- a. 4-bromo-2,5-dimethoxy-amphetamine. Some trade or other names: 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA.
- b. 2,5-dimethoxyamphetamine. Some trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA.
- c. 4-methoxyamphetamine. Some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine, PMA.
- d. 5-methoxy-3,4-methylenedioxy-amphetamine.
- e. 4-methyl-2,5-dimethoxyl-amphetamine. Some trade or other names: 4-methyl-2,5-dimethoxy-a-methylphenethylamine; "DOM"; and "STP".
- f. 3,4-methylenedioxy amphetamine, also known as MDA.
- g. 3,4,5-trimethoxy amphetamine.
- h. Bufotenine. Some trade or other names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine.
- i. Diethyltryptamine. Some trade and other names: N, N-Diethyltryptamine; DET.
- j. Dimethyltryptamine. Some trade or other names: DMT.
- k. Ibogaine. Some trade or other names: 7-Ethyl-6,6B,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido (1',2':1,2) azepino (5,4-b) indole; Tabernanthe iboga.
- l. Lysergic acid diethylamide.
- m. Marijuana, except as otherwise provided by rules of the board of pharmacy examiners for medicinal purposes.
- n. Mescaline.
- o. Parahexyl. Some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo (b,d) pyran; synhexyl.
- p. Peyote, except as otherwise provided in subsection 8. Meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or extracts.
- q. N-ethyl-3-piperidyl benzilate.
- r. N-methyl-3-piperidyl benzilate.
- s. Psilocybin.

t. Psilocyn.

u. Tetrahydrocannabinols, except as otherwise provided by rules of the board of pharmacy examiners for medicinal purposes. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, and synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Δ 1 cis or trans tetrahydrocannabinol, and their optical isomers Δ 6 cis or trans tetrahydrocannabinol, and their optical isomers Δ 3,4 cis or trans tetrahydrocannabinol, and their optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

v. Ethylamine analog of phencyclidine. Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.

w. Pyrrolidine analog of phencyclidine. Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP.

x. Thiophene analog of phencyclidine. Some trade or other names: 1-(1-(2-thienyl)-cyclohexyl)-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP.

5. *Depressants*. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Mecloqualone.

b. Methaqualone.

6. *Stimulants*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

a. Fenethylline.

b. N-ethylamphetamine.

7. *Exclusions*. This section does not apply to marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol when utilized for medicinal purposes pursuant to rules of the state board of pharmacy examiners.

8. *Peyote*. Nothing in this chapter shall apply to peyote when used in bona fide religious ceremonies of the Native American Church; however, persons supplying the product to the church shall register, maintain appropriate records of receipts and disbursements of peyote, and otherwise comply with all applicable requirements of this chapter and rules adopted pursuant thereto.

85 Acts, ch 86, §1.2 SF 376

Subsection 2, paragraph a struck and subsequent paragraphs relettered

Subsection 5, paragraph b inserted (formerly reserved)

204.206 Schedule II—substances included.

1. Schedule II consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

2. *Substances, vegetable origin or chemical synthesis*. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrophan, nalbuphine, naloxone, and naltrexone, and their respective salts, but including the following:

(1) Raw opium.

- (2) Opium extracts.
- (3) Opium fluid extracts.
- (4) Powdered opium.
- (5) Granulated opium.
- (6) Tincture of opium.
- (7) Codeine.
- (8) Ethylmorphine.
- (9) Etorphine hydrochloride.
- (10) Hydrocodone, also known as dihydrocodeinone.
- (11) Hydromorphone, also known as dihydromorphinone.
- (12) Metopon.
- (13) Morphine.
- (14) Oxycodone.
- (15) Oxymorphone.
- (16) Thebaine.

b. Any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph "a", subparagraph (1), except that these substances shall not include the isoquinoline alkaloids of opium.

c. Opium poppy and poppy straw.

d. Coca leaves and any salt, compound, derivative or preparation of coca leaves. Decocainized coca leaves or extractions which do not contain cocaine or ecgonine are excluded from this paragraph. The following substances and their salts, isomers and salts of isomers, if salts, isomers or salts of isomers exist under the specific chemical designation, are included in this paragraph:

- (1) Cocaine.
- (2) Ecgonine.

e. Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy).

3. *Opiates*. Unless specifically excepted or unless listed in another schedule any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextropropfan and levopropoxyphene excepted:

- a. Alphaprodine.
- b. Anileridine.
- c. Bezitramide.
- d. Bulk dextropropoxyphene (nondosage forms).
- e. Dihydrocodeine.
- f. Diphenoxylate.
- g. Fentanyl.
- h. Isomethadone.
- i. Levomethorphan.
- j. Levorphanol.
- k. Metazocine.
- l. Methadone.
- m. Methadone-intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane.
- n. Moramide-intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid.
- o. Pethidine (meperidine).
- p. Pethidine-intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
- q. Pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.
- r. Pethidine-intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
- s. Phenazocine.

- t. Piminodine.
- u. Racemethorphan.
- v. Racemorphan.
- w. Sufentanil.

4. *Stimulants*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

- a. Amphetamine, its salts, isomers, and salts of its isomers.
- b. Methamphetamine, its salts, isomers, and salts of its isomers.
- c. Phenmetrazine and its salts.
- d. Methylphenidate and its salts.

5. *Depressants*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- a. Amobarbital.
- b. Pentobarbital.
- c. Phencyclidine.
- d. Secobarbital.

6. *Immediate precursors*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

- a. Immediate precursor to amphetamine and methamphetamine:

(1) Phenylacetone. Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.

- b. Immediate precursors to phencyclidine (PCP):

- (1) 1-phenylcyclohexylamine.
- (2) 1-piperidinocyclohexanecarbonitrile (PCC).

7. Marijuana, tetrahydrocannabinol and chemical derivatives of tetrahydrocannabinol shall be deemed to be schedule II substances, but only when used for medicinal purposes pursuant to rules of the board of pharmacy examiners.

85 Acts, ch 86, §3, 4 SF 376
 Subsection 3, NEW paragraph w
 Subsection 5, paragraph b struck and subsequent paragraphs renumbered

204.210 Schedule IV—substances included.

1. The controlled substances listed in this section are included in schedule IV.

2. *Narcotic drugs*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

a. Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

b. Dextropropoxyphene (alpha-(α)-4-dimethylamindiphenyl-3-methyl-2-propionyxybutane).

3. *Depressants*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- a. Alprazolam.
- b. Barbital.
- c. Bromazepam.
- d. Camazepam.
- e. Chloral betaine.

- f. Chloral hydrate.
- g. Chlordiazepoxide.
- h. Clobazam.
- i. Clonazepam.
- j. Clorazepate.
- k. Clotiazepam.
- l. Cloxazolam.
- m. Delorazepam.
- n. Diazepam.
- o. Estazolam.
- p. Ethchlorvynol.
- q. Ethinamate.
- r. Ethyl Loflazepate.
- s. Fludiazepam.
- t. Flunitrazepam.
- u. Flurazepam.
- v. Halazepam.
- w. Haloxazolam.
- x. Ketazolam.
- y. Loprazolam.
- z. Lorazepam.
- aa. Lormetazepam.
- ab. Mebutamate.
- ac. Medazepam.
- ad. Meprobamate.
- ae. Methohexital.
- af. Methylphenobarbital (mephobarbital).
- ag. Nimetazepam.
- ah. Nitrazepam.
- ai. Nordiazepam.
- aj. Oxazepam.
- ak. Oxazolam.
- al. Paraldehyde.
- am. Petrichloral.
- an. Phenobarbital.
- ao. Pinazepam.
- ap. Prazepam.
- aq. Temazepam.
- ar. Tetrazepam.
- as. Triazolam.

4. *Fenfluramine*. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

- a. Fenfluramine.

5. *Stimulants*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

- a. Diethylpropion.
- b. Mazindol.
- c. Pemoline (including organometallic complexes and chelates thereof).
- d. Phentermine.
- e. Pipradrol.
- f. SPA ((-)-1-dimethylamino-1,2-diphenylethane).

6. *Other substances.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

a. Pentazocine.

85 Acts, ch 86, §5 SF 376
Subsection 3 amended

204.212 Schedule V—substances included.

1. The controlled substances listed in this section are included in schedule V.

2. Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

a. Not more than two hundred milligrams of codeine per one hundred milliliters or per one hundred grams.

b. Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams.

c. Not more than one hundred milligrams of ethylmorphine per one hundred milliliters or per one hundred grams.

d. Not more than two point five milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit.

e. Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams.

f. Not more than point five milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

3. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below:

a. Buprenorphine.

85 Acts, ch 86, §6 SF 376
NEW subsection 3

CHAPTER 205

SALE AND DISTRIBUTION OF POISONS

205.3 Prescriptions.

A person shall not fill a prescription for a drug required by chapter 204 or this chapter to be furnished only upon written prescription unless the prescription is ordered for a medical, dental, or veterinary purpose only.

85 Acts, ch 73, §1 SF 306
Section amended

CHAPTER 214A

MOTOR VEHICLE FUEL

214A.1 Definitions.

The following definitions shall apply to the various terms used in this chapter:

1. "*Motor vehicle fuel*" shall mean and include any substance or combination of substances which is intended to be or is capable of being used for the purpose of propelling or running by combustion any internal combustion engine and kept for sale or sold for that purpose. The products commonly known as kerosene and distillate or petroleum products of lower gravity (Baume scale) when not used to propel a motor vehicle or for compounding or combining with any motor vehicle fuel, shall be exempt from the provisions of this chapter.

2. "*Department*" wherever used throughout this chapter shall be construed to mean the department of agriculture.

3. "*Retail dealer*" shall mean and include any person, firm, partnership, association, or corporation who operates, maintains, or conducts, either in person, or by any agent, employee, or servant, any place of business, filling station, pump station, or tank wagon, from which any motor vehicle fuel, as defined herein, is sold or offered for sale, at retail, or to the final or ultimate consumer.

4. "*Wholesale dealer*" shall mean and include any person, firm, partnership, association, or corporation, other than retail dealers as defined in subsection 3 of this section, who sells, keeps, or holds, for sale, or purchase for the purpose of sale within this state, any motor vehicle fuel.

5. "*Oxygenate octane enhancer*" means oxygen-containing compounds, including but not limited to alcohols and ethers.

6. "*A.S.T.M.*" means the American society for testing and materials.

85 Acts, ch 76, §1 SF 539
NEW subsections 5 and 6

214A.2 Tests and standards.

1. The secretary shall adopt rules pursuant to chapter 17A for carrying out the provisions of this chapter. In the interest of uniformity, the secretary shall adopt by reference or otherwise specifications relating to tests and standards for motor fuel established by the American society for testing and materials, unless the secretary determines those specifications are inconsistent with this chapter or are not appropriate to the conditions which exist in this state. References to A.S.T.M. specifications and standards are to the A.S.T.M. specifications and standards in effect on January 1, 1985.

2. Octane number shall conform to the average of values obtained from the A.S.T.M. D-2699 research method and the A.S.T.M. D-2700 motor method.

Octane number for regular grade leaded gasoline shall follow the specifications of A.S.T.M. but shall not be less than eighty-eight.

Octane number for premium grade leaded gasoline shall follow the specifications of A.S.T.M. but shall not be less than ninety-three.

Octane number for regular grade unleaded gasoline shall follow the specifications of A.S.T.M. but shall not be less than eighty-seven.

Octane number for premium grade unleaded gasoline shall follow the specifications of A.S.T.M. but shall not be less than ninety.

3. Gasoline shall not contain a mixture of more than thirteen percent ethanol.

4. Gasoline shall not contain methanol without an equal amount of cosolvent, and shall not contain more than five percent methanol.

85 Acts, ch 76, §2-5 SF 539; 85 Acts, ch 195, §23 SF 329
Subsection 1 amended
Subsection 2, unnumbered paragraphs 2, 3, 4 and 5 amended
Subsection 2, unnumbered paragraph 8 amended
Subsection 2, unnumbered paragraphs 6, 7 and 8 struck
NEW subsection 4

214A.16 Notice of blended fuel.

All motor vehicle fuel kept, offered, or exposed for sale, or sold at retail containing over one percent ethanol, methanol, or any combination of oxygenate octane enhancers shall be identified as "with" either "ethanol", "methanol", "ethanol/methanol", or similar wording on a white adhesive decal with black letters at least one inch high and at least one-quarter inch wide placed between thirty and forty inches above the driveway level on the front sides of any container or pump from which the motor fuel is sold.

85 Acts, ch 76, §6 SF 539
Section struck and rewritten

214A.17 Documentation in transactions.

Upon any delivery of motor vehicle fuel to a retailer, the invoice, bill of lading, shipping or other documentation shall disclose the presence, type, and amount of oxygenate octane enhancers over one percent by weight contained in the fuel.

85 Acts, ch 76, §7 SF 539
NEW section

214A.18 Whole-cent pricing.

No retailer shall sell or offer for sale motor vehicle fuel except at a whole-cent price per unit.

85 Acts, ch 76, §8 SF 539
NEW section

CHAPTER 216

IOWA STATE INDUSTRIES

Transferred in Code Supplement 1985 to division VIII of chapter 246;
85 Acts, ch 21, §54 HF 186; see table of corresponding sections

CHAPTER 217

DEPARTMENT OF HUMAN SERVICES

217.23 Personnel—merit system—reimbursement for damaged property.

1. The commissioner of human services or the commissioner's designee, shall employ such personnel as are necessary for the performance of the duties and responsibilities assigned to the department. All employees shall be selected on a basis of fitness for the work to be performed with due regard to training and experience and shall be subject to the provisions of chapter 19A.

2. The department is hereby authorized to expend moneys from the support allocation of the department as reimbursement for replacement or repair of personal items of the department's employees damaged or destroyed by clients of the department during the employee's tour of duty. However, the reimbursement shall not exceed one hundred fifty dollars for each item. The department shall establish rules in accordance with chapter 17A to carry out the purpose of this section.

85 Acts, ch 253, §7 SF 578
Exception for reimbursement to employees for damaged property; 85 Acts, ch 259, § 12
Subsection 2 amended

CHAPTER 217A

IOWA DEPARTMENT OF CORRECTIONS

Transferred in Code Supplement 1985 to chapter 246;
85 Acts, ch 21, §54 HF 186; see table of corresponding sections

CHAPTER 218

GOVERNMENT OF INSTITUTIONS UNDER DEPARTMENT OF HUMAN SERVICES

218.75 Payments for medical assistance. Repealed by 85 Acts, ch 146, §4. SF 588 See §249A.11.

218.78 Institutional receipts deposited.

1. All institutional receipts of the department of human services shall be deposited in the general fund except for reimbursements for services provided to another institution or state agency, for receipts deposited in the revolving farm fund under section 217A.70, for deposits into the medical assistance fund under section 249A.11, and rentals charged to employees or others for room, apartment, or house and meals, which shall be available to the institutions.

2. If approved by the commissioner of human services, the department may use appropriated funds for the granting of educational leave.

85 Acts, ch 146, §1 SF 588
Subsection 1 amended

CHAPTER 218B

INTERSTATE CORRECTIONS COMPACT

Transferred in Code Supplement 1985 to chapter 247; 85 Acts, ch 21, §54
HF 186; see table of corresponding sections

CHAPTER 220

IOWA FINANCE AUTHORITY

Intent that title guaranties not be made before January 1, 1987;
85 Acts, ch 252, §55 SF 577
Duties with respect to Iowa advance funding authority; see §442A.7

220.1 Definitions.

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

1. "Authority" means the Iowa finance authority established in section 220.2.
2. "Low or moderate income families" means families who cannot afford to pay enough to cause private enterprise in their locality to build an adequate supply of decent, safe, and sanitary dwellings for their use, and also includes, but is not limited to, (1) elderly families, families in which one or more persons are handicapped or disabled, lower income families and very low income families, and (2) families purchasing or renting qualified residential housing.
3. "Lower income families" means families whose incomes do not exceed eighty percent of the median income for the area with adjustments for the size of the family or other adjustments necessary due to unusual prevailing conditions in the area, and includes, but is not limited to, very low income families.

4. "*Very low income families*" means families whose incomes do not exceed fifty percent of the median income for the area, with adjustments for the size of the family or other adjustments necessary due to unusual prevailing conditions in the area.

5. "*Elderly families*" means families of low or moderate income where the head of the household or the head's spouse is at least sixty-two years of age or older, or the surviving member of any such tenant family.

6. a. "*Families*" includes but is not limited to families consisting of a single adult person who is primarily responsible for the person's own support, is at least sixty-two years of age, is disabled, is handicapped, is displaced, or is the remaining member of a tenant family.

b. "*Families*" includes but is not limited to two or more persons living together who are at least sixty-two years of age, are disabled, or are handicapped, or one or more such individuals living with another person who is essential to such individual's care or well-being.

7. "*Disabled*" means unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment.

8. "*Handicapped*" means having a physical or mental impairment which is expected to be of long-continued and indefinite duration, substantially impedes the ability to live independently, and is of a nature that the ability to live independently could be improved by more suitable housing conditions.

9. "*Displaced*" means displaced by governmental action, or by having one's dwelling extensively damaged or destroyed as a result of a disaster.

10. "*Income*" means income from all sources of each member of the household, with appropriate exceptions and exemptions reasonably related to an equitable determination of the family's available income, as established by rule of the authority.

11. a. "*Housing*" means single family and multifamily dwellings, and facilities incidental or appurtenant to the dwellings, and includes group homes of fifteen beds or less licensed as health care facilities or child foster care facilities and modular or mobile homes which are permanently affixed to a foundation and are assessed as realty.

b. "*Adequate housing*" means housing which meets minimum structural, heating, lighting, ventilation, sanitary, occupancy and maintenance standards compatible with applicable building and housing codes, as determined under rules of the authority.

12. "*Health care facilities*" means those facilities referred to in section 135C.1, subsection 4, which contain fifteen beds or less.

13. "*Mortgage*" means a mortgage, mortgage deed, deed of trust, or other instrument creating a first lien, subject only to title exceptions acceptable to the authority, on a fee interest in real property which includes completed housing located within this state, or on a leasehold on such a fee interest which has a remaining term at the time of computation that exceeds by not less than ten years the maturity date of the mortgage loan.

14. "*Mortgage lender*" means any bank, trust company, mortgage company, national banking association, savings and loan association, life insurance company, any governmental agency, or any other financial institution authorized to make mortgage loans in this state and includes a financial institution as defined in section 496B.2, subsection 2, which lends moneys for industrial or business purposes.

15. "*Mortgage loan*" means a financial obligation secured by a mortgage.

16. "*Bond*" means a bond issued by the authority pursuant to sections 220.26 to 220.30.

17. "*Note*" means a bond anticipation note or a housing development fund note issued by the authority pursuant to this chapter.

18. "*State agency*" means any board, commission, department, public officer, or other agency of the state of Iowa.

19. "*Housing program*" means any work or undertaking of new construction or rehabilitation of one or more housing units, or the acquisition of existing residential structures, for the provision of housing, which is financed pursuant to the provisions of this chapter for the primary purpose of providing housing for low or moderate income families. A housing program may include housing for other economic groups as part of an overall plan to develop new or rehabilitated communities or neighborhoods, where housing low or moderate income families is a primary goal. A housing program may include any buildings, land, equipment, facilities, or other real or personal property which is necessary or convenient in connection with the provision of housing, including, but not limited to, streets, sewers, utilities, parks, site preparation, landscaping, and other nonhousing facilities, such as administrative, community, health, recreational, educational, and commercial facilities, as the authority determines to be necessary or convenient in relation to the purposes of this chapter.

20. "*Housing sponsor*" means any individual, joint venture, partnership, limited partnership, trust, corporation, housing co-operative, local public entity, governmental unit, or other legal entity, or any combination thereof, approved by the authority or pursuant to standards adopted by the authority as qualified to either own, construct, acquire, rehabilitate, operate, manage or maintain a housing program, whether for profit, nonprofit or limited profit, subject to the regulatory powers of the authority and other terms and conditions set forth in this chapter.

21. "*Dilapidated*" means decayed, deteriorated or fallen into partial disuse through neglect or misuse.

22. "*Property improvement loan*" means a financial obligation secured by collateral acceptable to the authority, the proceeds of which shall be used for improvement or rehabilitation of housing which is deemed by the authority to be substandard in its protective coatings or its structural, plumbing, heating, cooling, or electrical systems; and regardless of the condition of the property the term "property improvement loan" may include loans to increase the energy efficiency of housing or to finance solar or other renewable energy systems for use in that housing.

23. When used in the context of an assumption of a loan, "*assume*" or "*assumed*" means any type of transaction involving the sale or transfer of an ownership interest in real estate financed by the authority, whether the conveyance involves a transfer by deed or real estate contract or some other device.

24. "*Child foster care facilities*" means the same as defined in section 237.1.

25. "*Cost*" as applied to Iowa small business loan program projects means the cost of acquisition, construction, or both including the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights, and interests required for acquisition, construction, or both. It also means the cost of demolishing or removing structures on acquired land, the cost of access roads to private property, including the cost of land or easements, and the cost of all machinery, furnishings, and equipment, financing charges, and interest prior to and during construction and for no more than eighteen months after completion of construction. Cost also means the cost of engineering, legal expenses, plans, specifications, surveys, estimates of cost and revenues, as well as other expenses incidental to determining the feasibility or practicability of acquiring or constructing a project. It also means other expenses incidental to the acquisition or construction of the project, the financing of the acquisition or construction, including the amount authorized in the resolution of the authority providing for the issuance of bonds, to be paid into any special funds from the proceeds of the bonds, and the financing of the placing of a project in operation.

26. "*Project*" means real or personal property connected with a facility to be acquired, constructed, improved, or equipped, with the aid of the Iowa small business loan program as provided in sections 220.61 to 220.65.

27. "*Iowa small business loan program*" or "*loan program*" means the program for lending moneys to small business established under sections 220.61 to 220.65.

28. "*Small business*" means a profit or nonprofit business, including but not

limited to an individual, partnership, corporation, joint venture, association or cooperative, to which the following apply:

a. It is not an affiliate or subsidiary of a business dominant in its field of operation.

b. It has either twenty or fewer full-time equivalent positions or not more than the equivalent of three million dollars in annual gross revenues as computed, for the preceding fiscal year or as the average of the three preceding fiscal years.

c. It does not involve the operation of a farm and does not involve the practice of a profession.

For purposes of this definition "dominant in its field of operation" means having more than twenty full-time equivalent positions and more than three million dollars in annual gross revenues, and "affiliate or subsidiary of a business dominant in its field of operation" means a business which is at least twenty percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

The authority may, by resolution, waive any or all of the requirements of paragraph "b" in connection with a loan to a small business, as defined under applicable federal law and regulations that have been enacted or adopted by April 1, 1983, in which federal assistance, insurance or guaranties are sought.

29. "*Mortgage-backed security*" means a security issued by the authority which is secured by residential mortgage loans owned by the authority.

30. "*Residential mortgage interest reduction program*" means the program for buying-down interest rates on residential mortgage loans pursuant to sections 220.81 through 220.84.

31. "*Residential mortgage loan*" means a financial obligation secured by a mortgage on a single-family or two-family home.

32. "*Residential mortgage marketing program*" means the program for buying and selling residential mortgage loans and the selling of mortgage-backed securities pursuant to sections 220.71 through 220.73.

33. "*Qualified residential housing*" means any of the following:

a. Owner-occupied residences purchased in a manner which satisfies the requirements contained in section 103A of the Internal Revenue Code in order to be financed with tax exempt mortgage subsidy bonds.

b. Residential property qualifying pursuant to section 103(b)(4) of the Internal Revenue Code to be financed with tax exempt residential rental property bonds.

c. Housing for low or moderate income families, elderly families, and families which include one or more persons who are handicapped or disabled.

34. "*Title guaranty*" means a guaranty against loss or damage caused by defective title to real property.

35. "*Division*" means the title guaranty division.

The authority shall establish by rule further definitions applicable to this chapter, and clarification of the definitions in this section, as necessary to assure eligibility for funds available under federal housing laws, or to assure complying with federal tax laws relating to the issuance of tax exempt mortgage subsidy bonds pursuant to section 103A of the Internal Revenue Code, as defined in section 422.3, or relating to the issuance of tax exempt residential rental property bonds for qualified residential housing under section 103 of the Internal Revenue Code.

85 Acts, ch 225, §1 SF 449; 85 Acts, ch 252, §24, 25 SF 577

See Code editor's note

Subsection 28, unnumbered paragraph 1 amended

NEW subsections 34 and 35

220.2 Establishment of authority—title guaranty division.

1. The Iowa finance authority is established, and constituted a public instrumentality and agency of the state exercising public and essential governmental functions, to undertake programs which assist in attainment of adequate housing

for low or moderate income families, elderly families, and families which include one or more persons who are handicapped or disabled, and to undertake the Iowa homesteading program and the small business loan program. The powers of the authority are vested in and shall be exercised by a board of nine members appointed by the governor subject to confirmation by the senate. No more than five members shall belong to the same political party. As far as possible the governor shall include within the membership persons who represent community and housing development industries, housing finance industries, the real estate sales industry, elderly families, minorities, lower income families, very low income families, handicapped and disabled families, average taxpayers, local government, and any other person specially interested in community housing.

A title guaranty division is created within the authority. The powers of the division as relating to the issuance of title guaranties shall be vested in and exercised by a division board of five members appointed by the governor subject to confirmation by the senate. The membership of the board shall include an attorney, an abstractor, a real estate broker, a representative of a mortgage-lender and a representative of the housing development industry. The executive director of the authority shall appoint a director of the title guaranty division who shall be an attorney and shall serve as an ex officio member of the board. The appointment of and compensation for the division director shall be exempt from the provisions of chapter 19A.

a. Members of the board of the division shall be appointed by the governor for staggered terms of six years beginning and ending as provided in section 69.19. A person shall not serve on the division board while serving on the authority board. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. A member of the division board may be removed from office by the governor for misfeasance, malfeasance or willful neglect of duty or for other just cause, after notice and hearing, unless notice and hearing is expressly waived in writing.

b. Three members of the board shall constitute a quorum. An affirmative vote of a majority of the appointed members is necessary for any substantive action taken by the division.

c. Members of the board are entitled to receive forty dollars per diem for each day spent in performance of duties as members and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

d. Members of the board and the director shall give bond as required for public officers in chapter 64.

e. Meetings of the board shall be held at the call of the chair of the board or on written request of two members.

f. Members shall elect a chair and vice chair annually and other officers as they determine. The director shall serve as secretary to the board.

g. The net earnings of the division, beyond that necessary for reserves, backing, guaranties issued or to otherwise implement the public purposes and programs authorized, shall not inure to the benefit of any person other than the state and are subject to subsection 8.

2. Members of the authority shall be appointed by the governor for staggered terms of six years beginning and ending as provided in section 69.19. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. A member of the authority may be removed from office by the governor for misfeasance, malfeasance or willful neglect of duty or other just cause, after notice and hearing, unless the notice and hearing is expressly waived in writing.

3. Five members of the authority constitute a quorum and the affirmative vote of a majority of the appointed members is necessary for any substantive action taken by the authority. The majority shall not include any member who has a conflict of interest and a statement by a member of a conflict of interest shall be conclusive for

this purpose. A vacancy in the membership does not impair the right of a quorum to exercise all rights and perform all duties of the authority.

4. Members of the authority are entitled to receive forty dollars per diem for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

5. Members of the authority and the executive director shall give bond as required for public officers in chapter 64.

6. Meetings of the authority shall be held at the call of the chairperson or whenever two members so request.

7. Members shall elect a chairperson and vice chairperson annually, and other officers as they determine, but the executive director shall serve as secretary to the authority.

8. The net earnings of the authority, beyond that necessary for retirement of its notes, bonds or other obligations, or to implement the public purposes and programs herein authorized, shall not inure to the benefit of any person other than the state. Upon termination of the existence of the authority, title to all property owned by the authority, including any such net earnings of the authority, shall vest in the state. The state reserves the right at any time to alter, amend, repeal, or otherwise change the structure, organization, programs or activities of the authority, including the power to terminate the authority, except that no law shall ever be passed impairing the obligation of any contract or contracts entered into by the authority to the extent that any such law would contravene article I, section 21 of the Constitution of the state of Iowa or article I, section 10 of the Constitution of the United States.

85 Acts, ch 252, §26 SF 577
Subsection 1 struck and rewritten

220.3 Legislative findings.

The general assembly finds and declares as follows:

1. The establishment of the authority is in all respects for the benefit of the people of the state of Iowa, for the improvement of their health and welfare, and for the promotion of the economy, which are public purposes.

2. The authority will be performing an essential governmental function in the exercise of the powers and duties conferred upon it by this chapter.

3. There exists a serious shortage of safe and sanitary residential housing available to low or moderate income families.

4. This shortage is conducive to disease, crime, environmental decline and poverty and impairs the economic value of large areas, which are characterized by depreciated values, impaired investments, and reduced capacity to pay taxes and are a menace to the health, safety, morals and welfare of the citizens of the state.

5. These conditions result in a loss in population and further deterioration, accompanied by added costs to communities for creation of new public facilities and services elsewhere.

6. One major cause of this condition has been recurrent shortages of funds in private channels.

7. These shortages have contributed to reductions in construction of new residential units, and have made the sale and purchase of existing residential units a virtual impossibility in many parts of the state.

8. The ordinary operations of private enterprise have not in the past corrected these conditions.

9. A stable supply of adequate funds for residential financing is required to encourage new housing and the rehabilitation of existing housing in an orderly and sustained manner and to reduce the problems described in this section.

10. It is necessary to create a state finance authority to encourage the investment of private capital and stimulate the construction and rehabilitation of adequate housing through the use of public financing.

11. All of the purposes stated in this section are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned or granted.

12. The interest costs paid by group homes of fifteen beds or less licensed as health care facilities or child foster care facilities for facility acquisition and indirectly reimbursed by the department of human services through payments for patients at those facilities who are recipients of medical assistance or state supplementary assistance are severe drains on the state's budget. A reduction in these costs obtained through financing with tax-exempt revenue bonds would clearly be in the public interest.

13. There is a need in areas of the state for new construction of certain group homes of fifteen beds or less licensed as health care facilities or child foster care facilities to provide adequate housing and care for elderly and handicapped Iowans and to provide adequate housing and foster care for children.

14. The abstract-attorney's title opinion system promotes land title stability for determining the marketability of land titles and is a public purpose. A public purpose will be served by providing, as an adjunct to the abstract-attorney's title opinion system, a low cost mechanism to provide for additional guaranties of real property titles in Iowa. The title guaranties will facilitate mortgage lenders' participation in the secondary market and add to the integrity of the land-title transfer system in the state.

85 Acts, ch 252, §27 SF 577
NEW subsection 14

220.5 General powers.

The authority has all of the general powers needed to carry out its purposes and duties, and exercise its specific powers, including but not limited to the power to:

1. Issue its negotiable bonds and notes as provided in sections 220.26 to 220.30 in order to finance its programs.
2. Sue and be sued in its own name.
3. Have and alter a corporate seal.
4. Make and alter bylaws for its management consistent with the provisions of this chapter.
5. Make and execute agreements, contracts and other instruments, with any public or private entity. All political subdivisions, public housing agencies, other public agencies and state departments and agencies may enter into contracts and otherwise co-operate with the authority.
6. Acquire, hold, improve, mortgage, lease and dispose of real and personal property, including, but not limited to, the power to sell at public or private sale, with or without public bidding, any such property, mortgage loan, or other obligation held by it.
7. Procure insurance against any loss in connection with its operations and property interests.
8. Fix and collect fees and charges for its services.
9. Subject to an agreement with bondholders or noteholders, invest or deposit moneys of the authority in a manner determined by the authority, notwithstanding chapter 452 or 453.
10. Accept appropriations, gifts, grants, loans, or other aid from public or private entities. A record of all gifts or grants, stating the type, amount and donor, shall be clearly set out in the authority's annual report along with the record of other receipts.
11. Provide technical assistance and counseling related to the authority's purposes, to public and private entities.
12. In co-operation with other local, state or federal governmental agencies, conduct research studies, develop estimates of unmet housing needs, and gather and compile data useful to facilitate decision making.
13. Co-operate in development of, and initiate housing demonstration projects.
14. Contract with architects, engineers, attorneys, accountants, housing construction and finance experts, and other advisors. However, the authority may enter into contracts or agreements for such services with local, state or federal governmental agencies.

15. Through the title guaranty division, make and issue title guaranties on Iowa real property in a form acceptable to the secondary market, to fix and collect the charges for the guaranties and to procure reinsurance against any loss in connection with the guaranties.

16. Make, alter and repeal rules consistent with the provisions of this chapter, and subject to chapter 17A.

85 Acts, ch 252, §28 SF 577

NEW subsection 15 and subsequent subsection renumbered

220.26 Bonds and notes.

1. The authority may issue its negotiable bonds and notes in principal amounts as, in the opinion of the authority, are necessary to provide sufficient funds for achievement of its corporate purposes, the payment of interest on its bonds and notes, the establishment of reserves to secure its bonds and notes, and all other expenditures of the authority incident to and necessary or convenient to carry out its purposes and powers. The bonds and notes shall be deemed to be investment securities and negotiable instruments within the meaning of and for all purposes of the uniform commercial code.

2. Bonds and notes issued by the authority are payable solely and only out of the moneys, assets, or revenues of the authority, and as provided in the agreement with bondholders or noteholders pledging any particular moneys, assets or revenues. Bonds or notes are not an obligation of this state or any political subdivision of this state other than the authority within the meaning of any constitutional or statutory debt limitations, but are special obligations of the authority payable solely and only from the sources provided in this chapter, and the authority may not pledge the credit or taxing power of this state or any political subdivision of this state other than the authority, or make its debts payable out of any moneys except those of the authority.

3. Bonds and notes must be authorized by a resolution of the authority. However, a resolution authorizing the issuance of bonds or notes may delegate to an officer of the authority the power to negotiate and fix the details of an issue of bonds or notes by an appropriate certificate of the authorized officer.

4. Bonds shall:

a. State the date and series of the issue, be consecutively numbered, and state on their face that they are payable both as to principal and interest solely out of the assets of the authority and do not constitute an indebtedness of this state or any political subdivision of this state other than the authority within the meaning of any constitutional or statutory debt limit.

b. Be either registered, registered as to principal only, or in coupon form, issued in denominations as the authority prescribes, fully negotiable instruments under the laws of this state, signed on behalf of the authority with the manual or facsimile signature of the chairperson or vice chairperson, attested by the manual or facsimile signature of the secretary, have impressed or imprinted thereon the seal of the authority or a facsimile of it, and the coupons attached shall be signed with the facsimile signature of the chairperson or vice chairperson, be payable as to interest at rates and at times as the authority determines, be payable as to principal at times over a period not to exceed fifty years from the date of issuance, at places, and with reserved rights of prior redemption, as the authority prescribes, be sold at prices, at public or private sale, and in a manner as the authority prescribes, and the authority may pay all expenses, premiums and commissions which it deems necessary or advantageous in connection with the issuance and sale, and be issued under and subject to the terms, conditions and covenants providing for the payment of the principal, redemption premiums, if any, interest and other terms, conditions, covenants and protective provisions safeguarding payment, not inconsistent with this chapter, as are found to be necessary by the authority for the most advantageous sale, which may include, but are not limited to, covenants with the holders of the bonds as to:

(1) Pledging or creating a lien, to the extent provided by the resolution, on moneys or property of the authority or moneys held in trust or otherwise by others to secure the payment of the bonds.

(2) Providing for the custody, collection, securing, investment and payment of any moneys of or due to the authority.

(3) The setting aside of reserves or sinking funds and the regulation or disposition of them.

(4) Limitations on the purpose to which the proceeds of sale of an issue of bonds then or thereafter to be issued may be applied.

(5) Limitations on the issuance of additional bonds and on the refunding of outstanding or other bonds.

(6) The procedure by which the terms of a contract with the holders of bonds may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which consent may be given.

(7) The creation of special funds into which moneys of the authority may be deposited.

(8) Vesting in a trustee properties, rights, powers and duties in trust as the authority determines, which may include the rights, powers and duties of the trustee appointed for the holders of any issue of bonds pursuant to section 220.28, in which event the provisions of that section authorizing appointment of a trustee by the holders of bonds shall not apply, or limiting or abrogating the right of the holders of bonds to appoint a trustee under that section, or limiting the rights, duties and powers of the trustee.

(9) Defining the acts or omissions which constitute a default in the obligations and duties of the authority and providing for the rights and remedies of the holders of bonds in the event of a default. However, rights and remedies shall be consistent with the laws of this state and other provisions of this chapter.

(10) Any other matters which affect the security and protection of the bonds and the rights of the holders.

5. The authority may issue its bonds for the purpose of refunding any bonds or notes of the authority then outstanding, including the payment of any redemption premiums thereon and any interest accrued or to accrue to the date of redemption of the outstanding bonds or notes. Until the proceeds of bonds issued for the purpose of refunding outstanding bonds or notes are applied to the purchase or retirement of outstanding bonds or notes or the redemption of outstanding bonds or notes, the proceeds may be placed in escrow and be invested and reinvested in accordance with the provisions of this chapter. The interest, income and profits earned or realized on an investment may also be applied to the payment of the outstanding bonds or notes to be refunded by purchase, retirement or redemption. After the terms of the escrow have been fully satisfied and carried out, any balance of proceeds and interest earned or realized on the investments may be returned to the authority for use by it in any lawful manner. All refunding bonds shall be issued and secured and subject to the provisions of this chapter in the same manner and to the same extent as other bonds issued pursuant to this chapter.

6. The authority may issue negotiable bond anticipation notes and may renew them from time to time but the maximum maturity of the notes, including renewals, shall not exceed ten years from the date of issue of the original notes. Notes are payable from any available moneys of the authority not otherwise pledged, or from the proceeds of the sale of bonds of the authority in anticipation of which the notes were issued. Notes may be issued for any corporate purpose of the authority. Notes shall be issued in the same manner as bonds, and notes and the resolution authorizing them may contain any provisions, conditions or limitations, not inconsistent with the provisions of this subsection, which the bonds or a bond resolution of the authority may contain. Notes may be sold at public or private sale. In case of default on its notes or violation of any obligations of the authority to the noteholders, the

noteholders shall have all the remedies provided in this chapter for bondholders. Notes shall be as fully negotiable as bonds of the authority.

7. A copy of each pledge agreement by or to the authority, including without limitation each bond resolution, indenture of trust or similar agreement, or any revisions or supplements to it shall be filed with the secretary of state and no further filing or other action under sections 554.9101 to 554.9507, article 9 of the uniform commercial code, or any other law of the state shall be required to perfect the security interest in the collateral or any additions to it or substitutions for it, and the lien and trust so created shall be binding from and after the time made against all parties having claims of any kind in tort, contract, or otherwise against the pledgor.

8. Neither the members of the authority nor any person executing its bonds, notes or other obligations shall be liable personally on the bonds, notes, or other obligations or be subject to any personal liability or accountability by reason of the issuance of the authority's bonds or notes.

9. The authority may make or participate in the making of loans to housing sponsors to provide interim construction financing for the construction or rehabilitation of adequate housing for low or moderate income persons or families, elderly persons or families, and persons or families which include one or more persons who are handicapped or disabled, and of noninstitutional residential care facilities. An interim construction loan may be made under this section only if the loan is the subject of a commitment from an agency or instrumentality of the United States government or from the authority, to provide long-term financing for the mortgage loan and interim construction advances made under the interim construction loan will be insured or guaranteed by an agency or instrumentality of the United States government.

85 Acts, ch 225, §2 SF 449
Subsections 1 and 3 amended

220.40 Commitment costs fund.

A commitment costs fund is created within the treasurer of state's office. The moneys shall be used by the authority to cover initial commitment costs of authority bond issues and loans in order to facilitate and ensure equal access across the state to funds for programs for first time home buyers. Moneys in the fund shall not revert to the general fund and interest on the moneys in the fund shall be retained as part of the fund and not accrue to the general fund.

85 Acts, ch 252, §29 SF 577
NEW section

TITLE GUARANTY PROGRAM

220.91 Title guaranty program.

1. The authority through the title guaranty division shall initiate and operate a program in which the division shall offer guaranties of real property titles in this state. The terms, conditions and form of the guaranty contract shall be forms approved by the division board. The division shall fix a charge for the guaranty in an amount sufficient to permit the program to operate on a self-sustaining basis, including payment of administrative costs and the maintenance of an adequate reserve against claims under the title guaranty program. A title guaranty fund is created in the office of the treasurer of state. Funds collected under this program shall be placed in the title guaranty fund and are available to pay all claims, necessary reserves and all administrative costs of the title guaranty program. Moneys in the fund shall not revert to the general fund and interest on the moneys in the fund shall be retained as a part of the fund and shall not accrue to the general fund. If the authority board in consultation with the division board determines that there are surplus funds in the title guaranty fund after providing for adequate reserves and operating expenses of the division, the surplus funds shall be transferred to the commitment costs fund created pursuant to section 220.40.

2. A title guaranty issued under this program is an obligation of the division only and claims are payable solely and only out of the moneys, assets and revenues of the title guaranty fund and are not an indebtedness or liability of the state. The state is not liable on the guaranties.

3. With the approval of the authority board the division and its board shall consult with the insurance department in developing a guaranty contract acceptable to the secondary market and developing any other feature of the program with which the department may have special expertise. The department shall establish the amount for a loss reserve fund. Except as provided in this subsection, the title guaranty program is not subject to the jurisdiction of or regulation by the insurance department or the commissioner of insurance.

4. Each participating mortgage lender, attorney and abstractor shall pay an annual participation fee to be eligible to participate in the title guaranty program. The fee shall be set by the division, subject to the approval of the authority.

5. The participation of abstractors, attorneys and lenders shall be in accordance with rules established by the division and adopted by the authority pursuant to chapter 17A. Each participant shall at all times maintain liability coverage in amounts approved by the division. Upon payment of a claim by the division, the division shall be subrogated to the rights of the claimant against all persons relating to the claim.

6. Prior to the issuance of a title guaranty, the division shall require evidence that an abstract of title to the property in question has been brought up-to-date and certified by a participating abstractor in a form approved by division rules and a title opinion issued by a participating attorney in the form approved in the rules stating the attorney's opinion as to the title. The division shall require evidence of the abstract being brought up-to-date and the abstractor shall retain evidence of the abstract as determined by the board.

7. The attorney rendering a title opinion shall be authorized to issue a title guaranty certificate subject to the rules of the authority. A person or mortgage lender participating in the title guaranty program shall not charge or receive any portion of the charge for the guaranty as a result of their participation in the title guaranty program.

8. A participating mortgage lender shall notify the division when the mortgage covered by a title guaranty has been satisfied of record.

9. The authority shall adopt rules pursuant to chapter 17A that are necessary for the implementation of the title guaranty program as established by the division and that have been approved by the authority.

85 Acts, ch 252, §30 SF 577

Intent that title guaranties not be made before January 1, 1987; 85 Acts, ch 252, §55

NEW section

CHAPTER 222

MENTALLY RETARDED PERSONS

222.31 Commitment—liability for charges.

If in the opinion of the court, or of a commission as authorized in section 222.28, the person is mentally retarded within the meaning of this chapter and the court determines that it will be conducive to the welfare of that person and of the community to commit the person to a proper institution for treatment, training, instruction, care, habilitation, and support, the court shall by proper order:

1. Commit the person to any public or private facility within or without the state, approved by the commissioner of the department of human services. If the person has not been examined by a commission as appointed in section 222.28, the court shall, prior to issuing an order of commitment, appoint such a commission to

examine the person for the purpose of determining the mental condition of the person. No order of commitment shall be issued unless the commission shall recommend that such order be issued and the private institution to which the person is to be committed shall advise the court that it is willing to receive the person.

2. Commit the person to the state hospital-school designated by the director to serve the county in which the hearing is being held, or to a special unit. The court shall prior to issuing an order of commitment request that a diagnostic evaluation of the person be made by the superintendent of the hospital-school or the special unit, or the superintendent's qualified designee. The evaluation shall be conducted at a place as the superintendent may direct. The cost of the evaluation shall be defrayed by the county of legal settlement unless otherwise ordered by the court. The cost may be equal to but shall not exceed the actual cost of the evaluation. Persons referred by a court to a hospital-school or the special unit for diagnostic evaluation shall be considered as outpatients of the institution. No order of commitment shall be issued unless the superintendent of the institution recommends that the order be issued, and advises the court that adequate facilities for the care of the person are available.

The court shall examine the report of the county attorney filed pursuant to section 222.13, and if the report shows that neither the person nor those liable for the person's support under section 222.78 are presently able to pay the charges rising out of the person's care in the hospital-school, or special treatment unit, shall enter an order stating that finding and directing that the charges be paid by the person's county of residence. The court may, upon request of the board of supervisors, review its finding at any subsequent time while the person remains at the hospital-school, or is otherwise receiving care or treatment for which this chapter obligates the county to pay. If the court finds upon review that the person or those legally responsible for the person are presently able to pay the expenses, that finding shall apply only to the charges incurred during the period beginning on the date of the board's request for the review and continuing thereafter, unless and until the court again changes its finding. If the court finds that the person, or those liable for the person's support, are able to pay the charges, the court shall enter an order directing that the charges be so paid to the extent required by section 222.78.

85 Acts, ch 67, §23 SF 121

Subsection 3 amended (now unnumbered paragraph)

222.38 Delivery of person to school or special unit.

The court may for the purpose of committing a person direct the clerk to authorize the employment of one or more assistants. If a mentally retarded person is taken to an institution, hospital-school, or special unit at least one attendant shall be of the same sex.

85 Acts, ch 99, §3 SF 224

Section amended

222.93 Medical assistance payments. Repealed by 85 Acts, ch 146, §4 SF 588; see §249A.11.

CHAPTER 223

IOWA MEDICAL AND CLASSIFICATION CENTER

Repealed by 85 Acts, ch 21, §53 HF 186; see §246.201

CHAPTER 225

PSYCHIATRIC HOSPITAL

225.18 Attendants.

The court or clerk may appoint a person to accompany the committed public patient or the voluntary public patient or the committed private patient from the place where the patient may be to the state psychiatric hospital of the state university at Iowa City, or to accompany the patient from the hospital to a place as may be designated by the court or clerk. If a patient is moved pursuant to this section, at least one attendant shall be of the same sex.

85 Acts, ch 99, §4 SF 224
Section amended

CHAPTER 225C

MENTAL HEALTH, MENTAL RETARDATION, AND DEVELOPMENTAL DISABILITIES

225C.4 Director's duties.

1. The director shall:

a. Prepare and administer state mental health and mental retardation plans for the provision of comprehensive services within the state and prepare and administer the state developmental disabilities plan. The director shall consult with the state department of health, the board of regents or a body designated by the board for that purpose, the office for planning and programming or a body designated by the director of the office for that purpose, the department of public instruction, the department of substance abuse, the department of job service and any other appropriate governmental body, in order to facilitate co-ordination of services provided to mentally ill, mentally retarded, and developmentally disabled persons in this state. The state mental health and mental retardation plans shall be consistent with the state health plan, shall be prepared in consultation with the state health co-ordinating council, and shall incorporate county mental health and mental retardation plans.

b. Assist county co-ordinating boards in developing a program for community mental health and mental retardation services within the state based on the need for comprehensive services, and the services offered by existing public and private facilities, with the goal of providing comprehensive services to all persons in this state who need them.

c. Emphasize the provision of outpatient services by community mental health centers and local mental retardation providers as a preferable alternative to inpatient hospital services.

d. Encourage and facilitate co-ordination of services with the objective of developing and maintaining in the state a mental health and mental retardation service delivery system to provide comprehensive services to all persons in this state who need them, regardless of the place of residence or economic circumstances of those persons.

e. Encourage and facilitate applied research and preventive educational activities related to causes and appropriate treatment for mental illness and mental retardation. The director may designate, or enter into agreements with, private or public agencies to carry out this function.

f. Promote co-ordination of community-based services with those of the state mental health institutes and hospital-schools.

g. Administer state programs regarding the care, treatment, and supervision of mentally ill or mentally retarded persons, except the programs administered by the state board of regents.

h. Administer and control the operation of the state institutions established by chapters 222 and 226, and any other state institutions or facilities providing care, treatment, and supervision to mentally ill or mentally retarded persons, except the institutions and facilities of the state board of regents.

i. Administer the state community mental health and mental retardation services fund established by section 225C.7.

j. Act as compact administrator with power to effectuate the purposes of interstate compacts on mental health.

k. Establish and maintain a data collection and management information system oriented to the needs of patients, providers, the department, and other programs or facilities.

l. Prepare a division budget and reports of the division's activities.

m. Advise the merit employment commission on recommended qualifications of all division employees.

n. Establish suitable agreements with other state agencies to encourage appropriate care and to facilitate the co-ordination of mental health, mental retardation, and developmental disabilities services.

o. Provide consultation and technical assistance to patients' advocates appointed pursuant to section 229.19, in co-operation with the judicial system and the care review committees appointed for county care facilities pursuant to section 135C.25.

p. Provide consultation and technical assistance to patients' advocates appointed pursuant to section 222.59.

q. Provide technical assistance to agencies and organizations, to aid them in meeting standards which are established, or with which compliance is required, under statutes administered by the director, including but not limited to chapters 227 and 230A.

r. Recommend and enforce minimum accreditation standards for the maintenance and operation of community mental health centers under section 230A.16.

s. In co-operation with the state department of health, recommend minimum standards under section 227.4 for the care of and services to mentally ill and mentally retarded persons residing in county care facilities.

t. In co-operation with the state department of health, recommend minimum standards for the maintenance and operation of public or private facilities offering services to mentally ill or mentally retarded persons, which are not subject to licensure by the department or the state department of health.

2. The director may:

a. Apply for, receive, and administer federal aids, grants, and gifts for purposes relating to mental health, mental retardation, and developmental disabilities services or programs.

b. Establish mental health and mental retardation services for all institutions under the control of the commissioner of human services and establish an autism unit, following mutual planning with and consultation from the medical director of the state psychiatric hospital, at an institution or a facility administered by the director to provide psychiatric and related services and other specific programs to meet the needs of autistic persons as defined in section 331.425, subsection 13, paragraph "b", subparagraph (2), and to furnish appropriate diagnostic evaluation services.

c. Establish and supervise suitable standards of care, treatment, and supervision for mentally ill and mentally retarded persons in all institutions under the control of the commissioner of human services.

d. Appoint professional consultants to furnish advice on any matters pertaining to mental health and mental retardation. The consultants shall be paid as provided by an appropriation of the general assembly.

225C.19 Community, supervised apartment living arrangements.

1. As used in this section, "community, supervised apartment living arrangement" means the provision of a residence in a noninstitutional setting to mentally ill, mentally retarded, or developmentally disabled adults who are capable of living semi-independently but require minimal supervision.

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

3. Approved community, supervised apartment living arrangements may receive funding from the state community mental health and mental retardation services fund, federal and state social services block grant funds, and other appropriate funding sources, consistent with state legislation and federal regulations. The funding may be provided on a per diem, per hour, or grant basis, as appropriate.

85 Acts, ch 141, §1 HF 631
NEW section

225C.20 Future status of division.

This chapter is repealed effective July 1, 1990.

85 Acts, ch 122, §4 HF 742
NEW section

BILL OF RIGHTS

Section 225C.28 effective July 1, 1987, dependent upon enactment of funding formula; implementation plan and process; advisory committee; report; rules; legislative study committee; 85 Acts, ch 249, §7.9 SF 473

225C.25 Short title.

Sections 225C.25 through 225C.28 shall be known as "the bill of rights of persons with mental retardation, developmental disabilities, or chronic mental illness".

85 Acts, ch 249, §2 SF 473
NEW section

225C.26 Scope.

These rights apply to any person with mental retardation, a developmental disability, or chronic mental illness who receives services which are funded in whole or in part by public funds or services which are permitted under Iowa law.

85 Acts, ch 249, §3 SF 473
NEW section

225C.27 Purpose.

Sections 225C.25 through 225C.28 shall be liberally construed and applied to promote their purposes and the stated rights. The division, in coordination with appropriate agencies, shall adopt rules to implement the purposes of sections 225C.25 through 225C.28 which include, but are not limited to the following:

1. Promotion of the human dignity and protection of the constitutional and statutory rights of persons with mental retardation, developmental disabilities, or chronic mental illness in the state.

2. Encouraging the development of the ability and potential of each person with mental retardation, developmental disabilities, or chronic mental illness in the state to the fullest extent possible.

3. Ensuring that the recipients of services shall not be deprived of any rights, benefits, or privileges guaranteed by law, the Constitution of the State of Iowa or the Constitution of the United States solely on account of the receipt of the services.

85 Acts, ch 249, §4 SF 473
NEW section

225C.28 Rights.

The rights of persons described in section 225C.26 include, but are not limited to:

1. Comprehensive evaluation and diagnosis. A person suspected of being mentally retarded, developmentally disabled, or chronically mentally ill or applying for developmental disabilities services, has the right to receive a comprehensive diagnosis and evaluation adapted to the cultural background, primary language, and ethnic origin of the person.

2. Individual treatment, habilitation, and program plan. Persons with mental retardation, a developmental disability, or chronic mental illness who require services have the right to an individual treatment, habilitation, and program plan.

3. Individualized treatment, habilitation, and program services. A person with a known or suspected mental retardation, developmentally disabled, or chronic mental illness condition shall not be denied treatment, habilitation, and program services because of age, sex, ethnic origin, marital status, ability to pay, criminal record, degree of disability or illness, or mental retardation condition.

4. Periodic review of treatment, habilitation, and program. A mentally retarded, developmentally disabled, or chronically mentally ill person receiving services has the right to a periodic, but at least annual, reevaluation and review of the individual treatment, habilitation, and program plan to measure progress, to modify objectives if necessary, and to provide guidance and remediation techniques.

5. Participation in the formulation of the plan. A person with mental retardation, a developmental disability, or chronic mental illness or the person's representative has the right to participate in planning the person's own treatment, habilitation, and program plan and to be informed, in writing, of progress at reasonable time intervals. Each person shall be given the opportunity to make decisions and exercise options regarding the plan, consistent with the person's capabilities.

6. Least restrictive environment and age-appropriate services. A person with mental retardation, a developmental disability, or chronic mental illness has the right to live and receive age-appropriate services in the least restrictive setting consistent with the person's individual treatment and habilitation needs, potential, and abilities.

7. Vocational training and employment options. A person with mental retardation, a developmental disability, or chronic mental illness has the right to vocational training which contributes to the person's independence and employment potential.

8. Wage protection. A person with mental retardation, a developmental disability, or chronic mental illness engaged in work programs shall be paid wages commensurate with the going rate for comparable work and productivity.

9. Insurance protection. Pursuant to section 507B.4, subsection 7, a person or designated group of persons shall not be denied insurance coverage by reason of mental retardation, a developmental disability, or chronic mental illness.

10. Due process. A person with mental retardation, a developmental disability, or chronic mental illness retains the right to citizenship in accordance with the laws of the state.

85 Acts, ch 249, §5 SF 473

Effective July 1, 1987, dependent upon enactment of funding formula; implementation plan and process; advisory committee; report; rules; legislative study committee; 85 Acts, ch 249, §7.9

NEW section

225C.29 Compliance.

Except for a violation of section 225C.28, subsection 9, the sole remedy for violation of a rule adopted by the division to enforce or implement 1985 Iowa Acts, chapter 249, shall be by a proceeding for compliance initiated by request to the division pursuant to chapter 17A. Any decision of the division shall be in accordance with due process of law and is subject to appeal to the Iowa district court pursuant to sections 17A.19 and 17A.20 by any aggrieved party. Either the division or a party in interest may apply to the Iowa district court for an order to enforce the decision of the division. Neither 1985 Iowa Acts, chapter 249, nor any rules adopted by the

division create any right, entitlement, property or liberty right or interest, or private cause of action for damages against a municipality as defined in chapter 613A or for which such municipality would be responsible. Any violation of section 225C.28, subsection 9 shall be subject to the enforcement by the commissioner of insurance and penalties granted by chapter 507B for a violation of section 507B.4, subsection 7.

85 Acts, ch 249, §6 SF 473
NEW section

CHAPTER 227

COUNTY AND PRIVATE HOSPITALS FOR MENTALLY ILL AND MENTALLY RETARDED

227.4 Standards for care of mentally ill and mentally retarded persons in county care facilities.

The director, in co-operation with the state department of health, shall recommend, and the mental health and mental retardation commission shall adopt standards for the care of and services to mentally ill and mentally retarded persons residing in county care facilities. The standards shall be enforced by the state department of health as a part of the licensure inspection conducted pursuant to chapter 135C. The objective of the standards is to ensure that mentally ill and mentally retarded residents of county care facilities are not only adequately fed, clothed, and housed, but are also offered reasonable opportunities for productive work and recreational activities suited to their physical and mental abilities and offering both a constructive outlet for their energies and, if possible, therapeutic benefit. When recommending standards under this section, the director shall designate an advisory committee representing administrators of county care facilities, county co-ordinating boards, and county care facility care review committees to assist in the establishment of standards.

85 Acts, ch 122, §2 HF 742
Section amended

CHAPTER 229

HOSPITALIZATION OF MENTALLY ILL PERSONS

229.1 Definitions.

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

1. "*Mental illness*" means every type of mental disease or mental disorder, except that it does not refer to mental retardation as defined in section 222.2, subsection 5, or to insanity, diminished responsibility, or mental incompetency as the terms are defined and used in the Iowa criminal code or in the rules of criminal procedure, Iowa court rules, 2d ed.

2. "*Seriously mentally impaired*" or "*serious mental impairment*" describes the condition of a person who is afflicted with mental illness and because of that illness lacks sufficient judgment to make responsible decisions with respect to the person's hospitalization or treatment, and who:

a. Is likely to physically injure the person's self or others if allowed to remain at liberty without treatment; or

b. Is likely to inflict serious emotional injury on members of the person's family or others who lack reasonable opportunity to avoid contact with the afflicted person if the afflicted person is allowed to remain at liberty without treatment.

3. "*Serious emotional injury*" is an injury which does not necessarily exhibit any

physical characteristics, but which can be recognized and diagnosed by a licensed physician or other qualified mental health professional and which can be causally connected with the act or omission of a person who is, or is alleged to be, mentally ill.

4. *"Respondent"* means any person against whom an application has been filed under section 229.6, but who has not been finally ordered committed for full-time custody, care and treatment in a hospital.

5. *"Patient"* means a person who has been hospitalized or ordered hospitalized to receive treatment pursuant to section 229.14.

6. *"Licensed physician"* means an individual licensed under the provisions of chapter 148, 150 or 150A to practice medicine and surgery, osteopathy or osteopathic medicine and surgery.

7. *"Qualified mental health professional"* means an individual experienced in the study and treatment of mental disorders in the capacity of:

a. A psychologist certified under chapter 154B; or

b. A registered nurse licensed under chapter 152; or

c. A social worker who holds a master's degree in social work awarded by an accredited college or university.

8. *"Public hospital"* means:

a. A state mental health institute established by chapter 226; or

b. The state psychiatric hospital established by chapter 225; or

c. Any other publicly supported hospital or institution, or part of such hospital or institution, which is equipped and staffed to provide inpatient care to the mentally ill, except the Iowa medical and classification center established by chapter 246.

9. *"Private hospital"* means any hospital or institution not directly supported by public funds, or a part thereof, which is equipped and staffed to provide inpatient care to the mentally ill.

10. *"Hospital"* means either a public hospital or a private hospital.

11. *"Chief medical officer"* means the medical director in charge of any public hospital, or any private hospital, or that individual's physician-designee. Nothing in this chapter shall negate the authority otherwise reposed by law in the respective superintendents of each of the state hospitals for the mentally ill, established by chapter 226, to make decisions regarding the appropriateness of admissions or discharges of patients of that hospital, however it is the intent of this chapter that if the superintendent is not a licensed physician the superintendent shall be guided in these decisions by the chief medical officer of that hospital.

12. *"Clerk"* means the clerk of the district court.

13. *"Director"* or *"state director"* means the director of that division of the department of human services having jurisdiction of the state mental health institutes, or that director's designee.

14. *"Chemotherapy"* means treatment of an individual by use of a drug or substance which cannot legally be delivered or administered to the ultimate user without a physician's prescription or medical order.

85 Acts, ch 21, §35 HF 186
Subsection 8, paragraph c amended

229.19 Advocates—duties—compensation—state liability.

The district court in each county shall appoint an individual who has demonstrated by prior activities an informed concern for the welfare and rehabilitation of the mentally ill, and who is not an officer or employee of the department of human services nor of any agency or facility providing care or treatment to the mentally ill, to act as advocate representing the interests of all patients involuntarily hospitalized by that court, in any matter relating to the patients' hospitalization or treatment under section 229.14 or 229.15. The advocate's responsibility with respect to any patient shall begin at whatever time the attorney employed or appointed to represent that patient as respondent in hospitalization proceedings, conducted under sections

229.6 to 229.13, reports to the court that the attorney's services are no longer required and requests the court's approval to withdraw as counsel for that patient. However, if the patient is found to be seriously mentally impaired at the hospitalization hearing, the attorney representing the patient shall automatically be relieved of responsibility in the case and an advocate shall be appointed at the conclusion of the hearing unless the attorney indicates an intent to continue the attorney's services and the court so directs. If the court directs the attorney to remain on the case the attorney shall assume all the duties of an advocate. The clerk shall furnish the advocate with a copy of the court's order approving the withdrawal and shall inform the patient of the name of the patient's advocate. With regard to each patient whose interests the advocate is required to represent pursuant to this section, the advocate's duties shall include all of the following:

1. To review each report submitted pursuant to sections 229.14 and 229.15.
2. If the advocate is not an attorney, to advise the court at any time it appears that the services of an attorney are required to properly safeguard the patient's interests.
3. To make the advocate readily accessible to communications from the patient and to originate communications with the patient within five days of the patient's commitment.
4. To visit the patient within fifteen days of the patient's commitment and periodically thereafter.
5. To communicate with medical personnel treating the patient and to review the patient's medical records pursuant to section 229.25.
6. To file with the court quarterly reports, and additional reports as the advocate feels necessary or as required by the court, in a form prescribed by the court. The reports shall state what actions the advocate has taken with respect to each patient and the amount of time spent.

The hospital or facility to which a patient is committed shall grant all reasonable requests of the advocate to visit the patient, to communicate with medical personnel treating the patient and to review the patient's medical records pursuant to section 229.25. An advocate shall not disseminate information from a patient's medical records to any other person unless done for official purposes in connection with the advocate's duties pursuant to this chapter or when required by law.

The court shall from time to time prescribe reasonable compensation for the services of the advocate. The compensation shall be based upon the reports filed by the advocate with the court. The advocate's compensation shall be paid on order of the court by the county in which the court is located. The advocate is an employee of the state for purposes of chapter 25A.

85 Acts, ch 62, §1 HF 558

Unnumbered paragraph 3 (last paragraph) amended

229.21 Judicial hospitalization referee.

1. The judges in each judicial district shall meet and determine, individually for each county in the district, whether one or more district judges or magistrates will be sufficiently accessible in that county to make it feasible for them to perform at all times the duties prescribed by sections 229.7 to 229.19 and section 229.22 and by sections 125.75 to 125.94. If the judges find that accessibility of district court judges or magistrates in any county is not sufficient for this purpose, the chief judge of the district shall appoint in that county a judicial hospitalization referee. The judges in any district may at any time review their determination, previously made under this subsection with respect to any county in the district, and pursuant to that review may authorize appointment of a judicial hospitalization referee, or abolish the office, in that county.

2. The judicial hospitalization referee shall be an attorney, licensed to practice law in this state, who shall be chosen with consideration to any training, experience, interest, or combination of those factors, which are pertinent to the duties of the

office. The referee shall hold office at the pleasure of and receive compensation at a rate fixed by the chief judge of the district. If the referee expects to be absent from the county for any significant length of time, the referee shall inform the chief judge who may appoint a temporary substitute judicial hospitalization referee having the qualifications set forth in this subsection.

3. When an application for involuntary hospitalization under this chapter or an application for involuntary commitment or treatment of substance abusers under sections 125.75 to 125.94 is filed with the clerk of the district court in any county for which a judicial hospitalization referee has been appointed, and no district judge is accessible in the county, the clerk shall immediately notify the referee in the manner required by section 229.7 or section 125.77. The referee shall discharge all of the duties imposed upon judges of the district court or magistrates by sections 229.7 to 229.19 or sections 125.75 to 125.94 in the proceeding so initiated. If an emergency hospitalization proceeding is initiated under section 229.22 a judicial hospitalization referee may perform the duties imposed upon a magistrate by that section.

4. Any respondent with respect to whom the judicial hospitalization referee has found the contention that the respondent is seriously mentally impaired or a substance abuser sustained by clear and convincing evidence presented at a hearing held under section 229.12 or section 125.82, may appeal from the referee's finding to a judge of the district court by giving the clerk notice in writing, within seven days after the referee's finding is made, that an appeal therefrom is taken. The appeal may be signed by the respondent or by the respondent's next friend, guardian or attorney. When so appealed, the matter shall stand for trial de novo. Upon appeal, the court shall schedule a hospitalization or commitment hearing before a district judge at the earliest practicable time.

5. If the appellant is in custody under the jurisdiction of the district court at the time of service of the notice of appeal, the appellant shall be discharged from custody unless an order that the appellant be taken into immediate custody has previously been issued under section 229.11 or section 125.81, in which case the appellant shall be detained as provided in that section until the hospitalization or commitment hearing before the district judge. If the appellant is in the custody of a hospital or facility at the time of service of the notice of appeal, the appellant shall be discharged from custody pending disposition of the appeal unless the chief medical officer, not later than the end of the next secular day on which the office of the clerk is open and which follows service of the notice of appeal, files with the clerk a certification that in the chief medical officer's opinion the appellant is seriously mentally ill or a substance abuser. In that case, the appellant shall remain in custody of the hospital or facility until the hospitalization or commitment hearing before the district court.

6. The hospitalization or commitment hearing before the district judge shall be held, and the judge's finding shall be made and an appropriate order entered, as prescribed by sections 229.12 and 229.13 or sections 125.82 and 125.83. If the judge orders the appellant hospitalized or committed for a complete psychiatric or substance abuse evaluation, jurisdiction of the matter shall revert to the judicial hospitalization referee.

85 Acts, ch 195, §25 SF 329
Subsection 3 amended

229.26 Exclusive procedure for involuntary hospitalization.

Sections 229.6 to 229.19 constitute the exclusive procedure for involuntary hospitalization of persons by reason of serious mental impairment in this state, except that this chapter does not negate the provisions of section 246.503 relating to transfer of mentally ill prisoners to state hospitals for the mentally ill and does not apply to commitments of persons under chapter 812 or the rules of criminal procedure, Iowa court rules, 2d ed.

85 Acts, ch 21, §36 HF 186
Section amended

CHAPTER 232

JUVENILE JUSTICE

232.13 Liability for public work assignments.

The state of Iowa is liable, according to and under chapter 25A, for a tortious act committed by a child given a work assignment of value to the state or the public under this chapter.

The state of Iowa is exclusively liable for and shall pay any compensation becoming due a person under section 85.59.

85 Acts, ch 177, §2 HF 130
NEW unnumbered paragraph 2

232.37 Summons, notice, subpoenas and service—order for removal.

1. After a petition has been filed the court shall set a time for an adjudicatory hearing and unless the parties named in subsection 2 voluntarily appear, shall issue a summons requiring the child to appear before the court at a time and place stated and requiring the person who has custody or control of the child to appear before the court and to bring the child with the person at that time. The summons shall attach a copy of the petition and shall give notification of the right to counsel provided for in section 232.11.

2. Notice of the pendency of the case shall be served upon the known parents, guardians or legal custodians of a child if these persons are not summoned to appear as provided in subsection 1. Notice shall also be served upon the child and upon the child's guardian ad litem, if any. The notice shall attach a copy of the petition and shall give notification of the right to counsel provided for in section 232.11.

3. Upon request of the child who is identified in the petition as a party to the proceeding, the child's parent, guardian or custodian, a county attorney or on the court's own motion, the court or the clerk of the court shall issue subpoenas requiring the attendance and testimony of witnesses and production of papers at any hearing under this division.

4. Service of summons or notice shall be made personally by the delivery of a copy of the summons or notice to the person being served. If the court determines that personal service of a summons or notice is impracticable, the court may order service by certified mail addressed to the last known address or by publication or both. Service of summons or notice shall be made not less than five days before the time fixed for hearing. Service of summons, notice, subpoenas or other process, after an initial valid summons or notice, shall be made in accordance with the rules of the court governing such service in civil actions.

5. If a person personally served with a summons or subpoena fails without reasonable cause to appear or to bring the child, the person may be proceeded against for contempt of court or the court may issue an order for the arrest of such person or both the arrest of the person and the taking into custody of the child.

6. The court may issue an order for the removal of the child from the custody of the child's parent, guardian or custodian when there exists an immediate threat that the parent, guardian or custodian will flee the state with the child, or when it appears that the child's immediate removal is necessary to avoid imminent danger to the child's life or health.

85 Acts, ch 195, §26 SF 329
Subsection 4 amended

232.45 Waiver hearing and waiver of jurisdiction.

1. After the filing of a petition which alleges that a child has committed a delinquent act on the basis of an alleged commission of a public offense and before an adjudicatory hearing on the merits of the petition is held, the county attorney

or the child may file a motion requesting the court to waive its jurisdiction over the child for the alleged commission of the public offense.

2. The court shall hold a waiver hearing on all such motions.

3. A notice that states the time, place, and purpose of the waiver hearing shall be issued and served in the same manner as for adjudicatory hearings as provided in section 232.37. Summons, subpoenas and other process may be issued and served in the same manner as for adjudicatory hearings as provided in section 232.37.

4. Prior to the waiver hearing, the juvenile probation officer or other person or agency designated by the court shall conduct an investigation for the purpose of collecting information relevant to the court's decision to waive its jurisdiction over the child for the alleged commission of the public offense and shall submit a report concerning the investigation to the court. The report shall include any recommendations made concerning waiver. Prior to the hearing the court shall provide the child's counsel and the county attorney with access to the report and to all written material to be considered by the court.

5. At the waiver hearing all relevant and material evidence shall be admitted.

6. At the conclusion of the waiver hearing the court may waive its jurisdiction over the child for the alleged commission of the public offense if all of the following apply:

a. The child is fourteen years of age or older.

b. The court determines, or has previously determined in a detention hearing under section 232.44, that there is probable cause to believe that the child has committed a delinquent act which would constitute the public offense.

c. The court determines that the state has established that there are not reasonable prospects for rehabilitating the child if the juvenile court retains jurisdiction over the child and the child is adjudicated to have committed the delinquent act, and that waiver of the court's jurisdiction over the child for the alleged commission of the public offense would be in the best interests of the child and the community.

7. In making the determination required by subsection 6, paragraph "c", the factors which the court shall consider include but are not limited to the following:

a. The nature of the alleged delinquent act and the circumstances under which it was committed.

b. The nature and extent of the child's prior contacts with juvenile authorities, including past efforts of such authorities to treat and rehabilitate the child and the response to such efforts.

c. The programs, facilities and personnel available to the juvenile court for rehabilitation and treatment of the child, and the programs, facilities and personnel which would be available to the court that would have jurisdiction in the event the juvenile court waives its jurisdiction so that the child can be prosecuted as an adult.

8. If at the conclusion of the hearing the court waives its jurisdiction over the child for the alleged commission of the public offense, the court shall make and file written findings as to its reasons for waiving its jurisdiction.

9. If the court waives jurisdiction, statements made by the child after being taken into custody and prior to intake are admissible as evidence in chief against the child in subsequent criminal proceedings provided that the statements were made with the advice of the child's counsel or after waiver of the child's right to counsel and provided that the court finds the child had voluntarily waived the right to remain silent. Other statements made by a child are admissible as evidence in chief provided that the court finds the statements were voluntary. In making its determination, the court may consider any factors it finds relevant and shall consider the following factors:

a. Opportunity for the child to consult with a parent, guardian, custodian, lawyer or other adult.

b. The age of the child.

c. The child's level of education.

- d. The child's level of intelligence.
- e. Whether the child was advised of the child's constitutional rights.
- f. Length of time the child was held in shelter care or detention before making the statement in question.
- g. The nature of the questioning which elicited the statement.
- h. Whether physical punishment such as deprivation of food or sleep was used upon the child during the shelter care, detention, or questioning.

Statements made by the child during intake or at a waiver hearing held pursuant to this section are not admissible as evidence in chief against the child in subsequent criminal proceedings over the child's objection in any event.

10. If the court waives its jurisdiction over the child for the alleged commission of the public offense so that the child may be prosecuted as an adult, the judge who made the waiver decision shall not preside at any subsequent proceedings in connection with that prosecution if the child objects.

11. The waiver does not apply to other delinquent acts which are not alleged in the delinquency petition presented at the waiver hearing.

12. If a child who is alleged to have delivered, manufactured, or possessed with intent to deliver or manufacture, a controlled substance except marijuana, as defined in chapter 204, is waived to district court for prosecution, the mandatory minimum sentence provided in section 204.413 shall not be imposed if a conviction is had; however, each child convicted of such an offense shall be confined for not less than thirty days in a secure facility.

Upon application of a person charged or convicted under the authority of this subsection, the district court shall order the records in the case sealed if:

- a. Five years have elapsed since the final discharge of that person; and
- b. The person has not been convicted of a felony or an aggravated or serious misdemeanor, or adjudicated a delinquent for an act which if committed by an adult would be a felony, or an aggravated or serious misdemeanor since the final discharge of that person.

85 Acts, ch 130, §1,2 HF 204
Subsections 1,4,6,8, and 10 amended
NEW subsection 11 and subsequent subsection renumbered

232.48 Predisposition investigation and report.

1. The court shall not make a disposition of the matter following the entry of an order of adjudication pursuant to section 232.47 until a predisposition report has been submitted to and considered by the court.

2. After a petition is filed, the court shall direct a juvenile court officer or any other agency or individual to conduct a predisposition investigation and to prepare a predisposition report. The investigation and report shall cover all of the following:

- a. The social history, environment and present condition of the child and the child's family.
- b. The performance of the child in school.
- c. The presence of child abuse and neglect histories, learning disabilities, physical impairments and past acts of violence.

d. Other matters relevant to the child's status as a delinquent, treatment of the child or proper disposition of the case.

3. No predisposition report shall be submitted to or considered by the court prior to the completion of the adjudicatory hearing without the consent of the child and the child's counsel.

4. A predisposition report shall not be disclosed except as provided in this section and in division VIII of this chapter. The court shall permit the child's attorney to inspect the predisposition report prior to consideration by the court. The court may order counsel not to disclose parts of the report to the child, or to the child's parent, guardian, guardian ad litem, or custodian if the court finds that disclosure would seriously harm the treatment or rehabilitation of the child.

85 Acts, ch 88, §1 SF 467
Section amended

232.52 Disposition of child found to have committed a delinquent act.

1. Pursuant to a hearing as provided in section 232.50, the court shall enter the least restrictive dispositional order appropriate in view of the seriousness of the delinquent act, the child's culpability as indicated by the circumstances of the particular case, the age of the child and the child's prior record. The order shall specify the duration and the nature of the disposition, including the type of residence or confinement ordered and the individual, agency, department or facility in whom custody is vested.

2. The dispositional orders which the court may enter subject to its continuing jurisdiction are as follows:

a. An order prescribing one or more of the following:

(1) A work assignment of value to the state or to the public.

(2) Restitution consisting of monetary payment or a work assignment of value to the victim.

(3) If the child is fourteen years of age or older, restitution consisting of monetary payment or a work assignment of value to the county or to the public for fees of attorneys appointed to represent the child at public expense pursuant to section 232.11.

An order under paragraph "a" may be the sole disposition or may be included as an element in other dispositional orders.

b. An order placing the child on probation and releasing the child to the child's parent, guardian or custodian.

c. An order providing special care and treatment required for the physical, emotional or mental health of the child, and

(1) Placing the child on probation or other supervision; and

(2) If the court deems appropriate, ordering the parent, guardian, or custodian to reimburse the county for any costs incurred as provided in section 232.141, subsection 2 or to otherwise pay or provide for such care and treatment.

d. An order transferring the legal custody of the child, subject to the continuing jurisdiction of the court for purposes of section 232.54, to one of the following:

(1) An adult relative or other suitable adult and placing the child on probation.

(2) A child placing agency or other suitable private agency or facility which is licensed or otherwise authorized by law to receive and provide care for children and placing the child on probation or other supervision.

(3) The department of human services for purposes of foster care and prescribing the type of placement which will serve the best interests of the child and the means by which the placement shall be monitored by the court.

e. An order transferring the guardianship of the child, subject to the continuing jurisdiction of the court for the purposes of section 232.54, to the commissioner of the department of human services for purposes of placement in the state training school or other facility provided that:

(1) The child is at least twelve years of age; and

(2) The court finds such placement to be in the best interests of the child or necessary to the protection of the public.

f. An order committing the child to a mental health institute or other appropriate facility for the purpose of treatment of a mental or emotional condition after making findings pursuant to the standards set out for involuntary commitment in chapter 229.

3. When the court enters an order placing a child on probation pursuant to this section, the court may in cases of change of residency transfer jurisdiction of the child to the juvenile court of the county where the child's residence is established. The court to which the jurisdiction of the child is transferred shall have the same powers with respect to the child as if the petition had originally been filed in that court.

4. When the court enters an order transferring the legal and physical custody of a child to an agency, facility, department or institution, the court shall transmit its

order, its finding, and a summary of its information concerning the child to such agency, facility, department or institution.

5. If the court orders the transfer of custody of the child to the department of human services or other agency for placement, the department or agency responsible for the placement of the child shall submit a case permanency plan to the court and shall make every effort to return the child to the child's home as quickly as possible.

6. When the court orders the transfer of legal custody of a child pursuant to subsection 2, paragraphs "d", "e", or "f", the order shall state that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home.

85 Acts, ch 124, §1 HF 751

Subsection 2, paragraph a struck and rewritten

232.55 Effect of adjudication and disposition.

1. An adjudication or disposition in a proceeding under this division shall not be deemed a conviction of a crime and shall not impose any civil disabilities or operate to disqualify the child in any civil service application or appointment.

2. Adjudication and disposition proceedings under this division are not admissible as evidence against a person in a subsequent proceeding in any other court before or after the person reaches majority except in a sentencing proceeding after conviction of the person for an offense other than a simple or serious misdemeanor. Adjudication and disposition proceedings may properly be included in a presentence investigation report prepared pursuant to chapter 901 and section 906.5.

However, the use of adjudication and disposition proceedings pursuant to this subsection shall be subject to the restrictions contained in section 232.150.

85 Acts, ch 179, §1 HF 688

Subsection 2 struck and rewritten

232.68 Definitions.

As used in sections 232.67 through 232.77 and 235A.12 through 235A.23, unless the context otherwise requires:

1. "Child" means any person under the age of eighteen years.
2. "Child abuse" or "abuse" means harm or threatened harm occurring through:
 - a. Any nonaccidental physical injury, or injury which is at variance with the history given of it, suffered by a child as the result of the acts or omissions of a person responsible for the care of the child.
 - b. The commission of any sexual offense with or to a child pursuant to chapter 709, section 726.2, or section 728.12, subsection 1, as a result of the acts or omissions of the person responsible for the care of the child.
 - c. The failure on the part of a person responsible for the care of a child to provide for the adequate food, shelter, clothing or other care necessary for the child's health and welfare when financially able to do so or when offered financial or other reasonable means to do so. A parent or guardian legitimately practicing religious beliefs who does not provide specified medical treatment for a child for that reason alone shall not be considered abusing the child, however this provision shall not preclude a court from ordering that medical service be provided to the child where the child's health requires it.
 - d. The acts or omissions of a person responsible for the care of a child which allow, permit, or encourage the child to engage in prostitution pursuant to section 725.1.
3. "Department" means the state department of human services and includes the local, county and regional offices of the department.
4. "Health practitioner" includes a licensed physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, optometrist, podiatrist or chiropractor; a resident or intern in any of such professions; and any registered nurse or licensed practical nurse.

5. "Registry" means the central registry for child abuse information established in section 235A.14.

6. "Person responsible for the care of a child" means:

- a. A parent, guardian, or foster parent.
- b. A relative or any other person with whom the child resides, without reference to the length of time or continuity of such residence.
- c. An employee or agent of any public or private facility providing care for a child, including an institution, hospital, health care facility, group home, mental health center, residential treatment center, shelter care facility, detention center, or child care facility.

85 Acts, ch 173, §2 HF 451
Subsection 6, paragraph c amended

232.69 Mandatory and permissive reporters—training required.

1. The following classes of persons shall make a report within twenty-four hours and as provided in section 232.70, of cases of child abuse:

a. Every health practitioner who examines, attends, or treats a child and who reasonably believes the child has been abused.

b. Every self-employed social worker, every social worker under the jurisdiction of the department of human services, any social worker employed by a public or private agency or institution, public or private health care facility as defined in section 135C.1, certified psychologist, certificated school employee, employee or operator of a licensed child care center or registered group day care home or registered family day care home, individual licensee under chapter 237, member of the staff of a mental health center, or peace officer, who, in the course of employment or in providing child foster care, examines, attends, counsels or treats a child and reasonably believes a child has suffered abuse.

2. Any other person who believes that a child has been abused may make a report as provided in section 232.70.

3. A person required to make a report under subsection 1, other than a physician whose professional practice does not regularly involve providing primary health care to children, shall complete two hours of training relating to the identification and reporting of child abuse within one year of initial employment or self-employment involving the examination, attending, counseling, or treatment of children on a regular basis. The person shall complete at least two hours of additional child abuse identification and reporting training every five years. If the person is an employee of a hospital or similar institution, or of a public or private institution, agency, or facility, the employer shall be responsible for providing the child abuse identification and reporting training. If the person is self-employed, the person shall be responsible for obtaining the child abuse identification and reporting training. The person may complete the initial or additional training as part of a continuing education program required under chapter 258A or may complete the training as part of a training program offered by the department of human services, the department of public instruction, an area education agency, a school district, the Iowa law enforcement academy, or a similar public agency.

85 Acts, ch 173, §3-5 HF 451
Subsection 1, paragraphs a and b amended
NEW subsection 3

232.71 Duties of the department upon receipt of report.

1. Whenever a report is received, the department of human services shall promptly commence an appropriate investigation. The primary purpose of this investigation shall be the protection of the child named in the report.

2. The investigation shall include:

- a. Identification of the nature, extent and cause of the injuries, if any, to the child named in the report;
- b. The identification of the person or persons responsible therefor;

c. The name, age and condition of other children in the same home as the child named in the report;

d. An evaluation of the home environment and relationship of the child named in the report and any other children in the same home as the parents or other persons responsible for their care.

3. The investigation may with the consent of the parent or guardian include a visit to the home of the child or with the consent of the administrator of a facility include a visit to the facility providing care to the child named in the report and examination of the child. If permission to enter the home or facility and to examine the child is refused, the juvenile court or district court upon a showing of probable cause may authorize the person making the investigation to enter the home or facility and examine the child. The department may utilize a multidisciplinary team in investigations of child abuse involving employees or agents of a facility providing care for a child.

4. Based on an investigation of alleged child abuse by an employee of a facility providing care to a child, the department shall notify the licensing authority for the facility, the governing body of the facility, and the administrator in charge of the facility of any of the following:

a. A violation of facility policy noted in the investigation.

b. An instance in which facility policy or lack of facility policy may have contributed to the alleged child abuse.

c. An instance in which general practice in the facility appears to differ from the facility's written policy.

The licensing authority, the governing body, and the administrator in charge of the facility shall take any lawful action which may be necessary or advisable to protect children residing in the facility.

5. The department of human services may request information from any person believed to have knowledge of a child abuse case. The county attorney, any law enforcement or social services agency in the state, and any mandatory reporter shall cooperate and assist in the investigation upon the request of the department of human services. The county attorney and appropriate law enforcement agencies shall also take any other lawful action which may be necessary or advisable for the protection of the child.

6. Administrators of all public and nonpublic schools subject to the authority of the department of public instruction shall cooperate with the investigators by providing confidential access to the child named in the report, and to other children alleged to have relevant information, for the purposes of interviews. The investigators shall determine who shall be present at the interviews. The school administrators are under no duty to report the investigation or interview to the child's parent or guardian. The immunity granted by section 232.73 applies to such administrators and their school districts.

7. The department, upon completion of its investigation, shall make a preliminary report of its investigation as required by subsection 2. A copy of this report shall be retransmitted to juvenile court within ninety-six hours after the department initially receives the abuse report unless the juvenile court grants an extension of time for good cause shown. If the preliminary report is not a complete report, a complete report shall be filed within ten working days of the receipt of the abuse report, unless the juvenile court grants an extension of time for good cause shown. The department shall notify a subject of the report of the result of the investigation, of the subject's right to correct the information pursuant to section 235A.19, and of the procedures to correct the information. The juvenile court shall notify the registry of any action it takes with respect to a suspected case of child abuse.

8. The department of human services shall transmit a copy of the report of its investigation, including actions taken or contemplated, to the registry. The department of human services shall make periodic follow-up reports thereafter in a manner

prescribed by the registry so that the registry is kept up-to-date and fully informed concerning the handling of a suspected case of child abuse.

9. The department of human services shall also transmit a copy of the report of its investigation to the county attorney. The county attorney shall notify the registry of any actions or contemplated actions with respect to a suspected case of child abuse so that the registry is kept up-to-date and fully informed concerning the handling of such a case.

10. Based on the investigation conducted pursuant to this section, the department shall offer to the family of any child believed to be the victim of abuse such services as appear appropriate for either the child, the family, or both, if it is explained that the department has no legal authority to compel such family to receive such services.

11. If, upon completion of the investigation, the department of human services determines that the best interests of the child require juvenile court action, the department shall take the appropriate action to initiate such action under this chapter. The county attorney shall assist the county department of human services in the preparation of the necessary papers to initiate such action and shall appear and represent the department at all juvenile court proceedings.

12. The department of human services shall assist the juvenile court or district court during all stages of court proceedings involving a suspected child abuse case in accordance with the purposes of this chapter.

13. The department of human services shall provide for or arrange for and monitor rehabilitative services for abused children and their families on a voluntary basis or under a final or intermediate order of the juvenile court.

14. In every case involving child abuse which results in a child protective judicial proceeding, whether or not the proceeding arises under this chapter, a guardian ad litem shall be appointed by the court to represent the child in the proceedings. Before a guardian ad litem is appointed pursuant to this section, the court shall require the person responsible for the care of the child to complete under oath a detailed financial statement. If, on the basis of that financial statement, the court deems that the person responsible for the care of the child is able to bear the cost of the guardian ad litem, the court shall so order. In cases where the person responsible for the care of the child is unable to bear the cost of the guardian ad litem, the expense shall be paid out of the county treasury.

15. If a fourth report is received from the same person who made three earlier unfounded reports which identified the same child as the abused child and the same person responsible for the child as the alleged abuser, the department may determine that the report is again unfounded due to the report's spurious or frivolous nature and may in its discretion terminate its investigation.

85 Acts, ch 173, §6-9 HF 451

1985 amendment to subsection 7 applies to information entered in the central registry for child abuse information after July 1, 1985; 85 Acts, ch 173, §31

Subsection 2, paragraph e struck

Subsection 3 amended

NEW subsection 4 and subsequent subsections renumbered

Subsection 7 amended

232.78 Temporary removal of a child pursuant to ex parte court order.

1. The juvenile court may enter an ex parte order directing a peace officer to remove a child from the child's home or a child day care facility before or after the filing of a petition under this chapter provided all of the following apply:

a. The parent, guardian, legal custodian, or employee of the child day care facility is absent, or though present, was asked and refused to consent to the removal of the child and was informed of an intent to apply for an order under this section, or the parent, guardian, or legal custodian has a prior instance of flight to avoid a child abuse investigation.

b. It appears that the child's immediate removal is necessary to avoid imminent danger to the child's life or health.

c. There is not enough time to file a petition and hold a hearing under section 232.95.

2. The order shall specify the facility to which the child is to be brought. Except for good cause shown or unless the child is sooner returned to the place where the child was residing or permitted to return to the child day care facility, a petition shall be filed under this chapter within three days of the issuance of the order.

3. The juvenile court may enter an order authorizing a physician or hospital to provide emergency medical or surgical procedures before the filing of a petition under this chapter provided:

a. Such procedures are necessary to safeguard the life and health of the child; and

b. There is not enough time to file a petition under this chapter and hold a hearing as provided in section 232.95.

4. The juvenile court, before or after the filing of a petition under this chapter, may enter an ex parte order authorizing a physician or hospital to conduct an outpatient physical examination or authorizing a physician, a psychologist certified under section 154B.7, or a community mental health center accredited pursuant to chapter 230A to conduct an outpatient mental examination of a child if necessary to identify the nature, extent, and cause of injuries to the child as required by section 232.71, subsection 2, provided all of the following apply:

a. The parent, guardian, or legal custodian is absent, or though present, was asked and refused to provide written consent to the examination.

b. The juvenile court has entered an ex parte order directing the removal of the child from the child's home or a child day care facility under this section.

c. There is not enough time to file a petition and to hold a hearing as provided in section 232.98.

5. Any person who may file a petition under this chapter may apply for, or the court on its own motion may issue, an order for temporary removal under this section. An appropriate person designated by the court shall confer with a person seeking the removal order, shall make every reasonable effort to inform the parent or other person legally responsible for the child's care of the application, and shall make such inquiries as will aid the court in disposing of such application.

85 Acts, ch 173, §10,11 HF 451

Subsection 1, paragraph a amended

NEW subsection 4 and subsequent subsection renumbered

232.98 Physical and mental examinations.

1. Except as provided in section 232.78, subsection 4, a physical or mental examination of the child may be ordered only after the filing of a petition pursuant to section 232.87 and after a hearing to determine whether an examination is necessary to determine the child's physical or mental condition.

The hearing required by this section may be held simultaneously with the adjudicatory hearing.

An examination ordered prior to the adjudication shall be conducted on an outpatient basis when possible, but if necessary the court may commit the child to a suitable nonsecure hospital, facility, or institution for the purpose of examination for a period not to exceed fifteen days if all of the following are found to be present:

a. Probable cause exists to believe that the child is a child in need of assistance pursuant to section 232.2, subsection 6, paragraph "e" or "f".

b. Commitment is necessary to determine whether there is clear and convincing evidence that the child is a child in need of assistance.

c. The child's attorney agrees to the commitment.

An examination ordered after adjudication shall be conducted on an outpatient basis when possible, but if necessary the court may commit the child to a suitable nonsecure hospital, facility, or institution for the purpose of examination for a period not to exceed thirty days.

The child's parent, guardian, or custodian shall be included in counseling sessions offered during the child's stay in a hospital, facility, or institution when feasible, and when in the best interests of the child and the child's parent, guardian, or custodian. If separate counseling sessions are conducted for the child and the child's parent, guardian, or custodian, a joint counseling session shall be offered prior to the release of the child from the hospital, facility, or institution. The court shall require that notice be provided to the child's guardian ad litem of the counseling sessions and of the participants and results of the sessions.

2. Following an adjudication that a child is a child in need of assistance, the court may after a hearing order the physical or mental examination of the parent, guardian or custodian if that person's ability to care for the child is at issue.

85 Acts, ch 173, §12 HF 451
Subsection 1, unnumbered paragraph 1 amended

232.102 Transfer of legal custody of juvenile and placement.

1. After a dispositional hearing the court may enter an order transferring the legal custody of the child to one of the following for purposes of placement:

- a. A relative or other suitable person.
- b. A child placing agency or other suitable private agency, facility or institution which is licensed or otherwise authorized by law to receive and provide care for the child.
- c. The department of human services.

2. After a dispositional hearing and upon the request of the department, the court may enter an order appointing the department as the guardian of an unaccompanied refugee minor or of a child without parent or guardian.

3. After a dispositional hearing and upon written findings of fact based upon evidence in the record that an alternative placement set forth in subsection 1, paragraph "b" has previously been made and is not appropriate the court may enter an order transferring the guardianship of the court for the purposes of subsection 7, to the commissioner of human services for the purposes of placement in the Iowa Juvenile Home at Toledo.

4. Whenever possible the court should permit the child to remain at home with the child's parent, guardian or custodian. Custody of the child should not be transferred unless the court finds there is clear and convincing evidence that:

- a. The child cannot be protected from physical abuse without transfer of custody; or
- b. The child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance and an adequate placement is available.

The order shall, in addition, contain a statement that removal from the home is the result of a determination that continuation therein would be contrary to the welfare of the child, and that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home.

5. The child shall not be placed in the state training school.

6. In any order transferring custody to the department or an agency, or in orders pursuant to a custody order, the court shall specify the nature and category of disposition which will serve the best interests of the child, and shall prescribe the means by which the placement shall be monitored by the court. If the court orders the transfer of the custody of the child to the department of human services or other agency for placement, the department or agency shall submit a case permanency plan to the court and shall make every effort to return the child to the child's home as quickly as possible. When the child is not returned to the child's home and if the child has been previously placed in a licensed foster care facility, the department or agency shall consider placing the child in the same licensed foster care facility. If the court orders the transfer of custody to a relative or other suitable person, the court may direct the department or other agency to provide services to the child's parent, guardian or custodian in order to enable them to resume custody of the child.

7. The duration of any placement made after an order pursuant to this section shall be for an initial period of six months. At the expiration of that period and every six months thereafter, the court shall hold a hearing and review the placement in order to determine whether the child should be returned home, an extension of the placement should be made, or a termination of the parent-child relationship proceeding should be instituted. The placement shall be terminated and the child returned to the child's home if the court finds by a preponderance of the evidence that the child will not suffer harm in the manner specified in section 232.2, subsection 6. If the placement is extended, the court shall determine whether additional services are necessary to facilitate the return of the child to the child's home, and if the court determines such services are needed, the court shall order the provision of such services. When the child is not returned to the child's home and if the child has been previously placed in a licensed foster care facility, the department or agency responsible for the placement of the child shall consider placing the child in the same licensed foster care facility.

85 Acts, ch 173, §13 HF 451
NEW subsection 2 and subsequent subsections renumbered

232.139 Interstate juvenile compacts and related §232.140 transferred to §232.171 and 232.172 in Code Supplement 1985.

232.141 Expenses charged to county.

1. The following expenses upon certification of the judge or upon such other authorization as provided by law are a charge upon the county in which the proceedings are held to the extent provided in subsection 4.

a. The fees and mileage of witnesses and the expenses and mileage of officers serving notices and subpoenas.

b. The expenses of transporting a child to a place designated by a child placing agency for the care of a child if the court transfers legal custody to a child placing agency.

c. The expense of transporting a child to or from a place designated by the court.

d. Reasonable compensation for an attorney appointed by the court to serve as counsel or guardian ad litem.

e. The expense of treatment or care ordered by the court under an authority of subsection 2.

2. If legal custody of a minor is transferred by the court, if the minor is placed by the court with someone other than the parents, or if a minor is given physical or mental examinations or treatment under order of the court and no provision is otherwise made by law for payment for the care, examination, or treatment of the minor, the costs shall be charged upon the funds of the county in which the proceedings are held upon certification of the judge to the board of supervisors. If a minor is given physical or mental examinations or treatment with the consent of the parent, guardian, or legal custodian relating to a child abuse investigation and no other provision is otherwise made by law for payment for the examination or treatment of the minor, the costs shall be charged upon the funds of the county in which the child resides upon certification of the department to the board of supervisors. Except where the parent-child relationship is terminated, the court may inquire into the ability of the parents to support the minor and after giving the parents a reasonable opportunity to be heard may order the parents to pay in the manner and to whom the court may direct, such sums as will cover in whole or in part the cost of care, examination, or treatment of the minor. An order entered under this section shall not obligate a parent paying child support under a custody decree, except that any part of such a monthly support payment may be used to satisfy the obligations imposed by an order entered under this section. If the parents fail to pay the sum without good reason, the parents may be proceeded against for contempt or the court may inform the county attorney who shall proceed against the parents to collect the

unpaid sums or both. Any such sums ordered by the court shall be a judgment against each of the parents and a lien as provided in section 624.23. If all or any part of the sums that the parents are ordered to pay is subsequently paid by the county, the judgment and lien shall thereafter be against each of the parents in favor of the county to the extent of the county's payments.

3. The county charged with the cost and expenses under subsection 1 or 2 may recover the costs and expenses from the county where the child has legal settlement by filing verified claims which shall be payable as are other claims against the county. A detailed statement of the facts upon which the claim is based shall accompany the claim. Any dispute involving the legal settlement of a child for which the court has ordered payment under authority of this section shall be settled in accordance with sections 252.22 and 252.23.

4. Costs incurred under this section shall be paid as follows:

a. The costs incurred under the provisions of section 232.52 of prior Codes by each county for the fiscal years beginning July 1, 1975, 1976 and 1977 shall be averaged. The average cost for each county shall be that county's base cost for the first fiscal year after July 1, 1979.

b. Each county shall be required to pay for the first fiscal year after July 1, 1979 an amount equal to its base cost plus an amount equal to the percentage rate of change in the consumer price index as tabulated by the bureau of labor statistics for the current fiscal year times the base cost.

c. A county's base cost for a fiscal year plus the percentage rate of change amount as computed in paragraph "b" of this subsection shall become that county's base cost for the succeeding fiscal year. The amount to be paid in the succeeding year by the county shall be computed as provided in paragraph "b".

d. Costs incurred under provisions of this section which are not paid by the county under the provisions of paragraphs "a," "b" and "c" shall be paid by the state. The counties shall apply for reimbursement to the department, which shall promulgate rules and forms to carry out the provisions of this paragraph.

85 Acts, ch 173, §14 HF 451
Subsection 2 amended

232.149 Law enforcement records.

1. The taking of a child into custody under the provisions of section 232.19 shall not be considered an arrest.

2. Records and files of a criminal justice agency concerning a child other than fingerprint and photograph records and files shall not be open to inspection and their contents shall not be disclosed except as provided in this section and section 232.150 unless the juvenile court waives its jurisdiction over the child so that the child may be prosecuted as an adult for a public offense.

3. Such records may be inspected and their contents may be disclosed without a court order to the following:

a. Peace officers of this state and other jurisdictions when necessary for the discharge of their official duties.

b. The judge and professional staff, including juvenile court officers, of a juvenile court or of a juvenile or family court in another jurisdiction having the child currently before it in any proceeding.

c. The child, the child's counsel, parent, guardian, custodian and guardian ad litem.

d. The designated representative of any agency, association, facility or institution which has custody of the child, or is responsible for the care, treatment or supervision of the child pursuant to a court order.

e. A court in which the child has been convicted of a public offense in connection with a presentence report or dispositional proceedings.

4. Pursuant to court order such records may be inspected by and their contents may be disclosed to the following:

a. A person conducting bona fide research for research purposes under such conditions as the court may deem proper, provided that no personal identifying data shall be disclosed to such a person.

b. Persons who have a direct interest in a proceeding or in the work of the court.

5. This section does not prohibit a criminal justice agency from disclosing or releasing pursuant to chapter 694 the identity of a missing child or information useful in the recovery of a missing child.

85 Acts, ch 173, §15 HF 451
NEW subsection 5

DIVISION IX

INTERSTATE COMPACT ON PLACEMENT OF CHILDREN

232.158 Interstate compact on placement of children.

The interstate compact on the placement of children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

ARTICLE I—PURPOSE AND POLICY

It is the purpose and policy of the party states to co-operate with each other in the interstate placement of children to the end that:

a. Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

b. The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

c. The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

d. Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II—DEFINITIONS

As used in this compact:

a. "*Child*" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

b. "*Sending agency*" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

c. "*Receiving state*" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

d. "*Placement*" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution, but not in an institution caring for the mentally ill, mentally defective, or epileptic, in an institution primarily educational in character, or in a hospital or other medical facility.

ARTICLE III—CONDITIONS FOR PLACEMENT

a. A sending agency shall not send, bring, or cause to be sent or brought into any other party state a child for placement in foster care or as a preliminary to a possible adoption unless the sending agency complies with every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children in the receiving state.

b. Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

1. The name, date and place of birth of the child.
2. The identity and address or addresses of the parents or legal guardian.
3. The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring or place the child.
4. A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

c. Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph "b" of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

d. The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV—PENALTY FOR ILLEGAL PLACEMENT

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

ARTICLE V—RETENTION OF JURISDICTION

a. The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

b. When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

c. Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph "a" hereof.

ARTICLE VI—INSTITUTIONAL CARE OF DELINQUENT CHILDREN

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to the child being sent to such other party jurisdiction for institutional care and the court finds that:

a. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

b. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII—COMPACT ADMINISTRATOR

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general co-ordinator of activities under this compact in the officer's jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII—LIMITATIONS

This compact shall not apply to:

a. The sending or bringing of a child into a receiving state by the child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or guardian and leaving the child with any such relative or nonagency guardian in the receiving state.

b. Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX—ENACTMENT AND WITHDRAWAL

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the commonwealth of Puerto Rico, and, with the consent of Congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X—CONSTRUCTION AND SEVERABILITY

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

85 Acts, ch 173, §21-23 HF 451

Transferred in Code Supplement 1985 from §238.33 in Code 1985

Article II, paragraph d amended

Article III, paragraph a amended

Article VIII, paragraph a amended

232.159 Financial responsibility.

Financial responsibility for any child placed pursuant to the provisions of the interstate compact on the placement of children shall be determined in accordance with the provisions of article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of chapters 252 and 252A, fixing responsibility for the support of children also may be invoked.

Transferred in Code Supplement 1985 from §238.34 in Code 1985

232.160 Department of human services as public authority.

The "appropriate public authorities" as used in article III of the interstate compact on the placement of children shall, with reference to this state, mean the state department of human services and said department shall receive and act with reference to notices required by said article III.

Transferred in Code Supplement 1985 from §238.35 in Code 1985

232.161 Department as authority in receiving state.

As used in paragraph "a" of article V of the interstate compact on the placement of children, the phrase "appropriate authority in the receiving state" with reference to this state shall mean the state department of human services.

Transferred in Code Supplement 1985 from §238.36 in Code 1985

232.162 Authority to enter agreements.

The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph "b" of article V of the interstate compact on the placement of children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the director of family and children's services in the case of the state and the county general relief director in the case of a subdivision of the state.

Transferred in Code Supplement 1985 from §238.37 in Code 1985

232.163 Visitation, inspection or supervision.

Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under the provisions of this chapter shall be deemed to be met if performed pursuant to an

agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by paragraph "b" of article V of the interstate compact on the placement of children.

Transferred in Code Supplement 1985 from §238.38 in Code 1985

232.164 Court authority to place child in another state.

Any court having jurisdiction to place delinquent children may place such a child in an institution of or in another state pursuant to article VI of the interstate compact on the placement of children and shall retain jurisdiction as provided in article V thereof.

Transferred in Code Supplement 1985 from §238.39 in Code 1985

232.165 Executive head.

As used in article VII of the interstate compact on the placement of children, the term "executive head" means the governor. The governor is hereby authorized to appoint a compact administrator in accordance with the terms of said article VII.

Transferred in Code Supplement 1985 from §238.40 in Code 1985

232.166 Statutes not affected.

Nothing contained in sections 232.158 to 232.165 shall be deemed to affect or modify the other provisions of this chapter or of chapter 600.

Transferred in Code Supplement 1985 from §238.41 in Code 1985

DIVISION X

INTERSTATE COMPACT ON JUVENILES

232.171 Interstate juvenile compacts.

The state of Iowa through its courts and agencies is hereby authorized to enter into interstate compacts on juveniles in behalf of this state with any other contracting state which legally joins therein in substantially the following form.

The contracting states solemnly agree:

ARTICLE I—FINDINGS AND PURPOSES

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The co-operation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to

1. Co-operative supervision of delinquent juveniles on probation or parole;
2. The return, from one state to another, of delinquent juveniles who have escaped or absconded;
3. The return, from one state to another, of nondelinquent juveniles who have run away from home; and
4. Additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake co-operatively. In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformatory and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to co-operate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

ARTICLE II—EXISTING RIGHTS AND REMEDIES

That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

ARTICLE III—DEFINITIONS

That, for the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected or dependent children; "state" means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

ARTICLE IV—RETURN OF RUNAWAYS

a. That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for the juvenile's return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of the juvenile's running away, the juvenile's location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering the juvenile's own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent whether or not the juvenile is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel the juvenile's return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, the judge shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to the juvenile's legal custody, and that it is in the best interest and for the protection of such juvenile that the juvenile be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending

proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing the officer or person to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding the juvenile shall have appointed to receive the juvenile, unless the juvenile shall first be taken forthwith before a judge of a court in the state, who shall inform the juvenile of the demand made for the juvenile's return, and who may appoint counsel or guardian ad litem for the juvenile. If the judge of such court shall find that the requisition is in order, the judge shall deliver such juvenile over to the officer whom the court demanding the juvenile shall have appointed to receive the juvenile. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to the juvenile's legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for the person's own protection and welfare, for such a time not exceeding ninety days as will enable the person's return to another state party to this compact pursuant to a requisition for the person's return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein the juvenile is found any criminal charge, or any proceeding to have the juvenile adjudicated a delinquent juvenile for an act committed in such state, or if the juvenile is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon the juvenile's return to the state from which the juvenile ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

b. That the state to which a juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return.

c. That "juvenile" as used in this Article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

ARTICLE V—RETURN OF ESCAPEES AND ABSCONDERS

a. That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody the delinquent juvenile has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of the juvenile's adjudication as a delinquent juvenile, the circumstances of the breach of the terms

of the juvenile's probation or parole or of the juvenile's escape from an institution or agency vested with the juvenile's legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing the officer or person to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding the juvenile shall have appointed to receive the juvenile, unless the juvenile shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform the juvenile of the demand made for the juvenile's return and who may appoint counsel or guardian ad litem for the juvenile. If the judge of such court shall find that the requisition is in order, the judge shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding the juvenile shall have appointed to receive the juvenile. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with the person's legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, the person must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety days, as will enable the person's detention under a detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with the juvenile's legal custody or supervision, there is pending in the state wherein the juvenile is detained any criminal charge or any proceeding to have the juvenile adjudicated a delinquent juvenile for an act committed in such state, or if the juvenile is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon the juvenile's return to the state from which the juvenile escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

b. That the state to which a delinquent juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return.

ARTICLE VI—VOLUNTARY RETURN PROCEDURE

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with the juvenile's legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of Article IV "a" or of Article V "a", may consent to the juvenile's immediate return to the state from which the juvenile absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and the juvenile's counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and the juvenile's counsel or guardian ad litem, if any, consent to the juvenile's return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of the juvenile's rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver the juvenile to the duly accredited officer or officers of the state demanding the juvenile's return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order the juvenile to return unaccompanied to such state and shall provide the juvenile with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

ARTICLE VII—CO-OPERATIVE SUPERVISION OF PROBATIONERS AND PAROLEES

a. That the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

b. That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

c. That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than

establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against the juvenile within the receiving state any criminal charge or any proceeding to have the juvenile adjudicated a delinquent juvenile for any act committed in such state, or if the juvenile is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

d. That the sending state shall be responsible under this Article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

ARTICLE VIII—RESPONSIBILITY FOR COSTS

a. That the provisions of Articles IV "b", V "b" and VII "d" of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

b. That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV "b", V "b" or VII "d" of this compact.

ARTICLE IX—DETENTION PRACTICES

That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

ARTICLE X—SUPPLEMENTARY AGREEMENTS

That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the co-operative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:

1. Provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished;
2. Provide that the delinquent juvenile shall be given a court hearing prior to the juvenile being sent to another state for care, treatment and custody;
3. Provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;
4. Provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;
5. Provide for reasonable inspection of such institutions by the sending state;

6. Provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to the juvenile being sent to another state; and

7. Make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the co-operating states.

ARTICLE XI—ACCEPTANCE OF FEDERAL AND OTHER AID

That any state party to this compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

ARTICLE XII—COMPACT ADMINISTRATORS

That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XIII—EXECUTION OF COMPACT

That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

ARTICLE XIV—RENUNCIATION

That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months' renunciation notice of the present Article.

ARTICLE XV—RENDITION AMENDMENT

a. This article shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

b. All provisions and procedures of Articles V and VI of the Interstate Compact on Juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in Article V of the compact shall be forwarded by the judge of the court in which the petition has been filed.

OUT-OF-STATE CONFINEMENT AMENDMENT

a. Whenever the duly constituted judicial or administrative authorities in a sending state shall determine that confinement of a probationer or reconfinement of a parolee is necessary or desirable, said officials may direct that the confinement or reconfinement be in an appropriate institution for delinquent juveniles within the territory of the receiving state, such receiving state to act in that regard solely as agent for the sending state.

b. Escapees and absconders who would otherwise be returned pursuant to Article V of the compact may be confined or reconfined in the receiving state pursuant to this amendment. In any such case the information and allegations required to be made and furnished in a requisition pursuant to such Article shall be made and furnished, but in place of the demand pursuant to Article V, the sending state shall request confinement or reconfinement in the receiving state. Whenever applicable, detention orders as provided in Article V may be employed pursuant to this paragraph preliminary to disposition of the escapee or absconder.

c. The confinement or reconfinement of a parolee, probationer, escapee, or absconder pursuant to this amendment shall require the concurrence of the appropriate judicial or administrative authorities of the receiving state.

d. As used in this amendment: (1) "Sending state" means sending state as that term is used in Article VII of the compact or the state from which a delinquent juvenile has escaped or absconded within the meaning of Article V of the compact; (2) "receiving state" means any state, other than the sending state, in which a parolee, probationer, escapee, or absconder may be found, provided that said state is a party to this amendment.

e. Every state which adopts this amendment shall designate at least one of its institutions for delinquent juveniles as a "Compact Institution" and shall confine persons therein as provided in paragraph "a" hereof unless the sending and receiving state in question shall make specific contractual arrangements to the contrary. All states party to this amendment shall have access to "Compact Institutions" at all reasonable hours for the purpose of inspecting the facilities thereof and for the purpose of visiting such of said state's delinquents as may be confined in the institution.

f. Persons confined in "Compact Institutions" pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed from said "Compact Institution" for transfer to an appropriate institution within the sending state, for return to probation or parole, for discharge or for any purpose permitted by the laws of the sending state.

g. All persons who may be confined in a "Compact Institution" pursuant to the provisions of this amendment shall be treated in a reasonable and humane manner. The fact of confinement or reconfinement in a receiving state shall not deprive any person so confined or reconfined of any rights which said person would have had if confined or reconfined in an appropriate institution of the sending state; nor shall any agreement to submit to confinement or reconfinement pursuant to the terms of this amendment be construed as a waiver of any rights which the delinquent would have had if the delinquent had been confined or reconfined in any appropriate institution of the sending state except that the hearing or hearings, if any, to which a parolee, probationer, escapee, or absconder may be entitled (prior to confinement or reconfinement) by the laws of the sending state may be had before the appropriate judicial or administrative officers of the receiving state. In this event, said judicial and administrative officers shall act as agents of the sending state after consultation with appropriate officers of the sending state.

h. Any receiving state incurring costs or other expenses under this amendment shall be reimbursed in the amount of such costs or other expenses by the sending

state unless the states concerned shall specifically otherwise agree. Any two or more states party to this amendment may enter into supplementary agreements determining a different allocation of costs as among themselves.

i. This amendment shall take initial effect when entered into by any two or more states party to the compact and shall be effective as to those states which have specifically enacted this amendment. Rules and regulations necessary to effectuate the terms of this amendment may be promulgated by the appropriate officers of those states which have enacted this amendment.

85 Acts, ch 182, §1 SF 218

Transferred in Code Supplement 1985 from § 232.139 in Code 1985

NEW article XV added

232.172 Confinement of delinquent juvenile.

In addition to any institution in which the authorities of this state may otherwise confine or order the confinement of a delinquent juvenile, such authorities may, pursuant to the out-of-state confinement amendment to the interstate compact on juveniles, confine or order the confinement of a delinquent juvenile in a compact institution within another party state.

Transferred in Code Supplement 1985 from § 232.140 in Code 1985

CHAPTER 234

CHILD AND FAMILY SERVICES

234.9 County board of social welfare.

The board of supervisors of each county shall appoint a county board of social welfare, which shall consist of three members in counties of less than thirty-three thousand population, not more than two of whom shall belong to the same political party, and both sexes shall be represented. The county board shall consist of five members in counties of more than thirty-three thousand population, not more than three of whom shall belong to the same political party, and both sexes shall be represented. At the discretion of the board of supervisors one or more of the members may be chosen from the membership of the board of supervisors. Annually the board of supervisors shall appoint the members of the county board who shall serve for one year and until their successors are appointed. If a vacancy occurs in the membership of the county board, other than by the expiration of a term, a member shall be appointed to fill the vacancy for the unexpired term. All appointments shall be made a part of the regular proceedings of the board of supervisors and shall be filed with the county auditor and with the state director.

85 Acts, ch 99, §5 SF 224

Section amended

234.11 Duties of the county board.

The county board may direct emergency relief with only the powers and duties prescribed in the laws relating thereto and shall determine the allocation of funds to child day care facilities, organizations, and agencies pursuant to sections 237A.14 to 237A.18. Organizations and agencies which serve day care facilities and any licensed or registered facilities may apply for the funds. The board shall act in an advisory capacity on programs within the jurisdiction of the department of human services. The board shall review policies and procedures of the local departments of human services and make recommendations for changes to insure that effective services are provided in their respective communities. The county board may also make recommendations for new programs which it is believed would meet needs in the community. The state department shall establish a procedure to insure that county board recommendations receive appropriate review at the level of policy determination.

The county board shall annually review all human services provided or proposed to be provided with state or county funding to children, youth, and families in the county and shall annually review the system in the county for the delivery of the services to determine the degree to which the services are being coordinated. The review shall study cooperative efforts which are designed to prevent duplication of services and to break the cycle of dependency by certain families receiving assistance under human service programs. Human service agencies receiving county funding and state agencies providing human services in the county shall cooperate with the county board in conducting the review. The county board shall report its findings and recommendations by July 1 of each year to the county board of supervisors and to the commission on children, youth, and families established in section 237B.2. The commission shall include in its annual report to the general assembly a summary of its findings from the reports of the county boards.

85 Acts, ch 237, §1 HF 505
NEW unnumbered paragraph 2

CHAPTER 235A

ABUSE OF CHILDREN

235A.15 Authorized access.

1. Notwithstanding chapter 22, the confidentiality of all child abuse information shall be maintained, except as specifically provided by subsection 2 and subsection 3.

2. Access to child abuse information other than unfounded child abuse information is authorized only:

a. To a health practitioner who is examining, attending or treating a child whom the practitioner believes or has reason to believe has been the victim of abuse.

b. To employees of the department of human services having responsibility for the investigation of a child abuse report.

c. To a law enforcement officer having responsibility for the temporary emergency removal of a child from the child's parent or other legal guardian.

d. To a juvenile court or district court upon a finding that information is necessary for the resolution of an issue arising in any phase of a case involving child abuse, except that information obtained through the registry shall not be utilized in any aspect of any criminal prosecution.

e. To an authorized person or agency having responsibility for the care or supervision of a child named in a report as a victim of abuse or a person named in a report as having abused a child, if the juvenile court or the registry deems access to child abuse information by such person or agency to be necessary.

f. To a person conducting bona fide research on child abuse, if the details identifying any subject of a child abuse report are deleted.

g. To a person who is the subject of any report as provided in section 235A.19.

h. To registry or department personnel where necessary to the performance of their official duties.

i. To a court hearing an appeal for correction of registry information as provided in section 235A.19.

j. In an individual case, to the mandatory reporter who reported the child abuse.

k. To a multidisciplinary team, if the department of human services approves the composition of the multidisciplinary team and determines that access to the team is necessary to assist the department in the diagnosis, assessment, and disposition of a child abuse case.

l. To a licensing authority for a facility providing care for a child named in a report, if the licensing authority is notified of a relationship between facility policy and the child abuse under section 232.71, subsection 4.

m. To the department of public safety for the sole purpose of the filing of a claim for reparation pursuant to section 910A.5 and section 912.4, subsections 3, 4, and 5.

3. Access to unfounded child abuse information is authorized only to those persons identified in subsection 2, paragraphs "b", "g", "h", and "j".

85 Acts, ch 173, §16 HF 451; 85 Acts, ch 174, §1 HF 462
Section amended

235A.18 Sealing and expungement of child abuse information.

1. Child abuse information relating to a particular case of suspected child abuse shall be sealed ten years after the receipt of the initial report of such abuse by the registry unless good cause be shown why the information should remain open to authorized access. If a subsequent report of a suspected case of child abuse involving the child named in the initial report as the victim of abuse or a person named in such report as having abused a child is received by the registry within this ten-year period, the information shall be sealed ten years after receipt of the subsequent report unless good cause be shown why the information should remain open to authorized access.

2. Child abuse information which cannot be determined by a preponderance of the evidence to be founded or unfounded shall be expunged one year after the receipt of the initial report of abuse and child abuse information which is determined by a preponderance of the evidence to be unfounded shall be expunged six months after the receipt of the initial report of abuse, as a result of any of the following:

- a. The investigation of a report of suspected child abuse by the department.
- b. A successful appeal as provided in section 235A.19.
- c. A court finding by a juvenile or district court.

3. However, if a correction of child abuse information is requested under section 235A.19 and the issue is not resolved at the end of the one-year or six-month period, the information shall be retained until the issue is resolved and if the child abuse information is not determined to be founded, the information shall be expunged at the appropriate time under subsection 2.

4. The registry, at least once a year, shall review and determine the current status of child abuse reports which are transmitted or made to the registry after July 1, 1974, which are at least one year old and in connection with which no investigatory report has been filed by the department of human services pursuant to section 232.71. If no such investigatory report has been filed, the registry shall request the department of human services to file a report. In the event a report is not filed within ninety days subsequent to such a request, the report and information relating thereto shall be sealed and remain sealed unless good cause be shown why the information should remain open to authorized access.

85 Acts, ch 173, §17 HF 451
Subsection 2 amended, NEW subsection 3 and subsequent subsection renumbered

235A.19 Examination, requests for correction or expungement and appeal.

1. Any person or that person's attorney shall have the right to examine child abuse information in the registry which refers to that person. The registry may prescribe reasonable hours and places of examination.

2. A person may file with the department within six months of the date of the notice of the results of an investigation required by section 232.71, subsection 7, a written statement to the effect that child abuse information referring to the person is in whole or in part erroneous, and may request a correction of that information or of the findings of the investigation report. The department shall provide the person with an opportunity for an evidentiary hearing pursuant to chapter 17A to correct the information or the findings, unless the department corrects the information or findings as requested. The department shall delay the expungement of information which is not determined to be founded until the conclusion of a

proceeding to correct the information or findings. The department may defer the hearing until the conclusion of a pending juvenile or district court case relating to the information or findings.

3. The decision resulting from the hearing may be appealed to the district court of Polk county by the person requesting the correction or to the district court of the district in which the person resides. Immediately upon appeal the court shall order the department to file with the court a certified copy of the child abuse information. Appeal shall be taken in accordance with chapter 17A.

4. Upon the request of the appellant, the record and evidence in such cases shall be closed to all but the court and its officers, and access thereto shall be prohibited unless otherwise ordered by the court. The clerk shall maintain a separate docket for such actions. No person other than the appellant shall permit a copy of any of the testimony or pleadings or the substance thereof to be made available to any person other than a party to the action or the party's attorney. Violation of the provisions of this subsection shall be a public offense punishable under section 235A.21.

5. Whenever the registry corrects or eliminates information as requested or as ordered by the court, the registry shall advise all persons who have received the incorrect information of such fact. Upon application to the court and service of notice on the registry, any individual may request and obtain a list of all persons who have received child abuse information referring to the individual.

6. In the course of any proceeding provided for by this section, the identity of the person who reported the disputed information and the identity of any person who has been reported as having abused a child may be withheld upon a determination by the registry that disclosure of their identities would be detrimental to their interests.

85 Acts, ch 173, §18 HF 451

1985 amendment to subsection 2 applies to information entered in the central registry for child abuse information on or after July 1, 1985; 85 Acts, ch 173, § 31

Subsections 2 and 3 amended

CHAPTER 235B

ADULT ABUSE

235B.1 Adult abuse services.

1. As used in this section, "*dependent adult abuse*" means:

a. Any of the following as a result of the willful or negligent acts or omissions of a caretaker:

(1) Physical injury to or unreasonable confinement or cruel punishment of a dependent adult.

(2) The commission of a sexual offense under chapter 709 or section 726.2 with or against a dependent adult.

(3) Exploitation of a dependent adult which means the act or process of taking unfair advantage of a dependent adult or the adult's physical or financial resources for one's own personal or pecuniary profit by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.

(4) The deprivation of the minimum food, shelter, clothing, supervision, physical and mental health care, and other care necessary to maintain a dependent adult's life or health.

b. The deprivation of the minimum food, shelter, clothing, supervision, physical and mental health care, and other care necessary to maintain a dependent adult's life or health as a result of the acts or omissions of the dependent adult.

2. Dependent adult abuse does not include:

a. Depriving a dependent adult of medical treatment if the dependent adult

holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment. However, this provision does not preclude a court from ordering that medical service be provided to the dependent adult if the dependent adult's health requires it.

b. The withholding and withdrawing of health care from a dependent adult who is terminally ill in the opinion of a licensed physician, when the withholding and withdrawing of health care is done at the request of the dependent adult or at the request of the dependent adult's next-of-kin or guardian pursuant to the applicable procedures under chapter 125, 222, 229, or 633.

3. The department of human services shall operate a program relating to the providing of services in cases of dependent adult abuse. The program shall emphasize the reporting and evaluation of dependent adult abuse of an adult who is unable to protect the adult's own interests or unable to perform or obtain essential services.

4. a. A person who believes that a dependent adult has suffered abuse may report the suspected abuse to the department of human services. The department shall receive dependent adult abuse reports and shall collect, maintain, and disseminate the reports pursuant to sections 235A.12 through 235A.24 by expanding the central registry for child abuse to include reports of dependent adult abuse. The department shall evaluate the reports expeditiously. However, the state department of health is solely responsible for the evaluation and disposition of adult abuse cases within health care facilities and shall inform the department of human services of such evaluations and dispositions.

b. The department of human services shall inform the appropriate county attorneys of any reports. County attorneys, law enforcement agencies, multidisciplinary teams as defined in section 235A.13, subsection 9, and social services agencies in the state shall cooperate and assist in the evaluation upon the request of the department. County attorneys and appropriate law enforcement agencies shall also take any other lawful action necessary or advisable for the protection of the dependent adult.

c. Upon a showing of probable cause that a dependent adult has been abused, a district court may authorize a person, authorized by the department to make an evaluation, to enter the residence of, and to examine the dependent adult.

5. a. If, upon completion of the evaluation or upon referral from the state department of health, the department of human services determines that the best interests of the dependent adult require district court action, the department shall initiate action for the appointment of a guardian or conservator or for admission or commitment to an appropriate institution or facility pursuant to the applicable procedures under chapter 125, 222, 229, or 633. The appropriate county attorney shall assist the department in the preparation of the necessary papers to initiate the action and shall appear and represent the department at all district court proceedings.

b. The department shall assist the district court during all stages of court proceedings involving a suspected case of adult abuse.

c. In every case involving adult abuse which is substantiated by the department and which results in a judicial proceeding on behalf of the dependent adult, legal counsel shall be appointed by the court to represent the dependent adult in the proceedings. The court may also appoint a guardian ad litem to represent the dependent adult if necessary to protect the dependent adult's best interests. The same attorney may be appointed to serve both as legal counsel and as guardian ad litem. Before legal counsel or a guardian ad litem is appointed pursuant to this section, the court shall require the dependent adult and any person legally responsible for the support of the dependent adult to complete under oath a detailed financial statement. If, on the basis of that financial statement, the court deems that the dependent adult or the legally responsible person is able to bear all or a portion of the cost of the legal counsel or guardian ad litem, the court shall so order. In cases

where the dependent adult or the legally responsible person is unable to bear the cost of the legal counsel or guardian ad litem, the expense shall be paid by the county.

6. The department of human services shall complete an assessment of needed services and shall make appropriate referrals to services. The department may provide necessary protective services and may establish a sliding fee schedule for those persons able to pay a portion of the protective services.

7. A person participating in good faith in reporting or cooperating or assisting the department of human services in evaluating a case of dependent adult abuse has immunity from liability, civil or criminal, which might otherwise be incurred or imposed based upon the act of making the report or giving the assistance. The person has the same immunity with respect to participation in good faith in a judicial proceeding resulting from the report or assistance or relating to the subject matter of the report or assistance.

85 Acts, ch 180, §1 HF 700
Subsection 2, paragraph a amended

CHAPTER 236

DOMESTIC ABUSE

236.2 Definitions.

For purposes of this chapter, unless a different meaning is clearly indicated by the context:

1. "*Domestic abuse*" means committing assault as defined in section 708.1 under either of the following circumstances:

a. The assault is between family or household members who resided together at the time of the assault.

b. The assault is between separated spouses not residing together at the time of the assault.

2. "*Family or household members*" means spouses, persons cohabiting, parents, or other persons related by consanguinity or affinity, except children under eighteen.

3. "*Emergency shelter services*" include, but are not limited to, secure crisis shelters or housing for victims of domestic abuse.

4. "*Support services*" include, but are not limited to, legal services, counseling services, transportation services, child care services, and advocacy services.

5. "*Department*" means the department of human services.

6. "*Commissioner*" means the commissioner of human services.

85 Acts, ch 175, §2 HF 549
NEW subsections 3 through 6

236.3 Commencement of actions.

A person may seek relief from domestic abuse by filing a verified petition in the district court. Venue shall lie where either party resides. The petition shall state the:

1. Name of the plaintiff and the name and address of the plaintiff's attorney.

2. Name and address, if known, of the defendant.

3. Relationship of the plaintiff to the defendant.

4. Nature of the alleged domestic abuse.

5. Name and age of each child under eighteen whose welfare may be affected by the controversy.

6. Desired relief, including a request for temporary or emergency orders.

If the plaintiff files an affidavit stating that the plaintiff does not have sufficient funds to pay the cost of filing and service, the petition shall be filed and service shall be made without payment of costs. If a petition is filed and service is made without payment of costs, the court shall determine at the hearing if the payment of costs would prejudice the person's financial ability to provide economic necessities for the

plaintiff or the plaintiff's dependents. If the court finds that the payment of costs would not prejudice the person's financial ability to provide economic necessities for the plaintiff or the plaintiff's dependents, the court may order the plaintiff to pay the costs of filing and service. However, in making the determinations, the court shall not consider funds no longer available to the plaintiff as a result of the commencement of the action.

85 Acts, ch 175, §3 HF 549
Unnumbered paragraph 2 amended

236.9 Domestic abuse information.

Criminal justice agencies, as defined in section 692.1, shall collect and maintain information on incidents involving domestic abuse and shall provide the information to the department of public safety in the manner prescribed by the department of public safety. The department of public safety shall receive and maintain the information, including information on the personal characteristics and identities of perpetrators and victims of domestic abuse. The department of public safety shall maintain the confidentiality of information which individually identifies perpetrators or victims of domestic abuse, except that the department of public safety may disseminate the identifying information to a criminal justice agency if necessary for the performance of the official duties of the agency.

The department of public safety may compile statistics and issue reports on domestic abuse in Iowa, provided individual identifying details of the domestic abuse are deleted. The statistics and reports may include nonidentifying information on the personal characteristics of perpetrators and victims. The department of public safety may request the cooperation of the department of human services in compiling the statistics and issuing the reports. The department of public safety may provide nonidentifying information on individual incidents of domestic abuse to persons conducting bona fide research, including but not limited to personnel of the department of human services.

85 Acts, ch 175, §4 HF 549
Section struck and rewritten

236.12 Prevention of further abuse—notification of rights—arrest—penalty—liability.

1. If a peace officer has reason to believe that domestic abuse has occurred, the officer shall use all reasonable means to prevent further abuse including but not limited to the following:

a. If requested, remaining on the scene as long as there is a danger to an abused person's physical safety without the presence of a peace officer, including but not limited to staying in the dwelling unit, or if unable to remain on the scene, assisting the person in leaving the residence.

b. Assisting an abused person in obtaining medical treatment necessitated by an assault, including providing assistance to the abused person in obtaining transportation to the emergency room of the nearest hospital.

c. Providing an abused person with immediate and adequate notice of the person's rights. The notice shall consist of handing the person a copy of the following statement written in English and Spanish, asking the person to read the card and whether the person understands the rights:

"You have the right to ask the court for the following help on a temporary basis:

- (1) Keeping your attacker away from you, your home and your place of work.
- (2) The right to stay at your home without interference from your attacker.
- (3) Getting custody of children and obtaining support for yourself and your minor children if your attacker is legally required to provide such support.
- (4) Professional counseling.

You have the right to file criminal charges for threats, assaults, or other related crimes.

You have the right to seek restitution against your attacker for harm to yourself or your property.

If you are in need of medical treatment, you have the right to request that the officer present assist you in obtaining transportation to the nearest hospital or otherwise assist you.

If you believe that police protection is needed for your physical safety, you have the right to request that the officer present remain at the scene until you and other affected parties can leave or until safety is otherwise ensured.”

The notice shall also contain the telephone numbers of safe shelters, support groups, or crisis lines operating in the area.

2. A peace officer may, with or without a warrant, take any or all of the following courses of action if the officer has reasonable grounds to believe that there was recent physical domestic abuse inflicted on a person:

a. The officer may make reasonable inquiry of the person upon whom the officer believes the harm has been inflicted and of any witnesses, to ascertain whether there is probable danger of further physical domestic abuse being inflicted on the injured person.

b. If the officer has reasonable grounds to believe that there is a probable danger, the officer may lawfully order the abusing party to leave the premises for a cooling-off period of up to twelve hours.

c. If the abusing party refuses to comply with the order to leave or returns to the premises before the expiration of time ordered by the peace officer, the officer may place the abuser under arrest.

d. Arrest the abusing party pursuant to section 804.7, subsection 5.

The person refusing to comply with the lawful order of a peace officer under this subsection commits a violation of, and is subject to, the provisions of section 719.1.

3. A peace officer is not civilly or criminally liable for actions pursuant to this section taken in good faith.

85 Acts, ch 175, §5 HF 549
Subsection 2, NEW paragraph d

236.15 Application for designation and funding as a provider of services for victims of domestic abuse.

Upon receipt of state or federal funding designated for victims of domestic abuse by the department, a public or private nonprofit organization may apply to the commissioner for designation and funding as a provider of emergency shelter services and support services to victims of domestic abuse. The application shall be submitted on a form prescribed by the department and shall include, but not be limited to, information regarding services to be provided, budget, and security measures.

85 Acts, ch 175, §6 HF 549
NEW section

236.16 Department powers and duties.

1. The commissioner shall:

a. Designate and award grants for existing and pilot programs pursuant to this chapter to provide emergency shelter services and support services to victims of domestic abuse.

b. Design and implement a uniform method of collecting data from domestic abuse organizations funded under this chapter.

2. The department shall consult and cooperate with all public and private agencies which may provide services to victims of domestic abuse, including but not limited to, legal services, social services, prospective employment opportunities, and unemployment benefits.

3. The commissioner may accept, use, and dispose of contributions of money, services, and property made available by an agency or department of the state or federal government, or a private agency or individual.

85 Acts, ch 175, §7 HF 549
NEW section

236.17 Advisory board—membership.

1. The domestic abuse advisory board is created. The board consists of five members appointed by the governor. Appointments shall be made of persons with knowledge in the fields of health, law enforcement, social services, domestic abuse, and victim services. Members of the board shall serve at the pleasure of the governor.

Members of the board must be electors of the state of Iowa. No more than three members shall belong to the same gender or the same political party. Three members are a quorum. Members shall select a chairperson and other officers as necessary.

2. The board shall meet at the call of the governor, the board chairperson, or three board members. The members shall be paid their actual and necessary expenses.

85 Acts, ch 175, §8 HF 549
NEW section

236.18 Duties of the board.

The domestic abuse advisory board shall:

1. Advise the commissioner in the administration and coordination of programs awarded grants under section 236.16.

2. Review and comment on applications received by the commissioner for designation and awarding of grants under section 236.16.

3. Advise the commissioner regarding the adoption of rules relating to domestic abuse programs.

85 Acts, ch 175, §9 HF 549
NEW section

CHAPTER 236A**CONFIDENTIAL COMMUNICATIONS—COUNSELORS AND VICTIMS****236A.1 Victim counselor privilege.**

1. As used in this section:

a. "Victim" means a person who consults a victim counselor for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by a sexual assault or domestic violence.

b. "Victim counselor" means a person who is engaged in a sexual assault center or domestic violence center, is certified as a counselor by the sexual assault or domestic violence center, and is under the control of a direct services supervisor of a sexual assault or domestic violence center, whose primary purpose is the rendering of advice, counseling, and assistance to the victims of sexual assault or domestic violence. To qualify as a "victim counselor" under this section, the person must also have completed at least twenty hours of training provided by the center in which the person is engaged, by the Iowa coalition against sexual abuse, or by the Iowa coalition against domestic violence, which shall include but not be limited to, the dynamics of victimization, substantive laws relating to sexual assault and domestic violence, crisis intervention techniques, communication skills, working with diverse populations, an overview of the state criminal justice system, information regarding pertinent hospital procedures, and information regarding state and community resources for victims of sexual assault or domestic violence.

c. "Sexual assault center" means any office, institution, agency, or crisis center offering assistance to victims of sexual assault and their families through crisis intervention, accompaniment during medical and legal proceedings, and follow-up counseling.

d. "Sexual assault" means any act of sexual abuse or other unlawful sexual conduct under chapter 709, 726 or 728.

e. "Domestic violence center" means any office, institution, shelter, host home,

agency or crisis center offering assistance to victims of domestic violence through crisis intervention, referral to or provision of emergency shelter, and assistance and advocacy regarding medical and legal proceedings.

f. "Domestic violence" means any act of domestic abuse, as defined in section 236.2, subsection 1, and includes those acts commonly referred to as spouse abuse.

g. "Confidential communication" means information transmitted between a victim of sexual assault or domestic violence and a victim counselor in the course of the counseling relationship and in confidence by a means which, so far as the victim is aware, does not disclose the information to a third person other than any who is present to further the interests of the victim in the consultation or to whom disclosure is reasonably necessary for the transmission of the information or for accomplishment of the purposes for which the counselor is consulted, and includes all information received and any advice, report, or working paper given or prepared by the counselor in the course of the relationship with the victim.

2. A victim counselor shall not be examined or required to give evidence in any civil or criminal proceeding as to any confidential communication made by a victim to the counselor, nor shall a clerk, secretary, stenographer, or any other employee who types or otherwise prepares or manages the confidential reports or working papers of a sexual assault or domestic violence counselor be required to produce evidence of any such confidential communication, unless the victim waives this privilege in writing or disclosure of the information is compelled by a court pursuant to subsection 7. Under no circumstances shall the location of a domestic violence center or the identity of the victim counselor be disclosed in any civil or criminal proceeding.

3. If a victim is deceased or has been declared to be incompetent, this privilege specified in subsection 2 may be waived by the guardian of the victim or by the personal representative of the victim's estate.

4. A minor may waive the privilege under this section unless, in the opinion of the court, the minor is incapable of knowingly and intelligently waiving the privilege, in which case the parent or guardian of the minor may waive the privilege on the minor's behalf if the parent or guardian is not the defendant and does not have such a relationship with the defendant that the parent or guardian has an interest in the outcome of the proceeding being favorable to the defendant.

5. The privilege under this section does not apply in matters of proof concerning the chain of custody of evidence, in matters of proof concerning the physical appearance of the victim at the time of the injury or the counselor's first contact with the victim after the injury, or where the counselor has reason to believe that the victim has given perjured testimony and the defendant or the state has made an offer of proof that perjury may have been committed.

6. The failure of a counselor to testify due to this section shall not give rise to an inference unfavorable to the cause of the state or the cause of the defendant.

7. Upon the motion of a party, accompanied by a written offer of proof, a court may compel disclosure of certain information if the court determines that all of the following conditions are met:

a. The information sought is relevant and material evidence of the facts and circumstances involved in an alleged act of sexual assault or domestic violence which is the subject of a criminal proceeding.

b. The probative value of the information outweighs the harmful effect, if any, of disclosure on the victim, the counseling relationship, and the treatment services.

c. The information cannot be obtained by reasonable means from any other source.

8. In ruling on a motion under subsection 7, the court, or a different judge, if the motion was filed in a criminal proceeding to be tried to the court, shall adhere to the following procedure:

a. The court may require the counselor from whom disclosure is sought or the

victim claiming the privilege, or both, to disclose the information in chambers out of the presence and hearing of all persons except the victim and any other persons the victim is willing to have present.

b. If the court determines that the information is privileged and not subject to compelled disclosure, the information shall not be disclosed by any person without the consent of the victim.

c. If the court determines that certain information may be subject to disclosure, as provided in subsection 7, the court shall so inform the party seeking the information and shall order a subsequent hearing out of the presence of the jury, if any, at which the parties shall be allowed to examine the counselor regarding the information which the court has determined may be subject to disclosure. The court may accept other evidence at that time.

d. At the conclusion of a hearing under paragraph "c", the court shall determine which information, if any, shall be disclosed and may enter an order describing the evidence which may be introduced by the moving party and prescribing the line of questioning which may be permitted. The moving party may then offer evidence pursuant to the court order. However, no victim counselor is subject to exclusion under Iowa rule of evidence 615.

9. This section does not relate to the admission of evidence of the victim's past sexual behavior which is strictly subject to Iowa rule of evidence 412.

85 Acts, ch 175, §10 HF 549
NEW section

CHAPTER 237A

CHILD DAY CARE FACILITIES

237A.4 Inspection and evaluation.

The department shall make periodic inspections of licensed centers to insure compliance with licensing requirements provided in this chapter, and the local boards of health may make periodic inspections of licensed centers to insure compliance with health-related licensing requirements provided in this chapter. The director may inspect records maintained by a licensed center and may inquire into matters concerning these centers and the persons in charge. The director shall require that the center be inspected by the state fire marshal or a designee for compliance with rules relating to fire safety before a license is granted or renewed. The director or a designee may periodically visit registered family day care homes for the purpose of evaluation of an inquiry into matters concerning compliance with rules adopted under section 237A.12. Evaluation of family day care homes under this section may include consultative services provided pursuant to section 237A.6.

85 Acts, ch 173, §19 HF 451
Section amended

237A.5 Personnel.

All personnel in licensed or registered facilities shall have good health as evidenced by a report following a pre-employment physical examination taken within six months prior to beginning employment, including communicable disease tests by a licensed physician as defined in section 135C.1, at the time of initial employment and every three years after initial employment. A person convicted under a law of any state of a crime involving mistreatment of a child or violence against a person, or a person with a record of founded child sexual abuse or a record of multiple incidents of any other type of founded child abuse shall not own or operate or be employed as a staff member, with direct responsibility for child care, of a licensed center, a registered group home or a family day care home registered pursuant to section 237A.3, subsection 1, and shall not live in a licensed center, a registered group home, or a registered family day care home.

Every owner or operator of a licensed center, a registered group home, or a registered family day care home shall apply to the department for a criminal records check and a child abuse registry check at any time the records of an owner, operator, or staff member of, or a person living in any such facility have not previously been checked. The department shall make application forms available and shall initiate the records checks upon filing of an application with the department. Upon completion of the records checks, the department shall notify the applicant of the results of the records checks and whether the applicant can provide day care in compliance with this section. The department shall also notify an owner or operator of a licensed center, a registered group home, or a registered family day care home if an owner, operator, or staff member of, or person living in any such facility has a record of a single incident of founded child abuse other than child sexual abuse. An applicant is entitled to the procedural remedies provided in chapter 17A for adverse administrative action. A copy of a favorable records check must be made available upon request. The department shall maintain a list of licensed centers, registered group homes, and registered family day care homes with favorable records checks, and the list shall be a public record.

85 Acts, ch 184, §1 SF 424
1985 amendment effective January 1, 1986; 85 Acts, ch 184, §3
Section amended

237A.12 Rules.

Subject to the provisions of chapter 17A, the director shall promulgate rules setting minimum standards to provide quality child day care in the operation and maintenance of child care centers and registered family day care homes relating to:

1. The number and qualifications of personnel necessary to assure the health, safety, and welfare of children in the facilities. Rules for facilities which are pre-schools shall be drawn so that any staff-to-children ratios which relate to the age of the children enrolled shall be based on the age of the majority of the children served by a particular class rather than on the age of the youngest child served.

2. Physical facilities.

3. The adequacy of activity programs and food services available to the children.

4. Policies established by the center for parental participation.

5. Programs for education and in-service training of staff.

6. Records kept by the facilities.

7. Administration.

8. Health, safety and medical policies for children.

Rules promulgated by the state fire marshal for buildings used as child care centers as an adjunct to the primary purpose of the building shall take into consideration that children are received for temporary care only and shall not differ from rules promulgated for these buildings when they are used by groups of persons congregating from time to time in the primary use and occupancy of the buildings. However, the rules may require a fire-rated separation from the remaining portion of the building if the fire marshal determines that the separation is necessary for the protection of children from a specific flammable hazard.

Rules relating to fire safety shall be adopted under this chapter by the state fire marshal in consultation with the department. Rules relating to sanitation shall be adopted by the department in consultation with the commissioner of public health. All rules shall be developed in consultation with the state day care advisory committee. The state fire marshal shall inspect the facilities.

85 Acts, ch 173, §20 HF 451
Unnumbered paragraph 3 amended

237A.19 Penalty.

A person who establishes, conducts, manages, or operates a center without a license shall be guilty of a serious misdemeanor. Each day of continuing violation after conviction, or notice from the department by certified mail of the violation, shall be considered a separate offense.

A person who establishes, conducts, manages, or operates a group day care home without registering under this chapter or who operates a family day care home contrary to section 237A.5, is guilty of a simple misdemeanor. Each day of continuing violation after conviction, or notice from the department by certified mail of the violation, is a separate offense. A single charge alleging continuing violation may be made in lieu of filing charges for each day of violation.

85 Acts, ch 184, §2 SF 424
1985 amendment effective January 1, 1986; 85 Acts, ch 184, §3
Unnumbered paragraph 2 amended

CHAPTER 238

CHILD-PLACING AGENCIES

238.33 Interstate compact on placement of children and related §238.34–238.41 transferred to §232.158–232.166 in Code Supplement 1985; 85 Acts, ch 173, §30. HF 451

238.44 Burden of proof. Repealed by 85 Acts, ch 99, §6. SF 224

CHAPTER 242

TRAINING SCHOOL

242.4 Instruction and employment.

The state director shall cause the children in the state training school to be instructed on the Constitutions of the United States and of this state as is required in the common schools, and in such branches of useful knowledge as are adapted to their age and capacity, including the effect of alcoholic liquors, stimulants, and narcotics on the human system, and in some regular course of labor, either mechanical, agricultural, or manual, as is best suited to their age, strength, capacity, reformation, and well-being.

85 Acts, ch 21, §37 HF 186
Section amended

242.6 Visits.

Members of the executive council, the attorney general, the lieutenant governor, members of the general assembly, judges of the supreme and district court and court of appeals, magistrates, county attorneys and persons ordained or designated as regular leaders of a religious community are authorized to visit the state training school at reasonable times. No other person shall be granted admission except by permission of the superintendent.

85 Acts, ch 21, §38 HF 186
NEW section

242.16 Standards—advisory committee.

1. The department of human services shall adopt rules pursuant to chapter 17A establishing standards for services provided by the state training school, which shall address:

- a. The number, qualifications, and character of staff necessary to assure the health, safety, and welfare of children committed to the state training school.
- b. Programs for education and in-service training of staff.
- c. Policies for intake, assessment, admission, and discharge of children committed to the state training school.
- d. Policies for involvement of the parents of children committed to the state training school.

e. The adequacy of programs available to children committed to the state training school, including activity programs, social services, behavior management procedures, and educational programs.

f. Health, safety, and medical care policies.

2. The department shall establish an advisory committee for the state training school consisting of fifteen persons representing the local community, the juvenile court, providers of juvenile services, state agencies concerned with juvenile services, and persons with expertise in the treatment of youth. No more than five members of the advisory committee shall be state employees. The advisory committee shall meet at least three times annually, and shall review and make recommendations to the department regarding the programming and policies of the state training school.

85 Acts, ch 173, §24 HF 451

Repealed July 1, 1988; advisory committee to report its recommendations relating to repeal by January 1, 1988;

85 Acts, ch 173, §33

NEW section

CHAPTER 244

IOWA JUVENILE HOME

244.3 Admissions.

Admission to the home shall be granted to resident children of the state under seventeen years of age, as follows, giving preference in the order named:

1. Neglected or dependent children committed by the juvenile court.
2. Other destitute children.

85 Acts, ch 21, §39 HF 186

Subsection 1 struck and subsequent subsections renumbered

244.15 Standards—advisory committee.

1. The department of human services shall adopt rules pursuant to chapter 17A establishing standards for services provided by the Iowa juvenile home, which shall address:

- a.* The number, qualifications, and character of staff necessary to assure the health, safety, and welfare of children committed to the home.
- b.* Programs for education and in-service training of staff.
- c.* Policies for intake, assessment, admission, and discharge of children committed to the home.
- d.* Policies for involvement of the parents of children committed to the home.
- e.* The adequacy of programs available to children committed to the home, including activity programs, social services, behavior management procedures, and educational programs.
- f.* Health, safety, and medical care policies.

2. The department shall establish an advisory committee for the home consisting of fifteen persons representing the local community, the juvenile court, providers of juvenile services, state agencies concerned with juvenile services, and persons with expertise in the treatment of youth. No more than five members of the advisory committee shall be state employees. The advisory committee shall meet at least three times annually, and shall review and make recommendations to the department regarding the programming and policies of the home.

85 Acts, ch 173, §25 HF 451

Repealed July 1, 1988; advisory committee to report recommendations relating to repeal; 85 Acts, ch 173, §33

NEW section

CHAPTER 245

WOMEN'S CORRECTIONAL FACILITIES

Repealed by 85 Acts, ch 21, §53 HF 186; see chapter 246 and table of corresponding sections

CHAPTER 246

IOWA DEPARTMENT OF CORRECTIONS

Former chapter 246, Men's Correctional Facilities, repealed by 85 Acts, ch 21, §53 HF 186; see following new chapter 246 and table of corresponding sections

Sections 246.38, 246.39, 246.41, 246.42, 246.43, and 246.45, Code 1983, remain in effect for inmates sentenced for offenses committed prior to July 1, 1983; §903A.6

Prison overcrowding state of emergency; parole; see 85 Acts, ch 262, §1 SF 552

DIVISION I

ADMINISTRATION GENERALLY

246.101 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "*Department*" means the Iowa department of corrections established in section 246.102.
2. "*Board*" means the board of corrections established in section 246.104.
3. "*Director*" means the director of the department.

Transferred in Code Supplement 1985 from §217A.1 in Code 1985

246.102 Department established—institutions.

The Iowa department of corrections is established to be responsible for the control, treatment, and rehabilitation of offenders committed under law to the following institutions:

1. Iowa correctional institution for women.
2. Iowa state men's reformatory.
3. Iowa state penitentiary.
4. Iowa medical and classification center.
5. North central correctional facility at Rockwell City.
6. Mount Pleasant correctional facility.
7. Clarinda correctional facility.
8. Correctional release center.
9. Rehabilitation camps.
10. Other institutions related to an institution in subsections 1 through 9 but not attached to the campus of the main institution as program developments require.

85 Acts, ch 21, §13 HF 186

Transferred in Code Supplement 1985 from §217A.2 in Code 1985

Subsections 5 and 6 amended

246.103 Responsibilities of department.

The department shall administer the institutions listed in section 246.102. The department shall be responsible to the extent provided for by law for all of the following:

1. Accreditation and funding of community-based corrections programs including but not limited to pretrial release, probation, residential facilities, presentence investigation, parole, and work release.

2. Iowa state industries.
3. Jail inspections.
4. Other duties provided for by law.

Transferred in Code Supplement 1985 from §217A.3 in Code 1985

246.104 Board created.

A board of corrections is created within the department. The board shall consist of seven members appointed by the governor subject to confirmation by the senate. Not more than four of the members shall be from the same political party. Members shall be electors of this state. Six of the seven members shall each be a resident of a different congressional district. Members of the board shall serve four-year staggered terms.

Transferred in Code Supplement 1985 from §217A.4 in Code 1985

246.105 Board—duties.

The board of corrections shall:

1. Organize annually and select a chairperson and vice chairperson.
2. Adopt and establish policies for the operation and conduct of the department and the implementation of all department programs.
3. Recommend to the governor the names of individuals qualified for the position of director when a vacancy exists in the office.
4. Report immediately to the governor any failure by the director of the department to carry out any of the policy decisions or directives of the board.
5. Approve the budget of the department prior to submission to the governor.
6. Report biennially to the governor a summary of releases recommended, paroles granted, parole revocations, and other information relating to the parole of inmates as the board deems advisable.
7. Adopt rules in accordance with chapter 17A as the board deems necessary to transact its business and for the administration and exercise of its powers and duties.
8. Make recommendations from time to time to the governor and the general assembly.
9. Perform other functions as provided by law.

85 Acts, ch 21, §14 HF 186

Transferred in Code Supplement 1985 from §217A.5 in Code 1985

NEW subsection 6 and subsequent subsections renumbered

246.106 Meetings.

The board shall meet at least twelve times a year. Special meetings may be called by the chairperson or upon written request of any three members of the board. The chairperson shall preside at all meetings or in the chairperson's absence, the vice chairperson shall preside. The members of the board shall be paid forty dollars per diem while in session, and their reasonable and necessary expenses while attending the meetings.

Transferred in Code Supplement 1985 from §217A.6 in Code 1985

246.107 Director—appointment and qualifications.

The chief administrative officer for the department is the director. The director shall be appointed by the governor subject to confirmation by the senate and shall serve at the pleasure of the governor. The director shall be qualified in reformatory and prison management, knowledgeable in community-based corrections, and shall possess administrative ability. The director shall also have experience in the field of criminology and discipline and in the supervision of inmates in corrective penal institutions. The director shall not be selected on the basis of political affiliation, and while employed as the director, shall not be a member of a political committee, participate in a political campaign, be a candidate for a partisan elective office, and

shall not contribute to a political campaign fund, except that the director may designate on the checkoff portion of the state or federal income tax return, or both, a party or parties to which a contribution is made pursuant to the checkoff. The director shall not hold any other office under the laws of the United States or of this or any state or hold any position for profit and shall devote full time to the duties of office.

Transferred in Code Supplement 1985 from §217A.7 in Code 1985

246.108 Director—duties, powers.

1. The director shall:

a. Supervise the operations of the institutions under the department's jurisdiction and may delegate the powers and authorities given the director by statute to officers or employees of the department.

b. Supervise state agents whose duties relate primarily to the department.

c. Establish and maintain a program to oversee women's institutional and community corrections programs and to provide community support to ensure continuity and consistency of programs. The person responsible for implementing this section shall report to the director.

d. Establish and maintain acceptable standards of treatment, training, education, and rehabilitation in the various state penal and corrective institutions which shall include habilitative services and treatment for mentally retarded offenders. For the purposes of this paragraph, habilitative services and treatment means medical, mental health, social, educational, counseling, and other services which will assist a mentally retarded person to become self-reliant. However, the director may also provide rehabilitative treatment and services to other persons who require the services. The director shall identify all individuals entering the correctional system who are mentally retarded, as defined in section 222.2, subsection 5. Identification shall be made by a qualified mental retardation professional. In assigning a mentally retarded offender, or an offender with an inadequately developed intelligence or with impaired mental abilities, to a correctional facility, the director shall consider both the program needs and the security needs of the offender. The director shall consult with the department of human services in providing habilitative services and treatment to mentally ill and mentally retarded offenders.

e. Employ, assign, and reassign personnel as necessary for the performance of duties and responsibilities assigned to the department. Employees shall be selected on the basis of fitness for work to be performed with due regard to training and experience and are subject to chapter 19A.

f. Establish standards of mental fitness which shall govern the initial recruitment, selection, and appointment of correctional officers. To promote these standards, the director shall by rule require a battery of psychological tests to determine cognitive skills, personality characteristics and suitability of all applicants for a correctional career.

g. Examine all state institutions which are penal, reformatory, or corrective to determine their efficiency for adequate care, custody, and training of their inmates and report the findings to the board.

h. Prepare a budget for the department, subject to the approval of the board, and other reports as required by law.

i. Develop long-range correctional planning and an on-going five-year corrections master plan. The director shall annually report to the general assembly to inform its members as to the status and content of the planning and master plan.

j. Supervise rehabilitation camps within the state as may be established by the director. Persons committed to institutions under the department may be transferred to the facilities of the camp system and upon transfer shall be subject to the same laws as pertain to the transferring institution.

k. Adopt rules subject to the approval of the board, pertaining to the internal

management of institutions and agencies under the director's charge and necessary to carry out the duties and powers outlined in this section.

1. Adopt rules, policies, and procedures, subject to the approval of the board, pertaining to the supervision of parole and work release.

2. The director, with the express approval of the board, may establish for any inmate sentenced pursuant to section 902.3 a furlough program under which inmates sentenced to and confined in any institution under the jurisdiction of the department may be temporarily released. A furlough for a period not to exceed fourteen days may be granted when an immediate member of an inmate's family is seriously ill or has died, when an inmate is to be interviewed by a prospective employer, or when an inmate is authorized to participate in a training program not available within the institution. Furloughs for a period not to exceed fourteen days may also be granted in order to allow inmates to participate in programs or activities that serve rehabilitative objectives.

3. The director may establish a sales bonus system for the sales representatives for prison industry products. If a sales bonus system is established, the system shall not affect the status of the sales representatives under chapter 19A.

4. The director may expend moneys from the support allocation of the department as reimbursement for replacement or repair of personal items of the department's employees damaged or destroyed by clients of the department during the employee's tour of duty. However, the reimbursement shall not exceed one hundred fifty dollars for each item. The director shall establish rules in accordance with chapter 17A to carry out the purpose of this subsection.

5. The director may obtain assistance for the department including construction, facility planning, data processing and project accomplishment, by contracting under chapter 28E with the department of human services or the department of general services.

6. The director or the director's designee, having probable cause to believe that a person has escaped from a state correctional institution or a person released on work release has absconded from a work release facility, may make a complaint before a judge or magistrate. If it is determined from the complaint or accompanying affidavits that there is probable cause to believe that the person has escaped from a state correctional institution or absconded from a work release facility, the judge or magistrate shall issue a warrant for the arrest of the person.

85 Acts, ch 21, §15 HF 186
Transferred in Code Supplement 1985 from §217A.8 in Code 1985
Subsection 6 amended

246.109 Powers of governor—report of abuses.

Section 246.108, subsection 1, paragraph "a", does not limit the general supervisory or examining powers vested in the governor by the laws or constitution of the state, or legally vested by the governor in a committee appointed by the governor.

The superintendent of an institution shall make reports to the board and the director as requested by the board and the director and the director shall report, in writing, to the governor any abuses found to exist in any of the institutions.

Transferred in Code Supplement 1985 from §217A.20 in Code 1985

246.110 Official seal.

The department shall have an official seal with the words "Iowa Department of Corrections" and other engraved design as the board prescribes. Every commission, order, or other paper of an official nature executed by the department may be attested with the seal.

Transferred in Code Supplement 1985 from §217A.9 in Code 1985

246.111 Chapter 28E agreements.

The department of corrections may enter into agreements, as provided for in chapter 28E, with a district department of correctional services as necessary.

Transferred in Code Supplement 1985 from §217A.10 in Code 1985

246.112 Institutional receipts.

All institutional receipts of the department of corrections shall be deposited in the general fund except for reimbursements for services provided to another institution or state agency, rentals charged to employees or other persons for room, apartment, or housing, and charges for meals.

Transferred in Code Supplement 1985 from §217A.11 in Code 1985

246.113 Gifts.

The department may accept gifts of real or personal property from the federal government or any source. The director may exercise powers with reference to the property so accepted as necessary or appropriate to its preservation and the purposes for which it is given.

Transferred in Code Supplement 1985 from §217A.75 in Code 1985

246.114 Travel expenses.

The director, staff members, assistants, and employees, in addition to salary, shall receive their necessary traveling expenses by the nearest practicable route, when engaged in the performance of official business. Permission shall not be granted to any person to travel to another state except by approval of the board and the executive council.

Transferred in Code Supplement 1985 from §217A.16 in Code 1985

246.115 Report by department.

Annually at the time provided by law, the department shall make a report to the governor and the general assembly, which shall cover the annual period ending with June thirtieth preceding the date of the report and shall include:

1. An itemized statement of the department's expenditures for each program under the department's administration.
2. Adequate and complete statistical reports for the state as a whole concerning payments made under the department's administration.
3. Recommendations concerning changes in laws under the department's administration as the board deems necessary.
4. Observations and recommendations of the board and the director relative to the programs of the department.
5. Information concerning long-range planning and the master plan as provided by section 246.108, subsection 1, paragraph "i".
6. Other information the board or the director deems advisable, or which is requested by the governor or the general assembly.

Transferred in Code Supplement 1985 from §217A.17 in Code 1985

DIVISION II
INSTITUTIONS**246.201 Iowa medical and classification center.**

1. The Iowa medical and classification center at Oakdale shall be utilized as a forensic psychiatric hospital for persons displaying evidence of mental illness or psychosocial disorders and requiring diagnostic services or treatment in a security setting, as a security unit for persons requiring confinement in a security setting, and as a classification unit for the reception, orientation, and classification of inmates before placement in the most appropriate correctional institutions according to necessary security and custody arrangements and the assessed service needs of the inmates.

2. The superintendent of the center shall secure the professional care and treatment of each person confined at the center and maintain a complete record on the condition of each person confined at the center.

3. The forensic psychiatric hospital may admit the following persons:

a. Residents transferred from an institution under the jurisdiction of the department of human services or the Iowa department of corrections.

b. Persons committed by the courts as mentally incompetent to stand trial under section 812.4.

c. Persons referred by the courts for psychosocial diagnosis and recommendations as part of the pretrial or presentence procedure or determination of mental competency to stand trial.

d. Prisoners transferred from county and city jails for diagnosis, evaluation, or treatment for mental illness.

Other persons may be admitted providing the admissions are not inconsistent with law and are within the capacity of the facilities and staff to accommodate the persons.

4. The classification unit shall admit inmates for purposes of orientation and classification before placement in the most appropriate correctional institutions.

5. The director may house inmates from any correctional institution at the center in order to provide the inmates with suitable security or medical treatment, or both. Unless an inmate is determined to be mentally ill, the inmate shall not be subjected involuntarily to psychiatric treatment.

6. All admissions to the forensic psychiatric hospital shall be by written application only. Application shall be made by the head of the state institution, agency, governmental body, or court requesting admission to the superintendent of the center. An application may be denied by the superintendent, with the approval of the director, if the admission will result in an overcrowded condition or if adequate staff or facilities are not available. The decision regarding admission and discharge of persons shall be made by the superintendent of the center, subject to approval of the director.

7. When a person transferred to the center from any other state institution or admitted by request or order of any agency, governmental body, or court no longer requires special treatment in the security setting, the person may be returned to the source from which received. The state institution, agency, governmental body, or court that referred the person for hospitalization shall retain constructive jurisdiction over the person. Persons without legal encumbrances may be discharged directly from the center upon concurrence of the superintendent of the center and the head of the referring institution, agency, governmental body, or court. The support, commitment, and release statutes applicable to a person at the state institution from which transferred shall remain applicable while the person is at the center.

8. Chapter 230 governs the determination of costs and charges for the care and treatment of mentally ill persons admitted to the forensic psychiatric hospital, except that charges for the care and treatment of any person transferred to the forensic psychiatric hospital from an adult correctional institution or from a state

training school shall be paid entirely from state funds. Charges for all other persons at the forensic psychiatric hospital shall be billed to the respective counties at the same ratio as for patients at state mental health institutes under section 230.20.

85 Acts, ch 21, §29 HF 186
NEW section

246.202 Intake and classification center.

The director may provide facilities and personnel for a diagnostic intake and classification center. The work of the center shall include a scientific study of each inmate, the inmate's career and life history, the causes of the inmate's criminal acts and recommendations for the inmate's custody, care, training, employment, and counseling with a view to rehabilitation and to the protection of society. To facilitate the work of the center and to aid in the rehabilitation of the inmates, the trial judge, prosecuting attorney, and presentence investigators shall furnish the director upon request with a full statement of facts and circumstances attending the commission of the offense so far as known or believed by them. If the department develops and utilizes an inmate classification system, it must, within a reasonable time, present evidence from independent experts as to the effectiveness and validity of the classification system.

Transferred in Code Supplement 1985 from §217A.52 in Code 1985

246.203 North central correctional facility at Rockwell City.

The state correctional facility at Rockwell City shall be utilized as a medium security correctional facility for men.

85 Acts, ch 21, §30 HF 186
NEW section

246.204 Mount Pleasant correctional facility—special treatment unit.

The correctional facility at Mount Pleasant shall be utilized as a medium security facility for men primarily for treatment of inmates who exhibit treatable personality disorders, with or without accompanying history of drug or alcohol abuse. Such inmates may apply for and upon their application may be selected for treatment by the staff of the treatment facility at Mount Pleasant in accordance with section 246.503.

85 Acts, ch 21, §31 HF 186
NEW section

246.205 Clarinda correctional facility.

The state correctional facility at Clarinda shall be utilized as a secure men's correctional facility primarily for chemically dependent, mentally retarded, and socially inadequate offenders.

85 Acts, ch 21, §32 HF 186
NEW section

246.206 Correctional release center at Newton.

1. The correctional release center at Newton shall be utilized for the preparation of inmates of the correctional institutions for discharge or parole. The director may transfer an inmate of a correctional institution within ninety days of the inmate's release from custody to the correctional release center for intensive training to assist the inmate in the transition to civilian living. The statutes applicable to an inmate at the corrective institution from which transferred shall remain applicable during the inmate's stay at the correctional release center.

2. The superintendent of the correctional release center shall be a reputable and qualified person experienced in the administration of programs for the rehabilitation and preparation of inmates for their return to society.

85 Acts, ch 21, §33 HF 186
NEW section

DIVISION III

PERSONNEL AND GENERAL MANAGEMENT OF INSTITUTIONS

246.301 Appointment of superintendents.

The director shall appoint, subject to the approval of the board, the superintendents of the institutions provided for in section 246.102.

The superintendent has the immediate custody and control, subject to the orders and policies of the director, of all property used in connection with the institution except as otherwise provided by statute. The tenure of office of a superintendent shall be at the pleasure of the appointing authority but a superintendent may be removed for inability or refusal to properly perform the duties of the office. Removal shall occur only after an opportunity is given the person to be heard before the board and the director and upon preferred written charges. The removal when made is final.

Transferred in Code Supplement 1985 from §217A.21 in Code 1985

246.302 Farm operations administrator.

The director may appoint a farm operations administrator for institutions under the control of the departments of corrections and human services. If appointed, the farm operations administrator, subject to the direction of the director shall do all of the following:

1. Manage and supervise all farming and nursery operations at institutions, farms and gardens of the departments of corrections and human services.
2. Determine priorities on the use of agricultural resources and labor for farming and nursery operations.
3. Develop an annual operations plan for crop and livestock production and utilization that will provide work experience and contribute to developing vocational skills of the institutions' inmates and residents. The department of human services must approve the parts of the plan that affect farm operations on property of institutions having programs of the department of human services.
4. Coordinate farm lease arrangements, farm input purchases, farm product distribution, machinery maintenance and replacement, and renovation of farm buildings, fences and livestock facilities.
5. Develop and maintain accounting records, budgeting and cash flow systems, and inventory records.
6. Advise and instruct institution staff and inmates in application of agricultural technology.
7. Implement actions to restore and maintain productivity of soil resources at the institutions through crop rotation, minimum tillage, contouring, terracing, waterways, pasture renovation, windbreaks, buffer zones, and wildlife habitat in accordance with soil conservation service plans and recommendations.
8. Administer the revolving farm fund created in section 246.706.
9. Do any other farm management duties assigned by the director.

Transferred in Code Supplement 1985 from §217A.22 in Code 1985

246.303 Officers and employees—compensation.

The director shall determine the number and compensation of subordinate officers and employees for each institution subject to chapter 19A. Subject to this chapter, the officers and employees shall be appointed and discharged by the superintendent who shall keep in the record of each subordinate officer and employee, the date of employment, the compensation, and the date of and the reasons for each discharge.

The superintendents and employees of the correctional institutions shall receive salaries or compensation as determined by the director, shall receive a midshift meal when on duty, and shall be provided uniforms if uniforms are required to be worn

when on duty. The uniforms shall be maintained and replaced by the department at no cost to the employees and shall remain the property of the department.

85 Acts, ch 21, §16 HF 186
Transferred in Code Supplement 1985 from §217A.23 in Code 1985
NEW unnumbered paragraph 2

246.304 Bonds.

The director shall require officers and employees of institutions under the director's control who are charged with the custody or control of money or property belonging to the state, to give an official bond properly conditioned and signed by sufficient sureties in a sum to be fixed by the director. The bond is subject to approval by the director and shall be filed in the office of the secretary of state.

Transferred in Code Supplement 1985 from §217A.24 in Code 1985

246.305 Dwelling house or quarters.

The director may furnish the superintendent of each of the institutions, in addition to salary, with a dwelling house or with appropriate quarters in lieu of a house, or the director may compensate the superintendent of each of the institutions in lieu of furnishing a house or quarters. If a superintendent of the institution is furnished with a dwelling house or quarters, either of which is owned by the state, the superintendent may also be furnished with water, heat, and electricity.

The director may furnish assistant superintendents or other employees, or both, with dwelling houses or with appropriate quarters, owned by the state. The assistant superintendent or employee, who is so furnished shall pay rent for the dwelling house or quarters in an amount to be determined by the superintendent of the institution, which shall be the fair market rental value of the house or quarters. If an assistant superintendent or employee is furnished with a dwelling house or quarters either of which is owned by the state, the assistant superintendent or employee may also be furnished with water, heat, and electricity. However, the furnishing of these utilities shall be considered in determining the fair market rental value of the house or quarters.

Transferred in Code Supplement 1985 from §217A.25 in Code 1985

246.306 Conferences.

Quarterly conferences of the superintendents of the institutions shall be held with the director for the consideration of all matters relative to the management of the institutions. Full minutes of the meetings shall be preserved in the records of the director. The director may cause papers to be prepared and read at the conferences on appropriate subjects.

Transferred in Code Supplement 1985 from §217A.51 in Code 1985

246.307 Annual reports.

The superintendent of each institution shall make an annual report to the director. The report shall include a detailed and accurate inventory of the stock and supplies on hand, and their amount and value.

Transferred in Code Supplement 1985 from §217A.53 in Code 1985

246.308 Cooperation.

The department and the director shall cooperate with any department or agency of the state government in any manner, including the exchange of employees, calculated to improve administration of the affairs of the institutions. Joint use of facilities by the department and another public agency as defined in section 28E.2 shall be only according to an agreement entered into under chapter 28E. All joint campuses shall have one superintendent and one business manager who shall be

employed by the department with supervisory responsibility for the majority of the facility's population. Employment of the superintendent and business manager shall be done in consultation with the department which has responsibility for services for the other population at the facility.

Transferred in Code Supplement 1985 from §217A.71 in Code 1985

246.309 Consultants.

The director may secure the services of consultants to furnish advice on administrative, professional, or technical problems to the director or the employees of institutions under the director's jurisdiction or to provide in-service training and instruction for the employees. The director may pay the consultants from funds appropriated to the department or to any institution under the department's jurisdiction.

Transferred in Code Supplement 1985 from §217A.72 in Code 1985

246.310 Canteens.

The director may maintain a canteen at any institution under the director's jurisdiction for the sale to persons confined in the institution of items such as toilet articles, candy, tobacco products, notions, and other sundries, and may provide the necessary facilities, equipment, personnel, and merchandise for the canteen. The director shall specify the items to be sold in the canteen. The department may establish and maintain a permanent operating fund for each canteen. The fund shall consist of the receipts from the sale of commodities at the canteen.

Transferred in Code Supplement 1985 from §217A.76 in Code 1985

246.311 Contingent fund.

The director may permit the superintendent of each institution to retain a stated amount of funds in possession as a contingent fund for the payment of freight, postage, commodities purchased on authority of the director on a cash basis, salaries, and bills granting discount for cash. If necessary, the director shall make proper requisition upon the state comptroller for a warrant on the treasurer of state to secure the contingent fund for each institution. A monthly report of the status of the contingent fund shall be submitted by the superintendent of the institution to the director, according to rules prescribed by the director.

Transferred in Code Supplement 1985 from §217A.54 in Code 1985

246.312 Purchase of supplies.

The director shall adopt rules governing the purchase of all articles and supplies needed at the various institutions and the form and verification of vouchers for the purchases. When purchases are made by sample, the sample shall be properly marked and retained until after an award or delivery of the items is made. The director may purchase supplies from any institution under the director's control, for use in any other institution, and reasonable reimbursement shall be made for these purchases.

Transferred in Code Supplement 1985 from §217A.55 in Code 1985

246.313 Emergency purchases.

The purchase of materials or equipment for penal or correctional institutions under the department is exempted from the requirements of centralized purchasing and bidding by the department of general services if the materials or equipment are needed to make an emergency repair at an institution or the security of the institution would be jeopardized because the materials or equipment could not be purchased soon enough through centralized purchasing and bidding and, in either case, if the director approves the emergency purchase.

Transferred in Code Supplement 1985 from §217A.56 in Code 1985

246.314 Plans and specifications for improvements.

The director shall cause plans and specifications to be prepared for all improvements authorized and costing over twenty-five thousand dollars. An appropriation for any improvement costing over twenty-five thousand dollars shall not be expended until the adoption of suitable plans and specifications, prepared by a competent architect and accompanied by a detailed statement of the amount, quality, and description of all material and labor required for the completion of the improvement.

A plan shall not be adopted, and an improvement shall not be constructed, which contemplates an expenditure of money in excess of the appropriation.

Transferred in Code Supplement 1985 from §217A.57 in Code 1985

246.315 Contracts for improvements.

The director shall, in writing, let all contracts for authorized improvements costing in excess of twenty-five thousand dollars to the lowest responsible bidder, after advertisement for bids as the director deems proper in order to secure full competition. The director may reject all bids and readvertise. A preliminary deposit of money, bank check, or certified check, or a bid bond as provided in section 23.20, in an amount the director prescribes shall be required as an evidence of good faith, upon all proposals for the construction of improvements. The deposit, bank check, or certified check shall be held under the direction of the director. Upon prior authorization by the director, improvements costing five thousand dollars or less may be made by the superintendent of any institution.

Contracts are not required for improvements at any state institution where the labor of inmates is to be used.

Transferred in Code Supplement 1985 from §217A.58 in Code 1985

246.316 Payment for improvements.

The director shall not authorize payment for construction purposes until satisfactory proof has been furnished to the director by the proper officer or supervising architect, that the contract has been complied with by the parties. Payments shall be made in a manner similar to that in which the current expenses of the institutions are paid.

Transferred in Code Supplement 1985 from §217A.59 in Code 1985

246.317 Director may buy and sell real estate—options.

The director, subject to the approval of the board and executive council, may secure options to purchase real estate and acquire and sell real estate for the proper uses of the institutions. Real estate shall be acquired and sold upon terms and conditions the director recommends subject to the approval of the board and the executive council. Upon sale of the real estate, the proceeds shall be deposited with the treasurer of state and credited to the general fund of the state. There is appropriated from the general fund of the state to the department a sum equal to the proceeds so deposited and credited to the general fund of the state which, with the prior approval of the executive council, may be used to purchase other real estate or for capital improvements upon property under the director's supervision.

The costs incident to the securing of options and acquisition and sale of real estate including, but not limited to, appraisals, invitations for offers, abstracts, and other necessary costs, may be paid from moneys appropriated for support and maintenance to the institution at which the real estate is located. The fund shall be reimbursed from the proceeds of the sale.

Transferred in Code Supplement 1985 from §217A.73 in Code 1985

246.318 Fire protection contracts.

The director may enter into contracts with the governing body of any city for the protection from fire of any property under the director's primary control, located in any city or in territory contiguous to a city.

The state fire marshal shall cause an annual inspection to be made of all the institutions listed in section 246.102 and shall make a written report of the inspection to the director.

Transferred in Code Supplement 1985 from §217A.74 in Code 1985

246.319 Temporary quarters in emergency.

If the buildings at any institution under the management of the director are destroyed or rendered unfit for habitation by reason of fire, storms, or other like causes, to such an extent that the inmates cannot be confined and cared for at the institution, the director shall make temporary provision for the confinement and care of the inmates at some other place in the state. Like provision may be made in case of an epidemic among the inmates. The reasonable cost of the change including the cost of transfer of inmates, shall be paid from any money in the state treasury not otherwise appropriated.

Transferred in Code Supplement 1985 from §217A.68 in Code 1985

DIVISION IV
INVESTIGATIONS

246.401 Investigation.

The director or director's designee shall visit and inspect the institutions under the director's control, and investigate the financial condition and management of the institutions at least once in six months.

During the investigation the director or designee shall see every inmate of each institution as far as practicable, especially those admitted since the preceding visit, and shall give the inmates suitable opportunity to converse with the director or designee apart from the officers and attendants.

Transferred in Code Supplement 1985 from §217A.41 in Code 1985

246.402 Investigation of other institutions.

The director may investigate charges of abuse, neglect or mismanagement on the part of any officer or employee of any public or private institution subject to the director's supervision or control.

Transferred in Code Supplement 1985 from §217A.42 in Code 1985

246.403 Investigatory powers—witnesses.

The director may exercise the following powers in an investigation:

1. Summon and compel the attendance of witnesses.
2. Examine the witnesses under oath, which the director may administer.
3. Have access to all books, papers, and property material to the investigation.
4. Order the production of books or papers material to the investigation.

Witnesses other than those in the employ of the state are entitled to the same fees as in civil cases in the district court.

Transferred in Code Supplement 1985 from §217A.43 in Code 1985

246.404 Contempt.

If a person fails or refuses to obey the orders of the director issued under section 246.403, or fails or refuses to give or produce evidence when required, the director

shall petition the district court in the county where the offense occurs for an order of contempt and the court shall proceed as for contempt of court.

Transferred in Code Supplement 1985 from §217A.44 in Code 1985

246.405 Transcript of testimony.

The director shall cause the testimony taken at the investigation to be transcribed and filed in the director's office at the seat of government within ten days after the testimony is taken, or as soon as practicable, and when filed the testimony shall be open for the inspection of any person.

Transferred in Code Supplement 1985 from §217A.45 in Code 1985

DIVISION V

COMMITMENT, TRANSFER, AND GENERAL SUPERVISION OF INMATES

246.501 Reports to director.

The superintendent of each institution shall, within ten days after the commitment or entrance of a person to the institution, cause a true copy of the person's entrance record to be made and forwarded to the director. When an inmate leaves, is discharged, transferred, or dies in any institution, the superintendent or person in charge shall within ten days thereafter send the information to the office of the director on forms which the director prescribes.

Transferred in Code Supplement 1985 from §217A.34 in Code 1985

246.502 Questionable commitment.

The superintendent shall within three days of the commitment or entrance of a person at the institution notify the director if there is any question as to the propriety of the commitment or detention of any person received at the institution, and the director upon notification shall inquire into the matter presented, and take appropriate action.

Transferred in Code Supplement 1985 from §217A.35 in Code 1985

246.503 Transfers—mentally ill.

1. The director may transfer at the expense of the department an inmate of one institution to another institution under the director's control if the director is satisfied that the transfer is in the best interests of the institutions or inmates.

The director may transfer at the expense of the department an inmate under the director's jurisdiction from any institution supervised by the director to another institution under the control of a director of a division of the department of human services with the consent and approval of the other director and may transfer an inmate to any other institution for mental or physical examination or treatment retaining jurisdiction over the inmate when so transferred.

If the juvenile court waives its jurisdiction over a child over thirteen and under eighteen years of age pursuant to section 232.45 so that the child may be prosecuted as an adult and if the child is convicted of a public offense in the district court and committed to the custody of the director under section 901.7, the director may request transfer of the child to the state training school under this section. If the director of a division of the department of human services consents and approves the transfer, the child may be retained in temporary custody by the state training school until attaining the age of eighteen, at which time the child shall be returned to the custody of the director of the department of corrections to serve the remainder of the sentence imposed by the district court. If the child becomes a security risk or becomes a danger to other residents of the state training school at any time before reaching eighteen years of age, the director of the division of the department of

human services may immediately return the child to the custody of the director of the department of corrections to serve the remainder of the sentence.

2. When the director has cause to believe that an inmate in a state correctional institution is mentally ill, the Iowa department of corrections may cause the inmate to be transferred to the Iowa medical and classification center for examination, diagnosis, or treatment. The inmate shall be confined at that institution or a state hospital for the mentally ill until the expiration of the inmate's sentence or until the inmate is pronounced in good mental health. If the inmate is pronounced in good mental health before the expiration of the inmate's sentence, the inmate shall be returned to the state correctional institution until the expiration of the inmate's sentence.

3. When the director has reason to believe that a prisoner in a state correctional institution, whose sentence has expired, is mentally ill, the director shall cause examination to be made of the prisoner by competent physicians who shall certify to the director whether the prisoner is in good mental health or mentally ill. The director may make further investigation and if satisfied that the prisoner is mentally ill, the director may cause the prisoner to be transferred to one of the hospitals for the mentally ill, or may order the prisoner to be confined in the Iowa medical and classification center.

4. The director shall assure that an inmate transferred pursuant to this section is accompanied by a person of the same sex as the inmate.

85 Acts, ch 21, §17-19 HF 186
Transferred in Code Supplement 1985 from §217A.31 in Code 1985
Subsection 1, unnumbered paragraph 1 amended
Subsection 2 amended
NEW subsection 4

246.504 Federal prisoners.

Inmates sentenced for any term by any court of the United States may be received by the superintendent of a state correctional institution and kept there in pursuance of their sentences. The director may transfer inmates at state correctional institutions to the federal bureau of prisons.

85 Acts, ch 21, §22 HF 186
Transferred in Code Supplement 1985 from §217A.39 in Code 1985
Section amended

246.505 Disciplinary procedures—use of force.

1. Inmates who disobey the disciplinary rules of the institution to which they are committed shall be punished by the imposition of the penalties prescribed in the disciplinary rules, according to the following guidelines:

a. To ensure that sanctions are imposed only at such times and to such a degree as is necessary to regulate inmate behavior within the limits of the disciplinary rules and to promote a safe and orderly institutional environment.

b. To control inmate behavior in an impartial and consistent manner.

c. To ensure that disciplinary procedures are fair and that sanctions are not capricious or retaliatory.

d. To prevent the commission of offenses through the deterrent effect of the sanctions available.

e. To define the elements of each offense and the penalties which may be imposed for violations, in order to give fair warning of prohibited conduct.

f. To provide procedures for preparation of reports of disciplinary actions, for conducting disciplinary hearings, and for processing of disciplinary appeals.

2. The superintendent of each institution shall maintain a register of all penalties imposed on inmates and the cause for which the penalties were imposed.

3. A correctional officer of a correctional institution or the officer's assistant shall, in case an inmate resists the officer's or assistant's lawful authority, or refuses to obey the officer's or assistant's lawful command, only use such force as is reasonably necessary under all attendant circumstances. The use of a deadly weapon is justified

under conditions of extreme necessity and as a last resort to protect the life or safety of a person. The use of a deadly weapon is not justified solely to prevent damage to or destruction of property where there is no danger to the life or safety of a person. An officer or assistant is justified in using force which causes injury or death to an inmate if the officer's or assistant's actions comply with the requirements of this subsection.

85 Acts, ch 21, §21 HF 186
NEW section

246.506 Confiscation of currency.

1. Except as provided for by the director by rule, it is unlawful for an inmate of one of the penal or correctional facilities under the department to possess United States or foreign currency in the penal or correctional facility.

2. The director shall adopt rules as to circumstances under which the possession of currency by an inmate of a penal or correctional facility under the department is authorized.

3. The department may confiscate currency unlawfully possessed in violation of this section. Money confiscated pursuant to this section shall be deposited in a special fund in the state treasury which fund shall be established by the treasurer of state. Money deposited in the fund may be drawn upon by the department to pay for expenses incurred in operating the division's penal and correctional facilities and programs.

Transferred in Code Supplement 1985 from §217A.77 in Code 1985

246.507 Escape.

An inmate of a state correctional institution who escapes from it may be arrested and returned to the institution, by an officer or employee of a state correctional institution without any other authority than this chapter, and by any peace officer or other person on the request in writing of the superintendent or the state director.

Transferred in Code Supplement 1985 from §217A.38 in Code 1985

246.508 Property of inmate.

The superintendent of each institution shall receive and care for any property an inmate may possess on the inmate's person upon entering the institution, and on the discharge of the inmate, return the property to the inmate or the inmate's legal representatives, unless the property has been previously disposed of according to the inmate's written designation or policies prescribed by the board. The superintendent may place an inmate's money at interest, keeping an account of the money and returning the remaining money and interest upon discharge.

Upon the death of an inmate, the superintendent of the institution shall immediately take possession of the decedent's property left at the institution and shall deliver the property to the duly appointed representative of the deceased. However, if administration is not granted within one year from the date of the death of the decedent and the value of the estate of decedent is so small as to make the granting of administration inadvisable, then delivery of the money and other property left by the decedent may be made to the surviving spouse or an heir of the decedent. If administration is not granted within one year from the death of decedent and no surviving spouse or heir is known, the superintendent shall convert the property into money.

85 Acts, ch 21, §25 HF 186
Transferred in Code Supplement 1985 from §217A.66 in Code 1985
NEW unnumbered paragraph 1

246.509 Money deposited with treasurer of state.

Money from property converted pursuant to section 246.508 shall be transmitted to the treasurer of state as soon after one year after the death of the inmate as practicable. A complete permanent record of the property, showing by whom and with whom it was left, its amount when converted to money, the date of the death of the owner, the owner's reputed place of residence before becoming an inmate of the institution, the date on which the money was sent to the treasurer of state, and any other facts which may tend to identify the decedent and explain the case, shall be kept by the superintendent of the institution, and a transcript of the record shall be sent to and kept by the treasurer of state.

Money deposited with the treasurer of state pursuant to this section shall be paid at any time within ten years from the death of the inmate to any person who is shown to be entitled to it.

Transferred in Code Supplement 1985 from §217A.67 in Code 1985

246.510 Religious preference.

The superintendent receiving a person committed to any of the institutions shall ask the person to state the person's religious preference, shall enter the stated preference in a book kept for that purpose, and shall request that the person sign the entry. If the person is a minor and has formed no choice, the preference may be expressed at any later time by the person.

Transferred in Code Supplement 1985 from §217A.36 in Code 1985

246.511 Time for religion.

Any inmate, during the time of detention, shall be allowed for at least one hour on each Sunday or other holy day or in times of extreme sickness, and at other suitable and reasonable times consistent with proper discipline in the institution, to receive spiritual advice, instruction, and ministrations from any recognized member of the clergy who represents the inmate's religious belief.

Transferred in Code Supplement 1985 from §217A.37 in Code 1985

246.512 Visits.

Members of the executive council, the attorney general, the lieutenant governor, members of the general assembly, judges of the supreme and district court and court of appeals, judicial magistrates, county attorneys and persons ordained or designated as regular leaders of a religious community are authorized to visit all institutions under the control of the Iowa department of corrections at reasonable times. No other person shall be granted admission except by permission of the superintendent.

85 Acts, ch 21, §28 HF 186

Transferred in Code Supplement 1985 from §217A.80 in Code 1985

Section amended

DIVISION VI

RECORDS—CONFIDENTIALITY

246.601 Records of inmates.

The director shall keep the following record of every person committed to any of the department's institutions: Name, residence, sex, age, place of birth, occupation, civil condition, date of entrance or commitment, date of discharge, whether a discharge is final, condition of the person when discharged, the name of the institutions from which and to which the person has been transferred, and if the person is dead, the date and cause of death. The director may permit the state libraries and the Iowa state historical department's division of historical museum and archives to copy or reproduce by any photographic, photostatic, microfilm, microcard, or

other process which accurately reproduces in a durable medium and to destroy in the manner described by law the records of inmates required by this paragraph.

The director shall keep other records for the use of the board of parole as the board of parole may request.

85 Acts, ch 21, §20 HF 186
Transferred in Code Supplement 1985 from §217A.32 in Code 1985
NEW unnumbered paragraph 2

246.602 Confidentiality of records—penalty.

1. The following information regarding individuals receiving services from the department or from the judicial district departments of correctional services under chapter 905 is public information and may be given to anyone, except that the information shall be limited to the offense for which an individual was last convicted:

- a. Name.
- b. Age.
- c. Sex.
- d. Status (inmate, parolee, or probationer).
- e. Location, except home street address.
- f. Duration of supervision.
- g. Offense or offenses for which the individual was placed under supervision.
- h. County of commitment.
- i. Arrest and detention orders.
- j. Physical description.
- k. Type of services received.
- l. Disciplinary reports and decisions which have been referred to the county attorney or prosecutor for prosecution, and the following information of all other disciplinary reports:
 - (1) The name of the subject of the investigation.
 - (2) The alleged infraction involved.
 - (3) The finding of fact and the penalty, if any, imposed as a result of the infraction.

2. The following information regarding individuals receiving services from the department or from the judicial district departments of correctional services under chapter 905 is confidential and shall not be disseminated by the department to the public:

- a. Home street address of the individual receiving services or that individual's family.
- b. Department evaluations.
- c. Medical, psychiatric or psychological information.
- d. Names of associates or accomplices.
- e. Name of employer.
- f. Social security number.
- g. Prior criminal history including information on offenses where no conviction occurred.
- h. Family and personal history.
- i. Financial information.
- j. Information from disciplinary reports and investigations other than that identified in subsection 1, paragraph "l".
- k. Investigations by the department or other agencies which are contained in the individual's file.
- l. Department committee records which include any information identified in paragraphs "a" through "k". A record containing information which is both public and confidential which is reasonably segregable shall not be confidential after deletion of the confidential information.
- m. Presentence investigations as provided under chapter 901.
- n. Pretrial information that is not otherwise available in public court records or proceedings.

o. Correspondence directed to department officers or staff from an individual's family, victims, or employers of a personal or confidential nature. If the custodian of the record determines that the correspondence is confidential, in any proceeding under chapter 22 the burden of proof shall be on the person seeking release of the correspondence, and the writer of the correspondence shall be notified of the proceeding.

3. Information identified in subsection 2 shall not be disclosed or used by any person or agency except for purposes of the administration of the department's programs of services or assistance and shall not, except as otherwise provided in subsection 4, be disclosed by the department or be used by persons or agencies outside the department unless they are subject to, or agree to, comply with standards of confidentiality comparable to those imposed on the department by this section.

4. This section does not restrict the disclosure or use of information regarding the cost, purpose, number of persons served or assisted by or results of any program administered by the department, and other general statistical information so long as the information does not identify particular individuals served or assisted except as provided in subsection 1 of this section.

5. Information restricted in subsection 2 may be disclosed to persons or agencies with the approval of the director for the limited purpose of research and program evaluation or educational purposes when those persons or agencies agree to keep confidential that information restricted in subsection 2, and any reports of the research shall not contain any of the information restricted in subsection 2 except as allowed in subsection 4. However, the persons or agencies eligible to receive information under this subsection include only those which are state employees or those whom the department retains under contract to perform the services.

6. Confidential information described in subsection 2 may be disclosed to public officials for use in connection with their official duties relating to law enforcement, audits and other purposes directly connected with the administration of their programs. Full disclosure by the department of any information on an individual may be made to the board of parole and to judicial district departments of correctional services created under chapter 905, and the board and those departments are subject to the same standards as the department in dissemination or redissemination of information on persons served or supervised by those departments, and all provisions of this section pertain to the board of parole and to the judicial district departments as if they were a part of the department. Information may be disseminated about individuals while under the supervision of the department to public or private agencies to which persons served or supervised by the department are referred for specific services not otherwise provided by the department but only to the extent that the information is needed by those agencies to provide the services required, and they shall keep information received from the department confidential.

7. If it is established that a provision of this section would cause any of the department's programs of services or assistance to be ineligible for federal funds, the provision shall be limited or restricted to the extent which is essential to make the program eligible for federal funds. The department shall adopt, pursuant to chapter 17A, rules necessary to implement this subsection.

8. A supervised individual or former supervised individual shall be given access to the individual's own records in the custody of the department, except that records which could result in physical or psychological harm to another person or the supervised individual or adversely affect an investigation into a supervised individual's possible violation of departmental rules, shall not be disclosed without a court order. Psychiatric information may be withheld by the department if its release would jeopardize the supervised individual's treatment. Upon the supervised individual's written authorization, that information which the supervised individual has access to may be released to any third party. A reasonable fee for copying and services may be charged.

9. Regulations, procedures, and policies that govern the internal administration of the department and the judicial district departments of correctional services under chapter 905, which if released may jeopardize the secure operation of a correctional institution operation or program are confidential unless otherwise ordered by a court. These records include procedures on inmate movement and control, staffing patterns and regulations, emergency plans, internal investigations, equipment use and security, building plans, operation, and security, security procedures for inmate, staff, and visits, daily operation records, and contraband and medicine control.

These records are exempt from the public inspection requirements in section 17A.3 and section 22.2.

10. Violation of this section is a serious misdemeanor.

11. This section does not preclude the disclosure of otherwise confidential material if it is necessary to civil or criminal court proceedings. The review of the court may, however, limit the confidential information to an in camera inspection where the court determines that the confidential nature of the information needs to be protected.

Transferred in Code Supplement 1985 from §217A.18 in Code 1985

246.603 Action for damages.

A person receiving services, or that person's family, victim or employer may institute a civil action for damages under chapter 25A or other action to restrain the release of confidential records set out in section 246.602, subsection 2, which is in violation of that section, and a person, agency or governmental body proven to have released confidential records in violation of section 246.602, subsection 2 is liable for actual damages for each violation and is liable for court costs and reasonable attorney's fees incurred by the party bringing the action.

Transferred in Code Supplement 1985 from §217A.19 in Code 1985

DIVISION VII INMATE WORK

246.701 Services required—gratuitous allowances.

Inmates of the institutions may be required to perform any proper and reasonable service suited to their strength and attainments, for the benefit of the institutions or the welfare of the inmates, either in the institutions proper or in the industries established in connection with them. When an inmate of an institution is working outside the institution proper, the inmate shall be deemed at all times to be in the actual custody of the superintendent of the institution.

The director may when practicable pay the inmate an allowance as the director deems proper in view of the circumstances, and in view of the cost attending the maintenance of the inmate. The allowance is a gratuitous payment and is not a wage arising out of an employment relationship. The payment shall not exceed the amount paid to free labor for a like or equivalent service.

85 Acts, ch 21, §23 HF 186

Transferred in Code Supplement 1985 from §217A.46 in Code 1985

Section amended

246.702 Deduction to pay court costs or dependents—deposits.

If allowances are paid pursuant to section 246.701, the director may deduct an amount established by the inmate's restitution plan of payment or an amount sufficient to pay all or part of the court costs taxed as a result of the inmate's commitment. The amount deducted shall be forwarded to the clerk of the district court or proper official. The director may pay all or any part of remaining allowances paid pursuant to section 246.701 directly to a dependent of the inmate, or may deposit the allowance to the account of the inmate, or may deposit a portion and allow the inmate a portion for the inmate's personal use.

85 Acts, ch 21, §24 HF 186; 85 Acts, ch 195, §24 SF 329

Transferred in Code Supplement 1985 from §217A.47 in Code 1985

See Code editor's note

Section amended

246.703 Services of inmates—institutions and public service.

Inmates shall work only on state account in the maintenance of state institutions, in the erection, repair, authorized demolition, or operation of buildings and works used in connection with the institutions, and in industries established and maintained in connection with the institutions by the director. The director may detail inmates classified as trustees, from correctional institutions under the control of the director to perform public service for the conservation commission and other agencies of state, county, or local government. The supervision, security, and transportation of, and allowances paid to inmates used in public service projects shall be provided pursuant to agreements made by the director and the agency of state, local, or county government for which the work is done. Housing and maintenance shall also be provided pursuant to the agreement unless the inmate is housed and maintained in the correctional facility. All such work, including but not limited to that provided in this section, shall have as its primary purpose, and shall provide for, inculcation or the reactivation of attitudes, skills, and habit patterns which will be conducive to inmate rehabilitation.

However, an inmate shall not work in a public service project if the work of that inmate would replace a person employed by the state agency or political subdivision, which employee is performing the work of the public service project at the time the inmate is being considered for work in the project.

85 Acts, ch 21, §26 HF 186

Transferred in Code Supplement 1985 from §217A.78 in Code 1985

Section amended

246.704 Limitation on contracts.

The director or the superintendents of the institutions shall not, nor shall any other person employed by the state, make any contract by which the labor or time of an inmate in the institution is given, loaned, or sold to any person unless as provided by division VIII or section 246.703.

85 Acts, ch 21, §27 HF 186

Transferred in Code Supplement 1985 from §217A.79 in Code 1985

Section amended

246.705 Industries—forestry nurseries.

The director may establish industries at or in connection with any of the institutions under the director's control and may make contractual agreements with the United States, other states, state departments and agencies, and subdivisions of the state, for purchase of industry products.

The director may with the assistance of the Iowa state conservation commission establish and operate forestry nurseries on state-owned land under the control of the department. Residents of the adult correctional institutions shall provide the labor for the operation. Nursery stock shall be sold in accordance with the rules of the state conservation commission. The department shall pay the costs of establishing and operating the forestry nurseries out of the revolving farm fund created in section 246.706. The state conservation commission shall pay the costs of transporting, sorting, and distributing nursery stock to and from or on state-owned land under the control of the commission. Receipts from the sale of nursery stock produced under this section shall be divided between the department and the state conservation commission in direct proportion to their respective costs as a percentage of the total costs. The department shall deposit its receipts in the revolving farm fund created in section 246.706.

Transferred in Code Supplement 1985 from §217A.69 in Code 1985

246.706 Revolving farm fund.

A revolving farm fund is created in the state treasury in which the department shall deposit receipts from agricultural products, nursery stock, agricultural land

rentals, and the sale of livestock. However, before any agricultural operation is phased out, the department which proposes to discontinue this operation shall notify the governor, chairpersons and ranking members of the house and senate appropriations committees, and cochairpersons and ranking members of the subcommittee in the senate and house of representatives which has handled the appropriation for this department in the past session of the legislature. Before the department sells farmland under the control of the department, the director shall notify the governor, chairpersons and ranking members of the house and senate appropriations committees, and cochairpersons and ranking members of the joint appropriations subcommittee that handled the appropriation for the department during the past legislative session. The department may pay from the fund for the operation, maintenance, and improvement of farms and agricultural or nursery property under the control of the department. A purchase order for five thousand dollars or less payable from the fund is exempt from the general purchasing requirements of chapter 18. Notwithstanding section 8.33, unencumbered or unobligated receipts in the revolving farm fund at the end of a fiscal year shall not revert to the general fund of the state.

The department shall annually prepare a financial statement to provide for an accounting of the funds in the revolving farm fund. The financial statement shall be filed with the legislative fiscal bureau on or before February 1 each year.

As used in this section, "department" means the Iowa department of corrections and the Iowa department of human services.

The farm operations administrator appointed under section 246.302 shall perform the functions described under section 246.302 for agricultural operations on property of the Iowa department of human services.

The Iowa department of human services shall enter into an agreement under chapter 28D with the Iowa department of corrections to implement this paragraph.

Transferred in Code Supplement 1985 from §217A.70 in Code 1985

DIVISION VIII

IOWA STATE INDUSTRIES

Transferred in Code Supplement 1985 from chapter 216 in Code 1985; 85 Acts, ch 21, §54

246.801 Statement of intent.

It is the intent of this division that there be made available to inmates of the state correctional institutions opportunities for work in meaningful jobs with the following objectives:

1. To develop within those inmates willing to accept and persevere in such work:
 - a. Positive attitudes which will enable them to eventually function as law-abiding, self-supporting members of the community;
 - b. Good work habits that will assist them in eventually securing and holding gainful employment outside the correctional system; and
 - c. To the extent feasible, marketable skills that can lead directly to gainful employment upon release from a correctional institution.
2. To enable those inmates willing to accept and persevere in such work to:
 - a. Provide or assist in providing for their dependents, thus tending to strengthen the inmates' family ties while reducing the likelihood that inmates' families will have to rely upon public assistance for subsistence;
 - b. Make restitution, as the opportunity to do so becomes available, to the victims of the offenses for which the inmates were incarcerated, so as to assist the inmates in accepting responsibility for the consequences of their acts;
 - c. Make it feasible to require that such inmates pay some portion of the cost of board and maintenance in a correctional institution, in a manner similar to what would be necessary if they were employed in the community; and

d. Accumulate savings so that such inmates will have funds for necessities upon their eventual return to the community.

85 Acts, ch 21, §1.2 HF 186

Transferred in Code Supplement 1985 from §216.1 in Code 1985

Unnumbered paragraph 1 and subsection 1, unnumbered paragraph 1 amended

Subsection 2, unnumbered paragraph 1 amended

246.802 Definitions.

As used in this division:

1. "*Industries board*" means the state prison industries advisory board.
2. "*Iowa state industries*" means prison industries that are established and maintained by the Iowa department of corrections, in consultation with the industries board, at or adjacent to the state's adult correctional institutions, except that an inmate work program established by the state director under section 246.805, subsection 7 is not restricted to industries at or adjacent to the institutions.
3. "*State director*" means the director of the Iowa department of corrections, or the director's designee.

85 Acts, ch 21, §3 HF 186

Transferred in Code Supplement 1985 from §216.2 in Code 1985

Subsection 2 amended

246.803 Prison industries advisory board.

1. There is established a state prison industries advisory board, consisting of seven members selected as prescribed by this subsection.

a. Five members shall be appointed by the governor for terms of four years beginning July 1 of the year of appointment. They shall be chosen as follows:

(1) One member shall represent agriculture and one member shall represent manufacturing, with particular reference to the roles of their constituencies as potential employers of former inmates of the state's correctional institutions.

(2) One member shall represent labor organizations, membership in which may be helpful to former inmates of the state's correctional institutions who seek to train for and obtain gainful employment.

(3) One member shall represent agencies, groups and individuals in this state which plan and maintain programs of vocational and technical education oriented to development of marketable skills.

(4) One member shall represent the financial industry and be familiar with accounting practices in private industry.

b. One member each shall be designated by and shall serve at the pleasure of the state director and the state board of parole, respectively.

c. Upon the resignation, death or removal of any member appointed under paragraph "a" of this subsection, the vacancy shall be filled by the governor for the balance of the unexpired term. In making the initial appointments under that paragraph, the governor shall designate two appointees to serve terms of two years and three to serve terms of four years from July 1, 1977.

2. Biennially, the industries board shall organize by election of a chairperson and a vice chairperson, as soon as reasonably possible after the new appointees have been named. Other meetings shall be held at the call of the chairperson or of any three members, as necessary to enable the industries board to discharge its duties. Board members shall be reimbursed for expenses actually and necessarily incurred in the discharge of their duties, and those members not state employees shall also be entitled to forty dollars per diem for each day they are so engaged.

3. The state director shall provide such administrative and technical assistance as is necessary to enable the industries board to discharge its duties. The industries board shall be provided necessary office and meeting space at the seat of government.

85 Acts, ch 21, §4 HF 186

Transferred in Code Supplement 1985 from §216.3 in Code 1985

Subsection 1, paragraph a, subparagraph (1) amended

246.804 Duties of industries board.

The industries board's principal duties shall be to promulgate and adopt rules and to advise the state director regarding the management of Iowa state industries so as to further the intent stated by section 246.801.

Transferred in Code Supplement 1985 from §216.4 in Code 1985

246.805 Duties of state director.

The state director, with the advice of the industries board, shall:

1. Conduct market studies and consult with public bodies and officers who are listed in section 246.807, and with other potential purchasers, for the purpose of determining items or services needed and design features desired or required by potential purchasers of Iowa state industries products or services.

2. Receive, investigate and take appropriate action upon any complaints from potential purchasers of Iowa state industries products or services regarding lack of co-operation by Iowa state industries with public bodies and officers who are listed in section 246.807, and with other potential purchasers.

3. Establish, transfer and close industrial operations as deemed advisable to maximize opportunities for gainful work for inmates and to adjust to actual or potential market demand for particular products or services.

4. Establish and from time to time adjust, as necessary, levels of allowances paid to inmates working in Iowa state industries.

5. Co-ordinate Iowa state industries, and other opportunities for gainful work available to inmates of adult correctional institutions, with vocational and technical training opportunities and apprenticeship programs, to the greatest extent feasible.

6. Promote, plan, and when deemed advisable, assist in the location of privately owned and operated industrial enterprises on the grounds of adult correctional institutions, pursuant to section 246.809.

7. Implement an inmate work program for trustworthy inmates of state correctional institutions, under proper supervision, whether at work centers located outside the state correctional institutions or in construction or maintenance work at public or charitable facilities, which shall meet the following conditions:

a. Inmates applying to participate in a program shall be approved by the work release committee designated pursuant to section 246.902 and shall reside at state correctional institutions.

b. The state director shall encourage the making of agreements with departments and agencies of the state or its political subdivisions to provide products or services under a program to the departments and agencies.

c. The state director shall promulgate rules concerning access to and distribution of products and services provided under a program.

d. The state director shall promulgate rules establishing criteria for the screening of inmates applying to participate in a program to assure that each participant:

(1) Develops the positive attitudes, good work habits, and marketable skills as those objectives are established in section 246.801, subsection 1.

(2) Exhibits appropriate conduct to enable the participant to work outside the state correctional institutions without constituting a threat to the security of the local community.

e. The state director may adopt rules allowing inmates participating in a program to receive educational or vocational training outside the state correctional institutions and away from the work centers or public or charitable facilities utilized under a program.

85 Acts, ch 21, §5-7 HF 186

Transferred in Code Supplement 1985 from §216.5 in Code 1985

Subsections 3, 4 and 5 amended

Subsection 7, unnumbered paragraph 1 amended

Subsection 7, paragraph d, subparagraph (2) and paragraph e amended

246.806 Authority of state director not impaired.

Nothing in this division shall be construed to impair the authority of the state director over the adult correctional institutions of this state, nor over the inmates thereof. It is, however, the duty of the state director to obtain the advice of the industries board to further the intent stated by section 246.801.

Transferred in Code Supplement 1985 from §216.6 in Code 1985

246.807 Price lists to public officials.

The state director shall cause to be prepared from time to time classified and itemized price lists of the products manufactured by Iowa state industries. Such lists shall be furnished to all boards of supervisors, boards of directors of school corporations, city councils, and all other state, county, city and school departments and officials empowered to purchase supplies and equipment for public purposes.

Transferred in Code Supplement 1985 from §216.7 in Code 1985

246.808 State purchasing requirements—exceptions.

1. A product possessing the performance characteristics of a product listed in the price lists prepared pursuant to section 246.807 shall not be purchased by any department or agency of state government from a source other than Iowa state industries, except:

a. When the purchase is made under emergency circumstances, which shall be explained in writing by the public body or officer who made or authorized the purchase if the state director so requests; or

b. When the state director releases, in writing, the obligation of the department or agency to purchase the product from Iowa state industries, after determining that Iowa state industries is unable to meet the performance characteristics of the purchase request for the product, and a copy of the release is attached to the request to the state comptroller for payment for a similar product, or when Iowa state industries is unable to furnish needed products, comparable in both quality and price to those available from alternative sources, within a reasonable length of time. Any disputes arising between a purchasing department or agency and Iowa state industries regarding similarity of products, or comparability of quality or price, or the availability of the product shall be referred to the director of the department of general services, whose decision shall be subject to appeal as provided in section 18.7.

2. The state director shall adopt and update as necessary rules setting specific delivery schedules for each of the products manufactured by Iowa state industries. These delivery schedules shall not apply where a different delivery schedule is specifically negotiated by Iowa state industries and a particular purchaser.

3. A department or agency of the state shall cooperate and enter into agreements, if possible, for the provision of products and services under an inmate work program established by the state director under section 246.805, subsection 7.

85 Acts, ch 21, §8 HF 186

Transferred in Code Supplement 1985 from §216.8 in Code 1985

Subsection 3 amended

246.809 Private industry on grounds of correctional institutions.

1. Any other provision of the Code to the contrary notwithstanding, the state director may, after obtaining the advice of the industries board, lease one or more buildings or portions thereof on the grounds of any state adult correctional institution, together with the real estate needed for reasonable access to and egress from the leased buildings, for a term not to exceed twenty years, to a private corporation for the purpose of establishing and operating a factory for the manufacture and processing of products, or any other commercial enterprise deemed by the state director to be consistent with the intent stated in section 246.801.

2. Each lease negotiated and concluded under subsection 1 shall include, and shall be valid only so long as the lessee adheres to, the following provisions:

a. All persons working in the factory or other commercial enterprise operated in the leased property, except the lessee's supervisory employees and necessary training personnel approved by the industries board, shall be inmates of the institution where the leased property is located who are approved for such work by the state director and the lessee.

b. The factory or other commercial enterprise operated in the leased property shall observe at all times such practices and procedures regarding security as the lease may specify, or as the state director may temporarily stipulate during periods of emergency.

c. The factory or other commercial enterprise operated in the leased property shall be deemed a private enterprise and subject to all the laws and lawfully adopted rules of this state governing the operation of similar business enterprises elsewhere.

3. Except as prohibited by applicable provisions of the United States Code, inmates of adult correctional institutions of this state may work in the manufacture and processing of products for introduction into interstate or intrastate commerce, so long as they are paid allowances commensurate with those wages paid persons employed in similar jobs outside the correctional institutions.

85 Acts, ch 21, §10 HF 186

Transferred in Code Supplement 1985 from §216.10 in Code 1985

Subsection 2, paragraph a and subsection 3 amended

246.810 Private industry work force.

The state director with the advice of the prison industries advisory board may provide an inmate work force to private industry. Under the program inmates will be employees of a private business and eligible for all benefits and wages the same as other employees of the business engaged in similar work. The state director shall ensure that security and screening procedures will protect the safety of the public. In administering this program the state director shall comply with the intent stated in section 246.801.

Transferred in Code Supplement 1985 from §216.11 in Code 1985

246.811 Subcontracting with Iowa state industries.

Private or nonprofit organizations may subcontract with Iowa state industries to perform work in Iowa state industries shops located on the grounds of a state institution, or at other locations including the location of the private or nonprofit organization. The execution of the subcontract is subject to the following conditions:

1. Allowances paid to inmates are commensurate with those wages paid employees doing similar work. This may include piece rating for which the individual would be paid only for what is produced. The private employer shall pay to Iowa state industries at a rate commensurate with wages paid to other workers performing similar work.

2. Such paid inmate work will not result in displacement of employed workers.

3. The state director shall ensure that security and screening procedures protect the safety of the public.

4. The state director shall comply with the intent of section 246.801.

85 Acts, ch 21, §11 HF 186

Transferred in Code Supplement 1985 from §216.12 in Code 1985

Subsections 1 and 2 amended

246.812 Restriction on goods made available.

Effective July 1, 1978, and notwithstanding any other provisions of this division, goods made available by Iowa state industries shall be restricted to items, materials, supplies and equipment which are formulated or manufactured by Iowa state industries and shall not include goods, materials, supplies or equipment which are merely purchased by Iowa state industries for repacking or resale except with approval of the state director when such repacking for resale items are directly related to product lines.

Transferred in Code Supplement 1985 from §216.14 in Code 1985

246.813 Industries revolving fund—uses.

1. There is established in the treasury of the state a permanent Iowa state industries revolving fund. This revolving fund shall be created by the transfer thereto of all moneys in the revolving fund formerly established under section 246.26 as that section appeared in the Code of 1977 and prior editions, and shall be maintained by depositing therein all receipts from the sale of products manufactured by Iowa state industries, and from sale of any property of Iowa state industries found by the state director to be obsolete or unneeded.

2. The Iowa state industries revolving fund shall be used only for the following purposes:

a. Establishment, maintenance, transfer or closure of industrial operations, or vocational, technical and related training facilities and services for inmates as authorized by the state director in consultation with the industries board.

b. Payment of all costs incurred by the industries board, including but not limited to per diem and expenses of its members, and of salaries, allowances, support and maintenance of Iowa state industries. Payments from the revolving fund authorized by this subsection shall be made in the same manner as payments from appropriations for salaries, allowances, support and maintenance of the institutions under the jurisdiction of the state director.

3. The Iowa state industries revolving fund shall not be used for the operation of farms at any adult correctional institution unless such farms are operated directly by Iowa state industries.

4. The fund established by this section shall not revert to the general fund of the state at the end of any annual or biennial period and the investment proceeds earned from the balance of the fund shall be credited to the fund and used for the purposes provided for in this section.

85 Acts, ch 21, §9 HF 186
Transferred in Code Supplement 1985 from §216.9 in Code 1985
Subsection 2, paragraph b amended

246.814 Inmate allowance supplement revolving fund.

There is established in the treasury of the state a permanent adult correctional institutions inmate allowance supplement revolving fund, consisting solely of money paid as board and maintenance by inmates working in Iowa state industries, or working pursuant to section 246.809. The fund established by this section may be used to supplement the allowances of inmates who perform other institutional work within and about the adult correctional institutions including those who are working in Iowa state industries. Payments made from the fund shall supplement and not replace all or any part of the allowances otherwise received by, and shall be equably distributed among such inmates. The work of inmates in other institutional or industry work shall, to the greatest extent feasible, be in accord with the intent stated in section 246.801. The fund may also be used to supplement other rehabilitation activities within the adult correctional institutions. Determination of the use of the funds is the responsibility of the state director who shall first seek the advice of the prison industries advisory board.

85 Acts, ch 21, §12 HF 186
Transferred in Code Supplement 1985 from §216.13 in Code 1985
Section amended

DIVISION IX
WORK RELEASE
See also §356A.4

246.901 Program.

The Iowa department of corrections shall establish a work release program under which inmates sentenced to an institution under the jurisdiction of the department may be granted the privilege of leaving actual confinement during necessary and reasonable hours for the purpose of working at gainful employment. Under appropriate conditions the program may also include release for the purpose of seeking employment and attendance at an educational institution. An inmate may be placed on work release status in the inmate's own home, under appropriate circumstances, which may include child care and housekeeping in the inmate's own home. An inmate shall receive a unanimous vote from the work release committee to be approved for home work release.

Transferred in Code Supplement 1985 from §247A.2 in Code 1985

246.902 Committee.

A committee shall be designated by the Iowa department of corrections consisting of one member of the parole board or its designee, one representative of the Iowa department of corrections, and one representative of the institution in which the inmate is confined at the time of application.

Transferred in Code Supplement 1985 from §247A.3 in Code 1985

246.903 Application by inmate.

An inmate eligible to participate in the work release program may make application to the superintendent or executive officer of the institution in which confined for permission to participate in the program. The application shall include a statement that the inmate agrees to abide by all terms and conditions of the particular plan adopted for the inmate by the committee if the application is approved, shall state the name and address of the proposed employer, if any, and shall contain such other information as the committee may require. The superintendent or executive officer may, at that person's discretion, recommend such application to the committee. The committee may approve, disapprove, or defer action on the recommendation. If the recommendation is approved, the committee shall adopt a work release plan for the applicant which shall contain such terms and conditions as may be necessary and proper. The plan shall be signed by the inmate prior to participation in the program. Approval may be revoked for any reason by the superintendent or executive officer or by the committee at any time after being granted.

Transferred in Code Supplement 1985 from §247A.4 in Code 1985

246.904 Housing facilities—halfway houses.

Unless the inmate is transferred to the correctional release center, or returns after working hours to the institution under jurisdiction of the department of corrections, the department of corrections shall contract with a judicial district department of correctional services for the quartering and supervision of the inmate in local housing facilities. The committee shall include as a specific term or condition in the work release plan of any inmate the place where the inmate is to be housed when not on the work assignment. The committee shall not place an inmate on work release for longer than six months in any twelve-month period. However, an inmate may be placed on work release for a period in excess of six months in any twelve-month period if unanimous approval is given by the committee. Inmates may be temporarily released to the supervision of a responsible person to participate in family and selected community, religious, educational, social, civic, and recreational activities

when it is determined that the participation will directly facilitate the release transition from institution to community. The department of corrections shall provide a copy of the work release plan and a copy of any restitution plan of payment to the judicial district department of correctional services quartering and supervising the inmate.

Transferred in Code Supplement 1985 from §247A.5 in Code 1985

246.905 Surrender of earnings.

An inmate employed in the community under a work release plan shall surrender to the judicial district department of correctional services the inmate's total earnings less payroll deductions required by law. The judicial district department of correctional services shall deduct from the earnings in the following order of priority:

1. An amount determined to be the cost to the judicial district department of correctional services for providing food, lodging and clothing for the inmate while under the program.
2. The actual and necessary food, travel and other expenses of the inmate when released from actual confinement under the program.
3. An amount the inmate may be legally obligated to pay for the support of the inmate's dependents, the amount of which shall be paid to the dependents through the local department of human services in the county or city in which the dependents reside.
4. Restitution as ordered by the court pursuant to chapter 910.

Any balance remaining after deductions and payments shall be credited to the inmate's personal account at the judicial district department of correctional services and shall be paid to the inmate upon release. An inmate so employed shall be paid a fair and reasonable wage in accordance with the prevailing wage scale for such work and shall work at fair and reasonable hours per day and per week.

Transferred in Code Supplement 1985 from §247A.7 in Code 1985

246.906 Status of inmates on work release.

An inmate employed in the community under this chapter is not an agent, employee, or involuntary servant of the department of corrections nor the judicial district department of correctional services while released from confinement under the terms of a work release plan. If an inmate suffers an injury arising out of or in the course of the inmate's employment under this chapter, the inmate's recovery shall be from the insurance carrier of the employer of the project and no proceedings for compensation shall be maintained against the insurance carrier of the state institution, the state, the insurance carrier of the judicial district department of correctional services, or the judicial district department of correctional services, and there is no employer-employee relationship between the inmate and the state institution or the judicial district department of correctional services.

Transferred in Code Supplement 1985 from §247A.8 in Code 1985

246.907 Parole not affected.

This chapter does not affect eligibility for parole under chapter 906 or diminution of confinement of any inmate released under a work release plan.

Transferred in Code Supplement 1985 from §247A.9 in Code 1985

246.908 Alleged work release violators—temporary confinement by counties—reimbursement.

1. Upon request by the Iowa department of corrections or a judicial district department of correctional services a county shall provide temporary confinement for alleged violators of work release conditions if space is available.

2. The Iowa department of corrections shall negotiate a reimbursement rate with each county for the temporary confinement of alleged violators of work release conditions who are in the custody of the director of the Iowa department of corrections or who are housed or supervised by the judicial district department of correctional services. The amount to be reimbursed shall be determined by multiplying the number of days a person is confined by the average daily cost of confining a person in the county facility as negotiated with the department. Payment shall be made upon submission of a voucher executed by the sheriff and approved by the director of the Iowa department of corrections.

85 Acts, ch 21, §40 HF 186
Transferred in Code Supplement 1985 from §247A.10 in Code 1985
Subsection 1 amended

246.909 Work release violators—reimbursement to the department of corrections for transportation costs.

A work release client who escapes or participates in an act of absconding from the facility the client is assigned to shall reimburse the department of corrections for the cost of transportation incurred because of the escape or act of absconding. The amount of reimbursement shall be the actual cost incurred by the department and shall be credited to the support account from which the billing occurred. The director of the department of corrections shall recommend rules pursuant to chapter 17A, subject to approval by the board of corrections pursuant to section 246.105, subsection 7, to implement this section.

Transferred in Code Supplement 1985 from §247A.11 in Code 1985

CHAPTER 246A

CORRECTIONAL RELEASE CENTER

Repealed by 85 Acts, ch 21, §53 HF 186; see §246.206

CHAPTER 247

INTERSTATE CORRECTIONS COMPACT

Sections 247.29–247.32 repealed by 85 Acts, ch 21, §53 HF 186,
and §247.29–247.31 also repealed by ch 197, §46 SF 570; for §247.32,
see §246.105, 904.6, and 905.7(4)

Section 247.40 transferred to new chapter 907A; 85 Acts,
ch 21, §54 HF 186

For earlier repeals of other sections in former chapter 247, See Code 1985

247.1 Citation.

This chapter may be cited as the “Interstate Corrections Compact.”

Transferred in Code Supplement 1985 from §218B.1 in Code 1985

247.2 Corrections compact.

The interstate corrections compact is hereby enacted into law and entered into by this state with any other states legally joining therein in the form substantially as follows:

INTERSTATE CORRECTIONS COMPACT
ARTICLE I—PURPOSE AND POLICY

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of co-operation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of co-operation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

ARTICLE II—DEFINITIONS

As used in this compact, unless the context clearly requires otherwise:

1. "State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the commonwealth of Puerto Rico.
2. "Sending state" means a state party to this compact in which conviction or court commitment was had.
3. "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.
4. "Inmate" means an offender who is committed, under sentence to or confined in a penal or correctional institution.
5. "Institution" means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates may lawfully be confined.

ARTICLE III—CONTRACTS

Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.
2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.
3. Participation in programs of inmate work, if any; the disposition or crediting of payments received by inmates on account of the work; and the crediting of proceeds from or disposal of products resulting from the work.
4. Delivery and retaking of inmates.
5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV—PROCEDURES AND RIGHTS

Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party

state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of article III.

Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of the inmate's record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or the inmate's status changed on account of any action or proceeding in which the inmate could have participated if confined in any appropriate institution of the sending state located within such state.

The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in their exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V—ACTS NOT REVIEWABLE IN RECEIVING STATE—EXTRADITION

Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

An inmate who escapes from an institution in which the inmate is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI—FEDERAL AID

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII—ENTRY INTO FORCE

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

ARTICLE VIII—WITHDRAWAL AND TERMINATION

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

ARTICLE IX—OTHER ARRANGEMENTS UNAFFECTED

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of co-operative institutional arrangements.

ARTICLE X—CONSTRUCTION AND SEVERABILITY

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the Constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

85 Acts, ch 21, §34 HF 186

Transferred in Code Supplement 1985 from §218B.2 in Code 1985

Article III, subsection 3 amended

247.3 Duty of director.

The director of the Iowa department of corrections shall do all things necessary or incidental to the carrying out of the compact.

Transferred in Code Supplement 1985 from §218B.3 in Code 1985

CHAPTER 247A

WORK RELEASE FOR INMATES OF INSTITUTIONS

Section 247A.1 repealed by 85 Acts, ch 21, §53 HF 186

Sections 247A.2-247A.5 and 247A.7-247A.11 transferred in Code Supplement 1985 to division IX of new chapter 246; 85 Acts, ch 21, §54 HF 186

Section 247A.6 was repealed by 76 Acts, ch 1245, §525

CHAPTER 249A

MEDICAL ASSISTANCE

249A.3 Eligibility.

The extent of and the limitations upon eligibility for assistance under this chapter shall be as prescribed by this section, and by laws appropriating funds therefor.

1. Medical assistance shall be provided to, or on behalf of, any individual or family residing in the state of Iowa, including those residents who are temporarily absent from the state, who:

a. Is a recipient of federal supplementary security income or who would be eligible for federal supplemental security income if living in their own home.

b. Is a recipient of aid to families with dependent children payments under chapter 239 or is an individual who would be eligible for unborn child payments under the aid to families with dependent children program, as authorized by Title

IV-A of the federal Social Security Act, if the aid to families with dependent children program under chapter 239 provided for unborn child payments during the entire pregnancy.

c. Was a recipient of one of the previous categorical assistance programs as of December 31, 1973, and would continue to meet the eligibility requirements for one of the previous categorical assistance programs as the requirements existed on that date.

d. Is a child up to one year of age who was born on or after October 1, 1984 to a woman receiving medical assistance on the date of the child's birth, who continues to be a member of the mother's household, and whose mother continues to receive medical assistance.

2. Medical assistance may also, within the limits of available funds and in accordance with section 249A.4, subsections 1 and 2, be provided to, or on behalf of, other individuals and families who are not excluded under subsection 4 of this section and whose incomes and resources are insufficient to meet the cost of necessary medical care and services in accordance with the following order of priorities:

a. Individuals who are receiving care in a hospital or in a basic nursing home, intermediate nursing home, skilled nursing home or extended care facility, as defined by section 135C.1, and who meet all eligibility requirements for federal supplementary security income except that their income exceeds the allowable maximum therefor, but whose income is not in excess of the maximum established by subsection 4 for eligibility for medical assistance and is insufficient to meet the full cost of their care in the hospital or health care facility on the basis of standards established by the department.

b. Individuals under twenty-one years of age living in a licensed foster home, or in a private home pursuant to a subsidized adoption arrangement, for whom the department accepts financial responsibility in whole or in part and who are not eligible under subsection 1.

c. Individuals who are receiving care in an institution for mental diseases, and who are under twenty-one years of age and whose income and resources are such that they are eligible for aid to dependent children under chapter 239, or who are sixty-five years of age or older and who meet the conditions for eligibility in paragraph "a" of this subsection.

d. Individuals and families whose incomes and resources are such that they are eligible for federal supplementary security income or aid to dependent children, but who are not actually receiving such public assistance.

e. Individuals who are receiving state supplementary assistance as defined by section 249.1 or other persons whose needs are considered in computing the recipient's assistance grant.

f. Individuals under twenty-one years of age who qualify on a financial basis for, but who are otherwise ineligible to receive aid to dependent children.

g. Individuals and families who would be eligible under subsection 1 or 2 of this section except for excess income or resources, or a reasonable category of those individuals and families.

h. Individuals who have attained the age of twenty-one but have not yet attained the age of sixty-five who qualify on a financial basis for, but who are otherwise ineligible to receive, federal supplementary security income or aid to dependent children.

Notwithstanding the provisions of this subsection establishing priorities for individuals and families to receive medical assistance, the department may determine within the priorities listed in this subsection which persons shall receive medical assistance based on income levels established by the department, subject to the limitations provided in subsection 4.

3. Additional medical assistance may, within the limits of available funds and

in accordance with section 249A.4, subsections 1 and 2, be provided to, or on behalf of, either:

a. Only those individuals and families described in subsection 1 of this section;
or

b. Those individuals and families described in both subsections 1 and 2.

4. Discretionary medical assistance, within the limits of available funds and in accordance with section 249A.4, subsections 1 and 2, may be provided to or on behalf of those individuals and families described in subsection 2, paragraph "g" of this section.

5. Assistance shall not be granted under this chapter to:

a. An individual or family whose income, considered to be available to the individual or family, exceeds federally prescribed limitations.

b. An individual or family whose resources, considered to be available to the individual or family, exceed federally prescribed limitations.

6. In determining the eligibility of an individual for medical assistance under this chapter, the department shall include, as resources still available to the individual, those nonexempt resources or interests in resources, owned by the individual within the preceding twenty-four months, which the individual gave away or sold at less than fair market value for the purpose of establishing eligibility for medical assistance under this chapter.

a. A transaction described in this subsection is presumed to have been for the purpose of establishing eligibility for medical assistance under this chapter unless the individual furnishes convincing evidence to establish that the transaction was exclusively for some other purpose.

b. The value of a resource or an interest in a resource in determining eligibility under this subsection is the fair market value of the resource or interest at the time of the transaction less the amount of any compensation received.

c. If a transaction described in this subsection results in uncompensated value exceeding twelve thousand dollars, the department shall provide by rule for a period of ineligibility which exceeds twenty-four months and has a reasonable relationship to the uncompensated value above twelve thousand dollars.

85 Acts, ch 146, §2 SF 588
Subsection 1 NEW paragraph d

249A.11 Payment for patient care segregated.

A state hospital-school or mental health institute, upon receipt of any payment made under this chapter for the care of any patient, shall segregate an amount equal to that portion of the payment which is required by law to be made from nonfederal funds. The money segregated shall be deposited in the medical assistance fund of the department of human services.

85 Acts, ch 146, §3 SF 588
Section amended

249A.14 County attorney to enforce.

It is the intent of the general assembly that violations of law relating to aid to dependent children, medical assistance, and supplemental assistance shall be prosecuted by county attorneys. Area prosecutors of the office of the attorney general shall provide assistance in prosecution as required.

85 Acts, ch 195, §27 SF 329
Section amended

CHAPTER 249B

COMMISSION ON THE AGING

249B.31 Purpose.

The purpose of sections 249B.31 through 249B.36 is to establish the long-term care resident's aide program operated by the Iowa commission on the aging in accordance with the requirements of the Older Americans Act of 1965, 42 U.S.C. §§3026(a)(6)(d), 3027(a)(12) and 3030d(a)(10) amended to July 1, 1983, and to adopt the supporting federal regulations and guidelines for its implementation. In accordance with chapter 17A, the commission on the aging shall adopt and enforce rules for the implementation of sections 249B.31 through 249B.36.

85 Acts, ch 186, §3 HF 398
Section amended

249B.32 Definitions.

As used in sections 249B.33 through 249B.36:

1. "*Administrative action*" means an action or decision made by an owner, employee, or agent of a long-term care facility, or by a governmental agency, which affects the service provided to residents covered in sections 249B.33 through 249B.36.
2. "*Long-term care facility*" means a long-term care unit of a hospital, a foster group home, a group living arrangement, or a facility licensed under section 135C.1 whether the facility is public or private.
3. "*Resident's aide program*" means the state long-term care ombudsman program operated by the commission on the aging and administered by the long-term care resident's aide.
4. "*Federal Act*" means the Older Americans Act of 1965, 42 U.S.C. secs. 3001 et seq., as amended to July 1, 1983.

85 Acts, ch 186, §4 HF 398
Unnumbered paragraph 1 and subsection 1 amended

249B.36 Confidentiality of complainant.

The name of the person who files a complaint with the commission, long-term care resident's aide, or a care review committee regarding a person in a long-term care facility shall be kept confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than commission employees or care review committee members involved in the initial complaint.

85 Acts, ch 186, §1 HF 398
NEW section

CHAPTER 250

COMMISSIONS OF VETERAN AFFAIRS

250.3 County commission of veteran affairs.

The county commission of veteran affairs shall consist of three persons, all of whom shall be honorably discharged persons who served in the military or naval forces of the United States in any war, including World War I at any time between April 6, 1917, and November 11, 1918, both dates inclusive, World War II at any time between December 7, 1941, and December 31, 1946, both dates inclusive, the Korean Conflict at any time between June 25, 1950, and January 31, 1955, both dates inclusive, and the Vietnam Conflict at any time between August 5, 1964, and May 7, 1975, both dates inclusive. If possible each member of the commission shall be a veteran of a different war or conflict, so as to divide membership among the persons who served in World War I, World War II, the Korean Conflict and Vietnam Conflict,

however, this qualification does not preclude membership to a veteran who served in more than one of the wars or conflicts.

85 Acts, ch 67, §26 SF 121
Section amended

250.13 Burial—expenses.

The commission is responsible for the interment in a suitable cemetery of the bodies of any honorably discharged person who served in the military or naval forces of the United States during any war, including World War I at any time between April 6, 1917 and November 11, 1918, both dates inclusive, World War II at any time between December 7, 1941, and December 31, 1946, both dates inclusive, the Korean Conflict at any time between June 25, 1950, and January 31, 1955, both dates inclusive, and the Vietnam Conflict at any time between August 5, 1964, and May 7, 1975, both dates inclusive, or the spouse, surviving spouse, or child of the person, if the person has died without leaving sufficient means to defray the funeral expenses. The commission may pay such expenses in a sum not exceeding an amount established by the board of supervisors.

85 Acts, ch 67, §27 SF 121
Section amended

250.14 County appropriation.

The board of supervisors of each county may appropriate moneys for the benefit of, and to pay the funeral expenses of honorably discharged, indigent persons who served in the military or naval forces of the United States in any war including World War I at any time between April 6, 1917, and November 11, 1918, both dates inclusive, World War II at any time between December 7, 1941, and December 31, 1946, both dates inclusive, the Korean Conflict at any time between June 25, 1950, and January 31, 1955, both dates inclusive, and the Vietnam Conflict at any time between August 5, 1964, and May 7, 1975, both dates inclusive, and their indigent spouses, surviving spouses, and minor children not over eighteen years of age, having a legal residence in the county.

The appropriation shall be expended by the joint action and control of the board of supervisors and the county commission of veteran affairs.

85 Acts, ch 67, §28 SF 121
Unnumbered paragraph 1 amended

250.16 Markers for graves.

The county commission of veteran affairs may furnish a suitable and appropriate metal marker, at a cost not exceeding fifteen dollars each, for the grave of each honorably discharged person, who served in the military or naval forces of the United States during any war, including World War I at any time between April 6, 1917, and November 11, 1918, both dates inclusive, World War II at any time between December 7, 1941, and December 31, 1946, both dates inclusive, the Korean Conflict at any time between June 25, 1950, and January 31, 1955, both dates inclusive, and the Vietnam Conflict at any time between August 5, 1964, and May 7, 1975, both dates inclusive, and who is buried within the limits of the township or municipality, to be placed at the individual's grave to permanently mark and designate the grave for memorial purposes. The expenses shall be paid from any funds raised as provided in this chapter.

85 Acts, ch 67, §29 SF 121
Section amended

250.17 Maintenance of graves.

The county boards of supervisors shall each year appropriate and pay to the owners of, or to the public board or officers having control of cemeteries within the state in which any such deceased service person is buried, a sum sufficient to pay for the care and maintenance of the lots on which they are buried, in all cases in which provision for such care is not otherwise made.

85 Acts, ch 67, §30 SF 121
Section amended

CHAPTER 252A

UNIFORM SUPPORT OF DEPENDENTS LAW

252A.6 How commenced—trial.

1. A proceeding under this chapter shall be commenced by a petitioner, or a petitioner's representative, by filing a verified petition in the court in equity in the county of the state wherein the petitioner resides or is domiciled, showing the name, age, residence and circumstances of the petitioner, alleging that the petitioner is in need of and is entitled to support from the respondent, giving the respondent's name, age, residence and circumstances, and praying that the respondent be compelled to furnish such support. The petitioner may include in or attach to the petition any information which may help in locating or identifying the respondent including, but without limitation by enumeration, a photograph of the respondent, a description of any distinguishing marks of the respondent's person, other names and aliases by which the respondent has been or is known, the name of the respondent's employer, the respondent's fingerprints, or social security number.

2. If the respondent be a resident of or domiciled in such state and the court has or can acquire jurisdiction of the person of the respondent under existing laws in effect in such state, such laws shall govern and control the procedure to be followed in such proceeding.

3. If the court of this state acting as an initiating state finds that the petition sets forth facts from which it may be determined that the respondent owes a duty of support and that a court of the responding state may obtain jurisdiction of the respondent or the respondent's property, it shall so certify and shall cause three copies of (a) the petition (b) its certificate and (c) this chapter to be transmitted to the court in the responding state. If the name and address of such court is unknown and the responding state has an information agency comparable to that established in the initiating state it shall cause such copies to be transmitted to the state information agency or other proper official of the responding state, with a request that it forward them to the proper court, and that the court of the responding state acknowledge their receipt to the court of the initiating state.

4. When the court of this state, acting as a responding state, receives from the court of an initiating state the aforesaid copies, it shall docket the cause, notify the county attorney or other official acting as petitioner's representative, set a time and place for a hearing, and take such action as is necessary in accordance with the laws of this state to serve notice and thus obtain jurisdiction over the respondent. If a court of the state, acting as a responding state, is unable to obtain jurisdiction of the respondent or the respondent's property due to inaccuracies or inadequacies in the petition or otherwise, the court shall communicate this fact to the court in the initiating state, shall on its own initiative use all means at its disposal to trace the respondent or the respondent's property, and shall hold the case pending the receipt of more accurate information or an amended petition from the court in the initiating state.

However, if the court of the responding state is unable to obtain jurisdiction because the respondent resides in or is domiciled or found in another county of the responding state, the papers received from the court of the initiating state may be forwarded by the court of the responding state which received the papers to the court of the county in the responding state in which the respondent resides or is domiciled or found, and the court of the initiating state shall be notified of the transfer. The court of the county where the respondent resides or is domiciled or found shall acknowledge receipt of the papers to both the court of the initiating state and the court of the responding state which forwarded them, and shall take full jurisdiction of the proceedings with the same powers as if it had received the papers directly from the court of the initiating state.

5. It shall not be necessary for the petitioner or the petitioner's witnesses to appear personally at such hearing, but it shall be the duty of the petitioner's representative of the responding state to appear on behalf of and represent the petitioner at all stages of the proceeding.

6. If at such hearing the respondent controverts the petition and enters a verified denial of any of the material allegations thereof, the judge presiding at such hearing shall stay the proceedings and transmit to the judge of the court in the initiating state a transcript of the clerk's minutes showing the denials entered by the respondent.

7. Upon receipt by the judge of the court in the initiating state of such transcript, such court shall take such proof, including the testimony of the petitioner and the petitioner's witnesses and such other evidence as the court may deem proper, and, after due deliberation, the court shall make its recommendation, based on all of such proof and evidence, and shall transmit to the court in the responding state an exemplified transcript of such proof and evidence and of its proceedings and recommendation in connection therewith.

8. Upon the receipt of such transcript, the court in the responding state shall resume its hearing in the proceeding and shall give the respondent a reasonable opportunity to appear and reply.

9. Upon the resumption of such hearing, the respondent shall have the right to examine or cross-examine the petitioner and the petitioner's witnesses by means of depositions or written interrogatories, and the petitioner shall have the right to examine or cross-examine the respondent and the respondent's witnesses by means of depositions or written interrogatories.

10. If a respondent, duly summoned by a court in the responding state, willfully fails without good cause to appear as directed in the summons, the respondent shall be punished in the same manner and to the same extent as is provided by law for the punishment of a defendant or witness who willfully disobeys a summons or subpoena duly issued out of such court in any other action or proceeding cognizable by said court.

11. If, on the return day of the summons, the respondent appears at the time and place specified in the summons and fails to answer the petition or admits the allegations of the petition, or, if, after a hearing has been duly held by the court in the responding state in accordance with this section, the court has found and determined that the prayer of the petitioner, or any part of the prayer, is supported by the evidence adduced in the proceeding, and that the petitioner is in need of and entitled to support from the respondent, the court shall make and enter an order directing the respondent to furnish support to the petitioner and to pay a sum as the court shall determine, having due regard to the parties' means and circumstances. A certified copy of the order shall be transmitted by the court to the court in the initiating state and the copy shall be filed with and made a part of the records of the court in the proceeding. Upon entry of an order for support or upon failure of a person to make payments pursuant to an order for support, the court may require the respondent to provide security, a bond, or other guarantee which the court determines is satisfactory to secure the payment of the support. Upon the respondent's failure to pay the support under the order, the court may declare the security, bond, or other guarantee forfeited.

12. The court making such order may require the respondent to make payment at specified intervals to the clerk of the district court, or to the dependent, or to any state or county agency, and to report personally to the sheriff or any other official, at such times as may be deemed necessary.

13. A respondent who shall willfully fail to comply with or violate the terms or conditions of the support order or of the respondent's probation shall be punished by the court in the same manner and to the same extent as is provided by law for a contempt of such court or a violation of probation ordered by such court in any other suit or proceeding cognizable by such court.

14. The court of this state when acting as a responding state shall have the following duties which may be carried out through the clerk of the court: Upon receipt of a payment made by the respondent pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating state, and upon request to furnish to the court of the initiating state a certified statement of all payments made by the respondent.

15. Any order of support issued by a court of the state acting as a responding state shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

16. The court of the initiating state shall receive and accept all payments made by the respondent to the probation department or bureau of the court of the responding state and transmitted by the latter on behalf of the respondent. Upon receipt of any such payment, and under such rules as the court of the initiating state may prescribe, the court, or its probation department or bureau, as the court may direct, shall deliver such payment to the dependent person entitled thereto, take a proper receipt and acquittance therefor, and keep a permanent record thereof.

85 Acts, ch 100, §1 SF 244
Subsection 11 amended

CHAPTER 252C

CHILD SUPPORT DEBTS—ADMINISTRATIVE PROCEDURES

252C.7 Employers—assignments of earnings.

In addition to other remedies provided by law for the enforcement of a support obligation, the employer of a responsible person owing a support debt shall honor a duly executed assignment of current or future earnings presented by the director to the employer as a plan to satisfy or retire the support debt. The assignment is effective until released in writing by the director. The employer is entitled to receive from the debtor a fee of two dollars for each remittance under the assignment. Payment of moneys pursuant to the assignment of earnings is a full acquittance under a contract of employment. The director is released from liability for improper receipt of moneys under an assignment of earnings upon the return of the moneys.

85 Acts, ch 178, §1 HF 495
Section amended

252C.9 Court order prevails.

If an order of the director issued pursuant to this chapter conflicts with an order of a court, the court order prevails.

85 Acts, ch 195, §28 SF 329
Section amended

252C.11 Security for payment of support—forfeiture.

Upon entry of a court order or upon the failure of a person to make payments pursuant to a court order, the court may require the person to provide security, a bond, or other guarantee which the court determines is satisfactory to secure the payment of the support obligation. Upon the person's failure to pay the support obligation under the court order, the court may declare the security, bond, or other guarantee forfeited.

85 Acts, ch 100, §2 SF 244
NEW section

CHAPTER 252D

DELINQUENT SUPPORT PAYMENTS—ASSIGNMENT OF INCOME

252D.1 Support definition—delinquent support payments—assignment of income.

1. As used in this chapter, unless the context otherwise requires, “support” or “support payments” means any amount which the court may require a person to pay for the benefit of a child under a temporary order or a final judgment or decree, and may include child support, maintenance, and, if contained in a child support order, spousal support, and any other term used to describe these obligations. These obligations may include support for a child who is between the ages of eighteen and twenty-two years and who is regularly attending an approved school in pursuance of a course of study leading to a high school diploma or its equivalent, or regularly attending a course of vocational technical training either as a part of a regular school program or under special arrangements adapted to the individual person’s needs, or is, in good faith, a full-time student in a college, university, or area school, or has been accepted for admission to a college, university, or area school and the next regular term has not yet begun; and may include support for a child of any age who is dependent on the parties to the dissolution proceedings because of physical or mental disability.

2. All orders of support shall direct the payment of the support to the clerk of the district court pursuant to section 598.22.

3. If support payments ordered under section 252A.6, subsection 12, section 598.21, or section 675.25, or under a comparable statute of a foreign jurisdiction, as certified to the child support recovery unit established in section 252B.2 are not paid to the clerk of the district court pursuant to section 598.22 and become delinquent in an amount equal to the payment for one month, the clerk of the district court or the child support recovery unit shall order an assignment of income and notify an employer, trustee, or other payor by certified mail of the order of the assignment of income requiring the withholding of specified sums to be deducted from the delinquent person’s periodic earnings, trust income, or other income sufficient to pay the support obligation and, except for trusts governed by the federal Retirement Equity Act of 1984, Pub. L. No. 98-397, requiring the payment of such sums to the clerk of the district court. For trusts governed by the federal Retirement Equity Act of 1984, Pub. L. No. 98-397, the assignment of income shall require the payment of such sums to the alternate payee. The assignment of income is binding on an existing or future employer, trustee, or other payor ten days after the receipt of the order by certified mail. The amount of an assignment of income shall not exceed the amount specified in 15 U.S.C. §1673(b). The assignment of income has priority over a garnishment or an assignment for a purpose other than the support of the dependents in the court order being enforced. The clerk of the district court or the child support recovery unit may modify the assignment of income on the full payment of the delinquency or in an instance where the amount being withheld exceeds the amount specified in 15 U.S.C. §1673(b), or may revoke the assignment of income upon the termination of parental rights, emancipation, death or majority of the child, or upon a change of custody.

4. A person entitled by court order to receive support payments or a person responsible for enforcing such a court order may petition the clerk of the district court for an assignment of income. If the petition is verified and establishes that support payments are delinquent in an amount equal to the payment for one month and if the clerk of the district court determines, after providing an opportunity for a hearing, that notice of the mandatory assignment of income as provided in section 252D.3 has been given, the clerk of the district court shall order an assignment of income under subsection 3.

252D.3 Notice of assignment.

All orders for support entered on or after July 1, 1984 shall notify the person ordered to pay support of the mandatory assignment of income required under section 252D.1. However, for orders for support entered before July 1, 1984, the clerk of the district court, the child support recovery unit, or the person entitled by the order to receive the support payments, shall notify each person ordered to pay support under such orders of the mandatory assignment of income required under section 252D.1. The notice shall be sent by certified mail to the person's last known address or the person shall be personally served with the notice in the manner provided for service of an original notice at least fifteen days prior to the filing of a petition under section 252D.1, subsection 3 or the ordering of an assignment of income under section 252D.1, subsection 2 or 3. A person ordered to pay support may waive the right to receive the notice at any time.

85 Acts, ch 100, §4 SF 244
Section amended

252D.4 Duties of payor—liability.

1. The employer, trustee, or other payor who receives an order of assignment by certified mail pursuant to section 252D.1, subsection 3 shall deliver, on the next working day, a copy of the order to the person named in the order. The payor may deduct not more than two dollars from each payment from the employee's wages as a reimbursement for the payor's costs relating to the assignment. The payor's compliance with the order of assignment satisfies the payor's obligation to the person for the amount of income withheld and transmitted to the clerk of the district court.

2. An employer who willfully discharges an employee or refuses to hire a person because of the entry of an order of assignment under this chapter is guilty of a simple misdemeanor.

3. An employer, trustee, or other payor who receives an order of assignment pursuant to section 252D.1, subsection 2, is liable for the amount which the employer, trustee, or other payor willfully fails to withhold from amounts due the person named in the order, together with costs, interest, and reasonable attorney fees related to the collection of the amounts due from the employer, trustee, or other payor.

85 Acts, ch 100, §5 SF 244; 85 Acts, ch 178, §3 HF 495
Subsection 1 amended
NEW subsection 3

252D.5 Other remedies.

The remedies provided in this chapter do not exclude the use of other civil or criminal remedies in enforcing support obligations.

85 Acts, ch 100, §6 SF 244
Section amended

252D.6 Court certification. Repealed by 85 Acts, ch 178, §16. HF 495**CHAPTER 257****DEPARTMENT OF PUBLIC INSTRUCTION**

State board to develop recommendations and procedures, implement concepts, and develop model policies and curricula; deadlines, January 15, 1986, to January 1, 1987; see 85 Acts, ch 212, §16-18, 20 HF 686

257.10 Specific powers and duties.

It shall be the responsibility of the state board to exercise the following specific powers and perform the following duties:

1. Employ adequate clerical help to keep such records as are necessary to set forth clearly all actions and proceedings of the state board.

2. Direct the distribution of all moneys under the provisions of the law for the distribution of various state and federal aids to schools, when the amounts of the same have been computed by the commissioner of public instruction according to formulae provided by law and rules of the state board.

3. Adopt and transmit to the state comptroller as provided by law, on blanks provided by the state comptroller for that purpose, on or before September 1 prior to the meeting of each regular session of the general assembly, estimates of expenditure requirements for all functions and services, including the department of public instruction, under the supervision of the state board, when the same have been prepared and submitted to the state board by the commissioner of public instruction, except as otherwise provided by law, for each fiscal year of the ensuing biennium.

4. Advise and counsel with the commissioner of public instruction and other school officials and citizens concerning the school laws and the rules and regulations adopted pursuant thereto; and to review the record and decision of the commissioner of public instruction in all appeals heard and decided by said commissioner, whereupon it shall approve same or may direct a rehearing before said commissioner.

5. Authorize, approve, and require to be used such forms as are needed to promote uniformity, accuracy, and completeness in executing contracts, keeping records, and in pupil and cost accounting, making reports, and to require such reports to be made in such manner as may be recommended by the commissioner of public instruction. Prior to January 1, 1978, approve a uniform system of program accounting to be implemented by all school districts pursuant to plans submitted by the commissioner.

6. Approve plans when submitted by the commissioner of public instruction for co-operating with the federal government whenever it may find it desirable to do so, and provide for the acceptance and the administration of funds, subject to the approval of the legislature, which may be appropriated by Congress and apportioned to the state for any or all educational purposes relating to the public school system and for the acceptance of surplus commodities for distribution when made available by any government agency.

7. Approve plans submitted by the commissioner for co-operating with all other agencies, federal, state, county and municipal, in the development of regulations and in the enforcement of laws for which the state board and such agencies are jointly responsible and approve plans for co-operating with other proper agencies in the improvement of conditions relating to the state system of public education.

8. Adopt a long-range program for the state system of public education based upon special studies, surveys, research, and recommendations submitted by or proposed under the direction of the commissioner of public instruction.

9. Constitute a continuing research commission as to public school matters in the state and cause to be prepared and submitted to each regular session of the general assembly a report containing such recommendations as to revisions, amendments, and new provisions of the law as the state board has decided should be submitted to the legislature for its consideration.

10. Constitute the state board for vocational education, and have and exercise all the powers and perform all the duties imposed upon said board under the provisions of chapters 258 and 259, including both vocational education and vocational rehabilitation.

11. Constitute the board of educational examiners for the certification of administrative, supervisory and instructional personnel for the public school systems of the state; prescribe types and classes of certificates to be issued, the subjects and fields and positions which certificates cover and determine the requirements for certificates; establish standards for the acceptance of degrees, credits, courses, and other evidences of training and preparation from institutions of higher learning, junior colleges, or other training institutions, both public and private, within or without the state. The state board shall perform duties imposed upon the board of educational examiners under chapter 260.

12. Prescribe such minimum standards and rules and regulations as are required by law or recommended by the commissioner of public instruction in accordance with law, and as it may find desirable to aid in carrying out the provisions of the Iowa school laws.

13. At the request of an employee through contractual agreement the board may arrange for the purchase of group or individual annuity contracts for any of its respective employees from any company the employee may choose that is authorized to do business in this state and through an Iowa-licensed insurance agent that the employee may select, for retirement or other purposes and may make payroll deductions in accordance with such arrangements for the purpose of paying the entire premium due and to become due under such contract. The deductions shall be made in the manner which will qualify the annuity premiums for the benefits afforded under section 403b of the Internal Revenue Code of 1954 and amendments thereto. The employee's rights under such annuity contract shall be nonforfeitable except for the failure to pay premiums. Whenever an existing tax-sheltered annuity contract is to be replaced by a new contract the agent or representative of the company shall submit a letter of intent to the company being replaced, to the insurance commissioner of the state of Iowa, and to the agent or representative's own company at least thirty days prior to any action by registered mail. This letter of intent shall contain the policy number and description of the contract being replaced and a description of the replacement contract.

14. Approve, co-ordinate, and supervise the use of electronic data processing by local school districts, area education agencies and merged areas. A committee, consisting of the commissioner of public instruction, the director of the department of general services, the state comptroller, or their designees, and two persons knowledgeable in the area of administrative-instructional computer systems to be appointed by the governor, shall assist and advise the state board of public instruction in approving, co-ordinating and supervising the use of electronic data processing computers by local school districts, area education agencies and merged areas. The committee shall further inventory current practice and prepare and recommend a statewide plan for the use of electronic data processing computers in order to prevent the unnecessary proliferation of computers. These recommendations shall be submitted to the general assembly by December 1 of each year. For purposes of this subsection the term "electronic data processing computers" shall refer to equipment having as a component thereof a memory core to store information.

15. Approve the salaries for area education agency administrators set by the area education agency boards.

16. Develop and adopt a five-year plan for the achievement of common and significant educational goals in Iowa and shall update the plan annually and issue an annual report of progress. In the development of the plan the board shall solicit the views of associations and individuals interested in educating Iowa's children and youth.

17. Adopt rules establishing permissible fees for materials and services charged by area education agencies.

85 Acts, ch 1, §1 SF 78; 85 Acts, ch 138, §1 HF 552; 85 Acts, ch 212, § 21, 22 HF 686
Section amended
NEW subsections 16 and 17

257.11 Commissioner appointed.

The state board shall appoint, effective July 1, 1987, and each four years thereafter, subject to confirmation of the senate, a commissioner of public instruction. The state board shall evaluate and may dismiss the commissioner.

85 Acts, ch 212, §1 HF 686
Section amended

257.12 Qualifications of commissioner.

Commencing July 1, 1987, the commissioner shall be an individual with a background in education and administration experience. The deputy commissioner shall also meet these criteria.

85 Acts, ch 212, §2 HF 686
Section struck and rewritten

257.13 Oath.

The commissioner and deputy commissioner shall take the oath of office prescribed by section 63.10.

85 Acts, ch 212, §22 HF 686
Section amended

257.14 Bond.

The commissioner and any members of the commissioner's staff designated by the state board shall give bond as provided in section 64.6.

85 Acts, ch 212, §22, 23 HF 686
Section amended

257.15 Office in capitol.

The commissioner shall maintain an office in the department of public instruction in the capitol of the state.

85 Acts, ch 212, §22 HF 686
Section amended

257.16 Executive officer.

The commissioner shall be the executive officer of the state board.

Editorial correction

257.17 Powers of commissioner.

The commissioner shall have the following powers:

1. Exercise general supervision over the state system of public education, including the public elementary and secondary schools, the junior colleges, and shall have educational supervision over the elementary and secondary schools under the control of a director of a division of the department of human services, and nonpublic schools to the extent that is necessary to ascertain compliance with the provisions of the Iowa school laws.

2. Advise and counsel with the state board on all matters pertaining to education, recommend to the state board such matters as in the commissioner's judgment are necessary to be acted upon, and when approved, to execute or provide for the execution of the same when so directed by the state board.

3. Recommend to the state board for adoption such policies pertaining to the state system of public education as the commissioner may consider necessary for its more efficient operation.

4. Carry out all orders of the state board not inconsistent with state law.

5. Organize, staff and administer the department so as to render the greatest service to public education in the state.

Editorial correction

257.18 Responsibilities of commissioner.

It shall be the responsibility of the commissioner of public instruction to exercise all powers and perform all duties hereinafter listed; provided, in those categories where policies are to be initiated by the commissioner and approved by the state board, such policies are to be executed by the commissioner only after having been approved by the state board.

1. Attend all meetings of the state board, except executive sessions of the state

board, as may be requested by the state board, and call such special meetings of the board as the commissioner may be authorized to call by the president or by written request of five members of the board.

2. Keep such records of the proceedings of the board, including complete minutes, as are necessary to locate and identify the actions of the state board.

3. Act as custodian of a seal for the commissioner's office with which, together with the commissioner's signature, the commissioner shall authenticate all true copies of decisions, acts, or documents.

4. Act as the executive officer of the state board in all matters pertaining to vocational education and vocational rehabilitation.

5. Recommend to the state board the personnel of such committees as are required by law, and to appoint such other committees as may be deemed desirable by the commissioner or the state board for carrying out the provisions of the Iowa school laws.

6. Apportion to the respective school districts of the state all moneys provided by law according to the provisions of the various state and federal aid laws.

7. Provide the same educational supervision for the schools maintained by the commissioner of human services as is provided for the public schools of the state and make recommendations to the commissioner of human services for the improvement of the educational program in those institutions.

8. Recommend ways and means of co-operating with the federal government in carrying out any or all phases of the educational program relating to the state system of public education in which, in the discretion of the board, co-operation is desirable. Recommend policies for administering funds which may be appropriated by Congress and apportioned to the state for any or all educational purposes relating to the public school system, and execute such plans as adopted by the state board.

9. Recommend to the state board policies and ways and means of co-operating with other agencies, federal, state, county and municipal, for carrying out those phases of the program in which co-operation is required by law, or in the discretion of the state board, it is deemed desirable and co-operate with such agencies in planning and bringing about improvements in the educational program.

10. Advise and counsel concerning the interpretation and meaning of the school laws and the rules and regulations adopted pursuant thereto; and, when practicable, amicably adjust and settle such controversies arising thereunder as may be submitted to the commissioner, directly or by appeal, by all persons directly concerned, to hear and decide appeals as provided by law.

11. Prepare for the approval of the state board, such forms and procedures as are deemed necessary to be used by area education agency boards, district boards, school officials, principals, teachers, and other employees, and to insure uniformity, accuracy, and efficiency in keeping records in both pupil and cost accounting, the execution of contracts, and the submission of reports; furnish, when deemed advisable by the commissioner and approved by the state board, those forms which can more economically and efficiently be provided in that manner; and notify the area education agency board, or district board, or school authorities, in any case when any report has not been filed in the manner or on the dates prescribed by law or by regulation of the state board that the school be not approved until the report has been properly filed.

12. Ascertain by inspection, supervision, or otherwise, the condition, needs, and progress of the schools under the supervision of the department and make recommendations to the proper authorities for the correction of deficiencies and the educational and physical improvement of such schools, and recommend to the state board the need for a state audit of the accounts of any school district, area education agency, school official, or any school employee handling school funds when it is apparent that such audit should be made. If deemed advisable the state board may call upon the state auditor to make such an audit and the state auditor shall proceed to do so as soon as practicable.

13. Preserve all reports, documents, and correspondence that may be of a permanent value, which shall be open for inspection under reasonable conditions by any citizen of the state.

14. Keep a record of the business transacted by the commissioner.

15. Endeavor to promote among the people of the state an interest in education.

16. Classify and define the various schools under the supervision of the department, formulate suitable courses of study therefor, and publish and distribute such classifications and courses of study and promote their use.

17. Report to the state comptroller on the first day of January of each year the number of persons of school age in each county and in the area included in each area education agency.

18. Report biennially to the governor, at the time provided by law, the condition of the schools under the commissioner's supervision, including the number and kinds of school districts, the number of schools of each kind, the number and value of schoolhouses, the enrollment and attendance in each county for the previous year, any measures proposed or plans matured for the improvement of the public schools, such financial and statistical information as may be of public importance, and such general information relating to educational affairs and conditions within the state or elsewhere.

19. Direct area education agency administrators to arrange for professional teachers' meetings, demonstration teaching or other field work for the improvement of instruction as best fits the needs of the public schools in each merged area and formulate rules for the administration of this subsection.

20. Develop, print, and disseminate such information and facts as necessary to promote among the people of Iowa an interest and knowledge in education.

21. Cause to be printed in book form, during the months of June and July in the year 1955 and every four years thereafter, if deemed necessary, all school laws then in force with such forms, rulings, and decisions, and such notes and suggestions as may aid school officers in the proper discharge of their duties. A sufficient number shall be furnished to school officers, directors, superintendents, area administrators and others in such numbers as may be reasonably requested.

22. Cause to be printed in pamphlet form after each session of the general assembly any amendments or changes in the school laws with necessary notes and suggestions to be distributed as prescribed in subsection 21 of this section.

23. Prepare and submit to each regular session of the general assembly a report containing the recommendations of the state board as to revisions, amendments, and new provisions of school laws.

85 Acts, ch 212, §21-23 HF 686
Section amended

257.19 Department of public instruction established.

There is hereby established a department of public instruction to act as an administrative, supervisory, and consultative agency under the direction of the commissioner of public instruction and the state board. The department shall be located in the office of the commissioner, and shall assist the commissioner in providing professional leadership and guidance and in carrying out such policies, procedures, and duties authorized by law or by the regulations of the state board, as are found necessary to attain the purposes and objectives of the school laws of Iowa.

85 Acts, ch 212, §21,22 HF 686
Section amended and editorially corrected

257.20 Divisions of department.

The department of public instruction shall be organized into such divisions, branches or sections as may be found desirable and necessary by the commissioner, subject to the approval of the state board, to perform all the proper functions and

render maximum services relating to the operation and improvement of the state system of public education; provided that the organization shall be such as to promote co-ordination of functions and services relating to administration and financial services on the one hand and the improvement of instruction on the other hand.

85 Acts, ch 212, §22 HF 686
Section amended and editorially corrected

257.21 Employees of department.

The commissioner shall appoint all employees, with due regard to their qualifications for the duties to be performed, designate their titles and prescribe their duties. If deemed advisable, the commissioner may for cause effect the removal of any employee in the department of public instruction. The total amount of compensation for employees shall be subject to the limitation of the appropriation and other funds available for the maintenance of the department. The appointment, promotion, demotion, change in salary status or removal for cause of any employee shall be subject to the approval of the state board.

85 Acts, ch 212, §22 HF 686
Section amended and editorially corrected

257.22 Deputy commissioner.

The commissioner shall appoint a deputy commissioner, subject to the approval of the state board, whose qualifications shall be the same as required for the commissioner and whose duties shall be fixed by such commissioner. In the absence or inability of the commissioner, the deputy commissioner shall perform the commissioner's duties.

85 Acts, ch 212, §22, 23 HF 686
Section amended

257.23 Travel expenses.

The commissioner of public instruction, the commissioner's assistants, and the employees of the department shall receive their necessary travel expenses incurred in the performance of their official duties.

85 Acts, ch 212, §21, 23 HF 686
Section amended

257.24 Salaries of commissioner and assistants.

The salary of the commissioner of public instruction shall be fixed by the general assembly. The salary of the deputy commissioner shall be fixed by the state board, however, such salary and the salary of any other employee of the department of public instruction shall not exceed eighty-five percent of the salary of the commissioner. All appointments to the professional staff of the department of public instruction shall be without reference to political party affiliation, religious affiliation, sex, or marital status, but shall be based solely upon fitness, ability and proper qualifications for the particular position. The professional staff, including the commissioner, shall serve at the discretion of the state board; provided, however, that no such person shall be dismissed for cause without at least ninety days' notice, except in cases of conviction of a felony or cases involving moral turpitude. In cases of procedure for dismissal, the accused shall have the same right to notice and hearing as teachers in the public school systems as provided in section 279.27, or as much thereof as may be applicable.

85 Acts, ch 212, §21, 22 HF 686
Section amended

257.25 Educational standards.

In addition to the responsibilities of the state board of public instruction and the commissioner of public instruction under other provisions of the Code, the state board of public instruction shall, except as otherwise provided in this section,

establish standards for approving all public and nonpublic schools in Iowa offering instruction at any or all levels from the prekindergarten level through grade twelve. A nonpublic school which offers only a prekindergarten program may, but shall not be required to, seek and obtain approval under this chapter. A list of approved schools shall be maintained by the department of public instruction. The state board shall promulgate rules to require that a multicultural, nonsexist approach is used by school districts. The educational program shall be taught from a multicultural, nonsexist approach. The approval standards established by the state board shall delineate and be based upon the educational program described below:

1. If a school offers a prekindergarten program, the program shall be designed to help children to work and play with others, to express themselves, to learn to use and manage their bodies, and to extend their interests and understanding of the world about them. The prekindergarten program shall relate the role of the family to the child's developing sense of self and perception of others. Planning and carrying out prekindergarten activities designed to encourage co-operative efforts between home and school shall focus on community resources. A prekindergarten teacher employed by a school corporation or county or joint county school system, or its successor agency, and receiving a salary from state and local funds shall hold a certificate certifying that the holder is qualified to teach in prekindergarten.

2. The kindergarten program shall include experiences designed to develop healthy emotional and social habits and growth in the language arts and communication skills, as well as a capacity for the completion of individual tasks, and protection and development of physical being. A kindergarten teacher shall hold a certificate certifying that the holder is qualified to teach in kindergarten. An approved nonpublic school must meet the requirements of this subsection only if the nonpublic school offers a kindergarten program.

3. The following areas shall be taught in the grades one through six: English-language arts, including reading, handwriting, spelling, oral and written English, and literature; social studies, including geography, history of the United States and Iowa, cultures of other peoples and nations, and American citizenship, including the study of national, state and local government in the United States; mathematics; science, including environmental awareness and conservation of natural resources; health and physical education, including the effects of alcohol, tobacco, drugs and poisons on the human body; the characteristics of communicable diseases; traffic safety, including pedestrian and bicycle safety procedures; music; and art.

4. The following shall be taught in grades seven and eight as a minimum program: Science, including environmental awareness and conservation of natural resources; mathematics; social studies; cultures of other peoples and nations, and American citizenship; English-language arts which shall include reading, spelling, grammar, oral and written composition, and may include other communication subjects; health and physical education, including the effects of alcohol, tobacco, drugs and poisons on the human body, the characteristics of communicable diseases, including venereal diseases and current crucial health issues; music; and art.

5. Provision for special education services and programs shall be made for children requiring special education.

6. In grades nine through twelve, a unit of credit shall consist of a course or equivalent related components or partial units taught throughout the academic year. The minimum program for grades nine through twelve shall be:

a. Four units of science including physics and chemistry; the units of physics and chemistry may be taught in alternate years. The units of science shall include instruction in environmental awareness and conservation of natural resources.

b. Four units of the social studies. American history, American government, government and cultures of other peoples and nations, and general consumer education, family law, and economics, including comparative and consumer economics, shall be taught in the units but need not be required as full units. All students

shall be required to take one unit of American history and one-half unit of the governments of Iowa and the United States, including instruction in voting statutes and procedures, voter registration requirements, the use of paper ballots and voting machines in the election process, and the method of acquiring and casting an absentee ballot.

The county auditor, upon request and at a site chosen by the county auditor, shall make available to schools within the county voting machines or sample ballots that are generally used within the county, at such times that these machines or sample ballots are not in use for their recognized purpose.

c. Four units of English-language arts.

d. Four units of a sequential program in mathematics.

e. One unit of general mathematics.

f. Two units of one foreign language; the units of foreign language may be taught in alternate years, provided there is no break in the progression of instruction from one year to the next. However, the department may waive on an annual basis the foreign language requirement upon the request of the board of directors of a school district or the authorities in charge of a nonpublic school if the board or authorities are able to prove that a certificated teacher was employed and assigned a schedule that would have allowed students to enroll in a foreign language class, the foreign language class was properly scheduled, students were aware that a foreign language class was scheduled and no students enrolled in the class.

g. All students physically able shall be required to participate in physical education activities during each semester a student is enrolled in school except as otherwise provided in this paragraph. A minimum of one-eighth unit each semester shall be required, except that any student participating in an organized and supervised high school athletic program which requires at least as much time of participation per week as one-eighth unit may be excused from the physical education course during the time of the student's participation in the athletic program. In addition, a twelfth grade student who meets the requirements of this paragraph may be excused from the physical education requirement by the principal of the school in which the student is enrolled if the parent or guardian of the student requests in writing that the student be excused from the physical education requirement. A student who wishes to be excused from the physical education requirement must be enrolled in a co-operative or work-study program or other educational program authorized by the school which requires the student to leave the school premises for specified periods of time during the school day. The student must seek to be excused from the physical education requirement in order to enroll in academic courses not otherwise available to the student. The principal of the school shall inform the superintendent of the school district or nonpublic school that the student has been excused. Physical education activities shall emphasize leisure time activities which will benefit the student outside the school environment and after graduation from high school.

h. Five units of occupational education subjects, which may include, but shall not be limited to, programs, services and activities which prepare students for employment in office and clerical, trade and industrial, consumer and homemaking, agriculture, distributive and health occupations.

i. Units or partial units in the fine arts shall be taught which may include art, music and dramatics.

j. Health education, including an awareness of physical and mental health needs, the effects of alcohol, tobacco, drugs and poisons on the human body, the characteristics of communicable diseases, including venereal diseases and current crucial health issues.

7. A pupil shall not be required to enroll in either physical education or health courses if the pupil's parent or guardian files a written statement with the school principal that the course conflicts with the pupil's religious belief.

8. Upon request of the board of directors of any public school district or the authorities in charge of any nonpublic school, the state board of public instruction may, for a number of years to be specified by the state board, grant the district board or the authorities in charge of any nonpublic school exemption from one or more of the requirements of the educational program specified in subsection 6. The exemption may be renewed. Such exemptions shall be granted only if the state board deems that the request made is an essential part of a planned innovative curriculum project which the state board determines will adequately meet the educational needs and interests of the pupils and be broadly consistent with the intent of the educational program as defined in subsection 6.

The request for exemption shall include all of the following:

- a. Rationale of the project to include supportive research evidence.
- b. Objectives of the project.
- c. Provisions for administration and conduct of the project, including the use of personnel, facilities, time, techniques and activities.
- d. Plans for evaluation of the project by testing and observational measures of pupil progress in reaching the objectives.
- e. Plans for revisions of the project based on evaluation measures.
- f. Plans for periodic reports to the department of public instruction.
- g. The estimated cost of the project.
9. To facilitate the implementation and economical operation of the educational program defined in subsections 4 and 6, each school offering any of grades seven through twelve, except a school which offers grades one through eight as an elementary school, shall have:

a. A qualified school media specialist who shall meet the certification and approval standards prescribed by the department of public instruction and adequate media center facilities as hereinafter defined.

(1) *School media specialist.* The media specialist may be employed on a part-time or full-time basis, or may devote only part time to media service activities, according to the needs of the school and the availability of media personnel, as determined by the local board. The state board shall recommend standards based upon the number of students in attendance, the nature of the academic curriculum and other appropriate factors.

(2) *Organization and adequacy of collection.* The media center shall be organized as a resource center of instructional material for the entire educational program. The number and kind of library and reference books, periodicals, newspapers, pamphlets, information files, audio-visual materials and other learning aids shall be adequate for the number of pupils and the needs of instruction in all courses.

b. A qualified school guidance counselor who shall meet the certification and approval standards prescribed by the department of public instruction. The guidance counselor may be employed on a part-time or full-time basis, or may devote only part time to counseling services, according to the needs of the school and the availability of guidance personnel, as determined by the local board. The state board shall recommend standards based upon the number of students in attendance and other appropriate factors. Other members of the noninstructional professional staff, including but not limited to physicians, dentists, nurses, school psychologists, speech therapists and other specialists, may also be employed or shared by one or more schools. The guidance counselor shall meet the certification and approval standards of the department of public instruction and noninstructional staff members shall meet the professional practice requirements of this state relating to their special services.

c. Arrangement for special education services.

d. Adequate instructional materials for classrooms.

10. As a basis for inclusion on the list of approved schools, the department of public instruction shall evaluate the school educational program in the several school

systems of the state for the purposes of school improvement and approval, and each public and nonpublic school system shall make such reports as the commissioner of public instruction deems necessary to show compliance with the curriculum programs and other requirements prescribed in the Code. The department, in consultation with the board of directors and administration of the school district, shall conduct an immediate evaluation of the educational program of each school district which the department determines has failed to comply with the curriculum programs and other requirements prescribed in the Code.

The commissioner shall make recommendations and suggestions in writing to each school and school district which is subject to this section when the department of public instruction determines, after due investigation, that deficiencies exist in any school or school district.

The state board of public instruction shall adopt approval standards and rules to implement, interpret and make effective the provisions of this section. In adopting the same, the board shall take into account recognized educational standards. Standards and rules shall be of general application without specific regard to school population.

Such standards and rules shall be subject to the provisions of chapter 17A. In addition, such standards and rules shall be reported by the state board to the general assembly within twenty days after the commencement of a regular legislative session. No school or school district shall be removed from the approved list for failure to comply with such standards or rules, until at least one hundred twenty days have elapsed following the reporting of such standards and rules to the general assembly as provided in this section.

11. The state board of public instruction shall remove for cause, after due investigation and notice, any school or school district from the approved list which fails to comply with such approval standards and rules in the manner prescribed in this subsection. The state board shall allow a reasonable period of time after notification of noncompliance, not to exceed the following school year, for compliance with such approval standards and rules.

During the period of time allowed for compliance, the commissioner of public instruction and the president of the state board shall confer with the affected school board and with the school boards of contiguous school districts to assist the affected school board in determining how best to offer the students of that district an approved educational program.

12. The department of public instruction shall give any school or school district which is to be removed from the approved list at least one-year notice. Such notice shall be given by registered or certified mail addressed to the superintendent of the school district or the corresponding official of a private school, and shall specify the reasons for removal. Such notice shall also be sent by ordinary mail to each member of the board of directors or governing body of the school or school district, and to the news media which serve the area where the school or school district is located; but any good faith error or failure to comply with this sentence shall not affect the validity of any action by the state board. If, during said year, the school or school district remedies the reasons for removal and satisfies the state board that it will thereafter comply with the laws, approval standards and rules, the state board shall continue such school or school district on the approved list and shall give the school or school district notice of such action by registered or certified mail. At any time during said year, the board of directors or governing body of the school or school district may request a public hearing before the state board of public instruction, by mailing a written request to the commissioner by registered or certified mail. The president of the state board shall promptly set a time and place for the public hearing, which shall be either in Des Moines or in the affected area. At least thirty days' notice of the time and place of the hearing shall be given by registered or certified mail addressed to the superintendent of the school district or the corre-

sponding official of a private school. At least ten days before the hearing, notice of the time and place of the hearing and the reasons for removal shall also be published by the department in a newspaper of general circulation in the area where the school or school district is located. At the hearing the school or school district may be represented by counsel and may present evidence. The state board may provide for the hearing to be recorded or reported. If requested by the school or school district at least ten days before the hearing, the state board shall provide for the hearing to be recorded or reported at the expense of such school or school district, using any reasonable method specified by such school or school district. Within ten days after the hearing, the state board shall render its written decision, signed by a majority of its members, and shall affirm, modify or vacate the action or proposed action to remove the school or school district from the approved list.

After notification of removal from the approved list, the board of directors shall seek to merge the territory of the school district with one or more contiguous school districts pursuant to the provisions of chapter 275. If on the date specified for removal from the approved list, the district, or any portion of the district, has not been merged with one or more contiguous school districts, the portion that has not been merged shall be merged with one or more contiguous school districts by the state board, and the provisions of sections 275.25 to 275.38 shall apply. Until the merger is completed, the school district shall pay tuition for its resident students to an approved school district under the provisions of section 279.18.

13. Notwithstanding the foregoing provisions of this section and as an exception to their requirements, a private high school or private combined junior-senior high school operated for the express purpose of teaching a program designed to qualify its graduates for matriculation at accredited four-year or equivalent liberal arts, scientific or technological colleges or universities shall be placed on a special approved list of college preparatory schools, which list shall signify approval of the school for such express purpose only, provided that:

a. Such school complies with minimum standards established by provisions of the Code other than this section, and administrative rules thereunder, applicable to:

- (1) Courses comprising such limited program.
- (2) Health requirements for personnel.
- (3) Plant facilities.
- (4) Other environmental factors affecting such programs.

b. At least eighty percent of those graduating from such school within the annually most recent four calendar years, other than those graduating who are aliens, graduates entering military or alternative civilian service, or graduates deceased or incapacitated before college acceptance, have been accepted by accredited four-year or equivalent liberal arts, scientific, or technological colleges or universities.

Any school claiming to be a private college preparatory school which fails in any year to comply with the requirement of paragraph "b" of this subsection shall be placed on the special approved list of college preparatory schools probationally if such school complies with the requirements of paragraph "a" of this subsection, but such probational approval shall not continue for more than four successive years.

14. Notwithstanding the foregoing provisions of this section and as an exception to their requirements, a nonpublic grade school which is reopening shall be approved even if it does not have a complete grade one through grade six program, provided that the nonpublic grade school complies with all other minimum standards established by law and administrative rules adopted pursuant to the law and that the nonpublic grade school shows progress toward reaching a grade one through grade six program.

257.31 Specific criteria for teacher preparation and certain educators.

Pursuant to section 257.10, subsection 11, the department shall adopt rules requiring:

1. All approved teacher training institutions to include in the professional education program, preparation that contributes to education of the handicapped and the gifted and talented, which must be successfully completed before graduation from the teacher training program.

2. A person initially applying for a certificate, endorsement, or approval shall successfully complete a professional education program containing the subject matter specified in subsection 1, before the initial action by the department takes place.

85 Acts, ch 116, §1 SF 526
NEW section

257.42 Programs for improvement of science and mathematics teaching. Repealed by 85 Acts, ch 263, §28. HF 747

257.44 Appropriation for foreign language programs.

There is appropriated from the general fund of the state to the department of public instruction for the fiscal year beginning July 1, 1985 and each succeeding fiscal year the sum of one hundred fifty thousand dollars, or as much thereof as is necessary, to be used to provide assistance to school districts in offering foreign language courses. The department may use the money in the following areas:

1. To provide grants to school districts to develop and implement foreign language programs for elementary school pupils.

2. For administrative costs of the department in assisting school districts to develop programs under subsection 1 and in coordinating and developing other foreign language programs.

85 Acts, ch 263, §15 HF 747
NEW section

257.45 Standards for approved schools.

Commencing July 1, 1985, the state board shall review the standards contained in section 257.25, shall review current literature relating to effective schools and learning environments, and shall consult with representatives from the higher education institutions, area education agencies, school board members, school administrators, teachers, parents, students, members of business, industry and labor, other governmental agencies, associations interested in education, and representatives of communities of various sizes to develop standards for approved schools and school districts that encompass, but are not limited to the following general areas:

1. Objectives and assessment procedures for teaching specific competencies related to higher order thinking skills, learning skills, and communications skills.

2. Integration of the applications of current technologies into the general curriculum.

3. Procedures for curriculum development and refinement.

4. Staff development processes.

5. A performance evaluation process for personnel.

6. Use of support staff.

7. A specific number of hours per year for students to be engaged in formal academic instruction.

8. Learning opportunities for students whose needs are not met in the conventional classroom.

9. Career exploration activities and specific vocational education programs.

10. Curriculum standards that include the coordination of extracurricular and academic education goals.

11. Student responsibility and discipline policies.

12. Needs assessments and development of long-range plans as provided for in section 280.12.

13. Community and parent involvement in the education process.

14. Communication with business, industry, labor, and higher education regarding their expectations for adequate student preparation.

Notwithstanding the standards included in section 257.25, not later than July 1, 1987, the state board shall adopt new standards for approved schools. The standards shall be adopted under chapter 17A and shall require that schools and school districts meet the standards adopted by the state board not later than July 1, 1989.

Following adoption of the standards, the department of public instruction shall assist schools and school districts to comply with the standards.

The state board, in consultation with the boards of directors and the administration of the school districts, shall determine not later than July 1, 1989, on the basis of evidence submitted by the school districts, which school districts meet the approval standards adopted by the state board.

Thereafter the state board shall require that once every three years schools and school districts submit evidence that they meet the approval standards. One third of the schools and school districts shall be reviewed each year.

Section 257.25, subsection 12, applies to schools and school districts not meeting the approval standards.

85 Acts, ch 212, §4 HF 686
NEW section

CHAPTER 257A

FIRST IN THE NATION IN EDUCATION

257A.1 First in the nation in education.

There is created a corporate body called "First In the Nation in Education, an education foundation". The foundation is an independent nonprofit quasi-public instrumentality and the exercise of the powers granted to the foundation as a corporation in this chapter is an essential governmental function. As used in this chapter "foundation" means "First In the Nation in Education, an education foundation". The purposes of the foundation include but are not limited to the following:

1. Providing statewide leadership in identifying both immediate and long-range education issues for which a knowledge base is needed.
2. Conducting basic research in education issues.
3. Collecting, analyzing, and disseminating education information generated in other states and countries as well as in this state.
4. Establishing linkages with regional education laboratories and research institutes.
5. Establishing strategies and developing materials and practices to implement the results of the research.
6. Developing and supporting innovative and cooperative programs for school districts.
7. Making the results of research available in forms that are most useful to practitioners and policymakers.

85 Acts, ch 213, §1 HF 773
NEW section

257A.2 Governing board.

The foundation shall be administered by a governing board consisting of seven members appointed by the governor subject to senate confirmation. Members shall be knowledgeable about education, research, or fund-raising activities in this state. Statewide associations interested in education may submit the names of potential members to the governor, but the governor is not bound by the recommendations.

85 Acts, ch 213, §2 HF 773
NEW section

257A.3 Board requirements.

1. Members of the board shall be appointed by the appointing authority for staggered terms of six years beginning and ending as provided in section 69.19. Vacancies shall be filled in the same manner as the original appointment. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term.

2. Members of the board shall be reimbursed for actual and necessary expenses incurred while engaged in their official duties from funds available to the foundation.

3. Members shall elect a chairperson and vice chairperson annually. A majority of the members of the board constitute a quorum. The executive director shall serve as secretary to the board.

4. Meetings of the board shall be held at least quarterly at the call of the chairperson or at the request of a majority of the members of the board.

85 Acts, ch 213, §3 HF 773
Initial terms; 85 Acts, ch 213, §9
NEW section

257A.4 Nonprofit corporation.

The foundation as a nonprofit corporation created in section 257A.1 has perpetual succession. The succession shall continue until the existence of the corporation is terminated by law. If the corporation is terminated, the rights and properties of the corporation shall pass to the state. However, debts and other financial obligations shall not succeed to the state.

85 Acts, ch 213, §4 HF 773
NEW section

257A.5 Duties of the board.

The governing board, within the limits of the funds available to it, shall:

1. Employ an executive director to direct the activities of the foundation and such other employees as deemed necessary by the board. Employees shall be selected on a nonpartisan basis and are employees of the state but are exempt from chapter 19A.

2. Determine a site for the location of the foundation. The board may execute a contract with a governmental agency for leasing facilities for the foundation, but the foundation shall retain its independent status.

3. Approve a long-range plan relating to the conduct of educational research and development activities.

4. Determine the research and development activities to be undertaken, based upon an assessment of the education needs in this state from early childhood education to adult education.

5. Execute contracts with public and private agencies to conduct research and development activities.

6. Perform functions necessary to carry out the purposes of the foundation.

7. Disseminate information developed as a result of research and development activities in forms usable by education personnel.

8. Establish advisory committees to assist the foundation in carrying out its purposes. The advisory committees shall include as members representatives of state associations interested in education in this state.

9. Annually report the results of its activities to the general assembly.

85 Acts, ch 213, §5 HF 773
NEW section

257A.6 Duplication.

Research activities of the foundation shall not duplicate educational research efforts taking place in Iowa's colleges and universities unless for validation or confirmation of research results.

85 Acts, ch 213, §6 HF 773
NEW section

257A.7 Fund created.

1. Moneys received by the foundation shall be deposited in a special fund in the office of the treasurer of state known as the "First In the Nation in Education Fund". Moneys deposited in the fund shall not be expended, but shall be invested by the treasurer of state in investments authorized for the Iowa public employees' retirement fund in section 97B.7, unless the purposes set forth in the appropriations, grants, or gifts preclude the use of these moneys solely for investment. Interest income shall be paid quarterly from the fund to the foundation.

2. The foundation may accept grants, gifts, and bequests, including but not limited to appropriations, federal funds, and other funding available for educational research and development purposes. Moneys accepted under this subsection shall be deposited in the fund.

85 Acts, ch 213, §7 HF 773

Foundation funded from interest on permanent school fund for fiscal 1985-1986; intent for future funding; 85 Acts, ch 213, §8, 10

NEW section

CHAPTER 258**VOCATIONAL EDUCATION****258.3 Personnel.**

The commissioner of public instruction as executive officer of the state board of public instruction shall, with its approval, appoint, and direct the work of such personnel as may be necessary to carry out the provisions of this chapter.

85 Acts, ch 212, §21 HF 686

Section amended

258.7 Vocational education council.

A state council on vocational education is established, consisting of thirteen members, which shall be appointed by the governor. The term of a member is three years. The effective date of appointment shall comply with applicable federal law, or July 1 if federal law does not apply.

The council shall advise the state board and shall perform other functions as necessary in order for the state of Iowa to qualify for federal aids and grants to vocational education.

Seven members of the council shall represent the private sector and six members shall equitably represent secondary and postsecondary vocational institutions. Appointments shall be in compliance with the requirements of federal law. The governor shall insure that there is as nearly as possible equitable representation of both sexes, appropriate representation of racial and ethnic minorities, and appropriate geographic representation.

The council shall meet at the call of the chairperson at least once each quarter of the year.

85 Acts, ch 99, §7 SF 224; 85 Acts, ch 195, §29 SF 329; 85 Acts, ch 212, §5 HF 686

See Code editor's note

Initial terms; 85 Acts, ch 212, §6

Section struck and rewritten

258.13 Biennial report.

The commissioner of public instruction shall embrace in the commissioner's biennial report a full report of all receipts and expenditures under this chapter, together with such observations relative to vocational education as may be deemed of value.

85 Acts, ch 212, §21, 23 HF 686

Section amended

CHAPTER 259

VOCATIONAL REHABILITATION

259.1 Acceptance of federal Acts.

The state of Iowa, through its legislative authority, accepts the provisions and benefits of the Acts of Congress entitled "The Rehabilitation Act of 1973" (Pub. L. No. 93-112), "The Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978" (Pub. L. No. 95-602) and the "Rehabilitation Amendments of 1984" (Pub. L. No. 98-221) as codified in 29 U.S.C. §701.

85 Acts, ch 23, §1 SF 149
Section amended

CHAPTER 259A

HIGH SCHOOL EQUIVALENCY DIPLOMAS

259A.4 Use of fees.

The fees collected under the provisions of this chapter shall be used for the expenses incurred in administering, providing test materials, scoring of examinations and issuance of high school equivalency diplomas, and shall be disbursed on the authorization of the commissioner of public instruction. The treasurer of state shall be custodian of the funds paid to the department and shall disburse the same on vouchers audited as provided by law. The unobligated balance in such funds at the close of each biennium shall be placed in the general fund of the state.

85 Acts, ch 212, §21 HF 686
Section amended

259A.5 Rules.

The commissioner of public instruction, subject to the approval of the state board of public instruction, is hereby authorized to adopt such rules, tests, definition of terms, and forms as are necessary and proper for the administration of this chapter.

85 Acts, ch 212, §21 HF 686
Section amended

CHAPTER 260

BOARD OF EDUCATIONAL EXAMINERS

260.3 Personnel.

The commissioner shall with the approval of the state board direct the work of such personnel as may be necessary to carry out the provisions of this chapter.

85 Acts, ch 212, §22 HF 686
Section amended

260.8 Administrative endorsements and certifications.

The board of educational examiners shall develop and adopt a staff development program for individuals receiving endorsements as administrators or certified as area education agency administrators. Administrative endorsements and certificates are valid for five years from issuance. Successful completion of the staff development program is required every five years before the endorsement or certificate is renewed by the board.

85 Acts, ch 217, §1 SF 254
Holders of endorsements or certificates issued before July 1, 1985, must complete staff development program by July 1, 1990; 85 Acts, ch 217, §2
Period of practical experience to be required; 85 Acts, ch 212, §19 HF 686
NEW section

260.15 Applications—disbursement of fees.

Applications for the issuance or renewal of all teachers' certificates shall be made to the commissioner of public instruction. Fees for the issuance or renewal of certificates shall be paid to the commissioner of public instruction who shall deposit each fee received from these sources with the treasurer of state and credit the fee to the general fund of the state. If an application for the issuance or renewal of a certificate is not approved, the commissioner of public instruction shall remit the fee to the applicant by a state comptroller's warrant issued on the general fund of the state upon certification of the commissioner of public instruction that the fee has not been earned. The commissioner shall keep an accurate and detailed account of money received.

85 Acts, ch 212, §21, 22 HF 686
Section amended

260.28 Expenditures.

All expenditures authorized to be made by the board of educational examiners shall be certified by the commissioner of public instruction to the state comptroller, and if found correct, the state comptroller shall approve the same and draw warrants therefor upon the treasurer of state from the funds appropriated for that purpose.

85 Acts, ch 212, §21 HF 686
Section amended

CHAPTER 261**COLLEGE AID COMMISSION****261.1 Commission created.**

There is hereby created a commission to be known as the "College Aid Commission" of the state of Iowa. Membership of the commission shall be as follows:

1. A member of the state board of regents to be named by the board, or the secretary thereof if so appointed by the board, who shall serve for a four-year term or until the expiration of the member's term of office. Such member shall convene the organizational meeting of the commission.
2. The commissioner of public instruction.
3. A member of the state advisory committee for vocational education to be named by the said committee who shall serve for a four-year term or until the expiration of the member's term of office.
4. A member of the senate to be appointed by the president of the senate to serve as an ex officio nonvoting member for a term of four years beginning on July 1 of the year of appointment.
5. A member of the house of representatives to be appointed by the speaker of the house to serve as an ex officio nonvoting member for a term of four years beginning on July 1 of the year of appointment.
6. Six additional members to be appointed by the governor. One of such members shall be selected to represent private colleges, private universities and private junior colleges located in the state of Iowa. When appointing such one member, the governor shall give careful consideration to any person or persons nominated or recommended by any organization or association of some or all private colleges, private universities and private junior colleges located in the state of Iowa. One such member shall be enrolled as a student at a board of regents institution, merged area school, or accredited private institution. One such member shall be a representative of a lending institution located in this state. The other three such members, none of whom shall be official board members or trustees of an institution of higher learning or of an association of such institutions, shall be selected to represent the general public.

The members of the commission appointed by the governor shall serve for a term of four years.

Vacancies on the commission shall be filled for the unexpired term of such vacancies in the same manner as the original appointment.

A vacancy shall exist on the commission when a legislative member of the commission ceases to be a member of the general assembly or when a student member ceases to be enrolled as a student. Such vacancy shall be filled within thirty days.

85 Acts, ch 67, §31 SF 121; 85 Acts, ch 212, §21 HF 686

Subsection 2 amended

Subsection 6, unnumbered paragraph 2 amended and unnumbered paragraph 3 struck

261.12 Amount of grant.

1. The amount of a tuition grant to a qualified full-time student for the fall and spring semesters, or the trimester equivalent, shall be the amount of the student's financial need for that period. However, a tuition grant shall not exceed the lesser of:

a. The total tuition and mandatory fees for that student for two semesters or the trimester or quarter equivalent, less the base amount determined annually by the college aid commission, which base amount shall be within ten dollars of the average tuition for two semesters or the trimester equivalent of undergraduate study at the state universities under the board of regents, but in any event the base amount shall not be less than four hundred dollars; or

b. For the fiscal year beginning July 1, 1984, two thousand two hundred fifty dollars, and for the fiscal year beginning July 1, 1985 and for each following fiscal year, two thousand three hundred fifty dollars.

2. The amount of a tuition grant to a qualified half-time student for the fall and spring semesters, or the trimester or quarter equivalent, shall be one-half the amount which would be paid for a qualified full-time student under the provisions of subsection 1.

85 Acts, ch 263, §16 HF 747

Subsection 1, paragraph b amended

261.25 Appropriations—standing limited.

1. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of twenty million six hundred thousand dollars for tuition grants.

2. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of three hundred fifty thousand dollars for scholarships.

3. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of six hundred seventy-two thousand four hundred seventy-two dollars for vocational-technical tuition grants.

4. This section shall not be construed to be a limitation on any of the amounts which may be appropriated by the general assembly for any program enumerated in this section.

It is the intent of the general assembly to extend the tuition grant program beginning July 1, 1977 to the half-time students as provided in this Act taking at least six semester hours or the trimester or quarter equivalent in the school year beginning in the fall of 1977 and limited to a maximum of five hundred thousand dollars for these half-time students unless this amount is changed by legislative action. It is the further intent to extend eligibility for the tuition grant program to nursing students as defined in this Act [66GA, ch 1196] beginning July 1, 1977.

85 Acts, ch 263, §17 HF 747

Subsection 1 amended

261.51 Science and mathematics loan program.

The Iowa science and mathematics loan program is established to be administered by the commission. The purpose of the loan program is to assist individuals possessing a baccalaureate degree or higher to either obtain teaching certificates in the areas of science or mathematics, or both, or if the individuals are already certificated teachers under chapter 260, to obtain or upgrade their approvals to teach in the areas of science or mathematics, or both. The commission shall adopt rules under chapter 17A, in consultation with the board of educational examiners, to administer the program. The rules shall provide that loans not be granted to teachers for the purpose of improving their knowledge of subject content or teaching skills in order to teach courses in subject matter areas for which they possess approval granted by the board of educational examiners.

85 Acts, ch 263, §20 HF 747
Section amended

261.52 Loans.

Loans may be granted to an individual possessing a baccalaureate degree or higher or to an individual possessing a valid teacher's certificate issued under chapter 260. The annual amount of a loan to an applicant enrolled as a full-time student shall not exceed one thousand five hundred dollars for each fiscal year, or the total amount of tuition and fees, whichever is less, and loans shall be granted for not more than the equivalent of two years. The annual amount of a loan to an individual enrolled on less than a full-time basis shall be reduced proportionally and shall not exceed the total amount of tuition and fees. Loans for a part-time student shall be granted for not more than five years. Loans may be made for courses in programs offered in this state and approved by the board of educational examiners. The board of educational examiners shall adopt rules pursuant to chapter 17A for approval of programs. The rules shall require that the programs provide training in both subject content and teaching methodology for mathematics and science teaching.

The commission shall set a final date for submission of applications each year and shall review the applications and inform the recipients within a reasonable time after the deadline.

85 Acts, ch 263, §21 HF 747
Unnumbered paragraph 1 amended

261.53 Appropriation.

There is appropriated from the general fund of the state to the Iowa college aid commission for the fiscal year beginning July 1, 1985 and for each succeeding fiscal year, the sum of seventy thousand dollars, or as much thereof as is necessary, to make loans under sections 261.51 and 261.52.

85 Acts, ch 263, §22 HF 747
Section amended

261.54 Repayment.

Repayment of the loan shall begin one year after the recipient completes the educational program for which tuition and fees are received except as otherwise provided in this section. If a recipient submits evidence to the commission that the recipient was employed as a teacher of one or more science or mathematics courses or as an elementary teacher teaching science and mathematics in a public school district or nonpublic school in this state or at the Iowa braille and sight-saving school or the Iowa school for the deaf during that year, fifty percent of the amount of the loan is canceled. If the recipient continues employment as a teacher of science or mathematics courses or as an elementary teacher teaching science and mathematics during the next succeeding school year and submits evidence to the commission of the continuation of teaching employment, the recipient is not required to commence repayment during that school year and at the end of that school year the remaining fifty percent of the loan is canceled.

There is created a science and mathematics loan repayment fund for deposit of payments made by recipients. Payments made by recipients of the loans shall be transferred on each June 30 from the fund created in this section to the general fund of the state.

The interest rate collected on the loan shall be equal to the interest rate being collected by an eligible lender under the guaranteed student loan program.

The commission shall prescribe by rule the terms of repayment which shall provide for monthly payments of principal and interest of not less than seventy-five dollars.

85 Acts, ch 263, §23 HF 747

Unnumbered paragraph 1 amended

261.61 Supplemental grant program.

A person who graduates from a public or nonpublic high school in this state after January 1, 1986 who has successfully completed at least eight units of science and mathematics courses, and at least four of the eight units include sequential mathematics courses at the advanced algebra level or higher, chemistry, advanced chemistry, physics, or advanced physics courses, and who attends an eligible institution is eligible for a supplemental grant provided in this chapter.

The department of public instruction shall transmit to the commission a list of high school graduates who have successfully completed the courses required in this section.

For the purpose of this section and section 261.62, an eligible institution is an accredited private institution as defined in section 261.9, subsection 5, an institution of higher learning under the state board of regents, or a merged area school established under chapter 280A.

85 Acts, ch 263, §24 HF 747

Amendment effective January 1, 1986; 85 Acts, ch 263, § 30

Unnumbered paragraph 1 amended

261.63 Appropriation.

Commencing July 1, 1984, there is appropriated from the general fund of the state to the commission for each fiscal year the sum of one million dollars for supplemental grants.

85 Acts, ch 263, §25 HF 747

Reduction in appropriation took effect July 1, 1985

Section amended

FORGIVABLE LOAN PROGRAM

261.71 Forgivable loan program.

There is established a forgivable student loan program to be administered by the college aid commission. An individual is eligible for the reimbursement payments plan under the program if the individual meets all of the following conditions:

1. Is an Iowa resident student enrolled at an accredited private institution as defined in section 261.9, subsection 5 or at an institution under the control of the state board of regents.
2. Has filed an application for the loan with the college aid commission, using the procedures specified in section 261.16.
3. Meets the requirements for a tuition grant.

85 Acts, ch 33, §701 HF 225

NEW section

261.72 Forgivable loan administration.

The college aid commission shall administer the forgivable loan program in the same manner as specified in section 261.15 for the tuition grant program. The maximum loan that a student is eligible to receive is an amount equal to the maximum tuition grant awarded by the commission for the same fiscal year. A student is eligible to receive both a tuition grant and a forgivable loan. The interest

rate for the forgivable loan shall be equal to the interest rate being collected by an eligible lender under the Iowa guaranteed student loan program for the year in which the forgivable loan is made.

85 Acts, ch 33, §702 HF 225
NEW section

261.73 Interest and principal payment.

A student receiving a forgivable loan under section 261.71 shall begin paying the annual cost of interest immediately following graduation on an annual basis for five years. If the student remains an Iowa resident and is employed in a teaching position in an area in which a teaching shortage exists, as determined by the department of public instruction, for five years immediately following graduation, the student is not responsible for payment of the principal amount of the loan and shall not pay interest on the loan. If the commission determines that the student does not meet the criteria for elimination of the principal and interest payments, the commission shall establish by rule a plan for repayment of the principal and interest over a ten-year period. If a student who is required to make the repayment does not make the required payments, the commission shall provide for collecting the payments.

There is created a forgivable loan repayment fund for deposit of payments made by the recipients. Payments made by the recipients of the loans shall be credited to the fund and may be used to make additional loans under the program. Moneys in the fund shall not revert to the general fund of the state at the close of a fiscal year.

85 Acts, ch 33, §703 HF 225
NEW section

WORK-STUDY PROGRAM

261.81 Work-study program.

The Iowa college work-study program is established to stimulate and promote the part-time employment of students attending Iowa postsecondary educational institutions who are in need of employment earnings in order to pursue postsecondary education. The program shall be administered by the commission. The commission shall adopt rules under chapter 17A to carry out the program. The employment under the program shall be employment by the postsecondary education institution itself or work in a public agency or private nonprofit organization under a contract between the institution and the agency or organization. The work shall not result in the displacement of employed workers or impair existing contracts for services.

85 Acts, ch 219, §1 SF 156
NEW section

261.82 Duties of college aid commission.

The college aid commission shall:

1. Enter into agreements with eligible postsecondary education institutions for participation in the program.
2. Allocate funds to participating postsecondary education institutions if funds are available to the commission for that purpose.
3. Review reports from participating postsecondary education institutions.
4. Conduct program reviews and audits of participating postsecondary education institutions.
5. Accept gifts, grants, and other aid from public and private persons or agencies.

85 Acts, ch 219, §2 SF 156
NEW section

261.83 Eligibility and duties of institutions.

An eligible postsecondary education institution is an institution of higher education under the state board of regents, a merged area school, or an accredited private

institution as defined in section 261.9, subsection 5. The commission may enter into an agreement with an eligible postsecondary education institution under which the commission will make grants to the institution for the work-study program.

The participating institution shall:

1. File the proper forms with the commission for participation in the program.
2. Develop jobs that meet the requirements of the Iowa college work-study program. To the extent possible, the job should complement the student's educational program and career goal.
3. Supervise and evaluate employment and maintain the records required by the commission.
4. Participate in the federal work-study program.

85 Acts, ch 219, §3 SF 156
NEW section

261.84 Student eligibility.

In order to be eligible, a student must:

1. Be a citizen of the United States and a resident of this state.
2. Be enrolled and making satisfactory academic progress or accepted for enrollment at an eligible postsecondary institution on a half-time or greater basis.
3. Demonstrate financial need. A student's need shall be determined on the basis of a need analysis system approved for use under the federal work-study program.
4. Have not defaulted on an Iowa guaranteed student loan or on a loan guaranteed by the federal government.

85 Acts, ch 219, §4 SF 156
NEW section

CHAPTER 261A

HIGHER EDUCATION LOAN AUTHORITY (PRIVATE INSTITUTIONS)

HIGHER EDUCATION FACILITIES PROGRAM

261A.32 Legislative findings.

The general assembly finds:

1. For the benefit of the people of the state of Iowa, the increase of their commerce, welfare, and prosperity, and the improvement of their health and living conditions, it is essential that this and future generations of youth be given the greatest opportunity to learn and to fully develop their intellectual and mental capacities and skills.
2. To achieve these ends it is of the utmost importance that educational institutions within the state be provided with appropriate additional means of assisting the youth in achieving the required levels of learning and development of their intellectual and mental capacities and skills through new or enhanced physical facilities and equipment at these institutions.
3. The financing and refinancing of educational facilities, through means as described in this division, other than the appropriation of public funds to institutions, is a valid public purpose.

85 Acts, ch 210, §2 HF 541
NEW section

261A.33 Purpose of division.

It is the purpose of this division to provide a measure of assistance and an alternative method of enabling institutions in the state to finance the acquisition, construction, and renovation of needed educational facilities, structures and equipment and to refund, refinance, or reimburse outstanding indebtedness incurred by

them or advances made by them, including advances from an endowment or any other similar fund, for the construction, acquisition, or renovation of needed educational facilities and structures, whether or not constructed, acquired, or renovated prior to July 1, 1985.

85 Acts, ch 210, §3 HF 541
NEW section

261A.34 Definitions.

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

1. "*Project*" means any property located within the state, constructed or acquired before or after July 1, 1985 that may be used or will be useful in connection with the instruction, feeding, or recreation of students, the conducting of research, administration, or other work of an institution, or any combination of the foregoing. "Project" includes, but is not limited to, any academic facility, administrative facility, assembly hall, athletic facility, instructional facility, laboratory, library, maintenance facility, student health facility, recreational facility, research facility, student union, or other facility suitable for the use of an institution. "Project" also means the refunding or refinancing of outstanding obligations, mortgages, or advances, including advances from an endowment or similar fund, originally issued, made, or given by the institution to finance the cost of a project.

2. "*Property*" means the real estate upon which a project is or will be located, including equipment, machinery, and other similar items necessary or convenient for the operation of the project in the manner for which its use is intended, but not including such items as fuel, supplies, or other items that are customarily deemed to result in a current operation charge. Property does not include property used or to be used primarily for sectarian instruction or study, or as a place for devotional activities or religious worship, or any property which is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination or the training of ministers, priests, rabbis, or other professional persons in the field of religion.

3. "*Cost*" as applied to a project or any portion of a project financed under this division means all or a part of the cost of construction and acquisition of land, buildings, or structures, including the cost of machinery and equipment; finance charges; interest prior to, during, and after completion of the construction for a reasonable period as determined by the authority; reserves for principal and interest; extensions, enlargements, additions, replacements, renovations, and improvements; improvements, replacements, and renovations for energy conservation and other purposes; engineering, financial, and legal services; plans, specifications, studies, surveys, estimates of cost of revenue, administrative expenses, expenses necessary or incidental to determining the feasibility or practicability of constructing the project; and such other expenses as the authority determines may be necessary or incidental to the construction and acquisition of the project, the financing of the construction and acquisition, and the placing of the project in operation.

4. "*Obligation*" means an obligation issued by the authority under this division.

85 Acts, ch 210, §4 HF 541
NEW section

261A.35 General power of authority.

The authority is authorized to assist institutions in the constructing, financing, and refinancing of projects, and the authority may take action authorized by this division.

85 Acts, ch 210, §5 HF 541
NEW section

261A.36 Issuance of obligations.

The authority may issue obligations of the authority for any of its corporate purposes as provided for in this division, and fund or refund the obligations pursuant to this division.

85 Acts, ch 210, §6 HF 541
NEW section

261A.37 Loans authorized.

The authority may make loans to an institution for the cost of a project in accordance with an agreement between the authority and the institution, except that a loan shall not exceed the total cost of the project, as determined by the institution and approved by the authority.

85 Acts, ch 210, §7 HF 541
NEW section

261A.38 Issuance of obligations—conditions.

The authority may issue obligations and make loans to an institution and refund, refinance or reimburse outstanding obligations, indebtedness, mortgages, or advances, including advances from an endowment or any similar fund, issued, made, or given by the institution, whether before or after July 1, 1985, for the cost of a project, when the authority finds that the financing prescribed in this section is in the public interest, and either alleviates a financial hardship upon the institution, results in a lesser cost of education, or enables the institution to offer greater security for a loan or loans to finance a new project or projects or to effect savings in interest costs or more favorable amortization terms.

85 Acts, ch 210, §8 HF 541
NEW section

261A.39 General powers—apportionment of costs.

The authority may do all things necessary or convenient to carry out the purposes of this division. The authority may charge to and equitably apportion among participating institutions its administrative costs and expenses incurred in the exercise of the powers and duties conferred on the authority by this division.

85 Acts, ch 210, §9 HF 541
NEW section

261A.40 Joint and combination projects.

The authority may undertake a project for two or more institutions jointly or for any combination of institutions, and may combine for financing purposes, with the consent of all of the institutions which are involved, the project and some or all future projects of any institution or institutions, and this division applies to and is for the benefit of the authority and the joint participants. However, the money set aside in a fund or funds pledged for any series or issue of obligations shall be held for the sole benefit of the series or issue separate and apart from money pledged for another series or issue of obligations of the authority. To facilitate the combining of projects, obligations may be issued in series under one or more resolutions or trust agreements and may be fully open-ended, thus providing for the unlimited issuance of additional series, or partially open-ended, limited as to additional series. The authority may permit an institution to substitute one or more projects of equal value, as determined by an independent appraiser satisfactory to the authority, for a project financed under this division on terms and subject to conditions the authority prescribes.

85 Acts, ch 210, §10 HF 541
NEW section

261A.41 Expenses.

Expenses incurred in carrying out this division are payable solely from funds provided under this division and a liability or obligation shall not be incurred by the authority beyond the extent to which money is provided under this division.

85 Acts, ch 210, §11 HF 541
NEW section

261A.42 Obligations.

The authority may provide by resolution for the issuance of obligations for the purpose of paying, refinancing, or reimbursing all or part of the cost of a project. The authority shall not have outstanding at any one time obligations issued pursuant to

this division in an aggregate principal amount exceeding one hundred fifty million dollars. Except to the extent payable from payments to be made on federally guaranteed securities as provided in section 261A.45, the principal of and the interest on the obligations shall be payable solely out of the revenue of the authority derived from the project to which they relate and from other facilities pledged or made available for this purpose by the institution for whose benefit the obligations were issued. The obligations of each issue shall be dated, shall bear interest at rate or rates, without regard to any limit contained in any other statute or law of the state, and shall mature at times not exceeding forty years from the date of issuance, all as determined by the authority; and may be made redeemable before maturity at the prices and under terms fixed by the authority in the authorizing resolution.

Except as otherwise provided by this division, the obligations are to be paid solely out of the revenue of the project to which they relate and, in certain instances, out of the revenue of certain other facilities, and subject to section 261A.45 with respect to a pledge of government securities, the obligations may be unsecured or secured in the manner and to the extent determined by the authority. The authority shall determine the form of the obligations, including interest coupons, if any, to be attached, and shall fix the denominations of the obligations and the places of payment of principal and interest which may be at any bank or trust company within or without the state. The obligations and coupons attached, if any, shall be executed by the manual or facsimile signatures of officers of the authority designated by the authority. If an official of the authority whose signature or a facsimile of whose signature appears on any obligations or coupons ceases to be an official before the delivery of the obligations, the signature or facsimile, nevertheless, is valid and sufficient for all purposes the same as if the individual had remained an official of the authority until delivery. Obligations issued under this division have all the qualities and incidents of negotiable instruments, notwithstanding this payment from limited sources and without regard to any other law. The obligations may be issued in coupon or in registered form, or both, and one form may be exchangeable for the other in the manner as the authority may determine. Provision may be made for the registration of any coupon obligations as to principal alone and also as to both principal and interest, and for the reconversion into coupon obligations of any obligations registered as to both principal and interest. The obligations may be sold in the manner, either at public or private sale, as the authority determines.

The proceeds of the obligations of each issue shall be used solely for the payment of the cost of the project for which the obligations have been issued, and shall be disbursed in the manner and under the restrictions, if any, as the authority provides in the resolution authorizing the issuance of the obligations or in the trust agreement provided for in section 261A.44 securing the obligations. If the proceeds of the obligations of an issue, by error of estimates or otherwise, are less than the costs, additional obligations may in like manner be issued to provide the amount of the deficit, and, unless otherwise provided in the resolution authorizing the issuance of the obligations or in the trust agreement securing them, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the obligations first issued. If the proceeds of the obligations of an issue shall exceed the cost of the project for which the same shall have been issued, the surplus shall be deposited to the credit of the sinking fund for the obligations. Prior to the preparation of definitive obligations, the authority may, under like restrictions, issue interim receipts or temporary obligations, with or without coupons, exchangeable for definitive obligations when the obligations have been executed and are available for delivery.

The authority may also provide for the replacement of obligations which become mutilated or are destroyed or lost. Obligations may be issued under this division without obtaining the consent of an officer, department, division, commission, board, bureau, or agency of the state, and without other proceedings or conditions other

than those which are specifically required by this division. The authority may purchase its bonds out of funds available for that purpose. The authority may hold, pledge, cancel, or resell the obligations, subject to and in accordance with any agreement with the obligation holders. Members of the authority and any person executing the obligations are not liable personally on the obligations or subject to personal liability or accountability by reason of the issuance of the obligations.

85 Acts, ch 210, §12 HF 541
NEW section

261A.43 Resolution provisions.

The resolution authorizing obligations or an issue of obligations may contain provisions, which shall be a part of the contract with the holders of the obligations to be authorized, as to:

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

2. Setting aside reserves or sinking funds, and the regulation, investment, and disposition of them.

3. Limitations on the use of the project.

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

5. Limitations on the issuance of additional obligations, the terms upon which additional obligations may be issued and secured, and the refunding of outstanding obligations.

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

7. Limitations on the amount of money derived from the project to be expended for operating, administrative, or other expenses of the authority.

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

9. Mortgaging a project and the project site or other property for the purpose of securing the obligation holders.

10. Other matters relating to the obligations which the authority deems desirable.

85 Acts, ch 210, §13 HF 541
NEW section

261A.44 Obligations secured by trust agreement.

Obligations issued under this division may be secured by a trust agreement by and between the authority and an incorporated trustee, which may be a trust company or bank having the powers of a trust company within or without the state. The trust agreement or the resolution providing for the issuance of the obligations may pledge or assign the revenue to be received or proceeds of any contract pledged and may convey or mortgage the project or any portion of the project. A pledge or assignment made by the authority pursuant to this section is valid and binding from the time that the pledge or assignment is made, and the revenue pledged and thereafter received by the authority is immediately subject to the lien of the pledge or assignment without physical delivery or any further act. The lien of the pledge or assignment is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority irrespective of whether the parties have notice of the lien. The resolution or trust agreement by which a pledge is created or an assignment made shall be filed or recorded in the records of the authority, with

the secretary of state, and in each county in which the project is located. The trust agreement or resolution providing for the issuance of the obligations may contain provisions for protecting and enforcing the rights and remedies of the obligation holders as are reasonable and proper, not in violation of law, or provided for in this division. A bank or trust company incorporated under the laws of this state which acts as depository of proceeds of the obligations, revenue, or other money shall furnish the indemnifying obligations or pledge the securities as required by the authority. The trust agreement may set forth the rights and remedies of the obligation holders and of the trustee, and may restrict the individual right of action by obligation holders. The trust agreement or resolution may contain other provisions the authority deems reasonable and proper for the security of the obligation holders. Expense incurred in carrying out the trust agreement or resolution may be treated as a part of the cost of the operation of a project.

85 Acts, ch 210, §14 HF 541
NEW section

261A.45 Obligations issued to acquire federally guaranteed securities.

The authority may finance the cost of a project, refund outstanding indebtedness, or reimburse advances from an endowment or similar fund of an institution as authorized by this division, by issuing its obligations pursuant to a plan of financing involving the acquisition of a federally guaranteed security or the acquisition or entering into of commitments to acquire a federally guaranteed security. For the purposes of this section, "federally guaranteed security" means any direct obligation of, or obligation the principal of and interest on which are fully guaranteed or insured by the United States, or an obligation issued by, or the principal of and interest on which are fully guaranteed or insured by any agency or instrumentality of the United States, including without limitation an obligation that is issued pursuant to the National Housing Act, or any successor provision of law.

The authority may acquire or enter into commitments to acquire a federally guaranteed security and pledge or otherwise use the federally guaranteed security in the manner the authority deems in its best interest to secure or otherwise provide a source of repayment of its obligations issued to finance or refinance a project, or may enter into an appropriate agreement with an institution whereby the authority may make a loan to the institution for the purpose of acquiring or entering into commitments to acquire a federally guaranteed security. An agreement entered into pursuant to this section may contain provisions deemed necessary or desirable by the authority for the security or protection of the authority or the holders of the obligations, except that the authority, prior to making an acquisition, commitment, or loan, shall determine and enter into an agreement with the institution or another appropriate institution to require that the proceeds derived from the acquisition of a federally guaranteed security will be used, directly or indirectly, for the purpose of financing or refinancing a project.

The obligations issued pursuant to this section shall not exceed in principal amount the cost of financing or refinancing the project as determined by the participating institution and approved by the authority, except that the costs may include, without limitation, all costs and expenses necessary or incidental to the acquisition of or commitment to acquire a federally guaranteed security and to the issuance and obtaining of insurance or guarantee of an obligation issued or incurred in connection with a federally guaranteed security. In other respects the bonds are subject to this division, and the trust agreement creating the bonds may contain provisions set forth in this division as the authority deems appropriate.

If a project is financed or refinanced pursuant to this section, the title to the project shall remain in the participating institution owning the project, subject to the lien of a mortgage or security interest securing, directly or indirectly, the federally guaranteed securities being purchased or to be purchased.

85 Acts, ch 210, §15 HF 541
NEW section

261A.46 Obligations not liability of state or political subdivision.

Obligations issued pursuant to this division are not debts of the state or of any political subdivision of the state or a pledge of the faith and credit of the state or of any political subdivision, but the obligations are limited obligations of the authority payable solely from the funds or securities, pledged for their payment as authorized in this division, unless the obligations are refunded by refunding obligations issued under this division, which refunding obligations shall be payable solely from funds or securities pledged for their payment as authorized in this division. All revenue obligations shall contain on their face a statement to the effect that the obligations, as to both principal and interest, are not obligations of the state, or of any political subdivision of the state, but are limited obligations of the authority payable solely from revenue or securities pledged for their payment. Expenses incurred in carrying out this division are payable solely from funds provided under this division, and this division does not authorize the authority to incur indebtedness or liability on behalf of or payable by the state or any political subdivision of the state.

85 Acts, ch 210, §16 HF 541
NEW section

261A.47 Money received by authority.

All money received by the authority, whether as proceeds from the sale of obligations, from revenue, or otherwise, shall be deemed to be trust funds to be held and applied solely as provided in this division, but prior to the time when needed for use may be invested to the extent and in the manner provided by the authority. The funds shall be deposited, held, and secured as determined by the authority, except to the extent provided otherwise in the resolution authorizing the issuance of the related obligations or in the trust agreement securing the obligations. The resolution authorizing the issuance of the obligations or the trust agreement securing the obligations shall provide that an officer, bank or trust company to which the money is entrusted shall act as trustee of the money and shall hold and apply the money for the purposes of this division, subject to the provisions of this division and of the authorizing resolution or trust agreement.

85 Acts, ch 210, §17 HF 541
NEW section

261A.48 Powers of holders and trustees.

A holder of obligations or of the coupons pertaining to obligations and the trustee under a trust agreement, except to the extent the rights given in this division are restricted by the authorizing resolution or trust agreement, may, by suit, mandamus, or other proceedings, protect and enforce any and all rights under the laws of this state, or under the trust agreement or resolution authorizing the issuance of the obligations, and may enforce and compel the performance of all duties required by this division or by the trust agreement or resolution to be performed by the authority or by an officer, employee, or agent of the authority, including the fixing, charging, and collecting of fees and charges authorized in this division and required by the resolution or trust agreement to be fixed and collected.

The rights of holders include the right to compel the performance of all duties of the authority required by this division or the resolution or trust agreement, to enjoin unlawful activities, and in the event of default with respect to the payment of any principal of, premium, if any, and interest on an obligation or in the performance of a covenant or agreement on the part of the authority in the resolution, to apply to a court having jurisdiction of the cause to appoint a receiver to administer and operate the project, the revenue of which is pledged to the payment of the principal of, premium, if any, and interest on the obligations, the receiver to have full power to pay and to provide for payment of the principal of, premium, if any, and interest on the obligations, and to have the powers, subject to the direction of the court, as

are permitted by law and are accorded receivers in general equity cases, including the power to foreclose the mortgage on the project in the same manner as the foreclosure of a mortgage on real estate of private corporations, but excluding any power to pledge additional revenue of the authority to the payment of the principal, premium, and interest.

85 Acts, ch 210, §18 HF 541
NEW section

261A.49 Bondholders—pledge—agreement of the state.

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

85 Acts, ch 210, §19 HF 541
NEW section

261A.50 Provisions controlling.

The powers granted the authority under this division are in addition to the powers of the authority contained in other provisions of this chapter. All other provisions of this chapter apply to obligations issued pursuant to and powers granted the authority under this division, except to the extent they are inconsistent with this division.

85 Acts, ch 210, §20 HF 541
NEW section

CHAPTER 262

STATE BOARD OF REGENTS

Restrictions on South Africa-related investments and deposits
by state board of regents; see ch 12A

262.14 Loans—conditions.

The board may invest funds belonging to the institutions, subject to chapter 12A and the following regulations:

1. Each loan shall be secured by a mortgage paramount to all other liens upon approved farm lands in this state, accompanied by abstract showing merchantable title in the borrower. The loan shall not exceed sixty-five percent of the cash value of the land, exclusive of buildings.

2. Each such loan if for a sum more than one-fourth of the value of the farm shall be on the basis of stipulated annual principal reductions.

3. Any portion of the funds may be invested by the board. In the investment of the funds, the board shall exercise the judgment and care, under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in their own affairs as provided in section 633.123, subsection 1.

The board shall give appropriate consideration to those facts and circumstances that the board knows or should know are relevant to the particular investment involved, including the role the investment plays in the total value of the board's funds.

For the purposes of this subsection, appropriate consideration includes, but is not limited to, a determination by the board that the particular investment is reasonably designed to further the purposes prescribed by law to the board, taking into

consideration the risk of loss and the opportunity for gain or other return associated with the investment and consideration of the following factors as they relate to the funds of the board:

- a. The composition of the funds of the board with regard to diversification.
- b. The liquidity and current return of the investments relative to the anticipated cash flow requirements.
- c. The projected return of the investments relative to the funding objectives of the board.

Consistent with this subsection, investments made under this subsection shall be made in a manner that will enhance the economy of this state, and in particular, will result in increased employment of the residents of this state.

4. Any gift accepted by the Iowa state board of regents for the use and benefit of any institution under its control may be invested in securities designated by the donor, but whenever such gifts are accepted and the money invested according to the request of the said donor, neither the state, the Iowa state board of regents, nor any member thereof, shall be liable therefor or on account thereof.

5. A register containing a complete abstract of each loan and investment, and showing its actual condition, shall be kept by the board and be at all times open to inspection.

6. All loans made under the provisions of this section shall have an interest rate of not less than three and one-half percent per annum.

85 Acts, ch 190, §4 SF 27; 85 Acts, ch 227, §8 SF 110
Unnumbered paragraph 1 amended
Subsection 3 struck and rewritten

CHAPTER 273

AREA EDUCATION AGENCY

273.2 Area education agency established—powers—services and programs.

There are established throughout the state fifteen area education agencies, each of which is governed by an area education agency board of directors. The boundaries of an area education agency shall not divide a school district. The state board of public instruction shall change boundaries of area education agencies to take into account mergers of local school districts and changes in boundaries of local school districts, when necessary to maintain the policy of this chapter that a local school district shall not be a part of more than one area education agency.

An area education agency established under this chapter is a body politic as a school corporation for the purpose of exercising powers granted under this chapter, and may sue and be sued. An area education agency may hold property and execute lease-purchase agreements pursuant to section 273.3, subsection 7, and if the lease exceeds ten years or the purchase price of the property to be acquired pursuant to a lease-purchase agreement exceeds twenty-five thousand dollars, the area education agency shall conduct a public hearing on the proposed lease-purchase agreement and receive approval from the area education agency board of directors and the state board of public instruction before entering into the agreement.

The area education agency board shall furnish educational services and programs as provided in sections 273.1 to 273.9 and chapter 281 to the pupils enrolled in public or nonpublic schools located within its boundaries which are on the list of approved schools pursuant to section 257.25. The programs and services provided shall be at least commensurate with programs and services existing on July 1, 1974. The programs and services provided to pupils enrolled in nonpublic schools shall be comparable to programs and services provided to pupils enrolled in public schools within constitutional guidelines.

The area education agency board shall provide for special education services and media services for the local school districts in the area and shall encourage and assist school districts in the area to establish programs for gifted and talented children.

The area education agency board may provide for the following programs and services to local school districts within the limits of funds available:

1. In-service training programs for employees of school districts and area education agencies, provided at the time programs and services are established they do not duplicate programs and services available in that area from the universities under the state board of regents and from other universities and four-year institutions of higher education in Iowa.

2. Educational data processing pursuant to section 257.10, subsection 14.

3. Research, demonstration projects and models, and educational planning for children under five years of age through grade twelve and children requiring special education as defined in section 281.2 as approved by the state board of public instruction.

4. Auxiliary services for nonpublic school pupils as provided in section 257.26. However, if auxiliary services are provided their funding shall be based on the type of service provided.

5. Other educational programs and services for children under five years through grade twelve and children requiring special education as defined in section 281.2 and for employees of school districts and area education agencies as approved by the state board of public instruction.

The board of directors of an area education agency shall not establish programs and services which duplicate programs and services which are or may be provided by the area schools under the provisions of chapter 280A. An area education agency shall contract, whenever practicable, with other school corporations for the use of personnel, buildings, facilities, supplies, equipment, programs, and services.

85 Acts, ch 195, §30 SF 329

Unnumbered paragraph 2 amended

273.3 Duties and powers of area education agency board.

The board in carrying out the provisions of section 273.2 shall:

1. Determine the policies of the area education agency for providing programs and services.

2. Be authorized to receive and expend money for providing programs and services as provided in sections 273.1 to 273.9, chapters 281 and 442. All costs incurred in providing the programs and services, including administrative costs, shall be paid from funds received pursuant to sections 273.1 to 273.9 and chapters 281 and 442.

3. Provide data and prepare reports as directed by the commissioner of public instruction and the state board.

4. Provide for advisory committees as deemed necessary.

5. Be authorized, subject to rules and regulations of the state board of public instruction, to provide directly or by contractual arrangement with public or private agencies for special education programs and services, media services, and educational programs and services requested by the local boards of education as provided in this chapter, including but not limited to contracts for the area education agency to provide programs or services to the local school districts and contracts for local school districts, other educational agencies, and public and private agencies to provide programs and services to the local school districts in the area education agency in lieu of the area education agency providing the services. Contracts may be made with public or private agencies located outside the state if the programs and services comply with the rules of the state board.

6. Area education agencies may co-operate and contract between themselves and with other public agencies to provide special education programs and services, media services, and educational services to schools and children residing within their respective areas.

7. Be authorized to lease, subject to the approval of the state board of public instruction and to receive by gift and operate and maintain facilities and buildings necessary to provide authorized programs and services. However, a lease for less than ten years and with an annual cost of less than twenty-five thousand dollars does not require the approval of the state board. If a lease requires approval, the state board shall not approve the lease until the state board is satisfied by investigation that public school corporations within the area do not have suitable facilities available.

8. Be authorized, subject to the approval of the state board of public instruction, to enter into agreements for the joint use of personnel, buildings, facilities, supplies and equipment with school corporations as deemed necessary to provide authorized programs and services.

9. Be authorized to make application for, accept, and expend state and federal funds that are available for programs of educational benefit approved by the state board of public instruction, and co-operate with the department and the state board in the manner provided in federal-state plans or department rules in the effectuation and administration of programs approved by the department, or approved by other educational agencies, which agencies have been approved as a state educational authority.

10. In any county operating a juvenile home, upon request of the county board of supervisors, provide suitable curriculum, teaching staff, books, supplies, and other necessary materials for the instruction of children of school age who are maintained in the juvenile home of the county, as provided in section 232.142. Reimbursement for the cost of instruction provided under this section shall be made pursuant to section 273.11.

11. Be authorized to perform all other acts necessary to carry out the provisions and intent of this chapter.

12. Employ personnel to carry out the functions of the area education agency which shall include the employment of an administrator who shall possess a certificate issued under section 260.9. The administrator shall be employed pursuant to section 279.20 and sections 279.23, 279.24 and 279.25. The salary for an area education agency administrator shall be established by the board based upon the previous experience and education of the administrator. The provisions of section 279.13 shall apply to the area education agency board and to all teachers employed by the area education agency. The provisions of sections 279.23, 279.24 and 279.25 shall apply to the area education board and to all administrators employed by the area education agency.

13. Prepare an annual budget estimating income and expenditures for programs and services as provided in sections 273.1 to 273.9 and chapter 281 within the limits of funds provided under section 281.9 and chapter 442. The board shall give notice of a public hearing on the proposed budget by publication in an official county newspaper in each county in the territory of the area education agency in which the principal place of business of a school district that is a part of the area education agency is located. The notice shall specify the date, which shall be not later than November 10 of each year, the time, and the location of the public hearing. The proposed budget as approved by the board shall then be submitted to the state board of public instruction, on forms provided by the department, no later than December 1 preceding the next fiscal year for approval. The state board shall review the proposed budget of each area education agency and shall prior to January 1 either grant approval or return the budget without approval with comments of the state board included. Any unapproved budget shall be resubmitted to the state board for final approval.

14. Be authorized to pay, out of funds available to the board reasonable annual dues to an Iowa association of school boards. Membership shall be limited to those duly elected members of the area education agency board.

15. At the request of an employee through contractual agreement the board may

arrange for the purchase of an individual annuity contract for any of its respective employees from any company the employee may choose that is authorized to do business in this state, and through an Iowa-licensed insurance agent that the employee may select, for retirement or other purposes and may make payroll deductions in accordance with such arrangements for the purpose of paying the entire premium due, and to become due, under the contract. The deductions shall be made in the manner which will qualify the annuity premiums for the benefits afforded under section 403b of the Internal Revenue Code of 1954 and amendments thereto. The employee's rights under such annuity contract shall be nonforfeitable except for the failure to pay premiums.

16. Be authorized to establish and pay all or any part of the cost of group health insurance plans, nonprofit group medical service plans and group life insurance plans adopted by the board for the benefit of employees of the area education agency, from funds available to the board.

17. Meet at least annually with the members of the boards of directors of the merged areas in which the area education agency is located to discuss co-ordination of programs and services and other matters of mutual interest to the boards.

18. Be authorized to issue warrants and anticipatory warrants pursuant to chapter 74. The applicable rate of interest shall be determined pursuant to sections 74A.2, 74A.3, and 74A.7. This subsection shall not be construed to authorize a board to levy a tax.

19. Be authorized to issue school credit cards allowing area education agency employees to pay for the actual and necessary expenses incurred in the performance of work-related duties.

20. Pursuant to rules adopted by the state board of public instruction, be authorized to charge user fees for certain materials and services that are not required by law or by rules of the state board of public instruction and are specifically requested by a school district or approved nonpublic school.

85 Acts, ch 138, §2, 3 HF 552; 85 Acts, ch 212, §21 HF 686
 Subsection 3 amended
 Subsections 6 and 13 amended
 NEW subsection 20

273.8 Area education agency board of directors.

1. *Board of directors.* The board of directors of an area education agency shall consist of not less than five nor more than nine members, each a resident of and elected in the manner provided in this section from a director district that is approximately equal in population to the other director districts in the area education agency. Each director shall serve a three-year term which commences at the organization meeting.

2. *Election of directors.* The board of directors of the area education agency shall be elected at director district conventions attended by members of the boards of directors of the local school districts located within the director district. The member of the area education agency board to be elected at the director district convention may be a member of a local school district board of directors and shall be an elector and a resident of the director district, other than school district employees.

The director district conventions shall be called and the locations of the conventions shall be determined by the area education agency administrator. Annually the director district conventions shall be held within two weeks following the regular school election. Notice of the time, date and place of a director district convention shall be published by the area education agency administrator at least forty-five days prior to the day of the district conventions in at least one newspaper of general circulation in the director district. The cost of publication shall be paid by the area education agency.

The board of each separate school district which is located entirely or partially inside an area education agency director district shall cast a vote for director of the area education agency board based upon the ratio that the population of the school

district, or portion of the school district, in the director district bears to the total population in the director district. The population of each school district or portion shall be determined by the department of public instruction.

Vacancies, as defined in section 277.29, in the membership of the area education agency board shall be filled for the unexpired portion of the term at a special director district convention called and conducted in the manner provided in this subsection for regular director district conventions.

A candidate for election to the area education agency board shall file a statement of candidacy with the area education agency secretary at least ten days prior to the date of the director district convention, on forms prescribed by the department of public instruction. The statement of candidacy shall include the candidate's name, address and school district. The list of candidates shall be sent by the secretary of the area education agency by ordinary mail to the presidents of the boards of directors of all school districts within the director district immediately following the last day for filing the statement of candidacy. However, if no candidate files with the area education agency secretary by the deadline, an eligible elector who is present at the director district convention may be nominated at the convention by a delegate from a board of directors of a school district located within the director district. Delegates to director district conventions shall not be bound by a school board or any school board member to pledge their votes to any candidate prior to the date of the convention.

3. *Organization.* The board of directors of each area education agency shall meet and organize at the first regular meeting in October of each year at a suitable place designated by the president. Directors whose terms commence at the organization meeting shall qualify by taking the oath of office required by section 277.28 at or before the organization meeting.

The provisions of section 280A.12 relating to organization, officers, appointment of secretary and treasurer, and meetings of the merged area board apply to the area education agency board.

4. *Quorum.* A majority of the members of the board of directors of the area education agency shall constitute a quorum.

5. *Change in directors.* The board of an area education agency may change the number of directors on the board and shall make corresponding changes in the boundaries of director districts. Changes shall be completed not later than July 1 of a fiscal year for the director district conventions to be held the following September.

6. *Boundary line changes.* To the extent possible the board shall provide that changes in the boundary lines of director districts of area education agencies shall not lengthen or diminish the term of office of a director of an area education agency board. Initial terms of office shall be set by the board so that as nearly as possible the terms of one-third of the members expire annually.

7. *Census changes.* The board of the area education agency shall redraw boundary lines of director districts in the area education agency after each census to compensate for changes in population if changes in population have taken place.

Where feasible, boundary lines of director districts shall coincide with the boundary lines of school districts and the boundary lines of election precincts established pursuant to sections 49.3 to 49.6.

85 Acts, ch 138, §4 HF 552
Subsection 2, unnumbered paragraph 5 amended

273.11 Appropriation for reimbursement of instructional costs of children in juvenile homes.

The administrator of each area educational agency shall determine annually the cost of instruction provided under section 273.3, subsection 10, to a child of school age maintained in a juvenile home located in the area. The administrator shall certify the total yearly audited cost of instruction and the amount due for instruction, to

the commissioner of public instruction not later than September 1 of each year for the preceding fiscal year. The state board of public instruction shall review the amount due and submit a requisition to the state comptroller. The amount due shall be paid by the treasurer of state to the area education agency from any funds in the general fund of the state not otherwise appropriated upon warrants drawn and signed by the state comptroller.

85 Acts, ch 212, §21 HF 686
Section amended

CHAPTER 274

SCHOOL DISTRICTS IN GENERAL

274.42 Adjusting of district boundaries.

Whenever the federal government, or any agency or department thereof shall have heretofore located or shall hereafter locate any project which may be deemed desirable for the development of the national defense or for the purpose of flood control, and for the purpose of so locating such project shall have heretofore determined or shall hereafter determine, that certain real property making up a portion of a school district is required, the commissioner of public instruction with the approval of the state board shall have the power by resolution to adjust the boundaries of school districts wherein the federally owned property is located and the boundaries of adjoining school districts so as to effectively provide for the schooling of children residing within all of said districts. A copy of such resolution shall be promptly filed with the board of directors of such adjoining school district or districts and with the board of directors of such school district wherein the federally owned property is located unless such board has been reduced below a quorum in the manner contemplated in section 274.40, in which event such resolution shall be posted in two public places within the altered district.

85 Acts, ch 212, §21 HF 686
Section amended

274.43 Relinquishing funds.

The officers of the altered district shall relinquish to the proper officers of such adjoining district or districts all funds, claims for taxes, credits, and such other personal property in such a manner as the commissioner of public instruction shall direct, which said funds, credits, and personal property shall become the property of such adjoining district or districts as enlarged, to be used as the boards of directors of such districts may direct.

85 Acts, ch 212, §21 HF 686
Section amended

274.44 Determination final.

The determination of the commissioner of public instruction in such matters shall be final.

85 Acts, ch 212, §21 HF 686
Section amended

274.45 Expense audited and paid.

The expense of the commissioner of public instruction in respect to the carrying out of the provisions of sections 274.42 to 274.44, shall be paid from funds appropriated to the department of public instruction.

85 Acts, ch 212, §21 HF 686
Section amended

CHAPTER 275

REORGANIZATION OF SCHOOL DISTRICTS

275.1 Declaration of policy—surveys—definitions.

It is the policy of the state to encourage economical and efficient school districts which will ensure an equal educational opportunity to all children of the state. All areas of the state shall be in school districts maintaining kindergarten and twelve grades. If a school district ceases to maintain kindergarten and twelve grades except as otherwise provided in sections 280.15, 257.28, and 282.7, subsection 1, it shall reorganize within six months or the state board shall attach the school district not maintaining kindergarten and twelve grades to one or more adjacent districts. Voluntary reorganizations under this chapter shall be commenced only if the affected school districts are contiguous to one another. A reorganized district shall meet the requirements of section 275.3.

If a district is attached, division of assets and liabilities shall be made as provided in sections 275.29 to 275.31. The area education agency boards shall develop detailed studies and surveys of the school districts within the area education agency and all adjacent territory for the purpose of providing for reorganization of school districts in order to effect more economical operation and the attainment of higher standards of education in the schools. The plans shall be revised periodically to reflect reorganizations which may have taken place in the area education agency and adjacent territory.

As used in this chapter unless the context otherwise requires:

1. "*Eligible elector*" means eligible elector as defined in section 39.3, subsection 1.
2. "*Qualified elector*" means qualified elector as defined in section 39.3, subsection 2.
3. "*School districts affected*" means the school districts named in the reorganization petition whether a school district is affected in whole or in part.

85 Acts, ch 212, §7 HF 686
Unnumbered paragraph 1 amended

275.3 Minimum size.

No new school district shall be planned by an area education agency board nor shall any proposal for creation or enlargement of any school district be approved by an area education agency board or submitted to electors unless there reside within the proposed limits of such district at least three hundred persons of school age who were enrolled in public schools in the preceding school year. Provided, however, that the commissioner of public instruction shall have authority to grant permission to an area education agency board to approve the formation or enlargement of a school district containing a lower school enrollment than required in this section on the written request of such area education agency board if such request is accompanied by evidence tending to show that sparsity of population, natural barriers or other good reason makes it impracticable to meet the school enrollment requirement.

85 Acts, ch 212, §21 HF 686
Section amended

275.4 Studies, surveys, and plans.

In developing studies and surveys the area education agency board shall consult with the officials of school districts in the area and other citizens, and shall from time to time hold public hearings, and may employ such research and other assistance as it may determine reasonably necessary in order to properly carry on its survey and prepare definite plans of reorganization.

In addition, the area education agency board shall consult with the commissioner

of public instruction in the development of surveys and plans. The commissioner of public instruction shall provide assistance to the area education agency boards as requested and shall advise the area education agency boards concerning plans of contiguous area education agencies and the reorganization policies adopted by the state board of public instruction.

Completed plans shall be transmitted by the area education agency board to the commissioner of public instruction.

85 Acts, ch 212, §21 HF 686
Section amended

275.14 Objection—time of filing—notice.

Within ten days after the petition is filed, the area education agency administrator shall fix a final date for filing objections to the petition which shall be not more than sixty days after the petition is filed and shall fix the date for a hearing on the objections to the petition. Objections shall be filed in the office of the administrator who shall give notice at least ten days prior to the final day for filing objections, by one publication in a newspaper published within the territory described in the petition, or if none is published therein, in a newspaper published in the county where the petition is filed, and of general circulation in the territory described. The notice shall also list the date, time, and location for the hearing on the petition as provided in section 275.15. The cost of publication shall be assessed to each district whose territory is involved in the ratio that the number of pupils in basic enrollment, as defined in section 442.4 in each district bears to the total number of pupils in basic enrollment in the total area involved. Objections shall be in writing in the form of an affidavit and may be made by any person residing or owning land within the territory described in the petition, or who would be injuriously affected by the change petitioned for and shall be on file not later than twelve o'clock noon of the final day fixed for filing objections.

Objection forms shall be prescribed by the department of public instruction and may be obtained from the area education agency administrator. Objection forms that request that property be removed from a proposed district shall include the correct legal description of the property to be removed.

85 Acts, ch 221, §1 SF 398
NEW unnumbered paragraph 2

275.15 Hearing—decision—publication—appeal.

At the hearing, which shall be held within ten days of the final date set for filing objections, interested parties, both petitioners and objectors, may present evidence and arguments, and the area education agency board shall review the matter on its merits and within ten days after the conclusion of any hearing, shall rule on the objections and shall enter an order fixing the boundaries for the proposed school corporation as will in its judgment be for the best interests of all parties concerned, having due regard for the welfare of adjoining districts, or dismiss the petition.

The area education agency board, when entering the order fixing the boundaries, shall consider all requests timely filed for boundary line changes.

If the petition is not dismissed and the board determines that additional information is required in order to fix boundary lines of the proposed school corporation, the board may continue the hearing for no more than thirty days. The date of the continued hearing shall be announced at the original meeting. Additional objections in the form required in section 275.14 may be considered if filed with the administrator within five days after the date of the original board hearing. If the hearing is continued, the area education agency administrator may conduct one or more meetings with the boards of directors of the affected districts. Notice of any such meeting must be given at least forty-eight hours in advance by the area education agency administrator in the manner provided in section 21.4. The area education agency board may request that the administrator make alternative recommenda-

tions regarding the boundary lines of the proposed school corporation. The area education agency board shall make a decision on the boundary lines within ten days following the conclusion of the continued hearing.

The administrator shall at once publish the decision in the same newspaper in which the original notice was published. Within twenty days after the publication, the decision rendered by the area education agency board may be appealed to the district court in the county involved by any school district affected. For purposes of appeal, only those school districts who filed reorganization petitions are school districts affected. An appeal from a decision of an area education agency board or joint area education agency boards under section 275.4, 275.16, or this section is subject to appeal procedures under this chapter and is not subject to appeal under chapter 290.

85 Acts, ch 221, §2 SF 398
Section amended

275.16 Hearing when territory in different area education agencies.

If the territory described in the petition for the proposed corporation lies in more than one area education agency, the agency administrator with whom the petition is filed shall fix the time and place for a hearing and call a joint meeting of the members of all the agency boards in which territory of the proposed school corporation lies, to act as a single board for the hearing of the objections, and a majority of members of each of the agency boards of the different agencies in which any part of the proposed corporation lies, constitutes a quorum. The president of the board of directors of the area education agency in which the petition has been filed, or a member of the board designated by the president, shall preside at the joint meeting. The joint boards acting as a single board shall determine whether the petition conforms to plans or, if the petition requests a change in plans, whether a change should be made, and may change the plans of any or all the area education agency boards affected by the petition. The joint board shall determine and fix boundaries for the proposed corporation as provided in section 275.15 or dismiss the petition. The joint board may continue the hearing as provided in section 275.15.

Votes of each member of an area education agency board in attendance shall be weighted so that the total number of votes eligible to be cast by members of each board in attendance shall be equal. However, if the joint boards cast a tie vote and are unable to agree to a decision fixing the boundaries for the proposed school corporation or to a decision to dismiss the petition, the time during which actions must be taken under section 275.15 shall be extended from five days to fifteen days after the conclusion of the hearing under section 275.15, and the joint board shall reconvene not less than ten and not more than fifteen days after the conclusion of the hearing. At the hearing the joint board shall reconsider its action and if a tie vote is again cast it is a decision granting the petition and changing the plans of any and all of the agency boards affected by the petition and fixing the boundaries for the proposed school corporation. The agency administrator shall at once publish the decision in the same newspaper in which the original notice was published.

In case a controversy arises from such meeting, the area education agency board or boards or any school district aggrieved may bring the controversy to the department of public instruction, as provided in section 275.8, within twenty days from the publication of this order, and if said controversy is taken to the department of public instruction, a ten-day notice in writing shall be given to all agency boards and school districts affected or portions thereof. The department shall have the authority to affirm the action of the joint boards, to vacate, to dismiss all proceedings or to make such modification of the action of the joint boards as in their judgment would serve the best interest of all the agencies. Judicial review of the actions of the department may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review must be filed within thirty days after the decision of the department of public instruction.

85 Acts, ch 212, §24 HF 686; 85 Acts, ch 221, §3 SF 398
Section amended

275.18 Special election called—time.

When the boundaries of the territory to be included in a proposed school corporation and the number and method of the election of the school directors of the proposed school corporation have been determined as provided in this chapter, the area education agency administrator with whom the petition is filed shall give written notice of the proposed date of the election to the county commissioner of elections of the county in the proposed school corporation which has the greatest taxable base. The proposed date shall be as soon as possible pursuant to sections 39.2, subsections 1 and 2, and 47.6, subsections 1 and 2, but not later than November 30 of the calendar year prior to the calendar year in which the reorganization will take effect.

The county commissioner of elections shall give notice of the election by one publication in the same newspaper in which previous notices have been published regarding the proposed school reorganization, and in addition, if more than one county is involved, by one publication in a legal newspaper in each county other than that of the first publication. The publication shall be not less than four nor more than twenty days prior to the election. If the decision published pursuant to section 275.15 or 275.16 includes a description of the proposed school corporation and a description of the director districts, if any, the notice for election and the ballot do not need to include these descriptions. Notice for an election shall not be published until the expiration of time for appeal, which shall be the same as that provided in section 275.15 or 275.16, whichever is applicable; and if there is an appeal, not until the appeal has been disposed of.

85 Acts, ch 221, §4 SF 398
Section amended

275.25 Election of directors.

1. If the proposition to establish a new school district carries under the method provided in this chapter, the area education agency administrator with whom the petition was filed shall give written notice of a proposed date for a special election for directors of the newly formed school district to the commissioner of elections of the county in the district involved in the reorganization which has the greatest taxable base. The proposed date shall be as soon as possible pursuant to sections 39.2, subsections 1 and 2, and 47.6, subsections 1 and 2, but not later than the third Tuesday in January of the calendar year in which the reorganization takes effect. The election shall be conducted as provided in section 277.3, and nomination petitions shall be filed pursuant to section 277.4, except as otherwise provided in this subsection. Nomination petitions shall be filed with the secretary of the board of the existing school district in which the candidate resides, signed by not less than ten eligible electors of the newly formed district, and filed not less than thirty days prior to the date set for the special school election.

2. The number of directors of a school district is either five or seven as provided in section 275.12. In school districts that include a city of fifteen thousand or more population as shown by the most recent decennial federal census, the board shall consist of seven members elected in the manner provided in subsection 3. If it becomes necessary to increase the membership of a board, two directors shall be added according to the procedure described in section 277.23.

The county board of supervisors shall canvass the votes and the county commissioner of elections shall report the results to the area education agency administrator who shall notify the persons who are elected directors.

3. The directors who are elected to serve shall serve until their successors are elected and qualify. At the special election, the newly elected director receiving the most votes shall be elected to serve until the director's successor qualifies after the fourth regular school election date occurring after the effective date of the reorganization; the two newly elected directors receiving the next largest number of votes shall be elected to serve until the directors' successors qualify after the third regular

school election date occurring after the effective date of the reorganization; and the two newly elected directors receiving the next largest number of votes shall be elected to serve until the directors' successors qualify after the second regular school election date occurring after the effective date of the reorganization. However, in districts that include all or a part of a city of fifteen thousand or more population and in districts in which the proposition to establish a new corporation provides for the election of seven directors, the three newly elected directors receiving the most votes shall be elected to serve until the directors' successors qualify after the fourth regular school election date occurring after the effective date of the reorganization.

4. The board of the newly formed district shall organize within fifteen days after the special election upon the call of the area education agency administrator. The new board shall have control of the employment of personnel for the newly formed district for the next following school year under section 275.33. Following the organization of the board of the newly formed district, the board may establish policy, organize curriculum, enter into contracts, complete planning, and take action as necessary for the efficient management of the newly formed community school district.

5. Section 49.8, subsection 4 does not permit a director to remain on the board of a school district after the effective date of a boundary change which places the director's residence outside the boundaries of the district. Vacancies caused by this occurrence on a board shall be filled in the manner provided in sections 279.6 and 279.7.

6. The board of the newly formed district shall appoint an acting superintendent and an acting board secretary. The appointment of the acting superintendent shall not be subject to the continuing contract provisions of sections 279.20, 279.23, and 279.24.

85 Acts, ch 221, §5 SF 398
NEW subsection 6

275.29 Division of assets and liabilities after reorganization.

Between July 1 and July 20, the board of directors of the newly formed school district shall meet with the boards of all the old districts, or parts of districts, affected by the organization of the new school corporation for the purpose of reaching joint agreement on an equitable division of the assets of the several school corporations or parts of school corporations and an equitable distribution of the liabilities of the affected corporations or parts of corporations. In addition, if outstanding bonds are in existence in any district, the boards shall meet together prior to March 15 prior to the school year the reorganization is effective to determine the distribution of the bonded indebtedness between the districts so that the newly formed district may certify its budget under the procedures specified in chapter 24. The boards shall consider the mandatory levy required in section 76.2 and shall assure the satisfaction of outstanding obligations of each affected school corporation.

85 Acts, ch 221, §6 SF 398
Section amended

275.31 Taxes to effect equalization.

If necessary to equalize the division and distribution, the board or boards may provide for the levy of additional taxes, which shall be sufficient to satisfy the mandatory levy required in section 76.2 or other liabilities of the districts, upon the property of a corporation or part of a corporation and for the distribution of the tax revenues so as to effect equalization. When the board or boards are considering the equalization levy, the division and distribution shall not impair the security for outstanding obligations of each affected corporation.

85 Acts, ch 221, §7 SF 398
Section amended

275.33 Contracts of new district.

1. The terms of employment of superintendents, principals, and teachers, for the school year following the effective date of the formation of the new district shall not be affected by the formation of the new district, except in accordance with the provisions of sections 279.15 to 279.18 and 279.24 and the authority and responsibility to offer new contracts or to continue, modify, or terminate existing contracts pursuant to sections 279.12, 279.13, 279.15 to 279.21, 279.23, and 279.24 for the school year beginning with the effective date of the reorganization shall be transferred from the boards of the existing districts to the board of the new district on the third Tuesday of January prior to the school year the reorganization is effective.

2. The collective bargaining agreement of the district with the largest basic enrollment, as defined in section 442.4, in the new district shall serve as the base agreement and the employees of the other districts involved in the formation of the new district shall automatically be accreted to the bargaining unit of that collective bargaining agreement for purposes of negotiating the contract for the following year without further action by the public employment relations board. If only one collective bargaining agreement is in effect among the districts which are party to the reorganization, then that agreement shall serve as the base agreement, and the employees of the other districts involved in the formation of the new district shall automatically be accreted to the bargaining unit of that collective bargaining agreement for purposes of negotiating the contract for the following year without further action by the public employment relations board. The board of the newly formed district, using the base agreement as its existing contract, shall bargain with the combined employees of the existing districts for the school year beginning with the effective date of the reorganization. The bargaining shall be completed by March 15 prior to the school year in which the reorganization becomes effective or within one hundred twenty days after the organization of the new board, whichever is later. If a bargaining agreement was already concluded by the board and employees of the existing district with the contract serving as the base agreement for the school year beginning with the effective date of the reorganization, that agreement shall be void. However, if the base agreement contains multiyear provisions affecting school years subsequent to the effective date of the reorganization, the base agreement shall remain in effect as specified in the agreement.

The provisions of the base agreement shall apply to the offering of new contracts, or continuation, modification, or termination of existing contracts as provided in subsection 1 of this section.

85 Acts, ch 221, §8 SF 398
Section amended

275.41 Alternative method for director elections—temporary appointments.

1. As an alternative to the method specified in section 275.25 for electing directors in a newly formed community school district, the procedure specified in this section may be used.

2. The board of the former school district with the largest population involved in the merger shall designate four directors to be retained as members of the board of the newly formed district. Other school districts involved in the merger shall each be allowed to retain directors in proportion to the ratio that the population of the former school district bears to the most populous district involved in the merger, except that no district involved in the merger shall retain less than one director.

3. If the procedure in subsection 2 results in four members being retained from the largest district involved in the merger and only a single member from the other district involved in the merger, the reorganization petition may specify that the distribution of the board members who are retained from the districts involved in the merger be five to one, five to two, or six to one.

4. If the total number of directors determined under subsection 2 or 3 is an odd

number, the board of the district with the largest population shall designate the term of office of one of the members who is retained to commence at the organizational meeting of the board of the newly formed district and to end at the organizational meeting following the fourth regular school election held thereafter in the manner specified in the reorganization petition.

If the total number of directors determined under subsection 2 or 3 is an even number, that number of directors shall function until a special election can be held, at which time an additional director shall be elected to a term from the newly formed district ending at the organizational meeting following the fourth regular school election held thereafter. The procedure for calling the special election shall be the procedure specified in section 275.25.

5. The boards of directors of school districts which are involved in the merger which have three or more directors who are retained, shall each designate two of the directors who are retained to serve terms that expire at the organizational meeting following the second regular school election held thereafter. All other directors who are retained shall serve terms that expire at the organizational meeting following the third regular school election held thereafter. If there is an insufficient number of board members eligible to be retained from a former school district, the board of the former school district may appoint members to fill the vacancies. A vacancy occurs if there is an insufficient number of former board members who reside in the newly formed district or if there is an insufficient number who are willing to serve on the board of the newly formed district.

6. At the second regular school election held after the effective date of the merger, the two vacancies which will occur on the board shall be filled in a manner specified in the reorganization petition.

7. At the third regular school election held after the effective date of merger, if a five-member board is specified in the reorganization petition, two directors shall be elected in the manner specified in the reorganization petition and if a seven-member board is specified in the reorganization petition, four directors shall be elected, two for one-year terms and two for three-year terms, in the manner specified in the reorganization petition.

8. The board of the newly formed district shall organize within forty-five days after the approval of the merger upon the call of the area education agency administrator. The new board shall have control of the employment of all personnel for the newly formed district for the ensuing school year. Following the organization of the new board the board shall have authority to establish policy, organize curriculum, enter into contracts and complete such planning and take such action as is essential for the efficient management of the newly formed community school district.

9. The board of the newly formed district shall appoint an acting superintendent and an acting board secretary. The appointment of the acting superintendent shall not be subject to the continuing contract provision of sections 279.20, 279.23, and 279.24.

Section 49.8, subsection 4, shall not permit a director to remain on the board of a school district after the effective date of a boundary change which places the director's residence outside the boundaries of the district. Vacancies so caused on any board shall be filled in the manner provided in sections 279.6 and 279.7.

CHAPTER 276

IOWA COMMUNITY EDUCATION ACT

276.4 State consultant.

State consultant of community education shall serve district and local advisory councils in accordance with rules promulgated by the commissioner of public instruction and in compliance with Pub. L. No. 93-380.

85 Acts, ch 212, § 21 HF 686
Section amended

CHAPTER 279

DIRECTORS—POWERS AND DUTIES

279.3 Appointment of secretary and treasurer.

At a regular or special meeting of the board held in July or August prior to or on August 15 the board shall appoint a secretary who shall not be a teacher employed by the board but may be another employee of the board. The board shall also appoint a treasurer who may be another employee of the board. However, the board may appoint one person to serve as the secretary and the treasurer.

These officers shall be appointed from outside the membership of the board for terms of one year beginning with the date of appointment, and the appointment and qualification shall be entered of record in the minutes of the secretary. They shall qualify within ten days following appointment by taking the oath of office in the manner required by section 277.28 and filing a bond as required by section 291.2 and shall hold office until their successors are appointed and qualified.

85 Acts, ch 28, §1 SF 150
Unnumbered paragraph 1 amended

279.10 School year—beginning date—exceptions—pilot programs.

1. The school year shall begin on the first day of July and each regularly established elementary and secondary school shall begin no sooner than the first day of September and shall continue for at least one hundred eighty days, except as provided in subsection 3, and may be maintained during the entire calendar year. A school corporation may begin employment of personnel for in-service training and development purposes before the date to begin elementary and secondary school.

2. The board of directors shall hold a public hearing on any proposal prior to submitting it to the department of public instruction for approval.

3. The board of directors of a school district may request approval from the department of public instruction for a pilot program for an innovative school year. The number of days per year that school is in session may be more or less than those specified in subsection 1, but the innovative school year shall provide for an equivalent number of total hours that school is in session.

The board shall file a request for approval with the department not later than November 1 of the preceding school year. The request shall include a listing of the savings and goals to be attained under the innovative school year subject to rules adopted by the department under chapter 17A. The department shall notify the districts of the approval or denial of pilot programs not later than the next following January 15.

A request to continue an innovative school year pilot project after its initial year also shall include an evaluation of the savings and impacts on the educational program in the district.

Participation in a pilot project shall not modify provisions of a master contract

negotiated between a school district and a certified bargaining unit pursuant to chapter 20 unless mutually agreed upon.

4. The state board of public instruction may grant a request made by a board of directors of a school district stating its desire to commence classes for regularly established elementary and secondary schools before the first day of September. Such request shall be based upon the determination that a starting date on or after the first day of September would have a significant negative educational impact.

85 Acts, ch 6, §1, 2 SF 77
1985 amendments take effect July 1, 1986; 85 Acts, ch 6, §4
Subsection 1 amended
NEW subsection 4

279.19A Extracurricular contracts.

1. School districts employing individuals to coach interscholastic athletic sports shall issue a separate extracurricular contract for each of these sports. An extracurricular contract offered under this section shall be separate from the contract issued under section 279.13. Wages for employees who coach these sports shall be paid pursuant to established or negotiated supplemental pay schedules. An extracurricular contract shall be in writing, and shall state the number of contract days for that sport, the annual compensation to be paid, and any other matters as may be mutually agreed upon. The contract shall be for a single school year.

2. An extracurricular contract shall be continued automatically in force and effect for equivalent periods, except as modified or terminated by mutual agreement of the board of directors and the employee, or terminated in accordance with this section. An extracurricular contract shall initially be offered by the employing board to an individual on the same date that contracts are offered to teachers under section 279.13. An extracurricular contract may be terminated at the end of a school year pursuant to sections 279.15 through 279.19. If the school district offers an extracurricular contract for a sport for the subsequent school year to an employee who is currently performing under an extracurricular contract for that sport, and the employee does not wish to accept the extracurricular contract for the subsequent year, the employee may resign from the extracurricular contract within twenty-one days after it has been received.

Section 279.13, subsection 3, applies to this section.

3. The board of directors of a school district may require an employee who has resigned from an extracurricular contract to accept, as a condition of employment under section 279.13, the extracurricular contract for the subsequent school year if all of the following conditions apply:

a. The employee has accepted a teaching contract issued by the board pursuant to section 279.13 for the subsequent school year.

b. The board of directors has made a good faith effort to fill the coaching position with a certificated or authorized replacement.

c. The position has not been filled by June 1 of the year in which the employee resigned the extracurricular contract.

4. As a condition of employment under section 279.13, the board of directors of a school district may require an employee who has been issued a teaching contract pursuant to section 279.13 to accept an extracurricular contract for which the employee is certificated, or may require as a condition of employment that an applicant for a teaching contract under section 279.13 accept an extracurricular contract if all of the following conditions apply:

a. The individual who held the coaching position during the year has not been issued a teaching contract by the board pursuant to section 279.13 for the subsequent school year, or has been terminated from the extracurricular contract.

b. The board of directors has made a good faith effort to fill the coaching position with a certificated or authorized replacement.

c. The position has not been filled by June 1 of the year in which the vacancy occurred for the interscholastic athletic sport.

5. Within seven days following June 1 of that year, the board shall notify the employee in writing if the board intends to require the employee to accept an extracurricular contract for the subsequent school year under subsection 3 or 4. If the employee believes that the board did not make a good faith effort to fill the position the employee may appeal the decision by notifying the board in writing within ten days after receiving the notification.

The appeal shall state why the employee believes that the board did not make a good faith effort to fill the position. If the parties are unable to informally resolve the dispute, the parties shall attempt to agree upon an alternative means of resolving the dispute.

If the dispute is not resolved by mutual agreement, either party may appeal to the district court.

6. Subsections 3, 4, and 5 do not apply if the terms of a collective bargaining agreement provide otherwise.

7. An extracurricular contract may be terminated prior to the expiration of that contract pursuant to section 279.27.

8. A termination proceeding of an extracurricular contract either by the board pursuant to subsection 2 or pursuant to section 279.27 does not affect a contract issued pursuant to section 279.13.

A termination of a contract entered into pursuant to section 279.13, or a resignation from that contract by the teacher, constitutes an automatic termination or resignation of the extracurricular contract in effect between the same teacher and the employing school board.

9. For the purposes of this section, "good faith effort" includes advertising for the position in an appropriate publication, interviewing applicants, and giving serious consideration to those certificated or authorized, and otherwise qualified, applicants who apply.

85 Acts, ch 74, §1-3 SF 480
 See Code editor's note
 Subsections 1 and 2 amended
 Subsection 4, paragraph c amended
 Subsection 5, unnumbered paragraph 1 amended

279.19B Coaching endorsement and authorization.

The board of directors of a school district shall offer an extracurricular contract for varsity head coach of the interscholastic athletic activities of football, basketball, track, baseball, softball, volleyball, gymnastics, hockey, and wrestling only to an individual possessing a teaching certificate with a coaching endorsement issued pursuant to chapter 260.

The board of directors of a school district may employ for head coach of other interscholastic athletic activities or for assistant coach of any interscholastic athletic activity, an individual who possesses a coaching authorization issued by the department of public instruction. An individual who has been issued a coaching authorization or who possesses a teaching certificate with a coaching endorsement but is not issued a teaching contract under section 279.13 and who is employed by the board of directors of a school district serves at the pleasure of the board of directors and is not subject to sections 279.13 through 279.19, and 279.27. Chapter 272A and subsection 1 of section 279.19A apply to coaching authorizations.

85 Acts, ch 49, §1 SF 414
 Unnumbered paragraph 2 amended

279.43 Optional funding of asbestos removal or encapsulation.

1. The board of directors may pay the actual cost of removal or encapsulation of asbestos existing in its school buildings from any funds in the general fund of the district, funds received from the schoolhouse tax authorized under section 278.1, subsection 7, funds from the tax levy certified under section 297.5 or moneys obtained through a federal asbestos loan program, to be repaid from any of the funds specified in this subsection.

2. The board of directors may also submit a proposal to the qualified electors of the school district at a regular school election or at a special election, to authorize an additional tax levy to pay the actual cost of an asbestos removal or encapsulation project.

3. The election proposal shall include the following two parts:

a. Shall a tax levy be certified for not more than three consecutive years to pay the actual costs of the asbestos removal or encapsulation project?

b. If a tax levy is authorized by the electorate, which of the following tax methods shall be used to pay for the project:

(1) A property tax sufficient to pay the actual costs of the project.

(2) A combination of an enrichment property tax and a school district income surtax certified and levied as provided in sections 442.14 through 442.20.

c. If a property tax levy is selected under paragraph "b", subparagraph (1), the levy shall be certified for not more than three consecutive years.

d. If a combination of an enrichment property tax and a school district income surtax is selected, the amount of tax revenue raised shall not exceed the actual cost of the removal or encapsulation of the asbestos or the maximum amount which may be raised by the levy of the combination of the taxes for the three school years, as determined under section 442.14, subsections 3 and 4, whichever amount is less.

4. If a majority of the qualified electors voting for and against the tax authorization proposed under subsection 3, paragraph "a", favor the certification of a tax levy, the tax method receiving the largest number of votes under subsection 3, paragraph "b", shall be used to pay the actual costs of the removal or encapsulation project.

5. The taxes certified for levy under this section are in addition to any other taxes or additional enrichment amount raised for other programs as provided by law.

6. Nothing in sections 442.14 through 442.20 or this section shall be construed to require more than one favorable election to authorize the use of a property tax or the combination of an enrichment property tax and a school district income surtax to pay the actual cost of an asbestos removal or encapsulation project under this section.

85 Acts, ch 5, §1 SF 128; 85 Acts, ch 111, §1,2 HF 639

Subsections 1 and 2 amended

Subsection 3, paragraphs c and d amended

279.49 Child day care programs.

The board of directors of a school corporation may operate or contract for the operation of a program to provide child day care to children not enrolled in school or to students enrolled in kindergarten through grade six before and after school, or to both. The person employed to be responsible for coordinating a program operated by a board shall be an appropriately certificated teacher under chapter 260 or the program operated by contract with the board shall be licensed as a child care center under chapter 237A. The board shall require the employment of adequate personnel for a program to meet the personnel standards adopted by the department of human services pursuant to section 237A.12, subsection 1.

The board shall establish a fee for the cost of participation in a program. The parent or guardian of a child participating in a program is responsible for payment of the fee and for transportation of the child. The fee shall cover staffing costs and other necessary expenses as deemed appropriate by the board.

85 Acts, ch 173, §26 HF 451

NEW section

CHAPTER 280

UNIFORM SCHOOL REQUIREMENTS

280.3 Duties of board.

The board of directors of each public school district and the authorities in charge of each nonpublic school shall prescribe the minimum educational program for the schools under their jurisdictions. The minimum educational program shall be the curriculum set forth in section 257.25, except as otherwise provided by law. The board of directors of a public school district shall not allow discrimination in any educational program on the basis of race, color, creed, sex, marital status or place of national origin.

A nonpublic school which is unable to meet the minimum educational program may request an exemption from the state board of public instruction. The authorities in charge of the nonpublic school shall file with the commissioner of public instruction the names and locations of all schools desiring to be exempted and the names, ages, and post office addresses of all pupils of compulsory school age who are enrolled. The commissioner, subject to the approval of the state board, may exempt the nonpublic school from compliance with the minimum educational program for two school years. When the exemption has once been granted, renewal of the exemption for each succeeding school year may be conditioned by the commissioner, with the approval of the board, upon proof of achievement in the basic skills of arithmetic, the communicative arts of reading, writing, grammar, and spelling, and an understanding of United States history, history of Iowa, and the principles of American government, of the pupils of compulsory school age exempted in the preceding year. Proof of achievement shall be determined on the basis of tests or other means of evaluation prescribed by the commissioner of public instruction with the approval of the board of public instruction. The testing or evaluation, if required, shall be accomplished prior to submission of the request for renewal of the exemption. Renewal requests shall be filed with the commissioner of public instruction by April 15 of the school year preceding the school year for which the applicants desire exemption. This section shall not apply to schools eligible for exemption under section 299.24.

The board of directors of each public school district and the authorities in charge of each nonpublic school shall establish and maintain attendance centers based upon the needs of the school age pupils enrolled in the school district or nonpublic school. Kindergarten and prekindergarten programs may be provided. In addition, the board of directors or governing authority may include in the educational program of any school such additional courses, subjects, or activities which it deems fit the needs of the pupils.

85 Acts, ch 212, §21, 22 HF 686
Section amended

280.12 Goals and plans—evaluation—advisory committee.

1. The board of directors of each public school district and the authorities in charge of each nonpublic school shall:
 - a. Determine major educational needs and rank them in priority order.
 - b. Develop long-range goals and plans to meet the needs.
 - c. Establish and implement short-range and intermediate-range plans to meet the goals and to attain the desired levels of pupil performance.
 - d. Evaluate progress toward meeting the goals and maintain a record of progress under the plan that includes reports of pupil performance and results of school improvement projects.
 - e. Report progress made under the plan at least annually to the advisory committee appointed under subsection 2, the community and the department of public

instruction. Make other reports of progress as the commissioner of public instruction requires.

2. In meeting the requirements of subsection 1, a board of directors or the authorities in charge of a nonpublic school shall appoint an advisory committee to make recommendations to the board or authorities. The advisory committee shall consist of members representing students, parents, teachers, administrators, and representatives from the community.

85 Acts, ch 212, §8 HF 686
Section amended

280.13 Requirements for interscholastic contests and competitions.

No public school shall participate in or allow students representing a public school to participate in any extracurricular interscholastic contest or competition which is sponsored or administered by an organization as defined in this section, unless the organization is registered with the department of public instruction, files financial statements with the department in the form and at the intervals prescribed by the state board of public instruction, and is in compliance with rules and regulations which the state board of public instruction shall adopt for the proper administration, supervision, operation, adoption of eligibility requirements, and scheduling of such extracurricular interscholastic contests and competitions and such organizations. For the purposes of this section "organization" means any corporation, association, or organization which has as one of its primary purposes the sponsoring or administration of extracurricular interscholastic contests or competitions, but shall not include an agency of this state, a public or private school or school board, or an athletic conference or other association whose interscholastic contests or competitions do not include more than twenty schools.

85 Acts, ch 212, §24 HF 686
Section amended

280.15 Joint employment and sharing.

Two or more public school districts may jointly employ and share the services of any school personnel, or acquire and share the use of classrooms, laboratories, equipment and facilities. Classes made available to students in the manner provided in this section shall be considered as complying with the requirements of section 275.1 relating to the maintenance of kindergarten and twelve grades by a school district.

85 Acts, ch 212, §9 HF 686
Section amended

280.16 Appropriate instructional program review.

Pursuant to the procedures established in chapter 290, a student's parent or guardian may obtain a review of an action or omission of the board of directors of the district of residence of the student on either of the following grounds:

1. That the student has been or is about to be denied entry or continuance in an instructional program appropriate for that student.
2. That the student has been or is about to be required to enter or continue in an instructional program that is inappropriate for that student.

If the state board of public instruction finds that a student has been denied an appropriate instructional program, or required to enter an inappropriate instructional program, the state board shall order the resident district to provide or make provision for an appropriate instructional program for that student.

85 Acts, ch 212, §10 HF 686
NEW section

280.17 Procedures for handling child abuse reports.

The board of directors of a public school and the authorities in control of a nonpublic school shall prescribe procedures, in accordance with the guidelines

contained in the model policy developed by the department of public instruction in consultation with the department of human services, and adopted by the department of public instruction pursuant to chapter 17A, for the handling of reports of child abuse, as defined in section 232.68, subsection 2, paragraph "a", "b", or "d", alleged to have been committed by an employee or agent of the public or nonpublic school.

85 Acts, ch 173, §27 HF 451

Effective January 1, 1987; model policy to be reported to the general assembly by January 1, 1986; rules implementing model policy to be effective January 1, 1987; 85 Acts, ch 173, §32, 35

NEW section

CHAPTER 280A

AREA VOCATIONAL SCHOOLS AND COMMUNITY COLLEGES

280A.1 Statement of policy.

It is hereby declared to be the policy of the state of Iowa and the purpose of this chapter to provide for the establishment of not more than seventeen areas which shall include all of the area of the state and which may operate either area vocational schools or area community colleges offering to the greatest extent possible, educational opportunities and services in each of the following, when applicable, but not necessarily limited to:

1. The first two years of college work including preprofessional education.
2. Vocational and technical training.
3. Programs for in-service training and retraining of workers.
4. Programs for high school completion for students of post-high school age.
5. Programs for all students of high school age who may best serve themselves by enrolling for vocational and technical training while also enrolled in a local high school, public or private.
6. Programs for students of high school age to provide advanced college placement courses not taught at a student's high school while the student is also enrolled in the high school.
7. Student personnel services.
8. Community services.
9. Vocational education for persons who have academic, socioeconomic, or other handicaps which prevent succeeding in regular vocational education programs.
10. Training, retraining, and all necessary preparation for productive employment of all citizens.
11. Vocational and technical training for persons who are not enrolled in a high school and who have not completed high school.

85 Acts, ch 212, §11 HF 686

NEW subsection 6 and subsequent subsections renumbered

280A.2 Definitions.

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

1. "*Vocational school*" means a publicly supported school which offers as its curriculum or part of its curriculum vocational or technical education, training, or retraining available to persons who have completed or left high school and are preparing to enter the labor market; persons who are attending high school who will benefit from such education or training but who do not have the necessary facilities available in the local high schools; persons who have entered the labor market but are in need of upgrading or learning skills; and persons who due to academic, socioeconomic, or other handicaps are prevented from succeeding in regular vocational or technical education programs.
2. "*Junior college*" means a publicly supported school which offers as its curriculum or part of its curriculum two years of liberal arts, preprofessional, or other instruction partially fulfilling the requirements for a baccalaureate degree but which does not confer any baccalaureate degree.

3. "*Community college*" means a publicly supported school which offers two years of liberal arts, preprofessional, or other instruction partially fulfilling the requirements for a baccalaureate degree but which does not confer any baccalaureate degree and which offers in whole or in part the curriculum of a vocational school.

4. "*Merged area*" means an area where two or more county school systems or parts thereof merge resources to establish and operate a vocational school or a community college in the manner provided in this chapter.

5. "*Area vocational school*" means a vocational school established and operated by a merged area.

6. "*Area community college*" means a community college established and operated by a merged area.

7. "*State board*" means the state board of public instruction.

8. "*Commissioner*" means the commissioner of public instruction.

9. "*Planning board*" means any county board of education which is a party to a plan for establishment of an area vocational school or area community college.

10. "*Area school*" means an area vocational school or area community college established under the provisions of this chapter.

85 Acts, ch 212, §21, 22 HF 686
Subsection 8 amended

280A.25 Power of state board.

The state board shall:

1. Have authority to designate any vocational school or community college as an "area vocational education school" within the meaning of, and for the purpose of administering, the Act of Congress designated the "Vocational Education Act of 1963". No vocational school or community college shall be so designated by the board for the expenditure of funds under section 35c, subsection "a", paragraph 5, Title 20, U.S.C., which has not been designated and classified as an area vocational school or area community college by the state board.

2. Change boundaries of director districts in any merged area when the board fails to change boundaries as required by law.

3. The state board may make changes in boundaries of merged areas with the approval of the board of directors of each merged area affected by the change. When the boundaries of a merged area are changed, the state board may authorize the board of directors of the merged area to levy additional taxes upon the property within the merged area, or any part of the merged area, and distribute the taxes so that all parts of the merged area are paying their share toward the support of the school or college.

4. Administer, allocate, and disburse any federal or state funds made available to pay any portion of the cost of acquiring sites for and constructing, acquiring, or remodeling facilities for area vocational schools or area community colleges, and establish priorities for the use of such funds.

5. Administer, allocate, and disburse any federal or state funds available to pay any portion of the operating costs of area vocational schools or area community colleges.

6. Approve, in such manner as it may prescribe, sites and buildings to be acquired, erected, or remodeled for use by area vocational schools or area community colleges.

7. Have authority to adopt such administrative rules as it deems necessary to carry out the provisions of this chapter.

8. Have the power to enter into contracts with local school boards within the area that have and maintain a technical or vocational high school and with private schools or colleges in the co-operative or merged areas to provide courses or programs of study in addition to or as a part of the curriculum made available in the community college or area vocational schools.

9. Make arrangements with boards of merged areas and local school districts to

permit students attending high school to participate in vocational-technical programs and advanced college placement courses and obtain credit for such participation for application toward the completion of a high school diploma. The granting of such credit shall be subject to the approval of the state board.

10. Prescribe a uniform system of accounting for area schools.

11. Review programs and make recommendations, and approve or disapprove requests of merged area schools to expand their programs.

85 Acts, ch 212, §12 HF 686
Subsection 9 amended

280A.33 Joint action with board of regents.

1. Approval standards, except as hereinafter provided, for area and public community and junior colleges shall be initiated by the area schools branch of the department and submitted to the state board of public instruction and the state board of regents, through the commissioner of public instruction, for joint consideration and adoption.

2. Approval standards for area vocational schools and for vocational programs and courses offered by area community colleges shall be initiated by the area schools branch and submitted to the state board of public instruction through the commissioner of public instruction, for consideration and adoption. No such proposed approval standard shall be adopted by the state board until the standard has been submitted to the advisory committee created by chapter 258 and its recommendations thereon obtained.

3. For purposes of this section, "approval standards" shall include standards for administration, qualifications and assignment of personnel, curriculum, facilities and sites, requirements for awarding of diplomas and other evidence of educational achievement, guidance and counseling, instruction, instructional materials, maintenance, and library.

4. Approval standards shall be subject to the provisions of chapter 17A. In addition, approval standards shall be reported by the state board to the general assembly within twenty days after the commencement of a regular legislative session. No area community college or area vocational school shall be removed from the approved list for failure to comply with the approval standards until at least one hundred twenty days have elapsed following the reporting of such standards to the general assembly as provided in this section.

5. The department of public instruction shall supervise and evaluate the educational program in the several area community colleges and area vocational schools of the state for the purpose of the improvement and approval of such institutions.

6. The commissioner of public instruction shall make recommendations and suggestions in writing to each area community college and area vocational school if the department of public instruction determines, after due investigation, that deficiencies exist.

7. The state board shall maintain a list of approved area community colleges and area vocational schools, and it shall remove from the approved list for cause, after due investigation and notice, any area community college or area vocational school which fails to comply with the approval standards. An area community college or area vocational school which is removed from the approved list pursuant to this section shall be ineligible to receive state financial aid during the period of such removal. The state board shall allow a reasonable period of time, which shall be at least one year, for compliance with approval standards if an area community college or area vocational school is making a good faith effort and substantial progress toward full compliance or if failure to comply is due to factors beyond the control of the board of directors of the merged area operating the institution. In allowing time for compliance, the board shall follow consistent policies, taking into account the circumstances of each case. The reasonable period of time for compliance may be, but need not be, given prior to the one-year notice requirement that is provided in this section.

8. The department of public instruction shall give any area community college or area vocational school which is to be removed from the approved list at least one year's notice. The notice shall be given by registered or certified mail addressed to the superintendent of the area community college or area vocational school and shall specify the reasons for removal. The notice shall also be sent by ordinary mail to each member of the board of directors of the area community college or area vocational school, and to the news media which serve the merged area where the school is located; but any good faith error or failure to comply with this sentence shall not affect the validity of any action by the state board. If, during the year, the area community college or area vocational school remedies the reasons for removal and satisfies the state board that it will thereafter comply with the laws and approval standards the state board shall continue the area community college or area vocational school on the approved list and shall transmit to the area community college or area vocational school notice of the action by registered or certified mail.

9. At any time during the year after notice is given, the board of directors of the area community college or area vocational school may request a public hearing before the state board of public instruction, by mailing a written request to the commissioner of public instruction by registered or certified mail. The president of the state board shall promptly set a time and place for the public hearing, which shall be either in Des Moines or in the affected merged area. At least thirty days' notice of the time and place of the hearing shall be given by registered or certified mail addressed to the superintendent of the area community college or area vocational school. At least ten days before the hearing, notice of the time and place of the hearing and the reasons for removal shall also be published by the department in a newspaper of general circulation in the merged area where the area community college or area vocational school is located.

10. At the hearing the area community college or area vocational school may be represented by counsel and may present evidence. The state board may provide for the hearing to be recorded or reported. If requested by the area community college or area vocational school at least ten days before the hearing, the state board shall provide for the hearing to be recorded or reported at the expense of the area community college or area vocational school, using any reasonable method specified by the area community college or area vocational school. Within ten days after the hearing, the state board shall render its written decision, signed by a majority of its members, and shall affirm, modify or vacate the action or proposed action to remove the area community college or area vocational school from the approved list.

85 Acts, ch 212, §21, 24 HF 686
Subsections 1, 2, 6, and 9 amended

CHAPTER 280B

IOWA INDUSTRIAL NEW JOBS TRAINING ACT

Legislative intent that chapter 280C complement this chapter; 85 Acts, ch 235, §9 HF 766

New jobs tax credit; §422.11A, 422.33(7)

280B.2 Definitions.

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

1. "*New jobs training program*" or "*program*" means the project or projects established by an area school for the creation of jobs by providing education and training of workers for new jobs for new or expanding industry in the merged area served by the area school.

2. "*Project*" means a training arrangement which is the subject of an agreement entered into between the area school and an employer to provide program services.

3. "Program services" includes but is not limited to the following:
 - a. New jobs training.
 - b. Adult basic education and job-related instruction.
 - c. Vocational and skill-assessment services and testing.
 - d. Training facilities, equipment, materials, and supplies.
 - e. On-the-job training.
 - f. Administrative expenses for the new jobs training program.
 - g. Subcontracted services with institutions governed by the board of regents, private colleges or universities, or other federal, state, or local agencies.
 - h. Contracted or professional services.
 - i. Issuance of certificates.
4. "Program costs" means all necessary and incidental costs of providing program services.
5. "Employer" means the person providing new jobs in the merged area served by the area school and entering into an agreement.
6. "Employee" means the person employed in a new job.
7. "Agreement" is the agreement between an employer and an area school concerning a project.
8. "Area school" means a vocational school or a community college established under chapter 280A.
9. "Board of directors" means the board of directors of an area school.
10. "Incremental property taxes" means the taxes as provided in section 403.19 and section 280B.4.
11. "New jobs credit from withholding" means the credit as provided in section 280B.5.
12. "Date of commencement of the project" means the date of the agreement.
13. "Certificate" means industrial new jobs training certificates issued pursuant to section 280B.6.
14. "Industry" means a business engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce, but excludes retail, health, or professional services. "Industry" does not include a business which closes or substantially reduces its operation in one area of the state of Iowa and relocates substantially the same operation in another area of the state of Iowa. This subsection does not prohibit a business from expanding its operations in another area of the state provided that existing operations of a similar nature are not closed or substantially reduced.
15. "New job" means a job in a new or expanding industry but does not include jobs of recalled workers, or replacement jobs or other jobs that formerly existed in the industry in the state of Iowa.

85 Acts, ch 240, §2 HF 729
 Subsection 10 amended

CHAPTER 280C

IOWA SMALL BUSINESS NEW JOBS TRAINING ACT

Legislative intent that chapter complement chapter 280B; 85 Acts,
 ch 235, §9 HF 766

280C.1 Title.

This chapter shall be known and may be cited as the "Iowa small business new jobs training Act".

85 Acts, ch 235, §1 HF 766
 NEW section

280C.2 Definitions.

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

1. "*New jobs training program*" or "*program*" means the project or projects established by an area school for the creation of jobs by providing education and training of workers for new jobs for a new or expanding small business in the merged area served by the area school.
2. "*Project*" means a training arrangement which is the subject of an agreement entered into between the area school and an employer to provide program services.
3. "*Program services*" includes but is not limited to the following:
 - a. New jobs training.
 - b. Adult basic education and job-related instruction.
 - c. Vocational and skill-assessment services and testing.
 - d. Training facilities, equipment, materials, and supplies.
 - e. On-the-job training.
 - f. Administrative expenses for the new jobs training program.
 - g. Subcontracted services with institutions governed by the board of regents, private colleges or universities, or other federal, state, or local agencies.
 - h. Contracted or professional services.
4. "*Program costs*" means all necessary and incidental costs of providing program services.
5. "*Employer*" means the small business providing new jobs in the merged area served by the area school and entering into an agreement.
6. "*Employee*" means the person employed in a new job.
7. "*Agreement*" is the agreement between an employer and an area school concerning a project.
8. "*Area school*" means a vocational school or a community college established under chapter 280A.
9. "*Board of directors*" means the board of directors of an area school.
10. "*Incremental property taxes*" means the taxes as provided in section 280C.4.
11. "*New jobs credit from withholding*" means the credit as provided in section 280C.5.
12. "*Date of commencement of the project*" means the date of the agreement.
13. "*Small business*" means a business engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce, but excludes retail, health, or professional services and which meets the other criteria established by the Iowa development commission. "Small business" does not include a business which closes or substantially reduces its operation in one area of the state of Iowa and relocates substantially the same operation in another area of the state of Iowa. This subsection does not prohibit a business from expanding its operations in another area of the state provided that existing operations of a similar nature are not closed or substantially reduced. "Small business" does not include a business whose training costs can be economically funded under chapter 280B.
14. "*New job*" means a job in a new or expanding small business but does not include jobs of recalled workers, or replacement jobs or other jobs that formerly existed in the small business in the state of Iowa.

85 Acts, ch 235, §2 HF 766
NEW section

280C.3 Agreement.

An area school may enter into an agreement to establish a project. However, before an area school and a small business enter into an agreement to establish a project, the area school shall consult with the local office of the department of job service to determine if there already exists in the community, a skilled or experienced group of unemployed workers, as a result of a plant closing or reduction in force, sufficiently large to supply the needs of the new or expanding small business. If such a supply

of workers exists, the area school shall enter into the agreement only if the small business agrees to give preference in training to those workers over any other workers who do not have greater qualifications. If an agreement is entered into, the area school and the employer shall notify the department of revenue as soon as possible. An agreement may provide, but is not limited to:

1. Program costs, including deferred costs, may be paid from one or a combination of the following sources:

a. Incremental property taxes to be received or derived from an employer's business property where new jobs are created as a result of the project.

b. New jobs credit from withholding to be received or derived from new employment resulting from the project.

c. Tuition, student fees, or special charges fixed by the board of directors to defray program costs in whole or in part.

d. Guarantee of payments to be received under paragraph "a", "b", or "c".

2. Payment of program costs shall not be deferred for a period longer than ten years from the date of commencement of the project.

3. Costs of on-the-job training for employees shall not exceed fifty percent of the annual gross payroll costs for up to one year of the new jobs. For purposes of this subsection, "gross payroll" can be the gross wages, salaries, and benefits for the jobs in training in the project.

4. A provision which fixes the minimum amount of incremental property taxes, new jobs credit from withholding, or tuition and fee payments which shall be paid for program costs.

5. Any payments required to be made by an employer are a lien upon the employer's business property until paid and have equal precedence with ordinary taxes and shall not be divested by a judicial sale. Property subject to the lien may be sold for sums due and delinquent at a tax sale, with the same forfeitures, penalties, and consequences as for the nonpayment of ordinary taxes. The purchaser at tax sale obtains the property subject to the remaining payments.

85 Acts, ch 235, §3 HF 766
NEW section

280C.4 Incremental property taxes.

If an agreement provides that all or part of program costs are to be paid for by incremental property taxes, the board of directors shall provide by resolution that taxes levied on the employer's taxable business property, where new jobs are created as a result of a project, each year by or for the benefit of the state, city, county, school district, or other taxing district after the effective date of the resolution shall be divided as provided in section 403.19, subsections 1 and 2, in the same manner as if the employer's business property, where new jobs are created as a result of a project, was taxable property in an urban renewal project and the resolution was an ordinance within the meaning of those subsections. To the extent that the taxes received by the board of directors represent repayments of an advance made under section 280C.6 plus interest, the taxes shall be paid to the treasurer of state. However, with respect to any urban renewal project as to which an ordinance is in effect under section 403.19, the collection of incremental property taxes authorized by this chapter are suspended in favor of collection of incremental taxes under section 403.19. As used in this section, "taxes" includes, but is not limited to, all levies on an ad valorem basis upon land or real property of the employer's business, where new jobs are created as a result of a project.

85 Acts, ch 235, §4 HF 766
NEW section

280C.5 New jobs credit from withholding.

If an agreement provides that all or part of program costs are to be met by receipt of new jobs credit from withholding, it shall be done as follows:

1. New jobs credit from withholding shall be based upon the wages paid to the employees in the new jobs.

2. An amount equal to one and one-half percent of the gross wages paid by the employer to each employee participating in a project shall be credited from the payment made by an employer pursuant to section 422.16. If the amount of the withholding by the employer is less than one and one-half percent of the gross wages paid to the employees covered by the agreement, then the employer shall receive a credit against other withholding taxes due by the employer. The employer shall remit the amount of the credit quarterly in the same manner as withholding payments are reported to the department of revenue, to the area school. To the extent this credit represents repayments of an advance made under section 280C.6 plus interest, it shall be paid to the treasurer of state. When the repayments of an advance plus interest have been paid, the employer credits shall cease and any money received after this shall be remitted to the treasurer of state to be deposited in the general fund of the state.

3. The employer shall certify to the department of revenue that the credit in withholding is in accordance with an agreement and shall provide other information the department may require.

4. An area school shall certify to the department of revenue the amount of new jobs credit from withholding an employer has remitted to the area school and shall provide other information the department may require.

5. An employee participating in a project will receive full credit for the amount withheld as provided in section 422.16.

85 Acts, ch 235, §5 HF 766
NEW section

280C.6 Job training fund—advances.

1. There is established for the area schools an area school job training fund under the supervision of the treasurer of state. The area school job training fund consists of two separate accounts containing moneys as follows:

a. An advance account to which is credited moneys appropriated by the state under section 280C.8, plus the interest from repayment of advances made to employers for program costs. Moneys in this account shall be used to provide advances to employers for program costs upon requests of the boards of directors of the area schools.

b. A repayment account to which is credited the repayments of the advances made to employers for program costs. At the end of each calendar quarter, the treasurer of state shall transfer the moneys in the account to the permanent school fund as repayment of the appropriations made under section 280C.8. However, interest earned on moneys in the repayment account shall be credited to the advance account created in paragraph "a".

2. To provide funds for the present payment of the costs of a new jobs training program by the employer, the area school may provide to the employer an advance of the moneys to be used to pay for the program costs as provided in the agreement. To receive the funds for this advance from the area school job training fund, the area school shall submit an application to the treasurer of state. The treasurer shall provide the funds to the extent available. The amount of the advance shall not exceed seventy-five thousand dollars for any project. The advance shall be repaid with interest from the sources provided in the agreement. The rate of interest to be charged for advances made in a calendar month is equal to one half of the average rate of interest on certificates issued by area schools pursuant to chapter 280B for the previous twelve months. The rate shall be computed by the Iowa development commission.

85 Acts, ch 235, §6 HF 766
NEW section

280C.7 Development commission.

The Iowa development commission in consultation with the department of public instruction, department of job service, and the office for planning and programming shall coordinate the new jobs training program. The Iowa development commission shall adopt, amend, and repeal rules under chapter 17A that the area school will use in developing projects with new and expanding small business new jobs training proposals. The commission shall establish by rule criteria for determining what constitutes a small business. The commission is authorized to make any rule that is adopted, amended, or repealed effective immediately upon filing with the administrative rules coordinator or at a subsequent stated date prior to indexing and publication, or at a stated date less than thirty-five days after filing, indexing, and publication. The Iowa development commission shall prepare an annual report for the governor and general assembly on the activities and the future anticipated needs of this new jobs training program.

85 Acts, ch 235, §7 HF 766
NEW section

280C.8 Appropriations.

Notwithstanding sections 8.6, 292.1, 302.1 and 302.13, there is appropriated from the permanent school fund, for the fiscal period beginning July 1, 1985 and ending June 30, 1988 the sum of one million (1,000,000) dollars to provide funds for the purposes of and deposits in the area school job training fund created in section 280C.6. The money appropriated under this section is a loan from the permanent school fund to the area school job training fund. The interest on the loan shall be prepaid for the period of the loan from funds appropriated by this section. The rate of interest shall be determined by the treasurer of state. Notwithstanding section 8.33, moneys remaining of the appropriations made under this section on June 30, 1986 and June 30, 1987 shall not revert to the permanent school fund but remain in the area school job training fund. All moneys in the area school job training fund on June 30, 1988 and each fiscal year thereafter shall revert to the permanent school fund. Moneys to repay the amount of the loan from the permanent school fund shall be paid from funds to be credited to the "Surplus" account of the Iowa plan fund for economic development created in 1985 Iowa Acts, chapter 33, section 301.

85 Acts, ch 235, §8 HF 766
NEW section

CHAPTER 281

EDUCATION OF CHILDREN REQUIRING SPECIAL EDUCATION

281.1 Division of special education created.

There is created within the department of public instruction a division of special education for the promotion, direction, and supervision of education for children requiring special education in the schools under the supervision and control of the department. The commissioner, subject to the approval of the state board of public instruction, is authorized to organize the division and to employ the necessary qualified personnel to carry out the provisions of this chapter.

85 Acts, ch 212, §22 HF 686
Section amended

281.2 Definitions—policies—funds.

1. "*Children requiring special education*" means persons under twenty-one years of age, including children under five years of age, who are handicapped in obtaining an education because of physical, mental, communication or learning disabilities or who are behaviorally disordered, as defined by the rules of the department of public instruction.

2. "Special education" means classroom, home, hospital, institutional, or other instruction designed to meet the needs of children requiring special education as defined in subsection 1; transportation and corrective and supporting services required to assist children requiring special education, as defined in subsection 1, in taking advantage of, or responding to, educational programs and opportunities, as defined by rules of the state board of public instruction.

3. It is the policy of this state to require school districts and state operated educational programs to provide or make provision, as an integral part of public education, for a free and appropriate public education sufficient to meet the needs of all children requiring special education. This chapter is not to be construed as encouraging separate facilities or segregated programs designed to meet the needs of children requiring special education when the children can benefit from all or part of the education program as offered by the local school district. To the maximum extent possible, children requiring special education shall attend regular classes and shall be educated with children who do not require special education. Whenever possible, hindrances to learning and to the normal functioning of children requiring special education within the regular school environment shall be overcome by the provision of special aids and services rather than by separate programs for those in need of special education. Special classes, separate schooling or other removal of children requiring special education from the regular educational environment, shall occur only when, and to the extent that the nature or severity of the educational handicap is such that education in regular classes, even with the use of supplementary aids and services, cannot be accomplished satisfactorily. For those children who cannot adapt to the regular educational or home living conditions, and who are attending facilities under chapters 263, 269 and 270, upon the request of the board of directors of an area education agency, the department of human services shall provide residential or detention facilities and the area education agency shall provide special education programs and services. The area education agencies shall cooperate with the board of regents to provide the services required by this Act.*

Special aids and services shall be provided to children requiring special education who are less than five years of age if the aids and services will reasonably permit the child to enter the educational process or school environment when the child attains school age.

Every child requiring special education shall, if reasonably possible, receive a level of education commensurate with the level provided each child who does not require special education. The cost of providing such an education shall be paid as provided in section 273.9, this chapter and chapter 442. It shall be the primary responsibility of each school district to provide special education to children who reside in that district if the children requiring special education are properly identified, the educational program or service has been approved, the teacher or instructor has been certified, the number of children requiring special education needing that educational program or service is sufficient to make offering the program or service feasible, and the program or service cannot more economically and equably be obtained from the area education agency, another school district, another group of school districts, a qualified private agency, or in co-operation with one or more other districts.

4. Any funds received by the school district of the child's residence for the child's education, derived from funds received through chapter 442, this chapter and section 273.9 shall be paid by the school district of the child's residence to the appropriate education agency, private agency, or other school district providing special education for the child pursuant to contractual arrangements as provided in section 273.3, subsections 5 and 7.

85 Acts, ch 24, §1 SF 215

*See 65GA, ch 1172

Subsection 3 (formerly unnumbered paragraph 1) amended

281.9 Weighting plan.

1. In order to provide funds for the excess costs of instruction of children requiring special education, above the costs of instruction of pupils in a regular curriculum, a special education weighting plan for determining enrollment in each school district is adopted as follows:

a. Pupils in a regular curriculum are assigned a weighting of one.

b. Children requiring special education who require special adaptations while assigned to a regular classroom for basic instructional purposes and handicapped pupils placed in a special education class who receive part of their instruction in regular classrooms are assigned a weighting of one and eight-tenths for the school year commencing July 1, 1975.

c. Children requiring special education who require full-time, self-contained special education placement with little integration into a regular classroom are assigned a weighting of two and two-tenths for the school year commencing July 1, 1975.

d. Children requiring special education who are severely handicapped or who have multiple handicaps are assigned to a weighting of four and four-tenths for the school year commencing July 1, 1975.

e. Shared-time and part-time pupils of school age who require special education shall be placed in the proper category and counted in the proportion that the time for which they are enrolled or receive instruction for the school year bears to the time that full-time pupils, carrying a normal course schedule, in the same school district, for the same school year are enrolled and receive instruction.

2. The weighting for each category of child multiplied by the number of children in each category in the enrollment of a school district, as identified and certified by the director of special education for the area, determines the weighted enrollment to be used in that district for purposes of computations required under the state school foundation plan in chapter 442.

3. The weight that a child is assigned under this section shall be dependent upon the required educational modifications necessary to meet the special education needs of the child. Enrollment for the purpose of this section, and all payments to be made pursuant thereto, includes all children for whom a special education program or course is to be provided pursuant to sections 273.1 to 273.9 and this chapter, whether or not the children are actually enrolled upon the records of a school district.

4. On December 1, 1975, and no later than December 1 every two years thereafter, for the school year commencing the following July 1, the commissioner of public instruction shall report to the school budget review committee the average costs of providing instruction for children requiring special education in the categories of the weighting plan established under this section, and the state board of public instruction shall make recommendations to the school budget review committee for needed alterations to make the weighting plan suitable for subsequent school years. The school budget review committee shall establish the weighting plan for each school year after the school year commencing July 1, 1975, and shall report the plan to the commissioner of public instruction. The school budget review committee shall not alter the weighting assigned to pupils in a regular curriculum, but it may increase or decrease the weighting assigned to each category of children requiring special education by not more than two-tenths of the weighting assigned to pupils in a regular curriculum. The state board of public instruction shall promulgate rules under chapter 17A, to implement the weighting plan for each year and to assist in identification and proper indexing of each child in the state who requires special education.

5. The division of special education shall audit the reports required in section 273.5 to determine that all children in the area who have been identified as requiring special education have received the appropriate special education instructional and support services, and to verify the proper identification of pupils in the area who will

require special education instructional services during the school year in which the report is filed. The division shall certify to the state comptroller the correct total enrollment of each school district in the state, determined by applying the appropriate pupil weighting index to each child requiring special education, as certified by the directors of special education in each area.

6. The division may conduct an evaluation of the special education instructional program or special education support services being provided by an area education agency, school district, or private agency, pursuant to sections 273.1 to 273.9 and this chapter, to determine if the program or service is adequate and proper to meet the needs of the child; if the child is benefiting from the program or service; if the costs are in proportion to the educational benefits being received; and if there are any improvements that can be made in the program or service. A written report of the evaluation shall be sent to the area education agency, school district, or private agency evaluated and to the president of the senate and speaker of the house of representatives of the general assembly.

7. Commencing with the school year beginning July 1, 1976, costs of special education instructional programs include the costs of purchase of transportation equipment to meet the special needs of children requiring special education and for each school year subsequent to the school year beginning July 1, 1977 the inclusion of such costs shall be subject to the approval of the state board of public instruction. Unencumbered funds generated for special education instructional programs for the school year beginning July 1, 1975 and for the school year beginning July 1, 1976 shall not be expended for such purposes unless approved by the department based upon applications received by the department prior to January 1, 1978 and approved prior to April 1, 1978.

Commencing with the school year beginning July 1, 1976, a school district may expend an amount not to exceed two-sevenths of an amount equal to the district cost of a school district for the costs of regular classroom instruction of a child certified under the special education weighting plan in subsection 1, paragraph "b", as a handicapped pupil who is enrolled in a special class, but who receives part of the pupil's instruction in a regular classroom. Unencumbered funds generated for special education instructional programs for the school year beginning July 1, 1975 and for the school year beginning July 1, 1976 shall not be expended for such purpose.

Commencing with the school year beginning July 1, 1975, funds generated for special education instructional programs under this chapter and chapter 442 shall not be expended for modifications of school buildings to make them accessible to children requiring special education. Unencumbered funds generated for special education instructional programs for the school years beginning July 1, 1975 and July 1, 1976, shall not be expended for such purpose unless approved by the department of public instruction based upon applications received by the department prior to January 1, 1978 and approved prior to April 1, 1978.

85 Acts, ch 212, §21 HF 686
Subsection 4 amended

281.12 Children placed by district court.

Notwithstanding the provisions of section 282.27, a child who has been identified as requiring special education who has been placed in a facility or home by the district court, and for whom parental rights have been terminated by the district court, shall receive special education programs and services on the same basis as the programs and services are provided for children requiring special education who are residents of the school district in which the child has been placed. The special education instructional costs shall be certified to the commissioner of public instruction not later than September 1 of each year for the preceding fiscal year by the area education agency director of special education of the district in which the child has been placed. The state board of public instruction shall review the costs and submit

a requisition to the state comptroller. The amount due shall be paid by the treasurer of state to the school district or agency providing the program from any funds in the general fund of the state not otherwise appropriated upon warrants drawn and signed by the state comptroller.

85 Acts, ch 212, §21 HF 686
Section amended

CHAPTER 282

SCHOOL ATTENDANCE AND TUITION

282.7 Attending in another corporation—payment.

1. The board of directors of a school district by record action may discontinue any or all of grades seven through twelve and negotiate an agreement for attendance of the pupils enrolled in those grades in the schools of one or more contiguous school districts having approved school systems. If the board designates more than one contiguous district for attendance of its pupils, the board shall draw boundary lines within the school district for determining the school districts of attendance of the pupils. The portion of a district so designated shall be contiguous to the approved school district designated for attendance. Only entire grades may be discontinued under this subsection and if a grade is discontinued, all higher grades in that district shall also be discontinued. A school district that has discontinued one or more grades under this subsection has complied with the requirements of section 275.1 relating to the maintenance of kindergarten and twelve grades. A pupil who graduates from another school district under this subsection shall receive a diploma from the receiving district. Tuition shall be paid by the resident district as provided in section 282.24, subsection 2. The agreement shall provide for transportation and authority and liability of the affected boards.

2. A school district which does not have an area vocational technical high school or program, established and approved under chapter 258, may permit a resident child to attend school in another district which has such a school or program. The child shall meet the entrance requirements of the school district which has the area school or program. Tuition at the maximum rate prescribed in section 282.24, subsection 1, but not transportation, for such a child shall be paid by the resident district as required in section 282.20.

85 Acts, ch 212, §13 HF 686
Subsection 1 amended

282.19 Child living in foster care facility.

A child who is living in a licensed child foster care facility as defined in section 237.1 in this state which is located in a school district other than the school district in which the child resided before receiving foster care may enroll in and attend an approved school in the school district in which the child is living. If a child does not require special education and was not counted in the basic enrollment of a school district for a budget year under section 442.4, the tuition and transportation, when required by law, shall be paid by the treasurer of state from funds in the state treasury not otherwise appropriated, and upon warrants drawn by the state comptroller upon requisition of the commissioner of public instruction.

85 Acts, ch 212, §21 HF 686
Section amended

282.24 Tuition fees established.

1. There is established a maximum tuition fee that may be charged for elementary and high school students residing within another school district or corporation except students attending school in another district under section 282.7, subsection

1. That fee is the district cost per pupil of the receiving district as computed in section 442.9, subsection 1, paragraph "a".

A school corporation which owns facilities used as attendance centers for students shall maintain an itemized statement of the appraised value of all buildings owned by the school corporation. Beginning July 1, 1976, the appraisal shall be updated at least one time every five years.

The commissioner of public instruction shall, after July 1 but before September 1 of each year, notify every school in the state, affected by this section, what the computed maximum tuition rate shall be for the ensuing year.

This subsection does not prevent the corporation or district in which the student resides from paying a tuition in excess of the maximum computed tuition rates, if the actual per pupil cost of the preceding year so warrants, but the receiving district or corporation shall not demand more than the maximum rate.

2. The tuition fee charged by the board of directors for pupils attending school in the district under section 282.7, subsection 1, shall not exceed the actual cost of providing the educational program for either the high school or the junior high school in that district and shall not be less than the maximum tuition rate in that district. For the purpose of this section, high school means a school which commences with either grade nine or grade ten as determined by the board of directors of the district, and junior high school means the remaining grades commencing with grade seven.

85 Acts, ch 212, §21 HF 686
Subsection 1 amended

282.27 Payment for certain children.

When a child requiring special education is living in a state-supported institution, charitable institution, or licensed boarding home as defined in this chapter which does not maintain a school and the residence of the child requiring special education is in a school district other than the school district in which the state-supported institution, charitable institution, or licensed boarding home is located, the child is eligible for special education programs and services provided for children requiring special education who are residents of the school district in which the institution or boarding home is located. The special education instructional costs shall be computed by means of weighted enrollment for that child under the provisions of chapters 273, 281, and 442 as if that child were a resident of the school district in which the institution or boarding home is located but the child shall be included in the enrollment count in the district of residence in the manner provided in sections 281.9 and 442.4. The costs as computed shall be paid by the district of residence. No child requiring special education shall be denied special education programs and services because of a dispute over determination of residence of that child. If there is a dispute over the residence of the child, the state board of public instruction shall determine the residence of the child. However, if the special education instructional costs incurred on behalf of the child exceed the amount which would be allowed if the child were provided the programs and services in the district of residence, the treasurer of the school district of residence shall make payment at the maximum amount allowed in that district for a child requiring special education who is similarly handicapped. If the child requiring special education is not counted in the weighted enrollment of any district under section 281.9, and payment is not made by any district, the district in which the institution or boarding home is located may certify the special education instructional costs to the commissioner of public instruction not later than September 1 of each year for the preceding fiscal year. The state board of public instruction shall review the costs and submit a requisition to the state comptroller. The amount due shall be paid by the treasurer of state to the district in which the institution or licensed boarding home is located from any funds in the general fund of the state not otherwise appropriated upon warrants drawn and signed by the state comptroller. For the purposes of this section, the term "district of residence of the child" means the residence of the parent or legal guardian, or the location of the district court if the district court is the legal guardian, of the child.

85 Acts, ch 212, §21 HF 686
Section amended

CHAPTER 283A

SCHOOL LUNCH PROGRAMS

283A.3 Expenditure of federal funds.

The commissioner of public instruction is hereby authorized to accept and direct the disbursement of funds appropriated by any Act of Congress and appropriated to the state of Iowa for use in connection with school lunch programs. The commissioner of public instruction shall deposit all such funds with the treasurer of the state of Iowa, who shall make disbursements therefrom upon the direction of the commissioner of public instruction.

85 Acts, ch 212, §21 HF 686
Section amended

283A.4 Administration of program.

The commissioner of public instruction may enter into such agreements with any agency of the federal government, with any school board, or with any other agency or person, prescribe such regulations, employ such personnel, and take such other action as the commissioner may deem necessary to provide for the establishment, maintenance, operation, and expansion of any school lunch program, and to direct the disbursement of federal and state funds, in accordance with any applicable provisions of federal or state law. The commissioner of public instruction may give technical advice and assistance to any school board in connection with the establishment and operation of any school lunch program and may assist in training such personnel engaged in the operation of such program. The commissioner of public instruction and any school board may accept any gift for use in connection with any school lunch program.

85 Acts, ch 212, §21, 22 HF 686
Section amended

283A.5 Accounts, records, reports, and operations.

The commissioner of public instruction shall prescribe regulations for the keeping of accounts and records and the making of reports by or under the supervision of school boards. Such accounts and records shall at all times be available for inspection and audit by authorized officials and shall be preserved for such period of time, not in excess of five years, as the commissioner of public instruction may lawfully prescribe. The commissioner of public instruction shall conduct or cause to be conducted such audits and inspections with respect to school lunch programs as may be necessary to determine whether its agreement with school boards and regulations made pursuant to this chapter are being complied with, and to insure that school lunch programs are effectively administered.

85 Acts, ch 212, §21 HF 686
Section amended

CHAPTER 284

INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL

284.2 Designated state official.

The designated state official for this state, within the meaning of article II, paragraph 2, of the interstate agreement on qualification of educational personnel as set forth in section 284.1, shall be the commissioner of public instruction. The commissioner of public instruction shall enter into contracts pursuant to article III of the agreement only with the approval of the specific text thereof by the state board of public instruction.

85 Acts, ch 212, §21 HF 686
Section amended

CHAPTER 285

STATE AID FOR TRANSPORTATION

285.1 When entitled to state aid.

1. The board of directors in every school district shall provide transportation, either directly or by reimbursement for transportation, for all resident pupils attending public school, kindergarten through twelfth grade, except that:

a. Elementary pupils shall be entitled to transportation only if they live more than two miles from the school designated for attendance.

b. High school pupils shall be entitled to transportation only if they live more than three miles from the school designated for attendance.

For the purposes of this subsection, high school means a school which commences with either grade nine or grade ten, as determined by the board of directors of the school district or by the governing authority of the nonpublic school in the case of nonpublic schools.

Boards in their discretion may provide transportation for some or all resident pupils attending public school or pupils who attend nonpublic schools who are not entitled to transportation. Boards in their discretion may collect from the parent or guardian of the pupil not more than the pro rata cost for such optional transportation, determined as provided in subsection 12.

To the extent that this section as amended requires transportation which was not required before August 15, 1973, the board of directors shall not be required to provide such transportation before July 1, 1978.

2. Any pupil may be required to meet a school bus on the approved route a distance of not to exceed three-fourths of a mile without reimbursement.

3. In a district where transportation by school bus is impracticable or where school bus service is not available, the board may require parents or guardians to furnish transportation for their children to the schools designated for attendance. The parent or guardian shall be reimbursed for such transportation service for public and nonpublic school pupils by the board of the resident district in an amount equal to eighty dollars plus the following percent of the difference between eighty dollars and the previous school year's statewide average per pupil transportation cost, as determined by the department of public instruction:

a. For the school year commencing July 1, 1980, twenty-five percent.

b. For the school year commencing July 1, 1981, fifty percent.

c. For the school year commencing July 1, 1982 and each school year thereafter, seventy-five percent.

However, a parent or guardian shall not receive reimbursement for furnishing transportation for more than two family members who attend high school.

4. In all districts where unsatisfactory roads or other conditions make it advisable, the board at its discretion may require the parents or guardians of public and nonpublic school pupils to furnish transportation for their children up to two miles to connect with vehicles of transportation. The parents or guardians shall be reimbursed for such transportation by the boards of the resident districts at the rate of twenty-eight cents per mile per day, one way, per family for the distance from the pupil's residence to the bus route.

5. Where transportation by school bus is impracticable or not available or other existing conditions warrant it, arrangements may be made for use of common carriers according to uniform standards established by the commissioner of public instruction and at a cost based upon the actual cost of service and approved by the board.

6. When the school designated for attendance of pupils is engaged in the transportation of pupils, the sending or designating school shall use these facilities and pay the pro rata cost of transportation except that a district sending pupils to another school may make other arrangements when it can be shown that such

arrangements will be more efficient and economical than to use facilities of the receiving school, providing such arrangements are approved by the board of the area education agency.

7. If a local board closes either elementary or high school facilities and is approved by the board of the area education agency to operate its own transportation equipment, the full cost of transportation shall be paid by the board for all pupils living beyond the statutory walking distance from the school designated for attendance.

8. Transportation service may be suspended upon any day or days, due to inclemency of the weather, conditions of roads, or the existence of other conditions, by the board of the school district operating the buses, when in their judgment it is deemed advisable and when the school or schools are closed to all children.

9. Distance to school or to a bus route shall in all cases be measured on the public highway only and over the most passable and safest route as determined by the area education agency board, starting in the roadway opposite the private entrance to the residence of the pupil and ending in the roadway opposite the entrance to the school grounds or designated point on bus route.

10. The board in any district providing transportation for nonresident pupils shall collect the pro rata cost of transportation from the district of pupil's residence for all properly designated pupils so transported.

11. Boards in districts operating buses may transport nonresident pupils who attend public school, kindergarten through junior college, who are not entitled to free transportation provided they collect the pro rata cost of transportation from the parents.

12. The pro rata cost of transportation shall be based upon the actual cost for all the children transported in all school buses. It shall include one-seventh of the original net cost of the bus and such other items as shall be determined and approved by the commissioner of public instruction but no part of the capital outlay cost for school buses and transportation equipment for which the school district is reimbursed from state funds or that portion of the cost of the operation of any school bus used in transporting pupils to and from extra-curricular activities shall be included in determining said pro rata cost. In any district where because of unusual conditions, the cost of transportation is in excess of the actual operating cost of the bus route used to furnish transportation to nonresident pupils, the board of the local district may charge a cost equal to the cost of other schools supplying such service to that area, upon receiving approval of the state director of school transportation.

13. When a local board fails to pay transportation costs due to another school for transportation service rendered, the board of the creditor corporation shall file a sworn statement with the area education agency board specifying the amount due. The agency board shall check such claim and if the claim is valid shall certify to the county auditor. The auditor shall transmit to the county treasurer an order directing the county treasurer to transfer the amount of such claim from the funds of the debtor corporation to the creditor corporation and the treasurer shall pay the same accordingly.

14. Resident pupils attending a nonpublic school located either within or without the school district of the pupil's residence shall be entitled to transportation on the same basis as provided for resident public school pupils under this section. The public school district providing transportation to a nonpublic school pupil shall determine the days on which bus service is provided, which shall be based upon the days for which bus service is provided to public school pupils, and the public school district shall determine bus schedules and routes. In the case of nonpublic school pupils the term "school designated for attendance" means the nonpublic school which is designated for attendance by the parents of the nonpublic school pupil.

15. If the nonpublic school designated for attendance is located within the public school district in which the pupil is a resident, the pupil shall be transported to the nonpublic school designated for attendance as provided in this section.

16. *a.* If the nonpublic school designated for attendance of a pupil is located outside the boundary line of the school district of the pupil's residence, the pupil may be transported by the district of residence to a public school or other location within the district of the pupil's residence. A public school district in which a nonpublic school is located may establish school bus collection locations within its district from which nonresident nonpublic school pupils may be transported to and from a nonpublic school located in the district. If a pupil receives such transportation, the district of the pupil's residence shall be relieved of any requirement to provide transportation.

b. As an alternative to paragraph "a" of this subsection, subject to section 285.9, subsection 3, where practicable, and at the option of the public school district in which a nonpublic school pupil resides, the school district may transport a nonpublic school pupil to a nonpublic school located outside the boundary lines of the public school district if the nonpublic school is located in a school district contiguous to the school district which is transporting the nonpublic school pupils, or may contract with the contiguous public school district in which a nonpublic school is located for the contiguous school district to transport the nonpublic school pupils to the nonpublic school of attendance within the boundary lines of the contiguous school district.

c. If the nonpublic school designated for attendance of a pupil is located outside the boundary line of the school district of the pupil's residence and the district of residence meets the requirements of subsections 14 to 16 of this section by using subsection 17, paragraph "c", of this section and the district in which the nonpublic school is located is contiguous to the district of the pupil's residence and is willing to provide transportation under subsection 17, paragraph "a" or "b", of this section, the district in which the nonpublic school is located may provide transportation services, subject to section 285.9, subsection 3, and may make the claim for reimbursement under section 285.2. The district in which the nonpublic school is located shall notify the district of the pupil's residence that it is making the claim for reimbursement, and the district of the pupil's residence shall be relieved of the requirement for providing transportation and shall not make a claim for reimbursement for those nonpublic school pupils for which a claim is filed by the district in which the nonpublic school is located.

17. The public school district may meet the requirements of subsections 14 to 16 by any of the following:

a. Transportation in a school bus operated by a public school district.

b. Contracting with private parties as provided in section 285.5. However, contracts shall not provide payment in excess of the average per pupil transportation costs of the school district for that year.

c. Utilizing the transportation reimbursement provision of subsection 3.

d. Contracting with a contiguous public school district to transport resident nonpublic school pupils the entire distance from the nonpublic pupil's residence to the nonpublic school located in the contiguous public school district or from the boundary line of the public school district to the nonpublic school.

18. The commissioner of public instruction may review all transportation arrangements to see that they meet all legal and established uniform standard requirements.

19. Transportation authorized by this chapter is exempt from all laws of this state regulating common carriers.

20. Transportation for which the pro rata cost or other charge is collected shall not be provided outside the state of Iowa except in accordance with rules adopted by the department of public instruction in accordance with chapter 17A. The rules shall take into account any applicable federal requirements.

21. Boards in districts operating buses may in their discretion transport senior citizens, children, handicapped and other persons and groups, who are not otherwise entitled to free transportation, and shall collect the pro rata cost of transportation.

Transportation under this subsection shall not be provided when the school bus is being used to transport pupils to or from school unless the board determines that such transportation is desirable and will not interfere with or delay the transportation of pupils.

85 Acts, ch 212, §21 HF 686

Department to study reimbursement for transportation of nonpublic school pupils and report by February 15, 1986;
85 Acts, ch 263, §9 HF 747

Subsections 5, 12, and 18 amended
Subsection 20 editorially corrected

285.4 Pupils sent to another district.

When a board closes its elementary school facilities for lack of pupils or by action of the board, it shall, if there is a school bus service available in the area, designate for attendance the school operating the buses, provided the board of such school is willing to receive them and the facilities and curricular offerings are adequate. The board of the district where the pupils reside may with the approval of the area education agency board, subject to legal limitations and established uniform standards, designate another rural school and provide their own transportation if the transportation costs will be less than to use the established bus service.

All designations must be submitted to the area education agency board on or before July 15, for review and approval. The agency board shall after due investigation alter or change designations to make them conform to legal requirements and established uniform standards for making designations and for locating and establishing bus routes. After designations are made, they will remain the same from year to year except that on or before July 15, of each year, the rural board or parents may petition the agency board for a change of designation to another school. Appeals from the decision of the agency board on designations may be made by either the parents or board to the commissioner of public instruction as provided in section 285.12 and section 285.13.

85 Acts, ch 212, §21 HF 686

Section amended

285.5 Contracts for transportation.

1. Contracts for school bus service with private parties shall be in writing and be for the transportation of children who attend public school and children who attend nonpublic school. Such contracts shall define the route, the length of time, service contracted for, the compensation, the vehicle to be used. The contract shall prescribe the duties of the contractor and driver of the vehicles and shall provide that every person in charge of a vehicle conveying children to and from school shall be at all times subject to any rules said board shall adopt for the protection of the children, or to govern the conduct of the persons in charge of said conveyance. Contracts may be made for a period not to exceed three years.

The contract shall provide that the contractor will sell the equipment to the board should the contractor desire to terminate the contract, provided the board should desire to purchase said equipment, the price of the equipment to be determined by an appraisal board composed of one person appointed by the school board, one appointed by the owner of the equipment, and a third selected by these two.

2. The contractor shall operate the vehicle or provide a driver who must be approved by the board. The contractor and driver shall be subject to all laws and prescribed standards for school bus drivers. Failure to comply shall constitute grounds for dismissal of the driver or cancellation of the contract if the board so desires.

3. All vehicles of transportation provided by contractor shall be inspected, approved and certified before being put into operation.

4. All contracts may be terminated by either party on a ninety-day notice.

5. The commissioner of public instruction shall prepare a uniform contract containing provisions not in conflict with this chapter which shall be used by all schools in contracting for transportation service.

6. All contractors shall carry liability insurance in amounts and kind as provided in the official contract.

7. All contracts for transportation service and for drivers of school-owned and operated buses shall be made with someone outside the board except where no other transportation service is available, a board member may transport the member's own children.

8. Private buses other than common carriers not used exclusively in transportation of pupils while under contract to a school district shall meet all requirements for school-owned buses, as to construction and operation.

9. All bus drivers for school-owned equipment shall be under contract with the board. The commissioner of public instruction shall prepare a uniform contract containing provision not in conflict with this chapter which shall be used by all school boards in contracting with drivers of school-owned vehicles.

85 Acts, ch 212, §21 HF 686
Subsections 5 and 9 amended

285.6 Staff in department.

The commissioner, subject to the approval of the state board of public instruction, is authorized to organize and staff the division and to employ the necessary qualified personnel to carry out the provisions of this chapter. The appropriation provided by this chapter may be expended in part for the direction and supervision provided by the chapter which shall include salaries and all necessary traveling expense incurred by said personnel in the performance of their official duties.

85 Acts, ch 212, §22 HF 686
Section amended

285.8 Powers and duties of department.

The powers and duties of the department shall be to:

1. Exercise general supervision over the school transportation system in the state.

2. Review and establish the location of bus routes which are located in more than one area education agency when the area education agency boards of the affected area education agencies after formal action do not approve.

3. Establish uniform standards for locating and operating bus routes and for the protection of the health and safety of pupils transported.

4. Inspect or cause to be inspected all vehicles used as school buses to transport school children to determine if such vehicles meet all legal and established standards of construction and can be operated with safety, comfort, and economy. When it is determined that further use of such vehicles is dangerous to the pupils transported and to the safety and welfare of the traveling public, the department of public instruction shall order such vehicle to be withdrawn from further use on a specified date. School buses which do not conform to the requirements of the department of public instruction may be issued a temporary certificate of operation provided that such school buses can be operated with safety, and provided further that no such certificate shall be issued for a period in excess of one year. All equipment can be required to be altered, or safety equipment added in order to make vehicles reasonably safe for operation. New buses after initial inspection and approval shall be issued a seal of inspection. After each annual inspection a seal of inspection and approval shall be issued. Said seals shall be mounted on the lower right hand corner of the windshield.

5. Aid in the enforcement of the motor vehicle laws relating to the transportation of school children.

6. Prescribe uniform standards and regulations:

a. For the efficient operation and maintenance of school transportation equipment and for the protection of the health and safety of children transported.

b. For locating and establishing bus routes.

- c. For procedures and requirements in making designations.
 - d. For standard of safety in construction of school transportation equipment.
 - e. For procedures for purchase of buses.
 - f. For qualification of school bus drivers.
 - g. As deemed necessary for the efficient administration of this chapter.
7. Review all transportation arrangements when deemed necessary and shall disapprove any arrangements that are not in conformity with the law and established standards and require the same to be altered or changed so that they do conform.
8. Conduct schools of instruction for transportation personnel as needed or requested.

85 Acts, ch 212, §24 HF 686
Unnumbered paragraph 1 amended

285.12 Disputes—hearings and appeals.

In the event of a disagreement between a school patron and the board of the school district, the patron if dissatisfied with the decision of the district board, may appeal the same to the area education agency board, notifying the secretary of the district in writing within ten days of the decision of the board and by filing an affidavit of appeal with the agency board within the ten-day period. The affidavit of appeal shall include the reasons for the appeal and points at issue. The secretary of the local board on receiving notice of appeal shall certify all papers to the agency board which shall hear the appeal within ten days of the receipt of the papers and decide it within three days of the conclusion of the hearing and shall immediately notify all parties of its decision. Either party may appeal the decision of the agency board to the commissioner of public instruction by notifying the opposite party and the agency administrator in writing within five days after receipt of notice of the decision of the agency board and shall file with the commissioner of public instruction an affidavit of appeal, reasons for appeal, and the facts involved in the disagreement. The agency administrator shall, within ten days of said notice, file with the commissioner of public instruction all records and papers pertaining to the case, including action of the agency board. The commissioner of public instruction shall hear the appeal within fifteen days of the filing of the records in the commissioner's office, notifying all parties and the agency administrator of the time of hearing. The commissioner of public instruction shall forthwith decide the same and notify all parties of the decision and return all papers with a copy of the decision to the agency administrator. The decision of the commissioner of public instruction shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act. Pending final order made by the commissioner of public instruction, upon any appeal prosecuted to such commissioner, the order of the agency board from which the appeal is taken shall be operative and be in full force and effect.

85 Acts, ch 212, §21-23 HF 686
Section amended

285.13 Disagreements between boards.

In the event of a disagreement between the board of a school district and the board of an area education agency, the board of the school district may appeal to the commissioner of public instruction and the procedure and times provided for in section 285.12 shall prevail in any such case. The decision of the commissioner of public instruction shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act.

85 Acts, ch 212, §21 HF 686
Section amended

CHAPTER 286A

GENERAL AID TO SCHOOLS

Repealed by 85 Acts, ch 263, §28; see 85 Acts, ch 263, §6(11), 7
HF 747

CHAPTER 290

APPEAL FROM DECISIONS OF BOARDS OF DIRECTORS

290.5 Decision of state board.

The decision of the state board shall be final. The state board may adopt rules of procedure for hearing appeals which shall include the power to delegate the actual hearing of the appeal to the commissioner of public instruction and members of the commissioner's staff designated by the commissioner. The record of appeal so heard shall be reviewed by the state board and the decision recommended by the commissioner of public instruction shall be approved by the state board in the manner provided in section 257.10, subsection 4.

85 Acts, ch 212, §21-23 HF 686
Section amended

CHAPTER 291

PRESIDENT, SECRETARY, AND TREASURER OF BOARD

291.9 School census.

The secretary shall, between the first day of June and the first day of July of each even-numbered year, enter in a book prepared by the commissioner of public instruction for that purpose the following, taken as of June 1:

1. The name and post-office address of parents and guardians in the district with the name, sex, and age of all children or wards residing in the district who are between five and nineteen years of age.

2. The name, age, and post-office address of every person resident of the district without regard to age so blind as to be unable to acquire an education in the common schools.

3. The name, age, and post-office address of every person between the ages of five and thirty-five whose faculties with respect to speech and hearing are so deficient as to prevent the person from obtaining an education in the common schools.

4. The name, sex, age, and disability of every physically handicapped or mentally retarded person of school age, with the name and post-office address of the parent or guardian.

85 Acts, ch 212, §21 HF 686
Unnumbered paragraph 1 amended

291.10 Reports by secretary.

The secretary shall notify the commissioner of public instruction when each school is to begin and its length of term, and, ten days after the regular July meeting in each year, file with the commissioner a report on blanks prepared for that purpose by the commissioner of public instruction, showing:

1. The number, as shown by the last preceding school census, of persons of school age in the corporation, distinguishing the sexes.

2. The number of schools and branches taught.

3. The number of scholars enrolled and the average attendance in each school.

4. The number of teachers employed and the average compensation paid per month, distinguishing the sexes.
5. The length of school in days.
6. The average cost of tuition per month for each scholar.
7. The textbooks used.
8. The number of volumes in library.
9. The value of apparatus belonging to the corporation.
10. The number of schoolhouses and their estimated value.
11. The name, age and post-office address of each person resident of the corporation, without regard to age, so blind as to be unable to acquire an education in the common schools, and of each person between the ages of five and thirty-five whose faculties with respect to speech and hearing are so deficient as to prevent the person from obtaining an education in the common schools, and the name, sex, age, and disability of every physically handicapped or mentally retarded person of school age, with the name and post-office address of the parent or guardian.

85 Acts, ch 212, §21, 22 HF 686
Unnumbered paragraph 1 amended

291.11 Officers reported.

The secretary shall report to the commissioner of public instruction, the county auditor, and county treasurer the name and post-office address of the president, treasurer and secretary of the board as soon as practicable after the qualification of each.

85 Acts, ch 212, §21 HF 686
Section amended

291.15 Annual report.

The treasurer shall make an annual report to the board at its regular July meeting, which shall show the amount of the general fund and the schoolhouse fund held over, received, paid out, and on hand, the several funds to be separately stated, and the treasurer shall immediately file a copy of this report with the commissioner of public instruction and a copy with the county treasurer.

85 Acts, ch 212, §21 HF 686
Section amended

CHAPTER 292

COMMON SCHOOL LIBRARIES

292.1 Library fund.

Appropriation to first in the nation in education, an education foundation; 85 Acts, ch 213, §8 HF 773

CHAPTER 294

TEACHERS

294.5 Reports.

The teacher shall file with the school superintendent and the commissioner of public instruction such reports and in such manner as may be required.

85 Acts, ch 212, §21 HF 686
Section amended

294.15 State teachers' pension.

A person attaining the age of sixty-five who was an employee, holding a valid teaching certificate, in the public schools of this state with a record of service of twenty-five years or more, including a maximum of five years out-of-state service followed by at least ten years' service in this state prior to retirement and who retired prior to July 4, 1953, may receive, effective July 1, 1984, retirement allowance payments from the state of Iowa equal to two hundred twenty dollars per month. An amount necessary to meet this requirement shall be added to the retirement allowance payments, if any, now being received from the state of Iowa by individuals covered under this section. No such person shall receive retirement benefits from the state of more than two hundred twenty dollars per month. The word "employee" as used in this section includes persons who were state superintendents, county superintendents, or deputy county superintendents.

However, a person receiving retirement allowance payments under this section may elect in writing to the Iowa department of job service to continue to receive two hundred dollars per month.

Application for such retirement allowance payments shall be made to the department of job service under such rules as the commission may prescribe. Eligible persons shall be entitled to receive such retirement allowance payments effective from the date of application to the commission, provided such application is approved, and such payments shall be continued on the first day of each month thereafter during the lifetime of any such person.

For the purpose of paying the teachers' retirement allowance payments granted under this section, there is hereby appropriated out of any funds in the state treasury not otherwise appropriated, a sum sufficient therefor.

85 Acts, ch 67, §32 SF 121
Unnumbered paragraph 1 amended

CHAPTER 296**INDEBTEDNESS OF SCHOOL CORPORATIONS****296.3 Election called.**

The president of the board of directors, within ten days of receipt of a petition under section 296.2, shall call a meeting of the board which shall call the election, fixing the time of the election, which may be at the time and place of holding the regular school election, unless the board determines by unanimous vote that the proposition or propositions requested by a petition to be submitted at an election are grossly unrealistic or contrary to the needs of the school district. The decision of the board may be appealed to the state board of public instruction as provided in chapter 290. The president shall notify the county commissioner of elections of the time of the election.

85 Acts, ch 67, §33 SF 121
Section amended

CHAPTER 297**SCHOOLHOUSES AND SCHOOLHOUSE SITES****297.22 Power to sell, lease, or dispose of property.**

The board of directors of a school district may sell, lease, or dispose of, in whole or in part, a schoolhouse, site, or other property belonging to the district for which the appraised value does not exceed twenty-five thousand dollars. If the appraised value exceeds twenty-five thousand dollars, the board shall submit the question at an election under section 278.1, subsection 2, to authorize the sale, lease or disposal.

Proceeds from the sale, lease or disposition of real property shall be placed in the schoolhouse fund and proceeds from the sale, lease or disposition of property other than real property shall be placed in the general fund.

Before the board of directors may sell, lease or dispose of any property belonging to the school district it shall comply with the requirements set forth in sections 297.15 to 297.20 and sections 297.23 and 297.24. Any real estate proposed to be sold shall be appraised by three disinterested freeholders residing in the school district and appointed by the chief judge of the judicial district of the county in which said real estate is located from the list of compensation commissioners.

The board of directors of a school corporation may sell, lease, exchange, give or grant and accept any interest in real property to, with or from any county, municipal corporation, school district or township if the real property is within the jurisdiction of both the grantor and grantee. The provisions of sections 297.15 to 297.20, sections 297.23 and 297.24, and the property value limitation and appraisal requirements of this section do not apply to the transaction.

The board of directors of a school corporation may sell, lease, or dispose of a student-constructed building and the property on which the student-constructed building is located, and may purchase sites for the erection of additional structures, by any procedure which is adopted by the board.

The property value limitation listed in this section does not apply to the sale, lease, or disposition of real estate upon which a structure has been erected by students as part of a regular course of study.

The board of directors of a school corporation may lease a portion of an existing school building in which the remaining portion of the building will be used for school purposes for a period of not to exceed five years. The lease may be renewed at the option of the board. Sections 297.15 to 297.20, sections 297.23 and 297.24, and the property value limitations and appraisal requirements of this section do not apply to the lease of a portion of an existing school building.

85 Acts, ch 8, §1 HF 38
Unnumbered paragraph 1 amended

297.32 Equipment and supplies.

If there is any school equipment, supplies, or other usable school materials, such as desks, blackboards, playground equipment, or the like, in or on said buildings or grounds, the commissioner of public instruction may remove the same and divert their use to other public school districts.

85 Acts, ch 212, §21 HF 686
Section amended

CHAPTER 299

COMPULSORY EDUCATION

299.1 Attendance requirements.

A person having control of a child over seven and under sixteen years of age, in proper physical and mental condition to attend school, shall cause the child to attend some public school for at least one hundred twenty days in each school year, commencing no sooner than the first day of September, unless the board of school directors establishes a later date, which date shall not be later than the first Monday in December.

The board may, by resolution, require attendance for the entire time when the schools are in session in any school year.

In lieu of such attendance such child may attend upon equivalent instruction by a certified teacher elsewhere.

85 Acts, ch 6, §3 SF 77
1985 amendment takes effect July 1, 1986; 85 Acts, ch 6, §4
Unnumbered paragraph 1 amended

299.24 Religious groups exempted from school standards.

When members or representatives of a local congregation of a recognized church or religious denomination established for ten years or more within the state of Iowa prior to July 1, 1967, which professes principles or tenets that differ substantially from the objectives, goals, and philosophy of education embodied in standards set forth in section 257.25, and rules adopted in implementation thereof, file with the commissioner of public instruction proof of the existence of such conflicting tenets or principles, together with a list of the names, ages, and post-office addresses of all persons of compulsory school age desiring to be exempted from the compulsory education law and the educational standards law, whose parents or guardians are members of the congregation or religious denomination, the commissioner, subject to the approval of the state board of public instruction, may exempt the members of the congregation or religious denomination from compliance with any or all requirements of the compulsory education law and the educational standards law for two school years. When the exemption has once been granted, renewal of such exemptions for each succeeding school year may be conditioned by the commissioner, with the approval of the board, upon proof of achievement in the basic skills of arithmetic, the communicative arts of reading, writing, grammar, and spelling, and an understanding of United States history, history of Iowa, and the principles of American government, by persons of compulsory school age exempted in the preceding year, which shall be determined on the basis of tests or other means of evaluation selected by the commissioner with the approval of the board. The testing or evaluation, if required, shall be accomplished prior to submission of the request for renewal of the exemption. Renewal requests shall be filed with the commissioner on or before April 15 of the school year preceding the school year for which the applicants desire exemption.

85 Acts, ch 212, §21, 22 HF 686
Section amended

CHAPTER 302

SCHOOL FUNDS

302.13 Apportionment of interest.

On the first Monday of March annually, the state comptroller shall apportion the interest of the permanent school fund among the area education agencies in this state, in proportion to the number of persons of school age in each area education agency, as shown by the report of the commissioner of public instruction, as provided by section 257.18, subsection 17.

85 Acts, ch 212, §21 HF 686
Appropriation to first in the nation in education, an education foundation; 85 Acts, ch 213, §8 HF 773
Section amended

CHAPTER 303

HISTORICAL DEPARTMENT—HISTORICAL PRESERVATION

Historical board to serve on advisory committee to Iowa
community cultural grants commission; 85 Acts, ch 109, §3 HF 555

303.49 Election of trustees—terms—vacancies.

1. If the proposition to establish a land use district carries, a special election shall be called by the board of supervisors of the county which conducted the election to form the district. This special election shall be held within the newly created district at a single polling place designated by the county auditor not more than ninety days

after the organization of the land use district. The election shall be held for the purpose of electing the initial seven members of the board of trustees of the land use district. The county auditor shall cause notice of the election to be posted and published, and shall perform all other acts with reference to the election, and conduct it in like manner, as nearly as may be, as provided in this division for the election on the question of establishing the district. Each trustee must be a United States citizen not less than eighteen years of age and a resident of the district. Each qualified elector at the election may write in upon the ballot the names of not more than seven persons whom the elector desires for trustees and may cast not more than one vote for each of the seven persons. The seven persons receiving the highest number of votes cast shall constitute the first board of trustees of the district.

2. Following the initial special election, an annual election shall be held on the second Tuesday of each September at a single polling place within the district designated by the county auditor for the purpose of electing a trustee to replace a trustee whose term will expire. The county auditor shall perform all other acts with reference to the election and conduct it in like manner, as nearly as may be, as provided in chapters 45 and 49. Each qualified elector at the election may vote for one person whom the elector desires as a trustee for each expiring term. The term of office for each trustee elected shall be three years.

3. Vacancies in the office of trustee of a land use district shall be filled by the remaining members of the board of trustees for the period extending to the second Tuesday in September at which time the qualified electors of the district shall elect a new trustee to fill the vacancy for the unexpired term. Expenses incurred in carrying out the annual elections of trustees shall be paid for by the land use district.

4. When the initial board of trustees is elected under this section the trustees shall be ranked in the order of votes received from highest to lowest. Any ties shall be resolved by a random method. The last ranked trustee shall receive an initial term expiring at the next annual election for trustees in September, the sixth and fifth ranked trustees receive an initial term expiring one year later, the fourth ranked trustee receives an initial term expiring two years after that election, the third and second ranked trustees receive initial terms expiring three years after that election, and the first ranked trustee shall receive an initial term expiring four years after that election.

85 Acts, ch 161, §1 HF 569
Subsection 2 amended

303.52 Board of trustees—powers and duties.

1. The trustees elected under this division constitute the board of trustees for the district, which is the corporate authority of the district, and shall exercise all the powers and manage and control all the affairs of the district. A majority of the board of trustees is a quorum, but a smaller number may adjourn from day to day. The board of trustees may elect a president, vice president, clerk, and a treasurer from their own number and, from without their own number, employees of the district. The compensation of members of the board of trustees is fixed not to exceed ten dollars per day, or any part of a day, for each day the board is actually in session and ten dollars per day when not in session but employed on board service, and twenty cents for every mile traveled in going to and from sessions of the board and in going to and from the place of performing board service. Members of the board shall not receive compensation for more than sixty days of session and board service each year.

2. The board of trustees shall formulate and administer a land use plan which includes all ordinances, resolutions, rules, and regulations necessary for the proper administration of the land use district. The land use plan shall be created for the primary purpose of regulating and restricting, where deemed necessary, the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land in a manner which would maintain or enhance the distinctive historical and

cultural character of the district. The ordinances, resolutions, rules, and regulations shall not apply to any tillable farmland, pastureland, timber pasture or forestland located within the district except to structures of an advertising or commercial nature located on the land.

3. The board of trustees shall provide for the manner in which the land use plan shall be established and enforced and amended, supplemented, or changed. However, a plan shall not become effective until after a public hearing on it, at which parties in interest and citizens of the district shall have an opportunity to be heard. At least fifteen days notice of the time and place of the hearing shall be published in a newspaper of general circulation within the district giving the time, date, and location of the public hearing.

4. The board of trustees shall appoint an administrative officer authorized to enforce the resolutions or ordinances adopted by the board of trustees. The board of trustees may pay the administrative officer the compensation it deems fit from the funds of the district.

85 Acts, ch 161, §2 HF 569
Subsections 1, 2 and 4 amended

303.52A Inclusion or exclusion of land.

If at least sixty percent of the qualified electors of a land area petition the board of supervisors for inclusion in or exclusion from a land use district, the board shall review the petition and determine if the petition contains a sufficient number of qualified electors residing in the affected land area and, if the petition is sufficient, submit it to the board of trustees of the land use district. The land area to be included in or excluded from the land use district must be contiguous to the land use district. If two thirds of the membership of the board of trustees vote in favor of the petition, the petition shall be granted and the land area included in or excluded from the district.

85 Acts, ch 161, §3 HF 569
NEW section

303.55 Membership—term—compensation.

The board of adjustment shall consist of five members, all of whom shall reside within the district, each to be appointed for a term of five years. For the initial board one member shall be appointed for a term of five years, one for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year. Members are removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of a member whose term becomes vacant. The compensation for the members of the board of adjustment is the same as for the members of the board of trustees.

85 Acts, ch 161, §4 HF 569
Section amended

303.57 Appeals to board of adjustment.

Appeals to the board of adjustment may be taken by any person aggrieved or affected by the land use plan or by a decision of the administrative officer. The appeal shall be taken within a reasonable time, as provided by the rules of the board of adjustment, by filing with the administrative officer and the board of adjustment a notice of appeal specifying the grounds of the appeal.

85 Acts, ch 161, §5 HF 569
Section amended

303.59 Powers on appeal.

In exercising its powers the board may, in conformity with this division, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make the order, requirement, decision, or determination as should be made, and to that end have all the powers of the administrative officer of the board.

85 Acts, ch 161, §6 HF 569
Section amended

CHAPTER 303A

STATE LIBRARY OF IOWA

303A.1 Definitions.

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

1. "State library" means the state library of Iowa established in section 303A.3.
2. "Commission" means the state library commission of Iowa.
3. "State agency" means a legislative, executive, or judicial office of the state and all of its respective officers, departments, divisions, bureaus, boards, commissions, committees, and state institutions of higher education governed by the state board of regents.
4. "State publications" means all multiple-produced publications regardless of format which are issued by a state agency and supported by public funds, but it does not include:
 - a. Correspondence and memoranda intended solely for internal use within the agency or between agencies.
 - b. Materials excluded from this definition by the commission through the adoption and enforcement of rules pursuant to section 303A.4.

85 Acts, ch 218, §1 SF 250
Section 303A.1, Code 1985, repealed by 85 Acts, ch 218, §15
NEW section

303A.2 Purposes.

The purposes of the state library are to meet the informational needs of the three branches of state government, to provide for the improvement of library services to all Iowa citizens, and to foster development and cooperation among libraries.

85 Acts, ch 218, §2 SF 250
Section 303A.2, Code 1985, repealed by 85 Acts, ch 218, §15; see §303A.4(3)
NEW section

303A.3 State library and commission established.

1. There is established a state library of Iowa governed by a seven-member commission. The commission consists of one member appointed by the state supreme court and six members appointed by the governor to serve four-year, overlapping terms beginning and ending as provided in section 69.19. Of the governor's appointees, one member shall be from the medical profession and five members selected at large. Of the appointees to the initial commission, three gubernatorial appointees shall be appointed to an initial term of two years. Thereafter, all appointments shall be for a four-year term. Not more than three of the members appointed by the governor shall be of the same gender. Members of the commission shall receive per diem of forty dollars while engaged in their official duties. The members shall also be reimbursed for their actual and necessary travel and other official expenditures necessitated by their official duties.

2. The commission shall elect one of its members as chairperson. The commission shall meet at the time and place as specified by call of the chairperson. At least one meeting shall be held bimonthly. Four members are a quorum for the transaction of business.

85 Acts, ch 218, §3 SF 250
Section 303A.3, Code 1985, repealed by 85 Acts, ch 218, §15
NEW section

303A.4 Powers and duties of the commission.

In carrying out the purposes of section 303A.2, the commission:

1. May receive and expend money for providing programs and services. The commission may receive, accept, and administer any moneys appropriated or granted to it, separate from the general library fund, by the federal government or by any other public or private agency.

2. May enter into interstate library compacts on behalf of the state of Iowa with any state which legally joins in the compacts as provided in section 303A.8.

3. Shall appoint and evaluate the state librarian who shall have a master's degree in librarianship from a program of study accredited by the American library association and who may be terminated for good cause.

4. Shall determine policy for providing information service to the three branches of state government and to the legal and medical communities in this state.

5. Shall develop and adopt, in conjunction with the Iowa regional library system, long-range plans for the continued improvement of library services in the state. To insure that the concerns of all types of libraries are addressed, the commission shall establish a long-range planning committee to review and evaluate progress and report findings and recommendations to the commission and to the trustees of the Iowa regional library system at an annual meeting.

6. Shall develop in cooperation with the Iowa regional library system an annual plan of service for the Iowa regional library system and its individual members to insure consistency with the state long-range plan.

7. Shall coordinate a statewide interregional interlibrary-loan and information network among libraries in this state and support activities which increase cooperation among all types of libraries.

8. Shall establish and administer a statewide continuing education program for librarians and trustees.

9. Shall give to libraries advice and counsel in specialized areas which may include, but are not limited to, building construction and space utilization, children's services, and technological developments.

10. Shall obtain from libraries reports showing the condition, growth and development of services provided and disseminate this information in a timely manner to the citizens of Iowa.

11. Shall foster public awareness of the condition of libraries in Iowa and of methods to improve library services to the citizens of the state.

12. Shall establish and administer standards for state agency libraries, the Iowa regional library system, and public libraries.

13. Shall establish and administer certification guidelines for librarians not covered by other accrediting agencies.

14. Shall establish and administer a program for the collection and distribution of state publications to depository libraries.

15. Shall adopt and enforce rules under chapter 17A and perform other acts necessary to carry out its powers and duties under this chapter.

85 Acts, ch 218, §4 SF 250

Section 303A.4, Code 1985, repealed by 85 Acts, ch 218, §15

NEW section

303A.5 Duties of state librarian.

The state librarian shall:

1. Organize, staff, and administer the state library.

2. Recommend to the commission policies pertaining to library services as necessary for carrying out the provisions of this chapter.

3. Prepare a budget for the approval of the commission and administer the budget when approved.

4. Cooperate with the members of the Iowa regional library system, state agency libraries and representatives of the Iowa library community in considering and developing plans for the improvement of library services.

5. Advise and counsel with the commission on all matters pertaining to library and information services.

6. Carry out all policies of the commission not inconsistent with state law.

85 Acts, ch 218, §5 SF 250

Section 303A.5, Code 1985, repealed by 85 Acts, ch 218, §15

NEW section

303A.6 State publications.

Upon issuance of a state publication, a state agency shall deposit with the state library at no cost to the state library, seventy-five copies of the publication or a lesser number if specified by the state library.

85 Acts, ch 218, §6 SF 250

Section 303A.6, Code 1985, repealed by 85 Acts, ch 218, §15; see §303A.7

NEW section

303A.7 Library departments.

The state library shall include, but is not limited to, a medical library department and a law library department.

1. The medical library department shall be headed by a medical librarian, appointed by the state librarian with the approval of the commission, subject to chapter 19A. The medical librarian shall:

a. Operate the medical library department which shall always be available for free use by the residents of Iowa under rules the commission adopts.

b. Give no preference to any school of medicine and shall secure books, periodicals, and pamphlets for every legally recognized school of medicine without discrimination.

c. Perform other duties imposed by law or prescribed by the rules of the commission.

2. The law library department shall be headed by a law librarian, appointed by the state librarian with the approval of the commission and the Iowa supreme court, subject to chapter 19A. The law librarian shall:

a. Operate the law library department which shall be maintained in the state capitol or in rooms convenient to the state supreme court and which shall be available for free use by the residents of Iowa under rules the commission adopts.

b. Maintain, as an integral part of the law library, reports of various boards and agencies and copies of bills, journals and other information relating to current or proposed legislation.

c. Arrange to make exchanges of all printed material published by the several states and the government of the United States.

d. Perform other duties imposed by law or by the rules of the commission.

85 Acts, ch 218, §7 SF 250

Section 303A.7, Code 1985, repealed by 85 Acts, ch 218, §15; see §303A.4

NEW section

303A.21 Definitions. Repealed by 85 Acts, ch 218, §15. SF 250 See §303A.1.

303A.22 Depository library center. Repealed by 85 Acts, ch 218, §15. SF 250 See §303A.4(14).

303A.23 Duties of the depository librarian. Repealed by 85 Acts, ch 218, §15. SF 250

303A.24 Deposits by each state agency. Repealed by 85 Acts, ch 218, §15. SF 250 See §303A.6.

CHAPTER 303B

REGIONAL LIBRARY SYSTEM

303B.1 Regional library system established—purposes.

A regional library system is established to provide supporting services to libraries and to encourage local financial support for library services.

85 Acts, ch 218, §8 SF 250

Section struck and rewritten

303B.4 Terms.

Regional library trustees shall take office on the first day of January following the general election and shall serve terms of four years. A vacancy shall be filled when it occurs not less than ninety days before the next general election by appointment by the regional board for the unexpired term. No trustee shall serve on a local library board or be employed by a library during the trustee's term of office as a regional library trustee.

85 Acts, ch 218, §9 SF 250
Section amended

303B.6 Powers and duties of regional trustees.

In carrying out the purposes of section 303B.1, each board of trustees:

1. Shall appoint and evaluate a qualified administrator who shall have a master's degree in librarianship from a program of study accredited by the American library association and who may be terminated for good cause.
2. Subject to the approval of the annual plan of service by the state library commission, may receive and expend state appropriated funds.
3. May receive and expend other funds and receive and expend gifts of real property, personal property or mixed property, and devises and bequests including trust funds; may take title to the property; may execute deeds and bills of sale for the conveyance of the property; and may expend the funds received from the gifts.
4. May accept and administer trusts and may authorize nonprofit foundations acting solely for the support of the regional library to accept and administer trusts deemed by the board to be beneficial to the operation of the regional library. Notwithstanding section 633.63, the board and the nonprofit foundation may act as trustees in these instances. The board shall require that moneys belonging to a nonprofit foundation be audited annually.
5. May contract with libraries, library agencies, private corporations or individuals to improve library service.
6. May acquire land and construct or lease facilities to carry out the provisions of this chapter.
7. Shall provide consultation and educational programs for library staff and trustees concerning all facets of library management and operation.
8. Shall provide interlibrary loan and information services intraregionally, but which are capable of being linked interregionally, according to the standards developed by the state library commission.
9. Shall develop and adopt, in cooperation with other members of the regional library system and the state library of Iowa, a long-range plan for the region.
10. Shall prepare, in cooperation with all members of the regional library system and the state library commission, an annual plan of service.
11. Shall provide data and prepare reports as directed by the state library commission.
12. Shall require, as a condition for receiving services, that a governmental subdivision assure maintenance of local effort to support the operating expenses of a local library.
13. May perform other acts necessary to carry out its powers and duties under this chapter.

85 Acts, ch 218, §10 SF 250
Section struck and rewritten

303B.7 Duties of the regional administrator.

A regional administrator shall:

1. Act as administrator and executive secretary of the region in accordance with the objectives and policies adopted by the regional board and with the intent of this chapter.
2. Organize, staff, and administer the regional library so as to render the greatest benefit to libraries and information services in the area.

3. Advise and counsel with the regional board of trustees and individual libraries in all matters pertaining to the improvement of library services in the region.

4. Cooperate with other members of the regional library system, the state library of Iowa and representatives of the Iowa library community in considering and developing plans for the improvement of library services in Iowa.

5. Carry out the policies of the regional board of trustees not inconsistent with state law.

85 Acts, ch 218, §11 SF 250
Section struck and rewritten

303B.8 Allocation and administration of funds.

1. Funds appropriated for the purpose of carrying out this chapter shall be allocated to regional boards by the state library commission as follows:

- a. Sixty percent in proportion to the population served by each regional board.
- b. Twenty-five percent proportioned equally among the regional boards.
- c. Fifteen percent in proportion to the geographic area served by each regional board.

2. In addition to funds received under subsection 1, a regional library board may individually or cooperatively apply to the state library commission for available grants.

85 Acts, ch 218, §12 SF 250
Section struck and rewritten

303B.8A Allocation and administration of funds. Repealed by 85 Acts, ch 218, §15. SF 250 See §303B.8.

CHAPTER 306

ESTABLISHMENT, ALTERATION, AND VACATION OF HIGHWAYS

SOIL CONSERVATION IMPACT
Effective for construction projects approved on or after
April 1, 1986; 85 Acts, ch 106, §7 HF 514

306.50 Construction program notice.

The appropriate highway authority shall provide copies of its annual construction program to the soil conservation district commissioners' office in each county. The soil conservation district commissioners' office shall review the construction program submitted by each highway authority to determine those projects which may impact upon soil erosion and water diversion or retention.

85 Acts, ch 106, §2 HF 514
NEW section

306.51 Soil erosion impact.

The soil conservation district commissioners shall, within thirty days after receipt of the construction program, notify the appropriate highway authority of the projects which will impact upon soil erosion and water drainage and request that the appropriate highway authority notify them of the date, time, and place for holding the design hearing on preliminary plans.

85 Acts, ch 106, §3 HF 514
NEW section

306.52 Review of plans.

Upon examining the preliminary plans on a road project, the soil conservation district commissioners may review each road project for which a drainage structure is required. The soil conservation commissioners shall ascertain whether or not the proposed erosion control or runoff control structure is suitable to reduce the velocity

of runoff, reduce gully erosion, or provide for sedimentation or other improvement that would enhance soil conservation. The soil conservation commissioners shall also ascertain whether any other aspect of the road construction will affect soil conservation.

85 Acts, ch 106, §4 HF 514
NEW section

306.53 Submission of recommendations—contribution to cost.

The soil conservation district commissioners shall submit their findings and recommendations to the appropriate highway authority not later than twenty days following examination of the construction plans.

The appropriate highway authority shall respond to the soil conservation district commissioners and indicate its agreement to the suggested installation or its rejection of the proposal.

Where feasible and cost-sharing funds are available, the soil conservation district may contribute in part or in its entirety to any additional cost for the erosion control structure.

85 Acts, ch 106, §5 HF 514
NEW section

306.54 Reporting.

If the proposal is rejected, the appropriate highway authority shall provide a written report documenting the reason for the rejection to the soil conservation district commissioners and the state department of transportation. The state department of transportation shall submit a written report to the general assembly not later than March 1 of each year. The report shall contain only a list of those highway projects where a disagreement exists between the department and the soil conservation district commissioners and the reasons for rejecting the recommendations of the soil conservation district commissioners. The report shall be filed with the secretary of the senate and the chief clerk of the house of representatives.

85 Acts, ch 106, §6 HF 514
NEW section

CHAPTER 307B

RAILWAY FINANCE AUTHORITY

307B.23 Special railroad facility fund.

There is created in the office of the state treasurer a "special railroad facility fund". This fund shall include moneys credited to this fund under sections 307.29, 435.9, and other funds which by law may be credited to the special railroad facility fund. The moneys in the special railroad facility fund are hereby appropriated to and for the purposes of the authority as provided in this chapter. The funds in the special railroad facility fund shall not be considered as a part of the general fund of the state, shall not be subject to appropriation for any other purpose by the general assembly, and in determining a general fund balance shall not be included in the general fund of the state but shall remain in the special railroad facility fund to be used for the purposes set forth herein. The treasurer of state shall act as custodian of the fund and disburse amounts contained in it as directed by the authority. The treasurer of state is authorized to invest the funds deposited in the special railroad facility fund at the direction of the authority and subject to any limitations contained in the bond proceedings. The income from such investment shall be credited to and deposited in the special railroad facility fund. This fund shall be administered by the authority and may be used to purchase or upgrade railroad right-of-way and trackage facilities or to purchase general or limited partnership interests in a partnership formed to

purchase, upgrade, or operate railroad right-of-way and trackage facilities, to pay or secure obligations issued by the authority, to pay obligations, judgments, or debts for which the authority becomes liable in its capacity as a general partner, or for any other use authorized under this chapter. The fund may also be used to purchase or upgrade railroad right-of-way and trackage facilities for the development of railroad passenger tourism.

Any moneys credited to the special railroad facility fund under section 435.9 shall be deposited in a separate account within the special railroad facility fund. The authority may issue obligations under this chapter which are secured solely by the moneys to be deposited in that separate account and the holders or owners of any such obligations shall have no rights to payment of bond service charges from any other funds in the special railroad facility fund, including any moneys accruing to the authority from the lease, sale or other disposition, or use of railway facilities, or from payment of the principal of or interest on loans made, or from any other use of the proceeds of the sale of the obligations, and no such moneys may be used for the payment of bond service charges on any such obligations, except for accrued interest, capitalized interest, and reserves funded from proceeds received upon the sale of the obligations.

85 Acts, ch 257, §19 SF 562
Section amended

CHAPTER 308

MISSISSIPPI RIVER PARKWAY

308.4 Transportation commission duties—appropriation.

1. The state transportation commission shall make such investigations, surveys, studies and plans in connection with any proposed national parkway or parkway development as it shall deem necessary or desirable to determine if the proposed development is under the terms of the Act of the United States Congress applicable to such parkway or any regulations under such Act and is advantageous to the state. Such parkway development may be any portion of the proposed parkway which is proposed to be constructed as a project under such Act.

2. The state transportation commission, with the co-operation of the state conservation commission, shall also:

a. Plan, designate and establish the exact routing of the great river road, utilizing the general guidelines established in Title 23, United States Code.

b. Acquire all rights in land necessary for reconstruction or relocation of any portions of the great river road where such reconstruction or relocation is imperative for the safety of the traveling public, or where the condition or location of existing segments of the highway is not in keeping with the intent of the provisions of this chapter. Acquisitions of such rights in land shall be by gift, purchase, exchange, or by instituting and maintaining proceedings for condemnation. Gift, purchase, exchange, and condemnation shall include acquisition of a scenic easement. A scenic easement acquired under this chapter shall constitute easements both at law and in equity, and all legal and equitable remedies, including prohibitory and mandatory injunctions, shall be available to protect and enforce the state's interest in such scenic easements. Any scenic easement acquired under this chapter shall be deemed to be appurtenant to the roadway to which it is adjacent or from which it is visible. The duties created by any scenic easement acquired under this chapter shall be binding upon and enforceable against the original owner of the land subject to the scenic easement and the original owner's heirs, successors, and assigns in perpetuity, unless the instrument creating the scenic easement expressly provides for a lesser duration. A court shall not declare any scenic easement acquired under this chapter to have been extinguished or to have become unenforceable by virtue of changed conditions or frustration of purpose.

c. Accept and administer state, federal and any other public or private funds made available for the acquisition of rights in land and for the planning and construction or reconstruction of any segment of the great river road and any state and federal funds for the maintenance of that part of the great river road constituting the right of way.

3. There is appropriated from the general fund of the state to the state department of transportation the sum of one hundred thousand dollars for each fiscal year beginning July 1, 1983, and ending June 30, 1988. The money is to be utilized for the acquisition and construction of highway-associated project components for any portion of the great river road, regardless of jurisdiction. Each annual appropriation shall first be used to reimburse the great river road fund established in section 312.2, with remaining funds being available for a period of one fiscal year following the year of appropriation. The state department of transportation, in co-operation with the state conservation commission and the Mississippi river parkway commission, shall administer this subsection and shall issue rules for administration in accordance with chapter 17A. A report shall be submitted listing the expenditures for the previous year and cumulative expenditures of all funds appropriated by this section and the report shall be incorporated in the annual report required by section 17.9.

85 Acts, ch 108, §1 HF 539
Subsection 3 amended

308.5 Jurisdiction and control.

Jurisdiction and control of the great river road is vested as provided in section 306.4.

85 Acts, ch 108, §2 HF 539
Section amended

CHAPTER 310

FARM-TO-MARKET ROADS

310.27 Period of allocation—reversion.

The farm-to-market road fund allotted to any county as provided in this chapter shall remain available for expenditure in said county for three years after the close of the fiscal year during which said sums respectively were allocated. Any sum remaining unexpended at the end of the period during which it is available for expenditure, shall be reapportioned among all the counties as provided in section 312.5 for original allocations.

For the purposes of this section, any sums of the farm-to-market road fund allotted to any county shall be presumed to have been "expended" when a contract has been awarded obligating the sums. When projects and their estimated costs, which are proposed to be funded from the farm-to-market road fund, are submitted to the department for approval, the department shall estimate the total funding necessary and the period during which claims for the projects will be filed. After anticipating the funding necessary for approved projects, the department may temporarily allocate additional moneys from the farm-to-market road fund for use in any other farm-to-market projects. However, a county shall not be temporarily allocated funds for projects in excess of the county's anticipated farm-to-market road fund allocation for the current fiscal year plus the four succeeding fiscal years.

85 Acts, ch 83, §1 SF 413
Unnumbered paragraph 2 amended

CHAPTER 311

SECONDARY ROAD ASSESSMENT DISTRICTS

311.1 Power to establish.

In order to provide for improvements such as grading, draining, bridging, aggregate surfacing, paving, or resurfacing of secondary roads, the board of supervisors may, on petition, establish secondary road assessment districts.

85 Acts, ch 143, §1 SF 560
Section amended

311.3 Amount of assessment.

Special assessments in the aggregate amount of not less than fifty percent of the total estimated cost of improvement of a road included in a secondary road assessment district project shall be apportioned and levied on the lands included in the secondary road assessment district.

85 Acts, ch 143, §2 SF 560
Section amended

311.4 County line road.

When it is desired to improve a secondary road on a county line, as a secondary road assessment district project, the board of supervisors of any county may establish an assessment district in its county, and levy and collect special assessments for the payment of that portion of the estimated cost of the project assessable against lands in that county. Each county shall pay its share of the cost of the project as provided in this chapter, in the same manner as though the project were located wholly within that county.

85 Acts, ch 143, §3 SF 560
Section amended

311.5 Project in city.

A road or street which is a continuation of a secondary road within a city and which the county board desires to improve, may by resolution of the county board and concurrence by the council of the city be improved as a secondary road assessment district project or part of a project as provided in this chapter. The lands within the city abutting on or adjacent to the street or road may be included within the secondary road assessment district and assessed for the improvement upon the same basis and in the same manner as though the lands were located outside of a city.

85 Acts, ch 143, §4 SF 560
Section amended

311.6 Petition—information required.

The petition for a secondary road assessment district proposing to establish the district shall intelligibly describe the road or roads proposed to be improved, the nature of the proposed improvement, the percentage of the estimated cost of improving the road proposed to be assessed against the property in the district and the lands proposed to be included in the district.

The petition shall be signed by fifty percent of the owners of the lands within the proposed district, or by fifty percent of the owners of the land within the proposed district who reside within the county.

85 Acts, ch 143, §5 SF 560
Section amended

311.7 Improvement by private funds.

The owner or a group of owners of not less than seventy-five percent of the lands adjacent to, or abutting upon any secondary road may, on or before October 1 of any year, petition the board of supervisors of their county for the improvement of the

road, and for the assessment of not less than fifty percent, or a greater portion as provided in the petition, of the cost of the improvement, to the lands adjacent to, or abutting upon the road. When the petition has been filed, the board of supervisors shall review the project proposed by the petition and may accept or reject the proposed project. If the board of supervisors accepts the petition, the board shall include the project in the secondary road construction program of the county and establish a priority for the completion of the project.

The board of supervisors shall proceed with the construction and completion of the project in accordance with its assigned priority and under the same procedure as is prescribed generally for the improvement of secondary roads by assessment, and shall establish a special secondary road assessment district and assess against the lands included in the district not less than fifty percent, or a greater portion as provided in the petition, of the engineer's estimated cost of the improvements of the road included in the project against all the lands adjacent to or abutting upon the road.

However, if the owners of all the lands included in any special secondary road assessment district under this section, subscribe and deposit with the county treasurer an amount not less than fifty percent, or a greater portion as provided in the petition, of the engineer's estimated cost of the improvement of the road included in the project, the board of supervisors shall not establish the special assessment district, but shall accept the donations in lieu of an assessment, and shall otherwise proceed to the improvement of the road.

The total expenditure of secondary road funds of the county in any year for or on account of special secondary road assessment district projects on local secondary roads under this section shall not exceed the total secondary road funds legally expendable for construction on local secondary roads in the county in the year.

Upon the completion of the road, and the satisfaction of all claims in relation to the road, any balance then remaining of the funds provided by the sponsors shall be returned to them according to their respective interests, providing all guarantees made by the sponsors have been fulfilled.

Any road so improved under this section shall be maintained by the county pursuant to chapter 306.

85 Acts, ch 143, §6 SF 560
Section amended

311.8 County engineer's report.

Upon the filing of the petition with the county engineer proposing the establishment of a secondary road assessment district, the county engineer shall prepare a report on the proposed district, which report shall include:

1. An estimate of the cost of the improvement proposed on the road included in the proposed district.
2. A plat of said proposed district which plat shall show the road or roads proposed to be improved, the various tracts and parcels of real estate included in said proposed district, and the ownership of such lands.
3. An approximately equitable apportionment of not less than fifty percent of the estimated cost of the improvement among the tracts and parcels of real estate included in the proposed district.
4. A statement whether all of the secondary roads to be improved in the proposed secondary road assessment district project have been built to permanent grade and properly drained.
5. Any information the county engineer may deem pertinent.

85 Acts, ch 143, §7 SF 560
Subsections 1, 3 and 4 amended

311.11 Hearing—notice.

The board of supervisors shall fix a time for hearing on the proposal for the establishment of the secondary road assessment district and on the apportionment of not less than fifty percent of the estimated cost of the proposed improvement, and shall cause the county engineer to publish notice of the hearing. The notice shall state:

1. The time and place of hearing,
2. The road or roads proposed to be improved,
3. The type of surfacing proposed,
4. The estimated cost of the proposed improvement,
5. A description of the lands lying within said proposed district,
6. The ownership of said lands as shown by the transfer books in the auditor's office,
7. A statement of the amount apportioned to each tract or parcel of real estate as shown by the engineer's report,
8. That at said hearing the amount apportioned to any tract or parcel of land may be increased or decreased without further notice,
9. That all objections to the establishment of the district, to the apportionment report, or to the proceedings relating to the district or report must be specifically made in writing and filed with the county engineer on or before noon of the day set for the hearing, and
10. That a failure to make and file such objections will be deemed a conclusive waiver of all such objections.

85 Acts, ch 143, §8 SF 560
Unnumbered paragraph 1 amended

311.29 Sale of certificates.

Upon the signing of each of the certificates by the chairperson of the board, the certificates shall be delivered to the county treasurer, who shall countersign them and who shall be responsible for them on the treasurer's bond. The treasurer may apply the certificates in payment of warrants duly authorized and issued for improving the roads within the district, or the treasurer may sell the certificates for the best attainable price and for not less than par, plus accrued interest. The certificates shall be retired in the order of their numbering.

85 Acts, ch 143, §9 SF 560
Section amended

CHAPTER 312**ROAD USE TAX FUND****312.2 Allocations from fund.**

The treasurer of the state shall, on the first day of each month, credit all road use tax funds which have been received by the treasurer, to the primary road fund, the secondary road fund of the counties, the farm-to-market road fund, and the street construction fund of cities in the following manner and amounts:

1. To the primary road fund, forty-five percent.
2. To the secondary road fund of the counties, twenty-eight percent.
3. To the farm-to-market road fund, nine percent.
4. To the street construction fund of the cities, eighteen percent.
5. The treasurer of state shall before making the above allotments credit annually to the highway grade crossing safety fund the sum of seven hundred thousand dollars, credit annually from the road use tax fund the sum of nine hundred thousand dollars to the highway railroad grade crossing surface repair fund, credit monthly to the primary road fund the dollars yielded from an allotment of sixty-five hun-

dretdths of one percent of all road use tax funds for the express purpose of carrying out subsection 11 of section 307A.2, section 313.4, subsection 2, and section 307A.5, and credit annually to the primary road fund the sum of five hundred thousand dollars to be used for paying expenses incurred by the state department of transportation other than expenses incurred for extensions of primary roads in cities. All unobligated funds provided by this subsection, except those funds credited to the highway grade crossing safety fund, shall at the end of each year revert to the road use tax fund. Funds in the highway grade crossing safety fund shall not revert to the road use tax fund except to the extent they exceed five hundred thousand dollars at the end of any biennium. The cost of each highway railroad grade crossing repair project shall be allocated in the following manner:

- a. Twenty percent of the project cost shall be paid by the railroad company.
- b. Twenty percent of the project cost shall be paid by the highway authority having jurisdiction of the road crossing the railroad.
- c. Sixty percent of the project cost shall be paid from the highway railroad grade crossing surface repair fund.

6. The treasurer of state shall before making the allotments provided for in this section credit monthly to the state department of transportation funds sufficient in amount to pay the costs of purchasing certificate of title and registration forms, and supplies and materials and for the cost of prison labor used in manufacturing motor vehicle registration plates, decalcomania emblems, and validation stickers at the prison industries.

7. The treasurer of state, before making the allotments provided in this section, shall credit annually to the primary road fund from the road use tax fund the sum of seven million one hundred thousand dollars.

8. The treasurer of state, before making any allotments to counties under this section, shall reduce the allotment to any county for the secondary road fund by an amount by which the total funds that the county transferred or provided during the prior fiscal year under section 331.429, subsection 1, paragraphs "a," "b," "d," and "e", are less than seventy-five percent of the maximum funds that the county could have transferred in the prior fiscal year under section 331.429, subsection 1, paragraphs "a" and "b". Funds remaining in the secondary road fund of the counties due to a reduction of allocations to counties for failure to maintain a minimum local tax effort shall be reallocated to counties that are not reduced under this subsection pursuant to the allocation provisions of section 312.3, subsection 1, based upon the needs and area of the county. Information necessary to make allocations under this subsection shall be provided by the state department of transportation or the state comptroller upon request by the treasurer of state.

9. The treasurer of state, before making the allotments provided for in this section, shall credit annually to the Iowa department of soil conservation two hundred fifty thousand dollars from the road use tax funds. The department of soil conservation, in co-operation with the state department of transportation and the Iowa conservation commission shall expend the funds, for the lease or other use of land intended for the planting or maintenance of wind erosion control barriers designed to reduce wind erosion interfering with the maintenance of highways in the state or the safe operation of vehicles on the highway. However, the funds shall not be expended for wind erosion control barriers located more than forty rods from the highway.

10. The treasurer of state shall establish a great river road fund and at the request of the state department of transportation, shall credit monthly before making the allotments provided for in this section, sufficient funds to cover the anticipated costs, as identified by the state department of transportation, for the acquisition and construction of eligible highway-associated project components. Reimbursement to this fund shall be made as necessary from the funds appropriated in section 308.4. In no case shall the unreimbursed allotment to the great river road

fund exceed one million dollars less the cumulative sum as annually appropriated in section 308.4. Reimbursed funds shall be reallocated in accordance with the provisions of this section.

11. The treasurer of the state shall establish a revolving fund for use by affected jurisdictions for great river road projects. Funds shall be advanced at the request of the state department of transportation to affected jurisdictions as noninterest loans and shall be utilized for the construction of eligible great river road highway projects. Funds may be advanced from either the primary road fund or the farm-to-market road fund. The amount advanced and not reimbursed shall not exceed five million dollars at any one time from either the primary road fund or the farm-to-market road fund, nor shall the amount advanced and not reimbursed at any one time from all funds combined exceed seven million five hundred thousand dollars.

Funds advanced as provided by this subsection shall be administered by the state department of transportation. The department shall require repayment of the advanced funds within ten years. The treasurer of state shall, upon the request of the state department of transportation, transfer a portion of the affected local jurisdiction's allocation sufficient to meet repayment requirements if the terms of the individual agreements are not complied with.

12. The treasurer of state, before making the allotments provided in this section, shall credit annually to the primary road fund from the road use tax fund the sum of five thousand dollars to be used by the state department of transportation for payment of expenses authorized under section 306.6, subsection 2. The expense allowance shall be in accordance with the established expense reimbursement policy for employees of the state department of transportation. All unobligated funds shall at the end of each fiscal year revert to the road use tax fund.

13. The treasurer of state, before making the other allotments provided for in this section, shall credit annually to the primary road fund from the road use tax fund the sum of four million four hundred thousand dollars and to the farm-to-market road fund from the road use tax fund the sum of one million five hundred thousand dollars for partial compensation of allowing trucks to operate on the roads of this state as provided in section 321.463.

14. The treasurer of state, before making the allotments provided for in this section, shall credit annually to the state department of transportation one hundred thousand dollars from the road use tax funds. The state department of transportation shall expend the funds for the planting or maintenance of trees or shrubs in shelter belts for erosion control to reduce wind erosion interfering with the maintenance of highways in the state or the safe operation of vehicles on the highways.

15. The treasurer of state, before making the allotments provided for in this section, shall credit annually to the state department of transportation from the road use tax fund an amount equal to twenty-five cents on each title issuance for state and federal odometer law enforcement purposes. This subsection is effective for the fiscal period beginning July 1, 1984 and ending June 30, 1989.

16. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the revitalize Iowa's sound economy fund, created under section 315.2, the revenue accruing to the road use tax fund in the amount equal to two thirds of the revenues collected under each of the following:

a. From the excise tax on motor fuel and special fuel imposed under the tax rate of section 324.3:

(1) For the period July 1, 1985, through December 31, 1985, the amount of excise tax collected from two cents per gallon.

(2) From and after January 1, 1986, the amount of excise tax collected from three cents per gallon.

b. From the excise tax on special fuel for diesel engines:

(1) For the period July 1, 1985, through December 31, 1985, the amount of excise tax collected from one cent per gallon.

(2) For the period January 1, 1986, through December 31, 1986, the amount of excise tax collected from two cents per gallon.

(3) From and after January 1, 1987, the amount of excise tax collected from three cents per gallon.

17. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the public transit assistance fund, created under section 601J.6, an amount equal to one fortieth of the revenue credited to the road use tax fund under section 423.24.

85 Acts, ch 231, §1 SF 565
NEW subsections 16 and 17

CHAPTER 315

REVITALIZE IOWA'S SOUND ECONOMY FUND

(RISE fund)

315.1 Definitions.

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

1. "Department" means the state department of transportation.
2. "Fund" or "RISE fund" means the revitalize Iowa's sound economy fund.

85 Acts, ch 231, §2 SF 565
NEW section

315.2 Revitalize Iowa's sound economy fund.

A revitalize Iowa's sound economy fund is created, which includes:

1. All motor fuel and special fuel excise taxes credited by law to the RISE fund.
2. All other funds by law credited to the RISE fund.

85 Acts, ch 231, §3 SF 565
NEW section

315.3 Use of fund.

1. The fund is appropriated for and shall be used in the establishment, construction, improvement and maintenance of roads and streets which promote economic development in the state by having any of the following effects:

- a. Improving or maintaining highway access to specific development sites, including existing and future industrial locations.
- b. Improving or maintaining highway access between urban centers or between urban centers and the interstate road system as defined in section 306.3.
- c. Improving or maintaining highway access to economically depressed areas of the state.
- d. Improving or maintaining highway access to points of shipment or processing of products.
- e. Improving or maintaining highway access to trucking terminals and places of embarkation or shipment by other transportation modes.
- f. Improving or maintaining highway access to scenic, recreational, historic and cultural sites or other locations identified as tourist attractions.

2. The fund is also appropriated and shall be used for the reimbursement or payment to cities or counties of all or part of the interest and principal on general obligation bonds issued by cities or counties for the purpose of financing approved road and street projects meeting the requirements of subsection 1.

85 Acts, ch 231, §4 SF 565
NEW section

315.4 Allocation of fund.

Moneys credited to the RISE fund shall be allocated as follows:

1. Fifty percent for the use of the department on primary road projects.
2. Twenty-five percent for the use of counties on secondary road projects.
3. Twenty-five percent for the use of cities on city street projects.

85 Acts, ch 231, §5 SF 565
NEW section

315.5 Administration of fund.

Qualifying road and street projects shall be selected by the department for full or partial financing from the fund after consultation with organizations representing interests of counties and cities. Counties and cities may make application for qualifying road and street projects with the department. In ranking applications for funds, the department shall, in addition to effects listed in section 315.3, subsection 1, consider the proportion of political subdivision matching funds to be provided, if any, the proportion of private contributions to be provided, if any, the total number of jobs to be created, the level of need, and the impact of the proposed project on the economy of the area affected. The proportion of funding shall be determined by the department or, in the case of cooperative projects, by agreement between the department and the city councils of participating cities, or boards of supervisors of participating counties, or other participating public agencies or private parties.

85 Acts, ch 231, §6 SF 565
NEW section

315.6 Funding of projects.

Qualifying projects may be funded as follows:

1. Primary road projects may be financed entirely by the fund, or by combining money from the fund with money from the primary road fund, federal aid primary funds received by the state, or money from cities or counties raised through the sale of general obligation bonds of the cities or counties, other city or county revenues, or money from participating private parties.

2. Secondary road projects may be funded entirely by the fund or by combining money from the fund with money from the county's portion of road use tax funds, federal aid secondary funds, other county revenues, or money raised through the sale of general obligation bonds of the county, or money from participating private parties.

3. City street projects may be funded entirely by the fund, or by combining money from the fund with money from the city's portion of road use tax funds, federal aid urban system funds, other municipal revenues, or money raised through the sale of general obligation bonds of the city, or money from participating private parties.

A county or city may, at its option, apply moneys allocated for use on secondary road or city street projects under section 315.4, subsection 2 or 3, toward qualifying primary road projects.

85 Acts, ch 231, §7 SF 565
NEW section

315.7 Monthly certification of funds.

The account of the fund shall be kept by the state comptroller and the treasurer of state and shall show the amount of the fund including all credits to the fund and disbursements. The state comptroller shall report monthly to the department an account of the fund including all credits and disbursements. Upon certification by the department in accordance with rules adopted by the state comptroller, the state comptroller shall issue warrants for disbursements from the fund.

85 Acts, ch 231, §8 SF 565
NEW section

315.8 Accounts and records required.

The department shall keep accounts in relation to the allocation of moneys to the fund including all amounts credited to the fund and all amounts of duly and finally approved vouchers for claims chargeable to the fund. The department shall also keep accounts in relation to agreements with counties and cities for the reimbursement of interest and principal costs for general obligation bonds of counties or cities issued for the purpose of financing road or street projects under this chapter.

85 Acts, ch 231, §9 SF 565
NEW section

315.9 Project development.

The department shall be responsible for the development of qualifying projects under this chapter in the same manner as prescribed for primary road system improvements under chapter 313, including surveys, plans, specifications, bids, contracts, supervision and inspection. The department may delegate responsibility for project development to another participating governmental unit.

85 Acts, ch 231, §10 SF 565
NEW section

315.10 Rules.

The department shall adopt rules pursuant to chapter 17A as necessary for the administration of this chapter.

85 Acts, ch 231, §11 SF 565
NEW section

CHAPTER 317

WEEDS

Control of multiflora rose infestation; 85 Acts, ch 260, §2

317.1 Noxious weeds.

The following weeds are hereby declared to be noxious and shall be divided into two classes, namely:

1. Primary noxious weeds, which shall include quack grass (*Agropyron repens*), perennial sow thistle (*Sonchus arvensis*), Canada thistle (*Cirsium arvense*), bull thistle (*Cirsium lanceolatum*), European morning glory or field bindweed (*Convolvulus arvensis*), horse nettle (*Solanum carolinense*), leafy spurge (*Euphorbia esula*), perennial pepper-grass (*Lepidium draba*), Russian knapweed (*Centaurea repens*), buckthorn (*Rhamnus*, not to include *Rhamnus frangula*), and all other species of thistles belonging in genera of *Cirsium* and *Carduus*.)

2. Secondary noxious weeds, which shall include butterprint (*Abutilon theophrasti*) annual, cocklebur (*Xanthium commune*) annual, wild mustard (*Brassica arvensis*) annual, wild carrot (*Daucus carota*) biennial, buckhorn (*Plantago lanceolata*) perennial, sheep sorrel (*Rumex acetosella*) perennial, sour dock (*Rumex crispus*) perennial, smooth dock (*Rumex altissimus*) perennial, poison hemlock (*Conium maculatum*), multiflora rose (*Rosa multiflora*), wild sunflower (wild strain of *Helianthus annus L.*) annual, puncture vine (*Tribulus terrestris*) annual, teasel (*Dipsacus*) biennial, and shattercane (*Sorghum bicolor*) annual.

The multiflora rose (*Rosa multiflora*) shall not be considered a secondary noxious weed when cultivated for or used as understock for cultivated roses or as ornamental shrubs in gardens, or in any county whose board of supervisors has by resolution declared it not to be a noxious weed. Shattercane (*Sorghum bicolor*) shall not be considered a secondary noxious weed when cultivated or in any county whose board of supervisors has by resolution declared it not to be a noxious weed.

85 Acts, ch 171, §1 SF 406
Control of multiflora rose infestation; 85 Acts, ch 260, §2
Subsection 2 amended

317.3 Weed commissioner—standards for noxious weed control.

The board of supervisors of each county shall annually appoint a county weed commissioner who may be a person otherwise employed by the county and who passes minimum standards established by the department of agriculture for noxious weed identification and the recognized methods for noxious weed control and elimination. The county weed commissioner's appointment shall be effective as of March 1 and shall continue for a term at the discretion of the board of supervisors unless the commissioner is removed from office as provided for by law. The county weed commissioner may, with the approval of the board of supervisors, require that commercial applicators and their appropriate employees pass the same standards for noxious weed identification as established by the department of agriculture. The name and address of the person appointed as county weed commissioner shall be certified to the county auditor and to the secretary of agriculture within ten days of the appointment. The board of supervisors shall fix the compensation of the county weed commissioner and deputies. In addition to compensation, the commissioner and deputies shall be paid their necessary travel expenses. At the discretion of the board of supervisors, the weed commissioner shall attend a seminar or school conducted or approved by the state department of agriculture relating to the identification, control and elimination of noxious weeds.

The board of supervisors shall prescribe the time of year the weed commissioner shall perform the powers and duties of county weed commissioner under this chapter which may be during that time of year when noxious weeds can effectively be killed. Compensation shall be for the period of actual work only although a weed commissioner assigned other duties not related to weed eradication may receive an annual salary. The board of supervisors shall likewise determine whether employment shall be by hour, day or month and the rate of pay for the employment time.

85 Acts, ch 160, §1 HF 498
See Code editor's note
Unnumbered paragraph 1 amended

317.8 Duty of secretary of agriculture.

The secretary of agriculture shall be vested with the following duties, powers and responsibilities:

1. The secretary shall serve as state weed commissioner, and shall co-operate with all boards of supervisors and weed commissioners, and shall furnish blank forms for reports made by the supervisors and commissioners.
2. The secretary may, upon recommendation of the state botanist, temporarily declare noxious any new weed appearing in the state which possesses the characteristics of a serious pest.
3. The secretary shall aid the supervisors in the interpretation of the weed law, and make suggestions to promote extermination of noxious weeds.
4. The secretary shall aid the supervisors in enforcement of the weed law as it applies to all state lands, state parks and primary roads, and may impose a maximum penalty of a ten dollar fine for each day, up to ten days, that the state agency in control of land fails to comply with an order for destruction of weeds made pursuant to this chapter.

85 Acts, ch 171, §2 SF 406
NEW subsection 4

317.13 Program of control.

The board of supervisors of each county may each year, upon recommendation of the county weed commissioner by resolution prescribe and order a program of weed destruction.

85 Acts, ch 171, §3 SF 406
Section amended

317.16 Failure to comply.

In case of a substantial failure to comply by the date prescribed in any order of destruction of weeds made pursuant to this chapter, the weed commissioner or the deputies may, subsequent to the time after service of the notice provided for in section 317.6 enter upon the land and cause the weeds to be destroyed, or may impose a maximum penalty of a ten dollar fine for each day, up to ten days, that the owner or person in control of the land fails to comply. If a penalty is imposed and the owner or person in control of the land fails to comply, the weed commissioner shall cause the weeds to be destroyed. If the weed commissioner enters the land and causes the weeds to be destroyed, the actual cost and expense of cutting, burning or otherwise destroying the weeds, along with the cost of serving notice and special meetings or proceedings, if any, shall be paid by the county and, together with the additional assessment to apply toward costs of supervision and administration, be recovered by an assessment against the tract of real estate on which the weeds were growing, as provided in section 317.21. Any fine imposed shall be recovered by a similar assessment.

85 Acts, ch 171, §4 SF 406
Section amended

317.18 Order for destruction on roads.

The board of supervisors may order all noxious weeds, within the right-of-way of all county trunk and local county roads to be cut, burned or otherwise destroyed to prevent seed production, either upon its own motion or upon receipt of written notice requesting the action from any residents of the township in which the roads are located, or any person regularly using the roads. The order shall define the roads along which noxious weeds are required to be cut, burned or otherwise destroyed and shall require the weeds to be cut, burned or otherwise destroyed within fifteen days after the publication of the order in the official newspapers of the county.

85 Acts, ch 171, §5 SF 406
Section amended

317.19 Road clearing appropriation.

The board of supervisors may appropriate moneys to be used for the purposes of cutting, burning, or otherwise destroying weeds or brush within the right-of-way of county trunk roads and local county roads in time to prevent reseedling.

The board of supervisors may purchase or hire necessary equipment or contract with the adjoining landowner to carry out this section.

85 Acts, ch 171, §6 SF 406
Unnumbered paragraph 1 amended

317.21 Cost of such destruction.

When the commissioner destroys any weeds under the authority of section 317.16, after failure of the landowner responsible to destroy such weeds pursuant to the order of the board of supervisors, the cost of the destruction shall be assessed against the land and collected from the landowner responsible in the following manner:

1. Annually, after the weed commissioner has completed the program of destruction of weeds by reason of noncompliance by persons responsible therefor, the board of supervisors shall determine as to each tract of real estate the actual cost of labor and materials used by the commissioner in cutting, burning or otherwise destroying said weeds, the cost of serving notice and special meetings or proceedings, if any. To the total of all such sums expended, they shall add an amount equal to twenty-five percent thereof to compensate for the cost of supervision and administration and assess the resulting sum against said tract of real estate by a special tax, which shall be certified to the county auditor and county treasurer by the clerk of the board of supervisors, and shall be placed upon the tax books, and collected, together with interest and penalty after due, in the same manner as other unpaid taxes. Such tax shall be due on March 1 after such assessment, and shall be delinquent after March

30. When collected, said funds shall be paid into the fund from which said costs were originally paid.

2. Before making any such assessment, the board of supervisors shall prepare a plat or schedule showing the several lots, tracts of land or parcels of ground to be assessed which shall be in accord with the assessor's records and the amount proposed to be assessed against each of the same for destroying or controlling weeds during the fiscal year.

3. Such board shall thereupon fix a time for the hearing on such proposed assessments, which time shall not be later than December 15 of the year, and at least twenty days prior to the time thus fixed for such hearing shall give notice thereof to all concerned that such plat or schedule is on file, and that the amounts as shown therein will be assessed against the several lots, tracts of land or parcels of ground described in said plat or schedule at the time fixed for such hearing, unless objection is made thereto. Notice of such hearing shall be given by one publication in official county newspapers in the county in which the property to be assessed is situated; or by posting a copy of such notice on the premises affected and by mailing a copy by certified mail to the last known address of the person owning or controlling said premises. At such time and place the owner of said premises or anyone liable to pay such assessment, may appear with the same rights given by law before boards of review, in reference to assessments for general taxation.

85 Acts, ch 171, §7 SF 406
Unnumbered paragraph 1 amended

CHAPTER 321

MOTOR VEHICLES AND LAW OF THE ROAD

321.1 Definitions of words and phrases.

The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them.

1. "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway. "Vehicle" does not include:

- a. Any device moved by human power.
- b. Any device used exclusively upon stationary rails or tracks.
- c. Any integral part of a truck tractor or road tractor which is mounted on the frame of the truck tractor or road tractor immediately behind the cab and which may be used to transport persons and property but which cannot be drawn upon the highway by the truck tractor or another motor vehicle.
- d. Any steering axle, dolly, auxiliary axle or other integral part of another vehicle which in and of itself is incapable of commercially transporting any person or property but is used primarily to support another vehicle.

2. a. "Motor vehicle" means a vehicle which is self-propelled, but not including vehicles known as trackless trolleys which are propelled by electric power obtained from overhead trolley wires and are not operated upon rails.

b. "Used motor vehicle" or "second-hand motor vehicle" means a motor vehicle of a type subject to registration under the laws of this state which has been sold "at retail" as defined in chapter 322 and previously registered in this or any other state.

c. "New car" means a car which has not been sold "at retail" as defined in chapter 322.

d. "Used car" means a car which has been sold "at retail" as defined in chapter 322 and previously registered in this state or any other state.

e. "Car" or "automobile" means a motor vehicle designed primarily for carrying nine passengers or less, excluding motorcycles and motorized bicycles.

3. a. "Motorcycle" means every motor vehicle having a saddle or seat for the use of the rider and designed to travel on not more than three wheels in contact with the ground including a motor scooter but excluding a tractor and a motorized bicycle.

b. *"Motorized bicycle"* or *"motor bicycle"* means a motor vehicle having a saddle or a seat for the use of a rider and designed to travel on not more than three wheels in contact with the ground, with an engine having a displacement no greater than fifty cubic centimeters and not capable of operating at a speed in excess of twenty-five miles per hour on level ground unassisted by human power.

c. *"Bicycle"* means a device having two wheels and having at least one saddle or seat for the use of a rider which is propelled by human power.

4. *"Motor truck"* means every motor vehicle designed primarily for carrying livestock, merchandise, freight of any kind, or over nine persons as passengers.

5. *"Light delivery truck," "panel delivery truck,"* or *"pickup"* means any motor vehicle designed to carry merchandise or freight of any kind, not to exceed two thousand pounds.

6. *"Truck tractor"* means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

7. *"Farm tractor"* means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

8. *"Road tractor"* means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

9. *"Trailer"* means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

10. *"Semitrailer"* means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

Wherever the word *"trailer"* is used in this chapter, same shall be construed to also include *"semitrailer."*

A *"semitrailer"* shall be considered in this chapter separately from its power unit.

11. *"Trailer coach"* means either a trailer or semitrailer designed for carrying persons.

12. *"Specially constructed vehicle"* means every vehicle of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction.

13. *"Reconstructed vehicle"* means every vehicle of a type required to be registered hereunder materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

14. *"Essential parts"* mean all integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

15. *"Foreign vehicle"* means every vehicle of a type required to be registered hereunder brought into this state from another state, territory, or country other than in the ordinary course of business by or through a manufacturer or dealer and not registered in this state.

16. *"Implement of husbandry"* means every vehicle which is designed for agricultural purposes and exclusively used, except as herein otherwise provided, by the owner thereof in the conduct of the owner's agricultural operations. Implements of husbandry shall also include:

a. Portable livestock loading chutes without regard to whether such chutes are used by the owner in the conduct of the owner's agricultural operations, provided, that such chutes are not used as a vehicle on the highway for the purpose of transporting property.

b. Any vehicle which is principally designed for agricultural purposes and which is moved during daylight hours by a person either:

(1) From a place at which the vehicles are manufactured, fabricated, repaired, or sold to a farm site or a retail seller or from a retail seller to a farm site;

(2) To a place at which the vehicles are manufactured, fabricated, repaired, or sold to a farm site or a retail seller or from a retail seller from a farm site; or

(3) From one farm site to another farm site. For the purpose of this subsection the term "farm site" means a place or location at which vehicles principally designed for agricultural purposes are used or intended to be used in agricultural operations or for the purpose of exhibiting, demonstrating, testing, or experimenting with the same, provided, however, that said place or location shall not be deemed a "farm site" if the movement of said vehicle, from or to the place at which vehicles principally designed for agricultural purposes are manufactured, fabricated, repaired, or sold at retail, exceeds a distance of fifty miles.

c. Any semitrailer converted to a full trailer by the use of a dolly used by the owner in the conduct of the owner's agricultural operations to transport agricultural products being towed by a farm tractor provided the vehicle is operated in compliance with the following requirements:

(1) The towing unit is equipped with a braking device which can control the movement of and stop the vehicles. When the semitrailer is being towed at a speed of twenty miles per hour, the braking device shall be adequate to stop the vehicles within fifty feet from the point the brakes are applied. The semitrailer shall be equipped with brakes upon all wheels.

(2) The towing vehicle shall be equipped with a rear view mirror to permit the operator a view of the highway for a distance of at least two hundred feet to the rear.

(3) The semitrailer shall be equipped with a turn signal device which operates in conjunction with or separately from the rear taillight and shall be plainly visible from a distance of one hundred feet.

(4) The semitrailer shall be equipped with two flashing amber lights one on each side of the rear of the vehicle and be plainly visible for a distance of five hundred feet in normal sunlight or at night.

(5) The semitrailer shall be operated in compliance with sections 321.123 and 321.463.

d. All-terrain vehicles.

e. All self-propelled machinery operated at speeds of less than thirty miles per hour, specifically designed for, or especially adapted to be capable of, incidental over-the-road and primary off-road usage, and used exclusively for the application of plant food materials, agricultural limestone or agricultural chemicals, and not specifically designed or intended for transportation of agricultural limestone and such chemicals and materials. Such machinery shall be operated in compliance with section 321.463.

Notwithstanding the other provisions of this subsection any vehicle covered thereby if it otherwise qualifies may be registered as special mobile equipment, or operated or moved under the provisions of sections 321.57 to 321.63, if the person in whose name such vehicle is to be registered or to whom a special plate or plates are to be issued elects to do so and under such circumstances the provisions of this subsection shall not be applicable to such vehicle, nor shall such vehicle be required to comply with the provisions of sections 321.384 to 321.429, when such vehicle is moved during daylight hours, provided however, the provisions of section 321.383, shall remain applicable to such vehicle.

17. "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including trailers and bulk spreaders which are not self-propelled having a gross weight of not more than twelve tons used for the transportation of fertilizers and chemicals used for farm crop production, and other

equipment used primarily for the application of fertilizers and chemicals in farm fields or for farm storage, but not including trucks mounted with applicators of such products, road construction or maintenance machinery and ditch-digging apparatus. The foregoing enumeration shall be deemed partial and shall not operate to exclude other such vehicles which are within the general terms of this subsection; provided that nothing contained in this section shall be construed to include portable mills or cornshellers mounted upon a motor vehicle or semitrailer.

18. "*Pneumatic tire*" means every tire in which compressed air is designed to support the load.

19. "*Solid tire*" means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

20. "*Metal tire*" means every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

21. "*Where a vehicle is kept*" shall refer to the county of residence of the owner or to the county where the vehicle is mainly kept if said owner is a nonresident of the state.

22. "*Garage*" means every place of business where motor vehicles are received for housing, storage, or repair for compensation.

23. "*Combination*" or "*combination of vehicles*" shall be construed to mean a group consisting of two or more motor vehicles, or a group consisting of a motor vehicle and one or more trailers, semitrailers or vehicles, which are coupled or fastened together for the purpose of being moved on the highways as a unit.

24. "*Gross weight*" shall mean the empty weight of a vehicle plus the maximum load to be carried thereon. The maximum load to be carried by a passenger-carrying vehicle shall be determined by multiplying one hundred fifty pounds by the number of passenger seats carried by such vehicle.

"*Unladen weight*" means the weight of a vehicle or vehicle combination without load.

25. "*Combined gross weight*" shall mean the gross weight of a motor vehicle plus the gross weight of a trailer or semitrailer to be drawn thereby.

26. "*Authorized emergency vehicle*" means vehicles of the fire department, police vehicles, ambulances and emergency vehicles owned by the United States, this state or any subdivision of this state or any municipality of this state, and privately owned ambulances, and fire, rescue or disaster vehicles as are designated or authorized by the director of transportation under section 321.451.

27. "*School bus*" means every vehicle operated for the transportation of children to or from school, except vehicles which are: (a) Privately owned and not operated for compensation, (b) Used exclusively in the transportation of the children in the immediate family of the driver, (c) Operated by a municipally or privately owned urban transit company for the transportation of children as part of or in addition to their regularly scheduled service, or (d) Designed to carry not more than nine persons as passengers, either school owned or privately owned, which are used to transport pupils to activity events in which the pupils are participants or used to transport pupils to their homes in case of illness or other emergency situations. The vehicles operated under the provisions of paragraph "d" of this section shall be operated by employees of the school district who are specifically approved by the local superintendent of schools for the assignment.

28. "*Railroad*" means a carrier of persons or property upon cars operated upon stationary rails.

29. "*Railroad train*" means an engine or locomotive with or without cars coupled thereto, operated upon rails.

30. "*Railroad corporation*" means any corporation organized under the laws of this state or any other state for the purpose of operating the railroad within this state.

31. "*Explosives*" mean any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which

contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that on ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructible effects on contiguous objects or of destroying life or limb.

32. "*Flammable liquid*" means any liquid which has a flash point of 70 degrees F. or less, as determined by a Tagliabue or equivalent closed cup test device.

33. "*Department*" means the state department of transportation. "*Commission*" means the state transportation commission.

34. "*Director*" means the director of the state department of transportation or the director's designee.

35. "*Person*" means every natural person, firm, copartnership, association, or corporation. Where the term "person" is used in connection with the registration of a motor vehicle, it shall include any corporation, association, copartnership, company, firm, or other aggregation of individuals which owns or controls such motor vehicle as actual owner, or for the purpose of sale or for renting, whether as agent, salesperson, or otherwise.

36. "*Owner*" means a person who holds the legal title of a vehicle, or in the event a vehicle is the subject of a security agreement with an immediate right of possession vested in the debtor, then such debtor shall be deemed the owner for the purpose of this chapter.

37. "*Nonresident*" means every person who is not a resident of this state.

38. "*Dealer*" means every person engaged in the business of buying, selling or exchanging vehicles of a type required to be registered hereunder and who has an established place of business for such purpose in this state.

39. "*Transporter*" means every person engaged in the business of delivering vehicles of a type required to be registered hereunder from a manufacturing, assembling, or distributing plant to dealers or sales agents of a manufacturer.

40. "*Manufacturer*" means every person engaged in the business of fabricating or assembling vehicles of a type required to be registered. It does not include a person who converts, modifies or alters a completed motor vehicle manufactured by another person. It includes a person who uses a completed motor vehicle manufactured by another person to construct a class "B" motor home as defined in section 321.124.

"*Completed motor vehicle*" means a motor vehicle which does not require any additional manufacturing operations to perform its intended function except the addition of readily attachable equipment, components or minor finishing operations.

41. "*Established place of business*" means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where the dealer's or manufacturer's books and records are kept and a large share of the dealer's or manufacturer's business is transacted.

42. "*Operator*" means every person, other than a chauffeur, who is in actual physical control of a motor vehicle upon a highway.

43. "*Chauffeur*" means a person who operates a motor vehicle, including a school bus, in the transportation of persons for wages, compensation or hire, or a person who operates a truck tractor, road tractor or any motor truck which is required to be registered at a gross weight classification exceeding five tons, or any such motor vehicle exempt from registration which would be within the gross weight classification if not so exempt. A person is not a chauffeur when the operation of the motor vehicle by the owner or operator is occasional and merely incidental to the owner or operator's principal business.

A person is not a chauffeur when the operation is by a volunteer fire fighter operating fire apparatus, or is by a volunteer ambulance or rescue squad attendant

operating ambulance or rescue squad apparatus. If a volunteer fire fighter or ambulance or rescue squad operator receives nominal compensation not based upon the value of the services performed, the fire fighter or operator shall be considered to be receiving no compensation and classified as a volunteer.

If authorized to transport inmates, probationers, parolees, or work releasees by the director of the Iowa department of corrections or the director's designee, an employee of the Iowa department of corrections or a district department of correctional services is not a chauffeur when transporting the inmates, probationers, parolees, or work releasees in an automobile.

Subject to section 321.179, a farmer or the farmer's hired help is not a chauffeur when operating a truck owned by the farmer and used exclusively in connection with the transportation of the farmer's own products or property.

44. "*Driver*" means every person who drives or is in actual physical control of a vehicle.

45. "*Peace officer*" means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations in addition to its meaning in section 801.4.

46. "*Local authorities*" mean every county, municipal, and other local board or body having authority to adopt local police regulations under the Constitution and laws of this state.

47. "*Pedestrian*" means any person afoot.

48. "*Street*" or "*highway*" means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

49. "*Private road*" or "*driveway*" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons.

50. "*Roadway*" means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

51. "*Sidewalk*" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.

52. "*Laned highway*" means a highway the roadway of which is divided into three or more clearly marked lanes for vehicular traffic.

53. "*Through (or thru) highway*" means every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this chapter or such entrances are controlled by a peace officer or traffic-control signal. The term "arterial" is synonymous with "through" or "thru" when applied to highways of this state.

54. "*Intersection*" means the area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

55. "*Crosswalk*" means that portion of a roadway ordinarily included within the prolongation or connection of the lateral lines of sidewalks at intersections, or, any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface.

56. "*Safety zone*" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

57. "*Business district*" means the territory contiguous to and including a highway when fifty percent or more of the frontage thereon for a distance of three hundred feet or more is occupied by buildings in use for business.

58. "*Residence district*" means the territory within a city contiguous to and including a highway, not comprising a business, suburban or school district, where forty percent or more of the frontage on such highway for a distance of three hundred feet or more is occupied by dwellings or by dwellings and buildings in use for business.

59. "*School district*" means the territory contiguous to and including a highway for a distance of two hundred feet in either direction from a schoolhouse in a city.

60. "*Suburban district*" means all other parts of a city not included in the business, school or residence districts.

61. The linear measure of the plot of ground upon which the building is located abutting upon the highway shall be deemed "frontage occupied by the building," and the phrase "frontage on such highway for a distance of three hundred feet or more" shall mean the total frontage on both sides of the highway for such distance.

62. "*Official traffic-control devices*" mean all signs, signals, markings, and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

63. "*Official traffic-control signal*" means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

64. "*Railroad sign*" or "*signal*" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

65. "*Traffic*" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highway for purposes of travel.

66. "*Right of way*" means the privilege of the immediate use of the highway.

67. "*Alley*" means a thoroughfare laid out, established and platted as such, by constituted authority.

68. a. "*Mobile home*" means any vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed, or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons.

b. "*Travel trailer*" means a vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed to permit the vehicle to be used as a place of human habitation by one or more persons. Said vehicle may be up to eight feet in width and its overall length shall not exceed forty feet. Such vehicle shall be customarily or ordinarily used for vacation or recreational purposes and not used as a place of permanent habitation. If any such vehicle is used in this state as a place of human habitation for more than ninety consecutive days in one location it shall be classed as a mobile home regardless of the size limitations herein provided.

c. "*Fifth-wheel travel trailer*" means a type of travel trailer which is towed by a pickup by a connecting device known as a fifth wheel. However, this type of travel trailer may have an overall length which shall not exceed forty feet.

d. "*Motor home*" means a motor vehicle designed as an integral unit to be used as a conveyance upon the public streets and highways and for use as a temporary or recreational dwelling and having at least four, two of which shall be systems specified in subparagraphs (1), (4) or (5) of this paragraph, of the following permanently installed systems which meet American national standards institute and national fire protection association standards in effect on the date of manufacture:

(1) Cooking facilities.

(2) Ice box or mechanical refrigerator.

(3) Potable water supply including plumbing and a sink with faucet either self-contained or with connections for an external source, or both.

(4) Self-contained toilet or a toilet connected to a plumbing system with connection for external water disposal, or both.

(5) Heating or air conditioning system or both, separate from the vehicle engine or the vehicle engine electrical system.

(6) A one hundred ten—one hundred fifteen volt alternating current electrical system separate from the vehicle engine electrical system either with its own power supply or with a connection for an external source, or both, or a liquefied petroleum system and supply.

69. "*Tandem axle*" means any two or more consecutive axles whose centers are more than forty inches but not more than eighty-four inches apart.

70. "*Guaranteed arrest bond certificate*" means any printed, unexpired certificate issued by an automobile club or association to any of its members, or any printed, unexpired certificate issued by an insurance company authorized to write automobile liability insurance within this state, which said certificate is signed by such member or insured and contains a printed statement that such automobile club, association or insurance company and a surety company which is doing business in this state under the provisions of section 515.48, subsection 2, guarantee the appearance of the person whose signature appears on the certificate and that they will, in the event of failure of such person to appear in court at the time of trial, pay any fine or forfeiture imposed on such person in an amount not to exceed two hundred dollars. If such insurance company is itself qualified under the provisions of section 515.48, subsection 2, then it may be its own surety. Bail in this form shall be subject to the forfeiture and enforcement provisions with respect to bail bonds in criminal cases as provided by law.

71. A "*special truck*" means a motor truck not used for hire with a gross weight registration of six through twenty tons used by a person engaged in farming to transport commodities produced only by the owner, or to transport commodities purchased by the owner for use in the owner's own farming operation or occasional use for charitable purposes. "*Special truck*" also means a truck tractor which is modified by removal of a fifth wheel and carries the full load on the motor truck and which by reason of its conversion becomes a motor truck.

72. "*Component part*" means any part of a vehicle, other than a tire, having a component part number.

73. "*Component part number*" means the vehicle identification derivative consisting of numerical and alphabetical designations affixed to a component part by the manufacturer or the department or affixed by, or caused to be affixed by, the owner pursuant to rules promulgated by the department as a means of identifying the component part.

74. "*Vehicle identification number*" or the initials VIN mean the numerical and alphabetical designations affixed to a vehicle or a component part of a vehicle by the manufacturer or the department or affixed by, or caused to be affixed by, the owner pursuant to rules promulgated by the department as a means of identifying the vehicle.

75. "*Demolisher*" means any agency or person whose business is to convert a vehicle to junk, processed scrap or scrap metal, or otherwise to wreck or dismantle vehicles.

76. "*Multipurpose vehicle*" means a motor vehicle designed to carry not more than ten people, and constructed either on a truck chassis or with special features for occasional off-road operation.

77. "*Motor vehicle license*" means any license or permit issued to a person to operate a motor vehicle on the highways of this state, including but not limited to operator, chauffeur, and motorized bicycle licenses and instruction and temporary permits.

78. "*Vehicle rebuilder*" means a person engaged in the business of rebuilding or restoring to operating condition vehicles subject to registration under this chapter, which have been damaged or wrecked.

79. "*Used vehicle parts dealer*" means a person engaged in the business of selling bodies, parts of bodies, frames or component parts of used vehicles subject to registration under this chapter.

80. "*Vehicle salvager*" means a person engaged in the business of scrapping vehicles, dismantling or storing wrecked or damaged vehicles or selling reusable parts of vehicles or storing vehicles not currently registered which vehicles are subject to registration under this chapter.

81. "*Ambulance*" means a motor vehicle which is equipped with life support systems and used to transport sick and injured persons who require emergency medical care to medical facilities.

82. "*Registration year*" means the period of twelve consecutive months beginning on the first day of the month following the month of the birth of the owner of the vehicle for vehicles registered by the county treasurer and the calendar year for vehicles registered by the department or motor trucks and truck tractors with a combined gross weight exceeding five tons which are registered by the county treasurer.

83. "*Remanufactured vehicle*" means every vehicle of a type required to be registered and having a gross vehicle weight rating of at least thirty thousand pounds that has been disassembled, resulting in the total separation of the major integral parts and which has been reassembled with those parts being replaced with new or rebuilt parts. In every instance, a new diesel engine and all new tires shall be installed and shall carry manufacturers' warranties.

Every vehicle shall include, but not be limited to, new or rebuilt component parts consisting of steering gear, clutch, transmission, differential, engine radiator, engine fan hub, engine starter, alternator, air compressor and cab. For purposes of this subsection, "rebuilt" means the replacement of any element of a component part which appears to limit the serviceability of the part. A minimum of twenty thousand dollars shall be expended on each vehicle and the expense must be verifiable by invoices, work orders, or other documentation as required by the department.

The department may establish equipment requirements and a vehicle inspection procedure for remanufactured vehicles. The department may establish a fee for the inspection of remanufactured vehicles not to exceed one hundred dollars for each vehicle inspected.

84. "*Alcohol concentration*" means the number of grams of alcohol per any of the following:

- a. One hundred milliliters of blood.
- b. Two hundred ten liters of breath.
- c. Sixty-seven milliliters of urine.

85. "*Alcoholic beverage*" includes alcohol, wine, spirits, beer, or any other beverage which contains ethyl alcohol and is fit for human consumption.

86. "*All-terrain vehicle*" means a motor vehicle designed to travel on three or more wheels and designed primarily for off-road use but not including farm tractors, construction equipment, forestry vehicles or lawn and grounds maintenance vehicles.

85 Acts, ch 21, §41 HF 186; 85 Acts, ch 35, §1,2 SF 9; 85 Acts, ch 37, §1 SF 307; 85 Acts, ch 40, §1 SF 70
 Subsection 3, NEW paragraph c
 Subsection 16, NEW paragraph d, and paragraph e lettered and moved
 Subsection 26 amended
 Subsection 35, gender reference corrected
 Subsection 43 amended
 NEW subsection 86

321.16 Giving of notices.

When the department is authorized or required to give notice under this chapter or any other law regulating the operation of vehicles, unless a different method of giving notices is expressly prescribed, notice shall be given either by personal delivery to the person to be so notified or by personal service in the manner of original notice by R.C.P. 56.1, paragraph "a," or by certified mail addressed to the person at the address shown by the records of the department. Return acknowledgment is required to prove the latter service.

Proof of the giving of notice by personal service may be made by the certificate of any officer or employee of the department or affidavit of any person over eighteen years of age, naming the person to whom such notice was given and specifying the time, place, and manner of the giving thereof.

85 Acts, ch 121, §1 HF 366
Unnumbered paragraph 1 amended

321.19 Exemptions—distinguishing plates—definitions of urban transit company and regional transit system.

1. All vehicles owned or leased for a period of sixty days or more by the government and used in the transaction of official business by the representatives of foreign governments or by officers, boards, or departments of the government of the United States, and by the state, counties, municipalities and other political subdivisions of the state including vehicles used by an urban transit company operated by a municipality or a regional transit system, and self-propelling vehicles used neither for the conveyance of persons for hire, pleasure, or business nor for the transportation of freight other than those used by an urban transit company operated by a municipality or a regional transit system, and all fire trucks, providing they are not owned and operated for a pecuniary profit, are exempted from the payment of the fees imposed by this chapter, except as provided for urban transit companies in subsection 2, but are not exempt from the penalties provided in this chapter.

The department shall furnish, on application, free of charge, distinguishing plates for vehicles thus exempted, which plates except plates on Iowa highway safety patrol vehicles shall bear the word "official" and the department shall keep a separate record. Registration plates issued for Iowa highway safety patrol vehicles, except unmarked patrol vehicles, shall bear two red stars on a yellow background, one before and one following the registration number on the plate which registration number shall be the officer's badge number. Registration plates issued for a county sheriff's patrol vehicles shall display one seven pointed gold star on a green background followed by the letter "S" and the call number of the vehicle. However, the director of general services or the director of transportation may order the issuance of regular registration plates for any exempted vehicle used by peace officers in the enforcement of the law, persons enforcing chapter 204 and other laws relating to controlled substances, and persons in the department of justice who are regularly assigned to conduct investigations which cannot reasonably be conducted with a vehicle displaying "official" state registration plates. For purposes of sale of exempted vehicles, the exempted governmental body, upon the sale of the exempted vehicle, may issue for in-transit purposes a pasteboard card bearing the words "Vehicle in Transit", the name of the official body from which the vehicle was purchased, together with the date of the purchase plainly marked in at least one-inch letters, and other information which may be required by the department. The in-transit card shall be valid for use only within forty-eight hours after the purchase date as indicated on the bill of sale which shall be carried by the driver.

2. "*Urban transit company*" means any person, firm, corporation, company, or municipality which operates buses or trolley cars or both, primarily upon the streets of cities over well-defined routes between certain termini, for the transportation of passengers for a uniform fare, and which accepts for passengers all who present

themselves for transportation without discrimination up to the limit of the capacity of each vehicle. Included are street railways, plants, equipment, property, and rights, used and useful in the transportation of passengers. Motor carriers and interurbans subject to the jurisdiction of the state department of transportation, and taxicabs, are not included.

Any person, firm, corporation, or company operating an urban transit system shall pay to the county treasurer annually as a registration fee for each bus, car, or vehicle used in the transportation of passengers, five dollars, which shall be paid into the city general fund. Any urban transit company operated by a municipality is not required to pay such registration fees. The department, in accordance with subsection 1, shall furnish distinguishing plates for vehicles used by urban transit companies operated by a municipality. No other provision of law providing for the payment of taxes, registration, or license fees for vehicles shall be applicable to any bus, car, or vehicle for the transportation of passengers owned and operated by any urban transit company.

Section 324.3 and chapter 326 are not applicable to urban transit companies or systems.

3. "*Regional transit system*" means a public transit system serving one county or all or part of a multicounty area whose boundaries correspond to the same boundaries as those of the regional planning areas designated by the governor, except as agreed upon by the department. Each county board of supervisors within the region is responsible for determining the service and funding within its county. However, the administration and overhead support services for the overall regional transit system shall be consolidated into one existing or new agency to be mutually agreed upon by the participating members. Privately chartered bus services and uses other than providing services that are open and public on a shared ride basis shall not be construed to be a regional transit system.

85 Acts, ch 67, §34 SF 121; 85 Acts, ch 115, §2 SF 525
Subsection 1 amended

321.22 Urban and regional transit equipment certificates and plates.

1. An urban transit company or system having a franchise to operate in any city and any regional transit system may make application to the department, upon forms furnished by the department, for a certificate containing a distinguishing number and for one or more pairs of transit bus plates to be attached to the front and rear of buses owned or operated by the transit company or system.

2. The department shall issue to the applicant a certificate, or certificates, containing, but not limited to, the applicant's name and address, the distinguishing number assigned to the applicant, and such other information deemed necessary by the department for proper identification of the buses.

3. The department shall issue transit bus registration plates as applied for, which shall be imprinted with the words "Transit Bus" and the distinguishing number assigned to the applicant. The department shall issue the certificates and plates without fee.

4. Every transit bus plate issued shall expire at midnight on June 30 of each year, and new plates or validation stickers for the ensuing year may be obtained upon proper application.

85 Acts, ch 195, §31 SF 329
Subsection 3 amended

321.30 Grounds for refusing registration or title.

The treasurer shall refuse registration and issuance of a certificate of title or any transfer of title and registration upon any of the following grounds:

1. That the application contains any false or fraudulent statement or that the applicant has failed to furnish required information or reasonable additional information requested by the department or that the applicant is not entitled to registration and issuance of a certificate of title of the vehicle under this chapter.

2. That the vehicle is mechanically unfit or unsafe to be operated or moved upon the highways, providing such condition is revealed by a member of this department, or any peace officer.

3. That the treasurer has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle or that the granting of registration and issuance of a certificate of title would constitute a fraud against the rightful owner.

4. That the registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this state.

5. That the required fee has not been paid except as provided in section 321.48.

6. That the required use tax has not been paid.

7. If application for registration and certificate of title for a new vehicle is not accompanied by a manufacturer's or importer's certificate duly assigned.

8. If application for a transfer of registration and issuance of a certificate of title for a used vehicle registered in this state is not accompanied by a certificate of title duly assigned.

9. If application and supporting documents are insufficient to authorize the issuance of a certificate of title as provided by this chapter, except that an initial registration or transfer of registration may be issued as provided in section 321.23.

10. In the case of a mobile home, that taxes are owing under chapter 135D for a previous year.

11. In the case of a mobile home converted from real estate, real estate taxes which are delinquent.

The treasurer shall also refuse registration of any vehicle if the applicant for registration of such vehicle has failed to pay the required registration fees of any vehicle owned or previously owned when the registration fee was required to be paid by the applicant and for which vehicle the registration was suspended or revoked under the provisions of section 321.101, subsection 4, until such fees are paid together with any accrued penalties.

85 Acts, ch 98, §3 SF 452
NEW subsection 11

321.34 Plates or validation sticker furnished—retained by owner.

1. *Plates issued.* The county treasurer upon receiving application, accompanied by proper fee, for registration of a vehicle shall issue to the owner one registration plate for a motorcycle, motorized bicycle, truck tractor, trailer, or semitrailer and two registration plates for every other motor vehicle. The registration plates, including special registration plates, shall be assigned to the owner of a vehicle. When the owner of a registered vehicle transfers or assigns ownership of the vehicle to another person, the owner shall remove the registration plates from the vehicle. The owner shall forward the plates to the county treasurer where the vehicle is registered or the owner may have the plates assigned to another vehicle within thirty days after transfer, upon payment of the fees required by law. The owner shall immediately affix registration plates retained by the owner to another vehicle owned or acquired by the owner, providing the owner complies with section 321.46. The department shall adopt rules providing for the assignment of registration plates to the transferee of a vehicle for which a credit is allowed under section 321.46, subsection 6.

2. *Validation stickers.* In lieu of issuing new registration plates each registration year for a vehicle renewing registration, the department may reassign the registration plates previously issued to the vehicle and may adopt and prescribe annual validation stickers indicating payment of registration fees. The department shall issue two validation stickers for each set of registration plates. One sticker shall specify the year of expiration of the registration period. The second sticker shall specify the month of expiration of the registration period and need not be reissued annually. The month of registration shall not be required on registration plates or validation stickers issued for vehicles registered under chapter 326. The stickers shall be displayed only on the rear registration plate, except that the stickers shall be displayed on the front registration plate of a truck-tractor.

The state department of transportation shall promulgate rules to provide for the placement of motor vehicle registration validation stickers on all registration plates issued for the motor vehicle when such validation stickers are issued in lieu of issuing new registration plates under the provisions of this section.

3. *Radio operators plates.* The owner of an automobile, light delivery truck, panel delivery truck, or pickup who holds an amateur radio license issued by the federal communications commission may, upon written application to the county treasurer accompanied by a fee of five dollars, order special registration plates bearing the call letters authorized the radio station covered by the person's amateur radio license. When received by the county treasurer, such special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. Not more than one set of special registration plates may be issued to an applicant. Said fee shall be in addition to and not in lieu of the fee for regular registration plates. Special registration plates must be surrendered upon expiration of the owner's amateur radio license and the owner shall thereupon be entitled to the owner's regular registration plates. The county treasurer shall validate special plates in the same manner as regular registration plates, upon payment of five dollars in addition to the regular annual registration fee.

4. *Multiyear plates.* In lieu of issuing annual registration plates for trailers and semitrailers, the department may issue multiyear registration plates for a three-year period for trailers and semitrailers licensed under chapter 326 upon payment of the appropriate registration fee. Fees from three-year payments shall not be reduced or prorated.

5. *Personalized registration plates.*

a. Upon application and the payment of a fee of twenty-five dollars, the director may issue to the owner of a motor vehicle registered in this state or a trailer with a gross weight of one thousand pounds or less, personalized registration plates marked with the initials, letters, or a combination of numerals and letters requested by the owner. Upon receipt of the personalized registration plates, the applicant shall surrender the regular registration plates to the county treasurer. The fee for issuance of the personalized registration plates shall be in addition to the regular annual registration fee.

b. The county treasurer shall validate personalized registration plates in the same manner as regular registration plates are validated under this section at an annual fee of five dollars in addition to the regular annual registration fee.

c. The fees collected by the director under this section shall be paid to the treasurer of state and credited by the treasurer of state as provided in section 321.145.

6. *Sample vehicle registration plates.* Vehicle registration plates displaying the general design of regular registration plates, with the word "sample" displayed on the plate, may be furnished to any person upon payment of a fee of three dollars, except that such plates may be furnished to governmental agencies without cost. Sample registration plates shall not be attached to a vehicle moved on the highways of this state.

7. *Handicapped plates.* The owner of a motor vehicle subject to registration pursuant to section 321.109, subsection 1, light delivery truck, panel delivery truck or pickup who is a handicapped or paraplegic person as defined in section 601E.1, may upon written application to the department, order special registration plates designed by the department bearing the international symbol of accessibility. The application shall be approved by the department and the special registration plates shall be issued to the applicant in exchange for the previous registration plates issued to the person. The fee for the special plates shall be five dollars which shall be in addition to the regular annual registration fee. The department shall validate the special plates in the same manner as regular registration plates are validated under this section at the regular annual registration fee. However, the special plates shall

not be renewed without the applicant furnishing evidence to the department that the owner of the motor vehicle is still a handicapped or paraplegic person as defined in section 601E.1. The special registration plates shall be surrendered in exchange for regular registration plates when the owner of the motor vehicle no longer qualifies as a handicapped or paraplegic person as defined in section 601E.1.

8. *Prisoner of war plates.* The owner of a motor vehicle subject to registration under section 321.109, subsection 1, light delivery truck, panel delivery truck or pickup who was a prisoner of war during the second world war at any time between December 7, 1941 and December 31, 1946, the Korean conflict at any time between June 25, 1950 and January 31, 1955 or the Vietnam conflict at any time between August 5, 1964 and June 30, 1973, all dates inclusive, may upon written application to the department, order special registration plates designed by the department in co-operation with the adjutant general which plates signify that the applicant was a prisoner of war as defined in this subsection. Each applicant applying for special registration plates under this subsection may purchase only one set of registration plates under this subsection. The application is subject to approval by the department, in consultation with the adjutant general, and the special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. The special plates shall contain the letters "POW" and three numerals and are subject to an annual registration fee of fifteen dollars. The department shall validate the special plates in the same manner as regular registration plates are validated under this section.

9. *National guard plates.* The owner of a motor vehicle subject to registration pursuant to section 321.109, subsection 1, light delivery truck, panel delivery truck or pickup who is a member of the national guard, as defined in chapter 29A, may upon written application to the department, order special registration plates designed by the department in co-operation with the adjutant general which plates signify that the applicant is a member of the national guard. The application shall be approved by the department, in consultation with the adjutant general, and the special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. The fee for the special plates shall be five dollars which shall be in addition to the regular annual registration fee. The department shall validate the special plates in the same manner as regular registration plates are validated under this section at the regular annual registration fee. Special registration plates shall be surrendered in exchange for regular registration plates upon termination of the owner's membership in the active national guard.

85 Acts, ch 67, §35 SF 121; 85 Acts, ch 87, §1 SF 387
Subsections 1 and 8 amended

321.38 Plates, method of attaching—imitations prohibited.

Every registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which it is issued so as to prevent the plate from swinging and at a height of not less than twelve inches from the ground, measuring from the bottom of the plate, in a place and position to be clearly visible and shall be maintained free from foreign materials and in a condition to be clearly legible. An imitation plate or plates imitating or purporting to imitate the official registration plate of any other state or territory of the United States or of any foreign government shall not be fastened to the vehicle.

85 Acts, ch 195, §32 SF 329
Section amended

321.40 Application for renewal—notification—reasons for refusal.

Application for renewal of a vehicle registration shall be made on or after the first day of the month of expiration of registration and up to and including the last day of the month following the month of expiration of registration. The registration shall be renewed upon payment of the appropriate registration fee.

On or before the fifteenth day of the month of expiration of a vehicle's registration the county treasurer shall send a statement by mail of fees due to the appropriate owner of record. The statement shall be mailed to the most current address of record, showing information sufficient to identify the vehicle and a listing of the various fees as appropriate. Failure to receive a statement shall have no effect upon the accrual of penalty at the appropriate date. This paragraph applies to counties with a population of one hundred thousand or more. This paragraph applies to any county with a population of less than one hundred thousand at the discretion of the county treasurer.

Registration receipts issued for renewals shall have the word "renewal" imprinted thereon and, if the owner making a renewal application has been issued a certificate of title, the title number shall appear on the registration receipt. All registration receipts for renewals shall be typewritten or printed by other mechanical means. The applicant shall receive a registration receipt.

The county treasurer shall refuse to renew the registration of a vehicle registered to a person when notified that there is a warrant outstanding for that person's arrest out of a court located within that county and the warrant arises out of the alleged violation of a provision of this chapter or of an ordinance adopted by a local authority relating to the stopping, parking or operation of a vehicle or the regulation of traffic. Each clerk of court in this state shall, by the last day of each month, notify the county treasurer of that county of all persons against whom such an arrest warrant has been issued and is outstanding. Immediately upon the cancellation or satisfaction of such an arrest warrant the clerk of court shall notify the person against whom the arrest warrant was issued and the county treasurer if that person's name appeared on the last list furnished to the county treasurer. This paragraph does not apply to the transfer of a registration or the issuance of a new registration. The provisions of this paragraph are applicable to counties with a population of two hundred thousand or more. The provisions of this paragraph shall be applicable to any county with a population of less than two hundred thousand upon the adoption of a resolution by the county board of supervisors so providing.

The county treasurer shall refuse to renew the registration of a vehicle registered to the applicant for renewal of registration if the applicant has failed to pay any local vehicle taxes due in that county on that vehicle or any other vehicle owned or previously owned by the applicant until such local vehicle taxes are paid.

When application is made for the renewal of a motor vehicle registration on or after December 1, 1982, the person in whose name the registration is recorded shall notify the county treasurer of the type of fuel used by the vehicle if the type of fuel used is different from that which is shown on the registration receipt. If a motor vehicle registration indicates that the vehicle uses or may use a special fuel as defined in chapter 324 the county treasurer shall issue a special fuel user identification sticker. The person who owns or controls the vehicle shall affix the sticker in a prominent place on the vehicle adjacent to the place where the special fuel is delivered into the motor vehicle fuel supply tank.

85 Acts, ch 32, §78 SF 395; 85 Acts, ch 77, §1 HF 454; 85 Acts, ch 87, §2 SF 387

NEW unnumbered paragraph 2

Unnumbered paragraph 4 amended

NEW unnumbered paragraph 5

321.42 Lost or damaged certificates, cards, and plates.

If a registration card, plate, or pair of plates is lost or becomes illegible, the owner shall immediately apply for replacement. The fee for a replacement registration card shall be three dollars. The fee for a replacement plate or pair of plates shall be five dollars. When the owner has furnished information required by the department and paid the proper fee, a duplicate, substitute, or new registration card, plate, or pair of plates may be issued.

If a certificate of title is lost or destroyed, the owner or lienholder shall apply for a certified copy of the original certificate of title. The owner or lienholder of a motor

vehicle may also apply for a certified copy of the original certificate of title as a replacement for the original certificate of title upon surrender of the original certificate of title with the application. The application shall be made to the department or county treasurer who issued the original certificate of title. The application shall be signed by the owner or lienholder and accompanied by a fee of ten dollars. After five days, the department or county treasurer shall issue a certified copy to the applicant at the applicant's most recent address, however, the five-day waiting period does not apply to an applicant who has surrendered the original certificate of title to the department or county treasurer. The certified copy shall be clearly marked "duplicate" and shall be identical to the original, including notation of liens or encumbrances. When a certified copy has been issued, the previous certificate is void. A new purchaser or transferee is entitled to receive an original title upon presenting the assigned duplicate copy to the treasurer of the county where the new purchaser or transferee resides. At the time of purchase, a purchaser may require the seller to indemnify the purchaser and all future purchasers of the vehicle against any loss which may be suffered due to claims on the original certificate. A person recovering an original certificate of title for which a duplicate has been issued shall surrender the original certificate to the county treasurer or the department.

If a county treasurer mails vehicle registration documents which become lost or are damaged in transit through the United States postal service, the person to whom the documents were being sent may apply for reissuance without cost. The application shall be made with the county treasurer who originally issued the documents not less than twenty days from the date the documents were placed with the United States postal service. If the original documents are received after reissuance of duplicates, the original documents shall be surrendered to the county treasurer within five days of the time they are received.

85 Acts, ch 209, §1 HF 711
Unnumbered paragraph 2 amended

321.46 New title and registration upon transfer of ownership—credit.

1. The transferee shall within fifteen calendar days after purchase or transfer apply for and obtain from the county treasurer of the person's residence, or if a nonresident, the county treasurer of the county where the primary users of the vehicle are located or the county where all other vehicles owned by the nonresident are registered, a new registration and a new certificate of title for the vehicle except as provided in section 321.25 or 321.48. The transferee shall present with the application the certificate of title endorsed and assigned by the previous owner and the signed registration card or other evidence of current registration as required by the department. The transferee shall be required to list a motor vehicle license number as part of the application for a registration transfer and a new title. The motor vehicle license number shall not be the social security number of the transferee unless requested by the transferee.

2. Upon filing the application for a new registration and a new title, the applicant shall pay a title fee of ten dollars and a registration fee prorated for the remaining unexpired months of the registration year. The county treasurer, if satisfied of the genuineness and regularity of the application, and in the case of a mobile home, that taxes are not owing under chapter 135D, and that applicant has complied with all the requirements of this chapter, shall issue a new certificate of title and, except for a mobile home, a registration card to the purchaser or transferee, shall cancel the prior registration for the vehicle, and shall forward the necessary copies to the department on the date of issuance, as prescribed in section 321.24.

3. The applicant shall be entitled to a credit for that portion of the registration fee of the vehicle sold, traded, or junked within the state which had not expired prior to the transfer of ownership of the vehicle. The registration fee for the new registration for the vehicle acquired shall be reduced by the amount of the credit. The credit

shall be computed on the basis of the number of months remaining in the registration year, rounded to the nearest whole dollar. The credit shall be subject to the following limitations:

a. The credit shall be claimed within thirty days from the date the vehicle for which credit is granted was sold, transferred, or junked. After thirty days, all credits shall be disallowed.

b. Any credit granted to the owner of a vehicle which has been sold, traded, or junked may only be claimed by that person toward the registration fee for another vehicle purchased and the credit may not be sold, transferred, or assigned to any other person.

c. When the amount of the credit is computed to be an amount of less than five dollars, a credit shall be disallowed.

d. To claim a credit for the unexpired registration fee on a junked vehicle, the county treasurer shall disallow any claim for credit unless the owner presents a junking certificate or other evidence as required by the department to the county treasurer.

e. A credit shall not be allowed to any person who is eligible to receive a refund, upon proper application, under section 321.126.

f. The credit shall only be allowed if the owner provides the copy of the registration receipt to the county treasurer.

g. The credit allowed shall not exceed the amount of the registration fee for the vehicle acquired.

h. The credit shall be computed on the unexpired number of months computed from the date of purchase of the vehicle acquired.

4. If the registration fee upon application is delinquent, the applicant shall be required to pay the delinquent fee from the first day the registration fee was due prorated to the month of application for new title.

5. The seller or transferor may file an affidavit on forms prescribed and provided by the department with the county treasurer of the county where the vehicle is registered certifying the sale or transfer of ownership of the vehicle and the assignment and delivery of the certificate of title for the vehicle. Upon receipt of the affidavit the county treasurer shall file the affidavit with the copy of the registration receipt for the vehicle on file in the treasurer's office and on that day the treasurer shall forward copies of the affidavit to the department and to the county treasurer of the county of residence of the purchaser or transferee. Upon filing the affidavit it shall be presumed that the seller or transferor has assigned and delivered the certificate of title for the vehicle.

6. An applicant for a new registration for a vehicle transferred to the applicant by a spouse, parent or child of the applicant, or by operation of law upon inheritance, devise or bequest, from the applicant's spouse, parent or child, or by a former spouse pursuant to a decree of dissolution of marriage, is entitled to a credit to be applied to the registration fee for the transferred vehicle. A credit shall not be allowed unless the vehicle to which the credit applies is registered within the time specified under subsection 1. The credit shall be computed on the basis of the number of unexpired months remaining in the registration year of the former owner computed from the date the vehicle was transferred, computed to the nearest whole dollar. The credit shall not exceed the amount of the registration fee for the transferred vehicle. When the amount of the credit is computed to be an amount of less than five dollars, the credit shall be disallowed. The credit shall not be sold, transferred, or assigned to any other person.

85 Acts, ch 87, §3 SF 387
NEW subsection 6

321.49 Time limit—penalty—power of attorney.

1. Except as provided in section 321.52, if an application for transfer of registration and certificate of title is not submitted to the county treasurer of the residence

of the transferee within fifteen days of the date of assignment or transfer of title, a penalty of ten dollars shall accrue against the applicant, and no registration card or certificate of title shall be issued to the applicant for the vehicle until the penalty is paid.

2. Certificates of title to vehicles may be assigned by an attorney in fact of the owner under a power of attorney appointed and so empowered on forms provided by the department. Such power of attorney shall be filed by the transferee with the application for title.

85 Acts, ch 209, §2 HF 711
Subsection 1 amended

321.52 Out-of-state sales—junked, dismantled, wrecked, or salvaged vehicles.

1. When a vehicle is sold outside the state for purposes other than for junk the owner, dealer or otherwise, shall detach the registration plates and registration card and shall indicate on the reverse side of such registration card the name and address of the foreign purchaser or transferee over the person's signature. The owner shall surrender the registration plates and registration card to the county treasurer, unless the registration plates are properly attached to another vehicle, who shall cancel the records and shall destroy the registration plates and forward the registration card to the department. The department shall make a notation on the records of the out-of-state sale, and, after a reasonable period, may destroy the files to that particular vehicle. The department is not authorized to make a refund of license fees on a vehicle sold out of state unless it receives the registration card completed as provided in this section.

2. The purchaser or transferee of a motor vehicle for which a certificate of title is issued which is sold for scrap or junk shall surrender the certificate of title and registration receipt to the county treasurer of the county of residence of the transferee within fifteen days after assignment of the certificate of title. The county treasurer shall issue to such person without fee a junking certificate. A junking certificate shall authorize the holder to possess, transport or transfer by endorsement the ownership of the junked vehicle. A certificate of title shall not again be issued for the vehicle subsequent to the issuance of a junking certificate. The county treasurer shall cancel the record of the vehicle and forward the certificate of title to the department. The junking certificate shall be of a form to allow for the assignment of ownership of the vehicle. The junking certificate shall provide a space for the notation of the transferee of the component parts of the vehicle transferred by the owner of the vehicle.

3. When a vehicle for which a certificate of title is issued is junked or dismantled by the owner, the owner shall detach the registration plates and surrender the plates to the county treasurer, unless the plates are properly assigned to another vehicle. The owner shall also surrender the registration receipt and certificate of title to the county treasurer. Upon surrendering the certificate of title, the county treasurer shall issue to the person, without fee, a junking certificate, which shall authorize the holder to possess, transport or transfer ownership of the junked vehicle by endorsement of the junking certificate. The county treasurer shall hold the surrendered certificate of title, registration receipt and, if applicable, the registration plates for a period of fourteen days following the issuance of a junking certificate under this subsection. Within the fourteen-day period the person who was issued the junking certificate and to whom the vehicle was titled or assigned may surrender to the county treasurer the junking certificate, and upon the person's payment of appropriate fees and taxes and payment of any credit for registration fees received by the person for the vehicle under section 321.46, subsection 3, the county treasurer shall issue to the person a certificate of title for the vehicle. After the expiration of the fourteen-day period, a county treasurer shall not issue a certificate of title for a junked vehicle for which a junking certificate is issued. The county treasurer shall cancel the record of the vehicle and forward the certificate of title to the department.

However, upon application the department upon a showing of good cause may issue a certificate of title after the fourteen-day period for a junked vehicle for which a junking certificate has been issued. For purposes of this subsection, "good cause" means that the junking certificate was obtained by mistake or inadvertence. If a person's application to the department is denied, the person may seek judicial review as provided under sections 17A.19 and 17A.20.

4. A vehicle rebuilder or a motor vehicle dealer licensed under chapter 322, upon acquisition of a wrecked or salvage vehicle, shall surrender the certificate of title and registration receipt or manufacturer's or importer's statement of origin properly assigned, together with an application for a salvage certificate of title to the county treasurer of the county of residence of the purchaser or transferee within fourteen days after the date of assignment of the certificate of title for the wrecked or salvage motor vehicle. This subsection applies only to vehicles with a fair market value of five hundred dollars or more, based on the value before the vehicle became wrecked or salvage. Upon payment of a fee of two dollars, the county treasurer shall issue a salvage certificate of title which shall bear the word "SALVAGE" stamped on the face of the title in bold letters and coded in a manner prescribed by the department. A salvage certificate of title may be assigned to any person. Notwithstanding any other provisions in this section a vehicle on which ownership has transferred to an insurer of the vehicle, as a result of a settlement with the owner of the vehicle arising out of damage to, or unrecovered theft of the vehicle, shall be deemed to be a wrecked or salvage vehicle and the insurer shall comply with this subsection to obtain a salvage certificate of title within fourteen days after the date of assignment of the certificate of title of the vehicle.

When a wrecked or salvage vehicle has been repaired or rebuilt, that person shall make application for a certificate of title to the county treasurer of the county of residence of the owner, and shall surrender the salvage certificate of title issued for the vehicle. A verification of the vehicle identification number of the vehicle shall be made by a peace officer of the state department of transportation, the department of public safety, county sheriff or police department of cities with a population exceeding five thousand persons or a person designated by the commissioner of public safety or the director. The verification shall be made on forms provided by the department and signed by the peace officer or the appropriately designated person and the verification form shall be surrendered by the owner to the county treasurer at the time application is made for a certificate of title. Upon payment of the appropriate fees and surrender of the appropriate documents the county treasurer shall issue a certificate of title to the person making application.

For purposes of this subsection a "wrecked or salvage vehicle" means a damaged vehicle for which the cost of repair exceeds fifty percent of the fair market value of the vehicle before it became damaged.

85 Acts, ch 67, §36 SF 121; 85 Acts, ch 209, §3 HF 711
Subsection 3 amended

321.85 Stolen vehicles or component parts.

When a vehicle or component part is seized under section 321.84 or is stolen or embezzled, and is not claimed by the owner before the date on which the person charged with its stealing or embezzling is convicted, the officer having the vehicle or component part in the officer's custody shall, on that date by certified mail, notify the department that the officer has the vehicle or component part in the officer's possession, giving a full and complete description of it, including all vehicle identification numbers and component part numbers. If there is a dispute regarding a claim for the vehicle or component part, the agency holding the vehicle or component part shall conduct an evidentiary hearing to adjudicate the claim.

85 Acts, ch 64, §1 HF 664
Section amended

321.89 Abandoned vehicles.

1. *Definitions.* As used in this section and sections 321.90 and 321.91 unless the context otherwise requires:

a. "Police authority" means the Iowa highway safety patrol or any law enforcement agency of a county or city.

b. "Abandoned vehicle" means any of the following:

(1) A vehicle that has been left unattended on public property for more than forty-eight hours and lacks current registration plates or two or more wheels or other parts which renders the vehicle totally inoperable, or

(2) A vehicle that has remained illegally on public property for more than seventy-two hours, or

(3) A vehicle that has been unlawfully parked on private property or has been placed on private property without the consent of the owner or person in control of the property for more than twenty-four hours, or

(4) A vehicle that has been legally impounded by order of a police authority and has not been reclaimed for a period of ten days, or

(5) Any vehicle parked on the highway determined by a police authority to create a hazard to other vehicle traffic, or

(6) However a vehicle shall not be considered abandoned for a period of fifteen days if its owner or operator is unable to move the vehicle and notifies the police authority responsible for the geographical location of the vehicle and requests assistance in the removal of the vehicle.

c. "Demolisher" means any city or public agency organized for the disposal of solid waste, or any person whose business it is to convert a vehicle to junk, processed scrap or scrap metal, or otherwise to wreck, or dismantle vehicles.

2. *Authority to take possession of abandoned vehicles.* A police authority may, and on the request of any other authority having the duties of control of highways or traffic, shall take into custody any abandoned vehicle on public property and may take into custody any abandoned vehicle on private property. A police authority taking into custody an abandoned vehicle determined to create a traffic hazard shall report the reasons constituting the hazard in writing to the appropriate authority having duties of control of the highway. The police authority may employ its own personnel, equipment and facilities or hire other personnel, equipment and facilities for the purpose of removing, preserving, storing, or disposing abandoned vehicles.

3. *Notification of owner, lienholders, and other claimants.*

a. A police authority which takes into custody an abandoned vehicle shall notify, within twenty days, by certified mail, the last known registered owner of the vehicle, all lienholders of record, and any other known claimant to the vehicle or to personal property found in the vehicle, addressed to their last known addresses of record, that the abandoned vehicle has been taken into custody. Notice shall be deemed given when mailed. The notice shall describe the year, make, model, and serial number of the vehicle, describe the personal property found in the vehicle, set forth the location of the facility where the vehicle is being held, and inform the persons receiving the notice of their right to reclaim the vehicle and personal property within twenty-one days after the effective date of the notice upon payment of all towing, preservation, and storage charges resulting from placing the vehicle in custody and upon payment of the costs of notice required pursuant to this subsection. The notice shall also state that the failure of the owner or lienholders to exercise their right to reclaim the vehicle within the time provided shall be deemed a waiver by the owner and all lienholders of all right, title, claim and interest in the vehicle and that failure to reclaim the vehicle is deemed consent to the sale of the vehicle at a public auction or disposal of the vehicle to a demolisher. The notice shall state that any person claiming rightful possession of the vehicle or personal property who disputes the planned disposition of the vehicle or property by the police authority or of the assessment of fees and charges provided by this section may ask for an evidentiary

hearing before the police authority to contest those matters. If the persons receiving the notice do not ask for a hearing or exercise their right to reclaim the vehicle within the twenty-one-day reclaiming period, the owner and lienholders shall no longer have any right, title, claim, or interest in or to the vehicle. No court in any case in law or equity shall recognize any right, title, claim, or interest of the owner and lienholders after the expiration of the twenty-one-day reclaiming period.

b. If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in one newspaper of general circulation in the area where the vehicle was abandoned shall be sufficient to meet all requirements of notice under this section. The published notice may contain multiple listings of abandoned vehicles but shall be published within the same time requirements and contain the same information as prescribed for mailed notice in subsection 3, paragraph "a" of this section.

c. The owner or any lienholders may, by written request delivered to the police authority prior to the expiration of the twenty-one-day reclaiming period, obtain an additional fourteen days within which the vehicle may be reclaimed.

4. *Auction of abandoned vehicles.* If an abandoned vehicle has not been reclaimed as provided for in subsection 3, the police authority shall make a determination as to whether or not the vehicle shall be sold for use upon the highways. If the vehicle is not sold for use upon the highways, it shall be sold for junk, or demolished and sold as scrap. The police authority shall sell the vehicle at public auction. Notwithstanding any other provision of this section, any police authority, which has taken into possession any abandoned vehicle which lacks an engine or two or more wheels or another part which renders the vehicle totally inoperable may dispose of the vehicle to a demolisher for junk after complying with the notification procedures enumerated in subsection 3 and without public auction. The purchaser of the vehicle takes title free and clear of all liens and claims of ownership, shall receive a sales receipt from the police authority, and is entitled to register the vehicle and receive a certificate of title if sold for use upon the highways. However, if the vehicle is sold or disposed of to a demolisher for junk, the sales receipt by itself is sufficient title only for purposes of transferring the vehicle to the demolisher for demolition, wrecking, or dismantling and, when so transferred, no further titling of the vehicle is permitted. From the proceeds of the sale of an abandoned vehicle the police authority shall reimburse itself for the expenses of the auction, the costs of towing, preserving, and storing which resulted from placing the abandoned vehicle in custody, all notice and publication costs incurred pursuant to subsection 3, the cost of inspection, and any other costs incurred except costs of bookkeeping and other administrative costs. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lienholder for ninety days, and shall then be deposited in the road use tax fund. The costs to police authorities of auction, towing, preserving, storage, and all notice and publication costs, and all other costs which result from placing abandoned vehicles in custody, whenever the proceeds from a sale of the abandoned vehicles are insufficient to meet these expenses and costs, shall be paid from the road use tax fund.

The state comptroller shall establish by rule a claims procedure to be followed by police authorities in obtaining expenses and costs from the fund.

85 Acts, ch 64, §2 HF 664
Subsection 3, paragraph a amended

321.104 Penal offenses against title law.

It is a misdemeanor, punishable as provided in section 321.482 for any person to commit any of the following acts:

1. To operate any motor vehicle upon the highways upon which the certificate of title has been canceled, or while a certificate of registration of a motor vehicle is suspended or revoked.

2. For a dealer, or a person acting on behalf of a dealer to acquire, purchase, hold or display for sale a motor vehicle without having obtained a manufacturer's or importer's certificate or a certificate of title, or assignments thereof, unless otherwise provided in this chapter.

3. A person who fails to surrender a certificate of title, registration card or registration plates upon cancellation, suspension or revocation of the certificate or registration by the department and notice as prescribed in this chapter.

4. Any person whoever shall purport to sell or transfer a motor vehicle, trailer or semitrailer without delivering to the purchaser or transferee thereof a certificate of title or a manufacturer's or importer's certificate thereto duly assigned to such purchaser as provided in this chapter.

5. Any person whoever shall violate any of the other provisions of this chapter or any lawful rules promulgated pursuant to the provisions of this chapter.

6. For a dealer to sell or transfer a mobile home without delivering to the purchaser or transferee a certificate of title, a manufacturer's or importer's certificate properly assigned to the purchaser, or to transfer a mobile home without disclosing to the purchaser the owner of the mobile home in a manner prescribed by the department pursuant to rules or to fail to certify within seven days to the proper county treasurer the information required under section 321.45, subsection 4.

85 Acts, ch 195, §33 SF 329
Subsection 3 amended

321.115 Antiquated vehicles.

Any motor vehicle twenty-five years old, or older, whose owner desires to use said motor vehicle exclusively for exhibition or educational purposes at state or county fairs, or other places where said motor vehicle may be exhibited for entertainment or educational purposes, shall be given a registration permitting the driving of said motor vehicle upon the public roads to and from said fair or other place of entertainment or education for a registration fee of five dollars per annum.

The sale of a motor vehicle twenty-five years old or older which is primarily of value as a collector's item and not as transportation is not subject to chapter 322 and any person may sell such a vehicle at retail or wholesale without a license as required under chapter 322.

85 Acts, ch 101, §1 SF 290
NEW unnumbered paragraph 2

321.126 Refunds of fees.

Refunds of unexpired vehicle registration fees shall be allowed in accordance with this section, except that no refund shall be allowed and paid if the unused portion of the fee is less than five dollars. Subsections 1 and 2 do not apply to motor vehicles registered by the county treasurer. The refunds shall be made as follows:

1. If the motor vehicle is destroyed by fire or accident, or junked and its identity as a motor vehicle entirely eliminated, the owner in whose name the motor vehicle was registered at the time of destruction or dismantling shall return the plates to the department and within thirty days thereafter make a statement of such destruction or dismantling and make claim for refund. With reference to the destruction or dismantling of a vehicle, no refund shall be allowed unless a junking certificate has been issued, as provided in section 321.52.

2. If the motor vehicle is stolen, the owner shall give notice of the theft to the department within five days. If the motor vehicle is not recovered by the owner thirty days prior to the end of the current registration year, the owner shall make a statement of the theft and make claim for refund.

3. If the motor vehicle is placed in storage by the owner upon the owner's entry into the military service of the United States, the owner shall return the plates to the county treasurer or the department and make a statement regarding the storage and military service and make claim for refund. Whenever the owner of a motor

vehicle so placed in storage desires to again register the vehicle, the county treasurer or department shall compute and collect the fees for registration for the registration year commencing in the month the vehicle is removed from storage.

4. If the motor vehicle is registered by the county treasurer during the current registration year and the owner or lessee registers the vehicle for prorate under chapter 326, the owner of the registered vehicle shall surrender the registration plates to the county treasurer and may file a claim for refund.

5. A refund for trailers and semitrailers issued a multiyear registration plate shall be paid by the department upon application.

6. If a vehicle is sold or junked within thirty days after a replacement vehicle has been purchased and the title and registration for the replacement vehicle issued, the owner in whose name the vehicle was registered may within thirty days after the date of sale or junking make claim to the department for a refund of the sold or junked vehicle's registration fee subject to the following limitations:

a. The refund shall be computed on the basis of the number of unexpired months remaining in the registration year at the time the vehicle was sold or junked and shall be rounded to the nearest whole dollar. Section 321.127, subsection 1, does not apply.

b. The refund shall not exceed the amount of the registration fee for the replacement vehicle and shall only be allowed if the replacement vehicle was registered within the time specified for registration under section 321.46, subsection 1.

c. The refund shall only be allowed if the owner provides the credit copy of the registration receipt for the vehicle sold or junked and a photocopy of the registration receipt for the replacement vehicle.

d. This subsection does not apply to vehicles registered under chapter 326.

7. Notwithstanding any provision of this section to the contrary, there shall be no refund of proportional registration fees unless the state which issued the base plate for the vehicle allows such refund. If an owner subject to proportional registration leases the vehicle for which the refund is sought, the claim shall be filed in the names of both the lessee and the lessor and the refund payment made payable to both the lessor and the lessee. The term "owner" for purposes of this section shall include a person in whom is vested right of possession or control of a vehicle which is subject to a lease, contract, or other legal arrangement vesting right of possession or control in addition to the term as defined in section 321.1, subsection 36.

85 Acts, ch 87, §4, 5 SF 387

Unnumbered paragraph 1 amended

NEW subsection 6 and subsequent subsection renumbered

321.127 Payment of refund.

1. The refund of the registration fee for motor vehicles shall be computed on the basis of the number of unexpired months remaining in the registration year from date of filing of the claim for refund with the county treasurer, computed to the nearest dollar.

2. The department, unless reasonable grounds exist for delay, shall make refund on or before the last day of the month following the month in which the claim is filed with the department.

3. For trailers or semitrailers issued a multiyear registration plate a refund shall be paid equal to the annual fee for twelve months times the remaining number of complete registration years.

4. Refunds for motor vehicles registered for prorate under chapter 326 shall be paid on the basis of unexpired complete calendar months remaining in the registration year from the date the claim is filed with the department.

85 Acts, ch 87, §6 SF 387

Section amended

321.130 Fees in lieu of taxes.

The registration fees imposed by this chapter upon private passenger motor vehicles or semitrailers are in lieu of all state and local taxes, except local vehicle taxes, to which motor vehicles or semitrailers are subject, and if a motor vehicle or semitrailer has been registered at any time under this chapter it shall not thereafter be subject to a personal property tax unless the motor vehicle or semitrailer has been in storage continuously as an unregistered motor vehicle or semitrailer during the preceding registration year.

85 Acts, ch 32, §79 SF 395
Section amended

321.135 When fees delinquent.

Except as otherwise provided, delinquencies begin and penalties accrue the first of the month following the purchase of a new vehicle, and thirty days following the date a vehicle is brought into the state.

85 Acts, ch 209, §4 HF 711
Section amended

321.177 Persons not to be licensed.

The department shall not issue any license hereunder:

1. To any person, as an operator, who is under the age of eighteen years, without the person's first having successfully completed an approved driver education course, in which case, the minimum age is sixteen years. However, the department may issue a school license as provided in section 321.194, or a temporary instruction permit as provided in section 321.180, to any person who is at least fourteen years of age. The department may issue a license restricted for use only for motorized bicycles as provided in section 321.189, subsection 2.

2. To any person, as a chauffeur, who is under the age of eighteen years.

3. To any person, as an operator or chauffeur whose license or driving privilege has been suspended during such suspension or to any person whose license, or driving privilege, has been revoked, until the expiration of one year after such revocation.

4. To any person, as an operator or chauffeur, who is a chronic alcoholic, or is addicted to the use of narcotic drugs.

5. To any person, as an operator or chauffeur, who has previously been adjudged to be incompetent by reason of mental illness and who has not at the time of application been restored to competency by the methods provided by law.

6. To any person, as an operator or chauffeur, who is required by this chapter to take an examination, unless such person shall have successfully passed such examination.

7. To any person when the director has good cause to believe that such person by reason of physical or mental disability would not be able to operate a motor vehicle with safety upon the highways.

85 Acts, ch 195, §34 SF 329
Subsection 1 amended

321.196 Expiration of operator's license—renewal—vision test mandatory.

An operator's license expires six years from the licensee's birthday anniversary occurring in the year of issuance if the licensee is between the ages of eighteen and seventy years on the date of issuance of the license, otherwise the license is effective for a period of two years. The license is renewable without written examination or penalty within a period of thirty days after its expiration date. A person shall not be considered to be driving with an invalid license during a period of thirty days following the license expiration date. However, for a license renewed within the thirty-day period, the date of issuance shall be considered to be the previous birthday anniversary on which it expired. Applicants whose licenses are restricted due to vision or other physical deficiencies may be required to renew their licenses

every two years. For the purposes of this section the birthday anniversary of a person born on February 29 shall be deemed to occur on March 1. All applications for renewal of operators' licenses shall be made under the direct supervision of a uniformed member of the department and shall be approved by the uniformed member. The department in its discretion may authorize the renewal of a valid license upon application without an examination provided that the applicant satisfactorily passes a vision test as prescribed by the department.

Any resident of Iowa holding a valid operator's or chauffeur's license who is temporarily absent from the state, or incapacitated, may, at the time for renewal for such license, obtain from the sheriff of the county of the licensee's residence a form to apply for a temporary extension of the license. The department upon receipt of such application form properly filled out shall, upon a showing of good cause, issue a temporary extension of such license for not to exceed six months. The department shall prescribe and furnish such forms to each county sheriff.

85 Acts, ch 195, §35 SF 329
Unnumbered paragraph 1 amended

321.210A Suspension for failure to pay fine, penalty, surcharge, or court costs.

The department shall suspend the motor vehicle license of a person who, upon conviction of violating a law regulating the operation of a motor vehicle, has failed to pay the criminal fine or penalty, surcharge, or court costs, as follows:

1. Upon the failure of a person to timely pay the fine, penalty, surcharge, or court costs the clerk of the district court shall notify the person that if the fine, penalty, surcharge, or court costs remain unpaid after sixty days, the clerk will notify the department of the failure for purposes of instituting suspension procedures.

2. Upon the failure of a person to pay the fine, penalty, surcharge, or court costs within sixty days of receiving notice from the clerk of the district court as provided in subsection 1, the clerk shall report the failure to the department.

3. Upon receipt of a report of a failure to pay the fine, penalty, surcharge, or court costs from the clerk of the district court, the department shall in accordance with its rules, suspend the person's motor vehicle license until the fine, penalty, surcharge or court costs are paid, unless the person proves to the satisfaction of the clerk and the department that the person cannot pay the fine, penalty, surcharge, or court costs.

85 Acts, ch 197, §3 SF 570
NEW section

321.212 Period of suspension or revocation—surrender of license.

1. a. Except as provided in section 321.210A or 321.513 the department shall not suspend a license for a period of more than one year, except that a license suspended because of incompetency to drive a motor vehicle shall be suspended until the department receives satisfactory evidence that the former holder is competent to operate a motor vehicle and a refusal to reinstate constitutes a denial of license within section 321.215; upon revoking a license the department shall not grant an application for a new license until the expiration of one year after the revocation, unless another period is specified by law.

b. The department shall not revoke a license under the provisions of subsection 6 of section 321.209 for more than thirty days nor less than five days as recommended by the trial court.

c. The department shall revoke a license for six months for a first offense under the provisions of section 321.209, subsection 7, where the violation charged did not result in a personal injury or damage to property.

2. The department upon suspending or revoking a license shall require that such license be surrendered to and be retained by the department except that at the end of the period of suspension such license so surrendered shall be returned to the licensee.

85 Acts, ch 197, §4 SF 570
Subsection 1, paragraph a amended

321.218 Driving without valid license—penalties.

A person whose operator's or chauffeur's license or driving privilege has been denied, canceled, suspended or revoked as provided in this chapter, and who drives a motor vehicle upon the highways of this state while the license or privilege is denied, canceled, suspended, or revoked commits a simple misdemeanor. However, a person whose license or driving privilege has been revoked under section 321.209 or chapter 321B and who drives a motor vehicle upon the highways of this state while the license or privilege is revoked commits a serious misdemeanor. The sentence imposed under this section shall not be suspended by the court, notwithstanding section 907.3 or any other statute. The department, upon receiving the record of the conviction of a person under this section upon a charge of driving a motor vehicle while the license of the person was suspended or revoked, shall, except for licenses suspended under section 321.513, extend the period of suspension or revocation for an additional like period, and the department shall not issue a new license during the additional period.

Any person operating a motorized bicycle on the highways of the state not possessed of an operator's or chauffeur's license or a valid motorized bicycle license, shall, upon conviction, be guilty of a simple misdemeanor. -

85 Acts, ch 195, §36 SF 329
Unnumbered paragraph 2 amended

321.233 Road workers exempted.

This chapter, except section 321.277 and sections 321.280 to 321.282 does not apply to persons and motor vehicles and other equipment while actually engaged in work upon the surface of a highway officially closed to traffic but does apply to such persons and vehicles when traveling to or from such work. The minimum speed restriction of section 321.285, subsection 8, and the provisions of sections 321.297 and 321.298 do not apply to road workers operating maintenance equipment owned by or under lease to any state or local authority while engaged in road maintenance, road blading, snow and ice control and removal, and granular resurfacing work on a highway, whether or not the highway is closed to traffic.

A chauffeur's license shall not be required for a person to operate road construction and maintenance equipment while engaged in road construction and maintenance work, including the movement of the road construction and maintenance equipment to and from the work site under its own power. The department shall adopt rules pursuant to chapter 17A specifying each type of road construction and maintenance equipment for which a chauffeur's license is not required for the operation of the equipment.

85 Acts, ch 167, §1 HF 378
Unnumbered paragraph 1 amended

321.234 Bicycles, animals, or animal-drawn vehicles.

1. A person riding an animal or driving an animal drawing a vehicle upon a roadway is subject to the provisions of this chapter applicable to the driver of a vehicle, except those provisions of this chapter which by their nature can have no application.

2. A person riding a bicycle on the highway is subject to the provisions of this chapter and has all the rights and duties under this chapter applicable to the driver of a vehicle, except those provisions of this chapter which by their nature can have no application.

3. A person propelling a bicycle on the highway shall not ride other than upon or astride a permanent and regular seat attached to the bicycle.

4. A person shall not use a bicycle on the highway to carry more persons at one time than the number of persons for which the bicycle is designed and equipped.

5. This section does not apply to the use of a bicycle in a parade authorized by proper permit from local authorities.

85 Acts, ch 40, §2 SF 70
Section amended

321.234A All-terrain vehicles.

All-terrain vehicles shall be operated on a highway only between sunrise and sunset and only when the operation on the highway is incidental to the vehicle's use for agricultural purposes. A person operating an all-terrain vehicle on a highway shall have a valid operator's license and the vehicle shall be operated at speeds of less than thirty miles per hour. When operated on a highway, an all-terrain vehicle shall have a bicycle safety flag which extends not less than five feet above the ground attached to the rear of the vehicle. The bicycle safety flag shall be triangular in shape with an area of not less than thirty square inches, be day-glow in color, and shall be in lieu of the reflective equipment required by section 321.383.

85 Acts, ch 35, §3 SF 9
NEW section

321.236 Powers of local authorities.

Local authorities shall have no power to enact, enforce, or maintain any ordinance, rule or regulation in any way in conflict with, contrary to or inconsistent with the provisions of this chapter, and no such ordinance, rule or regulation of said local authorities heretofore or hereafter enacted shall have any force or effect, however the provisions of this chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

1. Regulating the standing or parking of vehicles.

Parking meter violations which are denied shall be charged and proceed before a court the same as other traffic violations. Parking violations which are admitted:

a. May be charged and collected upon a simple notice of a fine not exceeding five dollars payable to the city clerk or clerk of the district court, if authorized by ordinance. No costs or other charges shall be assessed. All fines collected by a city pursuant to this paragraph shall be retained by the city and all fines collected by a county pursuant to this paragraph shall be retained by the county.

b. Notwithstanding any such ordinance, may be prosecuted under the provisions of sections 805.7 to 805.13 or as any other traffic violation.

c. If the local authority regulating the standing or parking of vehicles under this subsection is located in a county where the registration of a vehicle shall be denied for outstanding arrest warrants under section 321.40, the simple notice of fine under paragraph "a" of this subsection shall contain the following statement:

"FAILURE TO PAY A JUDGMENT FOR A PARKING VIOLATION CAN BE GROUNDS FOR REFUSING TO RENEW YOUR MOTOR VEHICLE'S REGISTRATION."

This paragraph does not invalidate forms for notice of parking violations in existence prior to July 1, 1980. Existing forms may be used until supplies are exhausted.

2. Regulating traffic by means of police officers or traffic-control signals.

3. Regulating or prohibiting processions or assemblages on the highways.

4. Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction.

5. Regulating the speed of vehicles in public parks.

6. Designating any highway as a through highway and requiring that all vehicles stop or yield the right of way before entering or crossing the same or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances to such intersections.

7. Licensing and regulating the operation of vehicles offered to the public for hire and used principally in intracity operation.

8. Restricting the use of highways as authorized in sections 321.471 to 321.473.

9. Regulating or prohibiting the turning of vehicles at and between intersections.

10. Regulating the operation of bicycles and requiring the registration and licensing of the same, including the requirement of a registration fee. However, the regulations shall not conflict with the provisions of section 321.234.

11. Establishing speed limits in public alleys and providing the penalty for violation thereof.

12. Designating highways or portions of highways as snow routes. When conditions of snow or ice exist on the traffic surface of a designated snow route, it is unlawful for the driver of a vehicle to impede or block traffic if the driving wheels of the vehicle are not equipped with snow tires, tire chains or a nonslip differential. "Snow tires" as used in this subsection means tires designed for use when there are conditions of snow or ice on the highways, and meeting the standards which shall be promulgated by rule of the director of transportation. The standards promulgated by the director shall require that snow tires be so designed to provide adequate traction to maintain reasonable movement of the motor vehicle on highways under snow conditions.

Any person charged with impeding or blocking traffic for lack of snow tires, chains or nonslip differential shall have said charge dismissed upon a showing to the court that the person's motor vehicle was equipped with a nonslip differential.

85 Acts, ch 40, §3 SF 70
Subsection 10 amended

321.281 Operating while under the influence of alcohol or a drug or while having an alcohol concentration of 13/100 or more. (OWI)

1. A person shall not operate a motor vehicle in this state in either of the following conditions:

a. While under the influence of an alcoholic beverage or other drug or a combination of such substances.

b. While having an alcohol concentration of thirteen hundredths or more.

2. A person convicted of a violation of this section, upon conviction or a plea of guilty, is guilty of:

a. A serious misdemeanor for the first offense and shall be imprisoned in the county jail for not less than forty-eight hours to be served as ordered by the court, less credit for any time the person was confined in a jail or detention facility following arrest, and assessed a fine of not less than five hundred dollars nor more than one thousand dollars. As an alternative to the fine, the court may order the person to perform not less than fifty nor more than two hundred hours of unpaid community service. The court may accommodate the sentence to the work schedule of the defendant.

b. An aggravated misdemeanor for a second offense and shall be imprisoned in the county jail or community-based correctional facility not less than seven days, which minimum term cannot be suspended notwithstanding section 901.5, subsection 3 and section 907.3, subsection 2, and assessed a fine of not less than seven hundred fifty dollars.

c. A class "D" felony for a third offense and each subsequent offense and assessed a fine of not less than seven hundred fifty dollars.

No conviction for, deferred judgment for, or plea of guilty to, a violation of this section which occurred more than six years prior to the date of the violation charged shall be considered in determining that the violation charged is a second, third or subsequent offense. For the purpose of determining if a violation charged is a second, third, or subsequent offense, a deferred judgment pursuant to section 907.3 for an offense under this section shall be counted as a previous violation.

On a conviction for a second or subsequent offense in violation of this section, the court shall order the defendant to undergo a substance abuse evaluation and the court may order the defendant to follow the recommendations proposed in the substance abuse evaluation for appropriate substance abuse treatment for the defendant. Court ordered substance abuse treatment is subject to the periodic reporting requirements of section 125.86. If a defendant is committed by the court to a substance abuse treatment facility, the administrator of the facility shall report to the court when it is determined that the defendant has received the maximum

benefit of treatment at the facility and the defendant shall be released from the facility. The time for which the defendant is committed for treatment shall be credited against the defendant's sentence. The court may prescribe the length of time for the evaluation and treatment or it may request that the treatment program to which the person is committed immediately report to the court when the person has received maximum benefit from the treatment program or has recovered from the person's addiction, dependency, or tendency to chronically abuse alcohol or drugs. A person committed under this section who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44. A defendant who fails to carry out the order of the court or who fails to successfully complete or attend an ordered substance abuse treatment program shall be confined in the county jail for twenty days in addition to any other imprisonment ordered by the court or may be ordered to perform unpaid community service work, and shall be placed on probation for one year with a violation of this probation punishable as contempt of court.

3. A person shall not be convicted and sentenced for violations of both paragraphs "a" and "b" of subsection 1 if the offenses were committed in the same occurrence.

4. As a condition of a suspended sentence or portion of sentence for a second, third or subsequent offense in violation of this section, the court upon hearing may commit the defendant for inpatient treatment of alcoholism or drug addiction or dependency to any hospital, institution or community correctional facility in Iowa providing such treatment. The time for which the defendant is committed for treatment shall be credited against the defendant's sentence. The court may prescribe the length of time for the evaluation and treatment or it may request that the hospital to which the person is committed immediately report to the court when the person has received maximum benefit from the program of the hospital or institution or has recovered from the person's addiction, dependency, or tendency to chronically abuse alcohol or drugs. A person committed under this section who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44.

5. The clerk of court shall immediately certify to the department a true copy of the judgment sentencing the defendant under this section.

6. If the court defers judgment pursuant to section 907.3 for an offense under this section, the court shall order that the defendant's license to operate a motor vehicle be revoked for a period of not less than thirty days nor more than ninety days, during which time no new license to operate a motor vehicle shall be issued to the defendant. The court shall immediately require the defendant to surrender to it all operator's or chauffeur's licenses held by the defendant which the court shall forward to the department with a copy of the order deferring judgment. A person whose license to operate a motor vehicle is revoked pursuant to this subsection may be issued a temporary restricted driving permit by the department allowing the person to drive to and from the person's home and place of employment and in the person's employment and to attend evaluation, treatment or educational services for alcohol or drug dependency, if the person's license to operate a motor vehicle is not subject to revocation under section 321B.13 for refusal to submit to chemical testing.

7. This section does not apply to a person operating a motor vehicle while under the influence of a drug if the substance was prescribed for the person and was taken under the prescription and in accordance with the directions of a medical practitioner as defined in section 155.3, subsection 11, if there is no evidence of the consumption of alcohol and the medical practitioner had not directed the person to refrain from operating a motor vehicle.

8. In any prosecution under this section, evidence of the results of analysis of a

specimen of the defendant's blood, breath, or urine is admissible upon proof of a proper foundation. In an action in which a violation by the means described in subsection 1, paragraph "a" of this section is alleged, evidence that the defendant had an alcohol concentration of ten hundredths or more is presumptive evidence that the defendant was under the influence of an alcoholic beverage.

9. a. Upon a plea or verdict of guilty of a third or subsequent violation of this section, the court in which the plea was entered or the verdict was returned shall order that the defendant's license or permit to operate motor vehicles be revoked by the department and that the defendant shall remain ineligible for a new license or permit for a period of six years. Any license or permit to operate motor vehicles held by the defendant shall be surrendered to the court who shall forward it to the department with a copy of the order for revocation.

b. After two years from the date of the order for revocation, the defendant may apply to the court for restoration of the defendant's eligibility for a license or permit to operate motor vehicles. The application may be granted only if all of the following are shown by the defendant by a preponderance of the evidence:

(1) The defendant has completed an evaluation and, if recommended by the evaluation, a program of treatment for chemical dependency and is recovering, or has substantially recovered, from that dependency on or tendency to abuse alcohol or drugs.

(2) The defendant has not been convicted, since the date of the revocation order, of any subsequent violations of this section or section 123.46, or any comparable city or county ordinance, and the defendant has not, since the date of the revocation order, submitted to a chemical test under chapter 321B that indicated ten hundredths or more of one percent by weight of alcohol in the person's blood or refused to submit to chemical testing under that chapter.

(3) The defendant has abstained from the excessive consumption of alcoholic beverages and the consumption of controlled substances, except at the direction of a licensed physician or pursuant to a valid prescription.

(4) The defendant's license or permit is not currently subject to suspension or revocation for any other reason.

c. The court shall forward to the department a record of any application submitted under paragraph "b" and the results of the court's disposition of the application.

d. Upon a plea or verdict of guilty of a violation of this section during the occurrence of which there was an accident causing a serious injury in which the defendant was judged to be at fault, the court in which the plea was entered or the verdict was returned shall order that the defendant's license or permit to operate motor vehicles be revoked by the department and that the defendant shall remain ineligible for a new license or permit for a period of one year in addition to any other period of suspension. Any license or permit to operate motor vehicles held by the defendant shall be surrendered to the court who shall forward it to the department with a copy of the order for revocation. A person whose license to operate a motor vehicle has been revoked pursuant to this subsection may be issued a temporary restricted driving permit by the department allowing the person to drive to and from the person's home and place of employment and in the course of the person's employment upon the completion by the defendant of a substance abuse evaluation under section 125.33 and completion of a program of treatment if recommended.

e. Upon a plea or verdict of guilty of a violation of this section during the occurrence of which there was an accident which caused a loss of life for which the defendant was judged to be at fault, the court in which the plea was entered or the verdict was returned shall order that the defendant's license or permit to operate motor vehicles be revoked by the department and that the defendant for a period of six years shall not be eligible for a new license or permit. Any license or permit to operate motor vehicles held by the defendant shall be surrendered to the court who shall forward it to the department with a copy of the order for revocation.

10. The court shall order a defendant convicted of a violation of this section to make restitution, in an amount not to exceed two thousand dollars, for damages resulting directly from the violation. An amount paid pursuant to this restitution order shall be credited toward any adverse judgment in a subsequent civil proceeding arising from the same occurrence. However, other than establishing a credit, a restitution proceeding pursuant to this section shall not be given evidentiary or preclusive effect in a subsequent civil proceeding arising from the same occurrence.

11. If a defendant is convicted of a first offense of this section and the defendant's license or permit to operate a motor vehicle is revoked under section 321.209 or chapter 321B for the occurrence from which the arrest arose, the period of revocation shall be the period provided for such a revocation or until the defendant reaches the age of nineteen whichever period is longer. A person whose license to operate a motor vehicle is revoked pursuant to this subsection may be issued a temporary restricted driving permit by the department allowing the person to drive to and from the person's home and place of employment and in the course of the person's employment and to attend evaluation, treatment or educational services for alcohol or drug dependency.

12. A person whose motor vehicle license was revoked under this section or under chapter 321B who has been ordered by the court to perform community service work as a result of a violation of this section may be issued a temporary restricted driving permit by the department to allow the person to drive to and from the person's home and the location at which the community service work will be performed.

85 Acts, ch 195, §37 SF 329
Subsection 10 amended

321.283 Court-ordered drinking drivers course or substance abuse services—revocation—temporary driving permit—penalty.

1. *Definitions.* As used in this division, unless the context otherwise requires:

a. "Course for drinking drivers" means an approved course designed to inform the offender about drinking and driving and encourage the offender to assess the offender's own drinking and driving behavior in order to select practical alternatives.

b. "Satisfactory completion of a course" means receiving at the completion of a course a grade from the course instructor of "C" or "2.0," or better.

c. "Drivers license" means a license to drive a motor vehicle as an operator or chauffeur.

2. *Court order.* After a conviction for, or a plea of guilty of, a violation of section 321.281, the court in addition to its power to commit the defendant for treatment of alcoholism under section 321.281, may in lieu of, or prior to or after the imposition of punishment for a first offense or prior to or after the imposition of punishment for any subsequent offense, order the defendant, at the defendant's own expense, to enroll in, attend and successfully complete a course for drinking drivers. The court may alternatively or additionally require the defendant to seek evaluation, treatment or rehabilitation services under section 125.33 at the defendant's expense and to furnish evidence of successful completion. A copy of the order shall be forwarded to the department.

3. *Referred on conviction.* After a conviction for a violation of section 321.281, the court may refer the defendant for treatment at a facility as defined in sections 125.1 to 125.43 and designated by the Iowa department of substance abuse. The court may prescribe the length of time for treatment or it may be left to the discretion of the facility to which the defendant was referred. A person referred under this section who does not possess sufficient income or estate to enable the person to make payment of the costs of such treatment in whole or in part is a state patient, and costs for treatment shall be paid as provided in section 125.44.

4. *License revoked.* When the court orders a person to enroll, attend and successfully complete a course for drinking drivers or complete evaluation, treatment or rehabilitation services and the person's drivers license is not revoked or

suspended at the time of the order, the court shall also order revocation of the person's drivers license until the required course or treatment or rehabilitation services are successfully completed and proof of completion has been filed with the department and the provisions of chapter 321A have been complied with. If the person's drivers license is revoked or suspended at the time of the order, that revocation or suspension shall not end prior to the completion and proof of completion of the required course or evaluation, treatment or rehabilitation services.

5. *Training course not available.* No person shall have a drivers license revoked indefinitely under this division for failure to enroll in a course where the required course is not taught within a radius of one hundred miles from the person's usual residence.

6. *Temporary driving permit.* A person required to attend evaluation, treatment or rehabilitation services by this division, who is subject to a drivers license suspension or revocation, may be issued a temporary driving permit by the department restricted to driving to and from the person's home, place of employment, in the person's employment, and the location of the required evaluation, treatment or rehabilitation services. A person who does not receive a temporary driving permit may after the period of license suspension or revocation for a violation of section 321.281 have the person's drivers license reissued subject to suspension for failure to comply with this division. This section does not permit the issuance of a temporary driving permit or reissuance of a drivers license if chapter 321A has not been complied with.

Successful completion of a course or evaluation, treatment or rehabilitation services required by this division shall not reverse a drivers license suspension or revocation or reduce the length of a suspension or revocation for a violation of section 321.281 or under chapter 321B.

7. *Course offered at area schools.* The course provided in this division shall be offered on a regular basis at each area school as defined in section 280A.2.

Enrollment in the courses shall not be limited to persons ordered to enroll, attend and successfully complete the course under subsection 2, and any person convicted of a violation of section 321.281 who was not ordered to enroll in a course may enroll in and attend a course for drinking drivers.

The course required by this division shall be taught by the area schools under the department of public instruction and approved by the department.

The department of public instruction shall establish reasonable fees to defray the expense of obtaining classroom space, instructor salaries, and class materials. No person shall be denied enrollment in a course by reason of the person's indigency.

8. *No discharge from employment.* No employer shall discharge a person from employment solely for the reason of work absence to attend a course required by this division. Any employer who violates this section shall be liable for triple damages occasioned by the unlawful discharge from employment.

9. *Course available within one year.* The course required by this division shall, within the limit of available funds and instructors, be open for enrollment not later than one year after July 1, 1972.

10. *Hearing after revocation.* Upon written request the department shall afford a person having a drivers license revoked indefinitely under the provisions of this division an opportunity for a hearing before the director, within twenty days after receipt of the request and in the county where the licensee resides unless another county is mutually agreed upon. Following the hearing the revocation may be rescinded if the director determines the revocation is not authorized by this division.

11. *List of places and dates where course available.* The department of public instruction shall prepare a list of the locations of the courses taught under this division, the dates and times taught, the procedure for enrollment, and the schedule of course fees. The list shall be kept current and a copy of the list shall be sent to each court having jurisdiction over offenses provided in this chapter.

12. *Data preserved.* The department of public instruction shall maintain enrollment, attendance, successful and unsuccessful completion data on the persons ordered to enroll, attend and successfully complete a course for drinking drivers. This data shall be regularly forwarded to the department.

13. *Fee for temporary driving permit—possession required.* The fee for a temporary driving permit under subsection 6 is three dollars. The temporary driving permit must be in the permittee's immediate possession while operating a motor vehicle and becomes invalid when the permittee is issued a drivers license. The temporary driving permit shall be canceled upon conviction for a moving traffic violation. A "moving traffic violation" does not include a parking violation as defined in section 321.210.

14. *Penalty.* Any person violating a restriction or a temporary driving permit issued under subsection 6 shall be guilty of a simple misdemeanor.

85 Acts, ch 67, §37 SF 121
Subsection 6, unnumbered paragraph 1 amended

321.288 Control of vehicle—reduced speed.

1. A person operating a motor vehicle shall have the vehicle under control at all times.

2. A person operating a motor vehicle shall reduce the speed to a reasonable and proper rate:

a. When approaching and passing a person walking in the traveled portion of the public highway.

b. When approaching and passing an animal which is being led, ridden, or driven upon a public highway.

c. When approaching and traversing a crossing or intersection of public highways, or a bridge, sharp turn, curve, or steep descent, in a public highway.

d. When approaching and passing a fusee, flares, red reflector electric lanterns, red reflectors or red flags displayed in accordance with section 321.448, or an emergency vehicle displaying a revolving or flashing light.

e. When approaching and passing a slow moving vehicle displaying a reflective device as provided by section 321.383.

f. When approaching and passing through a sign posted construction or maintenance zone upon the public highway.

85 Acts, ch 167, §2 HF 378
Section amended

321.358 Stopping, standing or parking.

No person shall stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control device, in any of the following places:

1. On a sidewalk, except a bicycle may stop, stand, or park on a sidewalk if not prohibited by a local jurisdiction.

2. In front of a public or private driveway.

3. Within an intersection.

4. Within five feet of a fire hydrant.

5. On a crosswalk.

6. Within ten feet upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of a roadway.

7. Between a safety zone and the adjacent curb or within ten feet of points on the curb immediately opposite the ends of a safety zone, unless any city indicates a different length by signs or markings.

8. Within fifty feet of the nearest rail of a railroad crossing, except when parked parallel with such rail and not exhibiting a red light.

9. Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of said entrance when properly signposted.

10. Alongside or opposite any street excavation or obstruction when such stopping, standing, or parking would obstruct traffic.

11. On the roadway side of any vehicle stopped or parked at the edge or curb of a street.

12. Upon any bridge or other elevated structure upon a highway outside of cities or within a highway tunnel.

13. At any place where official signs prohibit stopping or parking.

14. Upon any street within the corporate limits of a city when the same is prohibited by a general ordinance of uniform application relating to removal of snow or ice from the streets.

85 Acts, ch 40, §4 SF 70
Subsection 1 amended

321.388 Illuminating plates.

Either the rear lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet to the rear. When the rear registration plate is illuminated by an electric lamp other than the required rear lamp, the two lamps shall be turned on or off only by the same control switch at all times when head lamps are lighted.

85 Acts, ch 195, §38 SF 329
Section amended

321.423 Flashing lights.

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. "*Fire department*" means a paid or volunteer fire protection service provided by a benefited fire district under chapter 357B or by a county, municipality or township, or a private corporate organization that has a valid contract to provide fire protection service for a benefited fire district, county, municipality, township or governmental agency.

b. "*Member*" means a person who is a member in good standing of a fire department.

2. *Prohibited lights.* A flashing light on or in a motor vehicle is prohibited except as follows:

a. On an authorized emergency vehicle.

b. On a vehicle as a means of indicating a right or left turn, a mechanical failure, or an emergency stop or intent to stop.

c. On a motor vehicle used by a rural mail carrier when stopping or stopped on or near a highway in the process of delivering mail, if such a light is any shade of color between white and amber and if it is mounted as a dome light on the roof of the vehicle.

d. On a vehicle being operated under an excess size permit issued under chapter 321E.

e. A flashing blue light on a vehicle upon which a blue light is permitted pursuant to subsection 3 of this section.

3. *Blue light.* A blue light shall not be used on any vehicle except:

a. A vehicle owned or exclusively operated by a fire department; or

b. A vehicle authorized by the director when:

(1) The vehicle is owned by a member of a fire department.

(2) The request for authorization is made by the member on forms provided by the department.

(3) Necessity for authorization is demonstrated in the request.

(4) The chief of the fire department certifies that the member is in good standing with the fire department and recommends that the authorization be granted.

4. *Expiration of authority.* The authorization shall expire at midnight on the thirty-first day of December five years from the year in which it was issued, or when

the vehicle is no longer owned by the member, or when the member has ceased to be an active member of the fire department or when the member has used the blue light beyond the scope of its authorized use.

5. *When used.* The certificate of authorization shall be carried at all times with the certificate of registration of the authorized vehicle and the operator of the vehicle shall not illuminate the blue light except:

- a. When the member is en route to the scene of a fire or is responding to an emergency in the line of duty requiring the services of the member;
- b. When the authorized vehicle is transporting a person requiring emergency care; or
- c. When the authorized vehicle is at the scene of an emergency.
- d. The use of a blue light in or on a private motor vehicle shall be for identification purposes only.

6. *Amber flashing light.* A farm tractor, farm tractor with towed equipment, self-propelled implement of husbandry, road construction or maintenance vehicle, road grader, or other vehicle principally designed for use off the highway which, when operated on a primary or secondary road, is operated at a speed of twenty-five miles an hour or less, shall be equipped with and display an amber flashing light visible from the rear at any time from sunset to sunrise. All vehicles specified in this subsection which are manufactured for sale or sold in this state shall be equipped with an amber flashing light. The type, number, dimensions, and method of mounting of the lights shall be determined by the director. The director, when approving the light, shall be guided as far as practicable by the standards of the American Society of Agricultural Engineers.

85 Acts, ch 37, §2 SF 307

Subsection 1, paragraph a struck and rewritten

321.451 Emergency vehicles—certificate of designation.

The director may designate a privately owned ambulance, fire, rescue or disaster vehicle as an authorized emergency vehicle, and issue a certificate of designation for it, upon written request being made on forms provided by the department and showing necessity for the designation. The certificate of designation shall at all times be carried with the certificate of registration of the vehicle to which it refers and may be revoked by the director upon a showing of abuse.

85 Acts, ch 37, §3 SF 307

Section amended

321.492A Quotas on citations prohibited.

A political subdivision or agency of the state shall not order, mandate, require, or in any other manner, directly or indirectly, suggest to a peace officer employed by the political subdivision or agency that the peace officer shall issue a certain number of traffic citations, police citations, memorandums of traffic, or memorandums of faulty equipment on a daily, weekly, monthly, quarterly, or yearly basis.

85 Acts, ch 226, §1 SF 497

NEW section

CHAPTER 321A

MOTOR VEHICLE FINANCIAL RESPONSIBILITY

321A.17 Proof required upon certain convictions.

1. Whenever the director, under any law of this state, suspends or revokes the license of any person upon receiving record of a conviction or a forfeiture of bail or revokes the license of any person pursuant to chapter 321B, the director shall also suspend the registration for all motor vehicles registered in the name of the person,

except that the director shall not suspend the registration, unless otherwise required by law, if the person has previously given or immediately gives and thereafter maintains proof of financial responsibility with respect to all motor vehicles registered by the person.

2. Such license and registration shall remain suspended or revoked and shall not at any time thereafter be renewed nor shall any license be thereafter issued to such person, nor shall any motor vehicle be thereafter registered in the name of such person until permitted under the motor vehicle laws of this state and not then unless and until the person shall give and thereafter maintain proof of financial responsibility.

3. If a person is not licensed, but by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the suspension or revocation of license, or for operating an unregistered motor vehicle upon the highways, no license shall be thereafter issued to such person and no motor vehicle shall continue to be registered or thereafter be registered in the name of such person until the person shall give and thereafter maintain proof of financial responsibility.

4. Whenever the director suspends or revokes a nonresident's operating privilege by reason of a conviction or forfeiture of bail, such privilege shall remain so suspended or revoked unless such person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility.

5. An individual applying for a motor vehicle license following a period of suspension or revocation under section 321.210A, 321.216 or 321.513 is not required to maintain proof of financial responsibility under this section.

85 Acts, ch 197, §5 SF 570
Subsection 5 amended

CHAPTER 321B

INTOXICATED DRIVERS

321B.30 Civil penalty—separate fund—reinstatement.

When the department revokes a person's license or operating privilege under this chapter, the department shall assess the person a civil penalty of one hundred dollars. The money collected by the department under this section shall be transmitted to the treasurer of state who shall deposit the money in a separate fund dedicated to and used for the purposes of chapter 912, and for the operation of a missing person clearinghouse and domestic abuse registry by the department of public safety. A temporary restricted license shall not be issued or a license or privilege to drive reinstated until the civil penalty has been paid.

85 Acts, ch 173, §28 HF 451
See also 85 Acts, ch 262, §28 SF 552
Section amended

CHAPTER 321E

MOVEMENT OF VEHICLES OF EXCESSIVE SIZE AND WEIGHT

321E.1 Permits by department and local authorities.

The department and local authorities may in their discretion and upon application and with good cause being shown issue permits for the movement of construction machinery or asphalt repavers being temporarily moved on streets, roads or highways and for vehicles with indivisible loads which exceed the maximum dimensions and weights specified in sections 321.452 to 321.466, but not to exceed the limitations

imposed in sections 321E.1 to 321E.15 except as provided in sections 321E.29 and 321E.30. Vehicles permitted to transport indivisible loads may exceed the width and length limitations specified in sections 321.454 and 321.457 for the purpose of picking up an indivisible load or returning from delivery of the indivisible load. Permits issued may be single-trip permits or annual permits. Permits shall be in writing and shall be carried in the cab of the vehicle for which the permit has been issued and shall be available for inspection at all times. The vehicle and load for which the permit has been issued shall be open to inspection by a peace officer or an authorized agent of a permit granting authority. When in the judgment of the issuing local authority in cities and counties the movement of a vehicle with an indivisible load or construction machinery which exceeds the maximum dimensions and weights will be unduly hazardous to public safety or will cause undue damage to streets, avenues, boulevards, thoroughfares, highways, curbs, sidewalks, trees, or other public or private property, the permit shall be denied and the reasons for denial endorsed on the application. Permits issued by local authorities shall designate the days when and routes upon which loads and construction machinery may be moved within the county on other than primary roads.

85 Acts, ch 257, §20 SF 562
Section amended

CHAPTER 321I

MOTOR VEHICLE SERVICE CONTRACTS

3211.1 Definitions.

For the purposes of this chapter:

1. "*Motor vehicle service contract*" or "*service contract*" means a contract or agreement given for consideration over and above the lease or purchase price of a motor vehicle that undertakes to perform or provide repair or replacement service, or indemnification for that service, for the operational or structural failure of a motor vehicle due to a defect in materials or skill of work or normal wear and tear, but does not include mechanical breakdown insurance.
2. "*Motor vehicle service contract provider*" or "*provider*" means a person who issues, makes, provides, sells, or offers to sell a motor vehicle service contract.
3. "*Commissioner*" means the commissioner of insurance.
4. "*Department*" means the department of insurance.
5. "*Mechanical breakdown insurance*" means a policy, contract, or agreement that undertakes to perform or provide repair or replacement service, or indemnification for that service, for the operational or structural failure of a motor vehicle due to a defect in materials or skill of work or normal wear and tear, and that is issued by an insurance company authorized to do business in this state.
6. "*Motor vehicle service contract reimbursement insurance policy*" or "*reimbursement insurance policy*" means a policy of insurance providing coverage for all obligations and liabilities incurred by a motor vehicle service contract provider under the terms of motor vehicle service contracts issued by the provider.
7. "*Motor vehicle*" means any self-propelled vehicle subject to registration under chapter 321.
8. "*Service contract holder*" means a person who purchases a motor vehicle service contract.

85 Acts, ch 45, §1 SF 392
NEW section

3211.2 Insurance required.

A motor vehicle service contract shall not be issued, sold, or offered for sale in this state unless the provider of the service contract is insured under a motor vehicle

service contract reimbursement insurance policy issued by an insurer authorized to do business in this state.

85 Acts, ch 45, §2 SF 392
NEW section

3211.3 Filing requirements.

A motor vehicle service contract shall not be issued, sold, or offered for sale in this state unless a true and correct copy of the service contract and the provider's reimbursement insurance policy have been filed with the commissioner.

85 Acts, ch 45, §3 SF 392
NEW section

3211.4 Disclosure to provider.

A motor vehicle service contract reimbursement insurance policy shall not be issued, sold, or offered for sale in this state unless the reimbursement insurance policy conspicuously states that the issuer of the policy shall pay on behalf of the provider all sums which the provider is legally obligated to pay for failure to perform according to the provider's contractual obligations under the motor vehicle service contracts issued or sold by the provider.

85 Acts, ch 45, §4 SF 392
NEW section

3211.5 Disclosure to service contract holders.

A motor vehicle service contract shall not be issued, sold, or offered for sale in this state unless the contract conspicuously states that the obligations of the provider to the service contract holder are guaranteed under the service contract reimbursement policy, and unless the contract conspicuously states the name and address of the issuer of the reimbursement policy.

85 Acts, ch 45, §5 SF 392
NEW section

3211.6 Commissioner may prohibit certain sales—injunction.

The commissioner shall, upon giving a ten-day notice to a motor vehicle service contract provider, issue an order instructing the provider to cease and desist from selling or offering for sale motor vehicle service contracts if the commissioner determines that the provider has failed to comply with a provision of this chapter. Upon the failure of a motor vehicle service contract provider to obey a cease and desist order issued by the commissioner, the commissioner may give notice in writing of the failure to the attorney general, who shall immediately commence an action against the provider to enjoin the provider from selling or offering for sale motor vehicle service contracts until the provider complies with the provisions of this chapter and the district court may issue the injunction.

85 Acts, ch 45, §6 SF 392
NEW section

3211.7 Rules.

The commissioner may adopt rules as provided in chapter 17A to administer and enforce the provisions of this chapter and to establish minimum standards for disclosure of motor vehicle service contract coverage limitations and exclusions.

85 Acts, ch 45, §7 SF 392
NEW section

3211.8 Exemption.

This chapter does not apply to motor vehicle service contracts issued by a motor vehicle manufacturer or importer.

85 Acts, ch 45, §8 SF 392
NEW section

CHAPTER 322

MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS AND DEALERS

322.9 Revocation or suspension of license.

The department may revoke or suspend the license of any retail motor vehicle dealer if, after notice and hearing, it finds that the licensee has been guilty of any act which would have been a ground for the denial of a license under section 322.6. Witnesses shall receive the same compensation provided in section 622.69 and shall be compensated from funds appropriated to the department.

The department is further authorized to revoke or suspend the license of any retail motor vehicle dealer if, after notice and hearing, it finds that such licensee has been convicted or has forfeited bail on three charges of:

1. Failing upon the sale or transfer of a vehicle to deliver to the purchaser or transferee of the vehicle sold or transferred, a manufacturer's or importer's certificate, or a certificate of title duly assigned, as provided in chapter 321.

2. Failing upon the purchasing or otherwise acquiring of a vehicle to obtain a manufacturer's or importer's certificate, or a certificate of title duly assigned as provided in chapter 321.

3. Failing upon the purchasing or otherwise acquiring of a vehicle to obtain a new certificate of title to such vehicle when and where required in chapter 321.

85 Acts, ch 67, §38 SF 121
Subsection 4 struck

CHAPTER 322D

FARM IMPLEMENT AND MOTORCYCLE FRANCHISES

322D.1 Definitions.

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

1. "*Attachment*" means a machine or part of a machine designed to be used on and in conjunction with a farm implement or a motorcycle.

2. "*Farm implement*" means a machine designed or adapted and used exclusively for agricultural or horticultural operations or livestock raising.

3. "*Franchise*" means a contract between two or more persons when all of the following conditions are included:

a. A commercial relationship of definite duration or continuing indefinite duration is involved.

b. The franchisee is granted the right to offer and sell farm implements or motorcycles, or parts manufactured or distributed by the franchiser.

c. The franchisee, as an independent business, constitutes a component of the franchiser's distribution system.

d. The operation of the franchisee's business is substantially associated with the franchiser's trademark, service mark, trade name, advertising, or other commercial symbol designating the franchiser.

e. The operation of the franchisee's business is substantially reliant on the franchiser for the continued supply of farm implements, motorcycles, parts, or attachments.

4. "*Franchisee*" means a person who receives farm implements or motorcycles, or parts for farm implements or motorcycles from the franchiser under a franchise and who offers and sells the farm implements or motorcycles or their parts to the general public.

5. "*Franchiser*" means a person who manufactures, wholesales, or distributes farm implements or motorcycles or parts for farm implements or motorcycles and who enters into a franchise.

6. "Motorcycle" has the same meaning as defined in section 321.1, subsection 3, paragraph "a".

7. "Net cost" means the price the franchisee actually paid for the merchandise to the franchiser less any applicable trade, volume, cash or bonus discounts.

8. "Net price" means the price listed in the franchiser's price list in effect at the time the franchise is canceled, less any applicable trade, volume or cash discounts.

9. "Person" means a sole proprietor, partnership, corporation, or any other form of business organization.

85 Acts, ch 47, §1-4 SF 183
 Subsection 1 amended
 Subsection 3, paragraphs b and e amended
 Subsections 4 and 5 amended
 NEW subsection 6 and subsequent subsections renumbered

322D.2 Franchisee's rights to payment.

1. A franchisee who enters into a written franchise with a franchiser to maintain a stock of parts, attachments, farm implements, or motorcycles has the following rights to payment, at the option of the franchisee, if the franchise is terminated:

a. One hundred percent of the net cost of new unused complete farm implements or motorcycles, including attachments, which were purchased from the franchiser, and in addition, transportation charges on the farm implements or motorcycles which have been paid by the franchisee.

b. Eighty-five percent of the net prices of any repair parts, including superseded parts, which were purchased from the franchiser and held by the franchisee on the date of the termination of the franchise.

c. Five percent of the net prices of the parts resold under paragraph "b" for handling, packing, and loading of the parts except that this payment shall not be due to the franchisee if the franchiser elects to perform the handling, packing, and loading.

2. Upon receipt of the payments due under subsection 1, the franchiser is entitled to possession of and title to the farm implements, motorcycles, attachments, or parts.

3. The cost of farm implements, motorcycles, or attachments and the price of repair parts shall be determined by reference to the franchiser's price list or catalog in effect at the time of the franchise termination.

85 Acts, ch 26, §1 HF 41; 85 Acts, ch 47, §5-7 SF 183
 Subsection 1, unnumbered paragraph 1 and paragraph a amended
 Subsections 2 and 3 amended
 Subsection 4 struck

322D.3 Exceptions.

This chapter does not require repurchase from a franchisee of:

1. A repair part which has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets or batteries.

2. A repair part which is in a broken or damaged package.

3. A single repair part which is priced as a set of two or more items.

4. A repair part which because of its condition is not resaleable as a new part without repackaging or reconditioning.

5. Any inventory for which the franchisee is unable to furnish evidence of title and ownership in the franchisee that is free and clear of all claims, liens and encumbrances to the satisfaction of the franchiser.

6. Any inventory which a franchisee desires to keep, provided the franchisee has a contractual right in the franchise agreement to do so.

7. A farm implement or motorcycle which is not in new, unused, undamaged, or complete condition.

8. A repair part which is not in new, unused or undamaged condition.

9. A farm implement or motorcycle which was purchased twenty-four months or more prior to the termination of the franchise.

10. Any inventory which was ordered by the franchisee on or after the date of notification of termination of the franchise.

11. Any inventory which was acquired by the franchisee from a source other than the franchiser with whom the franchise is being terminated.

12. A repair part not listed in the franchiser's current price list in effect on the date of notice of termination or classified as nonreturnable or obsolete by the franchiser as of the date of termination. However, this exception to the repurchase requirement applies only if the franchiser provided the franchisee with an opportunity to return the exempted part prior to notice of termination of the franchise.

85 Acts, ch 47, §8 SF 183; 85 Acts, ch 67, §39 SF 121
Subsections 5, 7 and 9 amended

322D.4 Franchiser failure to comply—civil penalty.

In the event that any franchiser fails to make payment to the franchisee or the franchisee's heir or heirs as required by this chapter within sixty days after the inventory has been received by the franchiser, the franchiser is civilly liable for one hundred percent of the current net price of the inventory; transportation charges which have been paid by the franchisee; eighty-five percent of the current net price of repair parts; five percent of the current net price of repair parts to cover handling, packing and loading, if applicable; and attorney fees incurred by the franchisee or the franchisee's heir or heirs.

85 Acts, ch 47, §9 SF 183
Section amended

322D.7 Application—farm implement franchise agreements.

This chapter applies to all agreements now in effect which have no expiration date and all other agreements entered into or renewed after April 12, 1985. Any agreement in effect on April 12, 1985 which by its own terms will terminate on a subsequent date shall be governed by the law as it existed prior to April 12, 1985.

85 Acts, ch 26, §2 HF 41
Farm implement franchise agreements apparently intended; see Code editor's note and §322D.8
NEW section

322D.8 Application—motorcycle franchise agreements.

The rights under section 322D.2, subsection 1, apply to motorcycle franchise agreements in effect on July 1, 1985, which have no expiration date and are continuing agreements, and to those entered into or renewed after July 1, 1985, but only to motorcycles and motorcycle attachments and parts purchased after July 1, 1985.

85 Acts, ch 47, §10 SF 183
See Code editor's note
NEW section

CHAPTER 324

MOTOR FUEL TAX LAW

324.2 Definitions.

As employed in this division:

1. "*Motor fuel*" shall mean (a) all products commonly or commercially known or sold as gasoline (including casinghead and absorption or natural gasoline) regardless of their classifications or uses; and (b) any liquid advertised, offered for sale, sold for use as, or commonly or commercially used as a fuel for propelling motor vehicles, which when subjected to distillation of gasoline, naphtha, kerosene and similar petroleum products (American Society of Testing Materials Designation D-86), show not less than ten per centum distilled (recovered) below three hundred forty-seven degrees Fahrenheit (one hundred seventy-five degrees Centigrade) and not less than ninety-five per centum distilled (recovered) below four hundred sixty-four degrees Fahrenheit (two hundred forty degrees Centigrade); provided, that the term "motor

fuel" shall not include special fuel as defined in section 324.33, subsection 1, and shall not include liquefied gases which would not exist as liquids at a temperature of sixty degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds per square inch absolute, nor naphthas and solvents as hereinafter defined unless the liquefied gases or naphthas and solvents are used as a component in the manufacture, compounding, or blending of a liquid within (b) above, in which event the resulting product shall be deemed to be motor fuel.

2. "*Distributor*" shall mean and include any person who first receives motor fuel within this state (within the meaning of the word "received" as hereinafter defined), and any person now or hereafter engaged in the business of selling motor fuel to a dealer in this state for resale provided that a person may bring into this state not to exceed thirty gallons of motor fuel in the fuel supply tank, or any other container, directly connected to the motor of a motor vehicle without becoming a distributor.

3. "*Licensee*" shall mean and include any person holding an uncanceled distributor's license issued by the department of revenue under this division or any prior motor fuel tax law.

4. "*Dealer*," "*agent*" and "*consignee*" shall mean and include any person (except distributors as herein defined) now or hereafter engaged in the business of selling motor fuel in this state.

5. "*Motor fuel deemed received.*"

a. Motor fuel refined at a refinery in this state and placed in tanks thereat, and motor fuel transferred from a refinery or a marine or pipeline terminal in this state or from points outside this state to a refinery or a marine or pipeline terminal in this state and placed in tanks thereat, shall be deemed received, for the purposes of this division, at the time withdrawn from such refinery or terminal storage for sale or use in this state or for transportation to destinations in this state other than refineries or marine or pipeline terminals and not before.

When withdrawn from refinery or terminal storage as aforesaid, the motor fuel shall be deemed received by the person who was the owner thereof immediately prior to withdrawal, unless (1) the motor fuel is withdrawn for shipment or delivery to a licensee, in which case the motor fuel shall be deemed received by the licensee to whom shipped or delivered or (2) the motor fuel is withdrawn for shipment or delivery to a nonlicensee for the account of a licensee in which case the motor fuel shall be deemed received by the licensee for whose account the shipment or delivery to the nonlicensee is made.

b. Motor fuel imported into this state, other than that placed in storage at refineries or terminals as set out in paragraph "a" above, shall be deemed received at the time unloaded in this state and by the person who is the owner thereof immediately after it is unloaded in this state, except that if motor fuel so imported is used in this state directly from the transportation equipment by which imported then the motor fuel shall be deemed received at the time it is brought into this state and by the person using the motor fuel within this state; provided, however, that if motor fuel shipped or brought into this state by a licensee is sold and delivered directly to a nonlicensee in this state, then the gallonage so delivered shall be deemed received by the licensee shipping or bringing the motor fuel into this state.

c. Motor fuel produced, compounded, or blended in this state other than at a refinery, marine or pipeline terminal, shall be deemed to be received at the time and by the person who is the owner thereof when the same is so produced, compounded or blended.

d. Motor fuel acquired in this state by any person, other than as set out in paragraphs "a", "b", or "c" above, shall, unless the person from whom the same is acquired has paid or incurred liability with respect thereto for the tax herein imposed, or unless the same be exempt under this division, be deemed to be received by the person so acquiring the same at the time so acquired.

Except as hereinbefore set forth, the word "received" shall be given its usual and customary meaning.

6. "Naphthas and solvents" shall mean and include those liquids which come within the distillation specifications for motor fuel set out under subsection 1, paragraph "b," but which are designed and sold for exclusive use other than as a fuel for propelling motor vehicles.

7. "Gasohol" means motor fuel containing at least ten percent alcohol distilled from cereal grains.

85 Acts, ch 231, §12 SF 565
Subsection 7 amended

324.3 Levy of excise tax—exemptions—refunds.

For the privilege of operating motor vehicles in this state an excise tax of fifteen cents per gallon for the period beginning July 1, 1985 and ending December 31, 1985, and sixteen cents per gallon beginning January 1, 1986, is imposed upon the use of all motor fuel used for any purpose except motor fuel containing at least ten percent alcohol distilled from cereal grains grown in the United States for the period beginning July 1, 1978 and ending June 30, 1992 and except as otherwise provided in this division.

The tax shall be paid in the first instance by the distributor upon the invoiced gallonage of all motor fuel received by the distributor in this state, within the meaning of the word "received" as defined in this division, less the deductions authorized. Thereafter, except as otherwise provided, the per gallon amount of the tax shall be added to the selling price of every gallon of such motor fuel sold in this state and shall be collected from the purchaser so that the ultimate consumer bears the burden of the tax. However, the tax shall not be imposed or collected under this division with respect to the following:

1. Motor fuel sold for export or exported from this state to any other state, territory, or foreign country.

2. Motor fuel sold to the United States or any agency or instrumentality thereof.

3. Motor fuel sold to any post exchange or other concessionaire on any federal reservation within this state; but the tax on motor fuel so sold, to the extent permitted by federal law, shall be collected by the post exchange or concessionaire, reported and paid the department of revenue.

4. Motor fuel used in the operation of an Iowa urban transit system or regional transit system. Any fuel sold to an Iowa urban transit system or regional transit system which is used for a purpose other than as specified in section 324.57, subsections 9 and 11, is not exempt from the tax.

5. Motor fuel sold to the state, any of its agencies, or to any political subdivision of the state, which is used for public purposes and delivered into any size of storage tank owned or used exclusively by the state, any of its agencies, or a political subdivision of the state. The department of revenue shall issue exemption certificate forms to the state, its agencies, and political subdivisions of the state, or the state, any of its agencies, or a political subdivision of the state, or a licensed motor fuel distributor may provide its own certificate of exemption in the form prescribed by the director, to a distributor or dealer to substantiate tax-exempt sales of motor fuel under this subsection. The certificate of exemption shall state that all of the motor fuel delivered into the storage tank shall be used for public purposes.

Motor fuel shall be sold tax paid to the state of Iowa, any of its agencies, or to any political subdivision of the state, including motor fuel sold for the transportation of pupils of approved public and nonpublic schools by a contract carrier who contracts with the public school under section 285.5 for the transportation of public and nonpublic school pupils under chapter 285 unless the motor fuel is delivered into storage tanks and exempt under subsection 5. Tax on fuel which is used for public purposes is subject to refund, including tax paid on motor fuel sold for the transportation of school pupils of approved public and nonpublic schools by a contract carrier who contracts with the public school under section 285.5 for the transportation of public and nonpublic school pupils under chapter 285. Claims for refunds will be filed

with the department on a quarterly basis and the director shall not grant a refund of motor fuel or special fuel tax where a claim is not filed within one year from the date the tax was due. The claim shall contain the number of gallons purchased, the calculation of the amount of motor fuel and special fuel tax subject to refund and any other information required by the department necessary to process the refund.

For the privilege of operating motor vehicles in this state an excise tax of fourteen cents per gallon beginning July 1, 1985 and ending December 31, 1985, and fifteen cents per gallon beginning January 1, 1986 and ending June 30, 1992, is imposed upon the use of gasohol used for any purpose except as otherwise provided in this division.

85 Acts, ch 231, §13, 14 SF 565
Unnumbered paragraphs 1 and 4 amended

324.34 Tax imposed.

For the privilege of operating motor vehicles in this state, there is imposed an excise tax on the use, as defined in section 324.33, of special fuel in a motor vehicle. The tax rate on special fuel for diesel engines is sixteen and one-half cents per gallon for the period beginning July 1, 1985 and ending December 31, 1985, is seventeen and one-half cents per gallon for the period beginning January 1, 1986 and ending December 31, 1986, and is eighteen and one-half cents per gallon beginning January 1, 1987. On all other special fuel the per gallon rate is the same as the motor fuel tax.

The tax, with respect to all special fuel delivered by a special fuel dealer for use in this state as defined by section 324.33, shall attach at the time of the delivery and shall be collected by the dealer from the special fuel user and paid over to the department of revenue as provided in this chapter. The tax, with respect to special fuel acquired by a special fuel user in any manner other than by delivery by a special fuel dealer into a fuel supply tank of a motor vehicle or delivery into a motor vehicle special fuel holding tank by a special fuel dealer or distributor, attaches at the time of the use, as defined in section 324.33, of the fuel and shall be paid over to the department of revenue by the user as provided in this chapter.

All deliveries by distributors of special fuel to be used for highway use, except deliveries into a motor vehicle special fuel holding tank, must be made into storage connected to a sealed meter pump as licensed in said section. Special fuel delivered to a motor vehicle special fuel holding tank of a special fuel user by a distributor shall be metered upon delivery and the special fuel tax shall be collected by the distributor and paid over to the department of revenue.

The department of revenue shall make reasonable rules governing the dispensing of special fuel by distributors, special fuel dealers and licensed special fuel users. The department shall require that all pumps located at special fuel dealer locations and licensed special fuel user locations through which fuel oil or liquefied petroleum gas can be dispensed, be metered, inspected, tested for accuracy, sealed and licensed by the state department of agriculture, and that special fuel delivered into the fuel supply tank of any motor vehicle or into a motor vehicle special fuel holding tank shall be dispensed only through tested metered pumps and may be sold without temperature correction or corrected to a temperature of sixty degrees. If the metered gallonage is to be temperature corrected, only a temperature compensated meter shall be used.

The deliberate heating of road taxable motor fuel or special fuel by dealers prior to consumer sale is a simple misdemeanor.

All gallonage for nonhighway use, dispensed through metered pumps as licensed above, on which special fuel tax is not collected, must be substantiated by nonhighway exemption certificates as provided by the department of revenue, signed by the purchaser, and retained by the dealer.

For the privilege of purchasing special fuel, dispensed through metered pumps as licensed above, on a basis exempt from the special fuel tax, the purchaser shall sign nonhighway exemption certificates for the gallonage claimed for nonhighway use.

The department of revenue will disallow all sales said to be for nonhighway use unless proof is established by the retention of said certificate. Certificates for nonhighway use sales must be retained by the dealer for a period of three years.

For natural gas used as a special fuel the rate of tax that is equivalent to the motor fuel tax shall be thirteen cents per hundred cubic feet adjusted to a base temperature of sixty degrees Fahrenheit and a pressure of fourteen and seventy-three hundredths pounds per square inch absolute. The tax on natural gas shall attach at the time of delivery into equipment for compressing the gas for subsequent delivery into the fuel supply tank of a motor vehicle and shall be paid over to the department of revenue by the person operating the compressing equipment under the applicable provisions for users or dealers. Natural gas used as a special fuel shall be delivered into compressing equipment through sealed meters certified for accuracy by the department of agriculture.

A person shall not deliver any special fuel into the fuel supply tank of a motor vehicle registered in Iowa on or after March 15, 1983 unless there is a special fuel user identification sticker affixed in a prominent place on the vehicle adjacent to the place where the special fuel is delivered into the tank or unless the motor vehicle is registered under chapter 326.

Except for deliveries to a licensed special fuel dealer or licensed special fuel user or deliveries on which the special fuel tax is paid at the time of delivery it is unlawful to deliver liquefied petroleum gas into any tank which has a valve or other outlet capable of transferring the liquefied petroleum gas into the fuel supply tank of a motor vehicle unless the person making the delivery receives a written statement from the recipient of the fuel which states that the recipient knows that the use of liquefied petroleum gas for highway purposes is unlawful.

85 Acts, ch 231, §15, 16 SF 565
Unnumbered paragraphs 1 and 9 amended

324.36 Special fuel distributors', special fuel dealers' and special fuel users' licenses.

1. *Required.* It is unlawful for a person to act as a special fuel dealer in this state unless the person holds a special fuel dealer's license issued to the person by the department of revenue, except as provided in this section. A person who holds a special fuel distributor's license may dispense special fuel into a motor vehicle special fuel holding tank without obtaining a special fuel dealer's license. Except for special fuel which is delivered by a special fuel dealer into a fuel supply tank of a motor vehicle or into a motor vehicle special fuel holding tank in this state or delivered by a special fuel distributor into a motor vehicle special fuel holding tank, the use of special fuel in this state by a person is unlawful unless the person holds a special fuel user's license issued to the person by the department of revenue. It is unlawful for a person to sell special fuel in this state in bulk for highway use without first obtaining a special fuel distributor's license. The license shall be issued under the same procedure and subject to the same requirements and limitations as provided in section 324.4.

2. *Application.* Application for a special fuel dealer's license or a special fuel user's license shall be made to the department of revenue. A special fuel dealer's license or a special fuel user's license, whichever is applicable, shall be required for each separate place of business or location where special fuels are regularly delivered or placed into the fuel supply tank of a motor vehicle. Provided, that if a special fuel dealer also operates one or more bulk plants from which the distribution of a special fuel is primarily by tank vehicle, the special fuel dealer need not obtain a separate license for any of these plants not provided with fixed equipment designed for fueling vehicles. Upon written application and at the discretion of the director, a special fuel user whose business operations require mobile special fuel storage may obtain a single special fuel user's license to be issued to the user's permanent principal place of business.

3. *Form of application.* The application shall be filed upon a form prepared and furnished by the department of revenue and shall contain such information as the department of revenue deems necessary.

4. *Issuance.* Upon receipt of the application, the department of revenue shall issue to the applicant a license to act as a special fuel dealer or a special fuel user; provided, however, the department of revenue may refuse to issue a special fuel dealer's license or a special fuel user's license to any person: (a) who formerly held either type of license and which has been revoked for cause; or (b) who is a subterfuge for the real party in interest whose license has been revoked for cause; or (c) upon other sufficient cause being shown. Before refusal, the department of revenue shall grant the applicant a hearing and give the applicant at least fifteen days' written notice of the time and place thereof.

5. *Expiration of license.* Each special fuel dealer's license and special fuel user's license shall be valid until suspended or revoked for cause or otherwise canceled.

6. *Assignment forbidden.* A special fuel dealer's license or special fuel user's license shall not be transferable.

85 Acts, ch 67, §40 SF 121
Subsection 1 amended

CHAPTER 324A

RAILWAY VEHICLE FUEL TAX

324A.2 Definitions.

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

1. "*Fuel*" means a combustible gas or liquid suitable for the generation of power for the propulsion of railway vehicles, except that it does not include motor fuel as defined in section 324.2.

2. "*Department*" means the department of revenue.

3. "*Railway vehicle*" means a vehicle designed and used primarily upon railways for self-propulsion or for propelling conveyances.

4. "*Railroad company*" means a person responsible for the operation of a railway vehicle within this state, except where the operation of the railway vehicle is limited to operation only within the geographical confines of a manufacturing plant or facility.

85 Acts, ch 257, §21 SF 562
Subsection 4 amended

CHAPTER 326

MOTOR VEHICLE REGISTRATION RECIPROCITY

326.10A Payment by check.

The department shall accept payment of fees under this chapter by personal or corporate check. The fee shall be deemed to have been paid upon receipt of the check. However, the department shall not issue plates, stickers or other identification of vehicles subject to proportional registration until sufficient time has elapsed to ensure that payment of the check has cleared the bank upon which it is drawn.

85 Acts, ch 61, §1 HF 418
NEW section

CHAPTER 327G

FENCES, CROSSINGS, SWITCHES, PRIVATE BUILDINGS, SPUR TRACKS, AND REVERSION

327G.32 Blocking highway crossing.

A railroad corporation or its employees shall not operate any train in such a manner as to prevent vehicular use of any highway, street or alley for a period of time in excess of ten minutes except:

1. When necessary to comply with signals affecting the safety of the movement of trains.
2. When necessary to avoid striking any object or person on the track.
3. When the train is disabled.
4. When necessary to comply with governmental safety regulations including, but not limited to, speed ordinances and speed regulations.

Any officer or employee of a railroad corporation violating any provision of this section shall, upon conviction be subject to the penalty provided in section 327G.14. An employee shall not be guilty of such violation if the employee's action was necessary to comply with the direct order or instructions of a railroad corporation or its supervisors. Such guilt shall then be with the railroad corporation.

This section notwithstanding, a political subdivision may pass a resolution or ordinance regulating the length of time a specific crossing may be blocked if the political subdivision demonstrates that a resolution or ordinance is necessary for public safety or convenience. If a resolution or ordinance is passed the political subdivision shall within thirty days of the effective date of the resolution or ordinance notify the authority and the railroad corporation using the crossing affected by the resolution or ordinance. The resolution or ordinance shall not become effective unless the authority and the railroad corporation are notified within thirty days. The resolution or ordinance shall become effective thirty days after notification unless a person files an objection to the resolution or ordinance with the authority. If an objection is filed the authority shall hold a hearing. The authority may disapprove the resolution or ordinance if public safety or convenience does not require a resolution or ordinance. The resolution or ordinance approved by the political subdivision is prima-facie evidence that the resolution or ordinance is adopted to preserve public safety or convenience.

The authority when considering rebuttal evidence shall weigh the benefits accruing to the political subdivision as it bears to the general public use compared to the burden placed on the railroad operation. Public safety or convenience may include, but shall not be limited to, high traffic density at a specific crossing of a main artery or interference with the flow of authorized emergency vehicles.

Political subdivisions shall notify the authority within sixty days of July 1, 1976, of each existing resolution or ordinance which does not conform with the provisions of this section. Political subdivisions not notifying the authority of an existing resolution or ordinance during the calendar year beginning January 1, 1976 shall have an additional sixty days after July 1, 1977 to notify the authority. Failure to do so shall render the resolution or ordinance void.

Such ordinances or resolutions may remain in effect until the authority has acted upon each ordinance or resolution under the procedures specified in this section.

CHAPTER 331

COUNTY HOME RULE IMPLEMENTATION

331.301 General powers and limitations.

1. A county may, except as expressly limited by the Constitution, and if not inconsistent with the laws of the general assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the county or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents. This grant of home rule powers does not include the power to enact private or civil law governing civil relationships, except as incident to an exercise of an independent county power.

2. A power of a county is vested in the board, and a duty of a county shall be performed by or under the direction of the board except as otherwise provided by law.

3. The enumeration of a specific power of a county, the repeal of a grant of power, or the failure to state a specific power does not limit or restrict the general grant of home rule power conferred by the Constitution and this section. A county may exercise its general powers subject only to limitations expressly imposed by a state law.

4. An exercise of a county power is not inconsistent with a state law unless it is irreconcilable with the state law.

5. A county shall substantially comply with a procedure established by a state law for exercising a county power unless a state law provides otherwise. If a procedure is not established by state law, a county may determine its own procedure for exercising the power.

6. A county shall not set standards and requirements which are lower or less stringent than those imposed by state law, but may set standards and requirements which are higher or more stringent than those imposed by state law, unless a state law provides otherwise.

7. A county shall not levy a tax unless specifically authorized by a state statute.

8. A county is a body corporate for civil and political purposes and shall have a seal as provided in section 331.552, subsection 4.

9. Supervisors and other county officers may administer oaths and take affirmations as provided in chapter 78.

10. A county may enter into leases or lease-purchase contracts for real and personal property in accordance with the terms and procedures set forth in section 364.4, subsection 4, provided that the references to cities shall be to counties, the reference to section 384.26* shall be to section 331.442, the reference to section 384.25 shall be to section 331.443, the reference to section 384.95, subsection 1 shall be to section 331.341, subsection 1, the reference to division VI of chapter 384 shall be to division III, part 3 of chapter 331, and reference to the council shall be to the board.

85 Acts, ch 156, §1 HF 523

*Reference to §384.26 not found in §364.4(4)

NEW subsection 10

331.361 County property.

1. Counties bounded by a body of water have concurrent jurisdiction over the entire body of water lying between them.

2. In disposing of an interest in real property by sale or exchange, by lease for a term of more than three years, or by gift, the following procedures shall be followed, except as otherwise provided by state law:

a. The board shall set forth its proposal in a resolution and shall publish notice of the time and place of a public hearing on the proposal, in accordance with section 331.305.

b. After the public hearing, the board may make a final determination on the proposal by resolution.

3. The board shall not dispose of real property by gift except for a public purpose, as determined by the board, in accordance with other state law. However, the board may dispose of real property for use in an Iowa homesteading program under section 220.14 for a nominal consideration.

4. On the application of a honorably discharged soldier, sailor, marine, or nurse of the army or navy of the United States who was disabled in the Philippine insurrection, China relief expedition, World War I, World War II, from December 7, 1941, to December 31, 1946, both dates inclusive, Korean Conflict, from June 25, 1950, to January 31, 1955, both dates inclusive, or Vietnam Conflict, from August 5, 1964, to June 30, 1973, both dates inclusive, the board shall reserve in the county courthouse a reasonable amount of space in the lobby to be used by the applicant rent-free as a stand for the sale of newspapers, tobaccos, and candies. If there is more than one applicant for reserved space, the board shall award the space at its discretion. The board shall prescribe the regulations by which a stand shall be operated.

5. The board shall:

a. Proceed upon a petition to establish a memorial hall or monument under chapter 37, as provided in that chapter.

b. Comply with section 103A.10, subsection 4, in the construction of new buildings.

c. Proceed upon a petition to, or with approval of the voters, establish a county public hospital under chapter 347 or sell or lease a county hospital for use as a private hospital or as a merged area hospital under chapter 145A or sell or lease a county hospital in conjunction with the establishment of a merged area hospital in accordance with procedures set out in chapter 347.

d. Bid for real property at a tax sale as required under section 446.19, and handle the property in accordance with section 446.31 and chapter 569.

e. Require the conduction of a life cycle cost analysis for county facilities in accordance with chapter 470.

f. Comply with chapter 601C if food service is provided in public buildings.

g. Comply with section 601D.9 if curbs and ramps are constructed.

h. Provide facilities for the district court in accordance with section 602.1303.

i. Perform other duties required by state law.

6. In exercising its power to manage county real property, the board may lease land for oil and gas exploration as provided in section 84.21.

7. The board shall not lease, purchase, or construct a facility or building before considering the leasing of a vacant facility or building which is located in the county and owned by a public school corporation. The board may lease a facility or building owned by the public school corporation with an option to purchase the facility or building in compliance with sections 297.22 to 297.24. The lease shall provide that the public school corporation may terminate the lease if the corporation needs to use the facility or building for school purposes. The public school corporation shall notify the board at least thirty days before the termination of the lease.

85 Acts, ch 185, §1 SF 103

See Code editor's note

Subsection 5, paragraph c amended

331.427 General fund.

1. Except as otherwise provided by state law, county revenues from taxes and other sources for general county services shall be credited to the general fund of the county, including revenues received under sections 84.21, 98.35, 98A.6, 101A.3, 101A.7, 110.12, 123.36, 123.143, 176A.8, 246.908, 321.105, 321.152, 321.192, 321G.7, 331.554, subsection 6, 341A.20, 364.3, 368.21, 422.65, 422.100, 422A.2, 428A.8, 430A.3, 433.15, 434.19, 441.68, 445.52, 445.57, 533.24, 556B.1, 567.10, 583.6, 906.17, and 911.3, and the following:

- a. License fees for business establishments.
 - b. Moneys remitted by the clerk of the district court and received from a magistrate or district associate judge for fines and forfeited bail imposed pursuant to a violation of a county ordinance.
 - c. Other amounts in accordance with state law.
2. The board may make appropriations from the general fund for general county services, including but not limited to the following:
- a. Expenses of a joint disaster services and emergency planning administration under section 29C.9.
 - b. Development, operation, and maintenance of memorial buildings or monuments under chapter 37.
 - c. Purchase of voting machines under chapter 52.
 - d. Expenses incurred by the county conservation board established under chapter 111A, in carrying out its powers and duties.
 - e. Local health services. The county auditor shall keep a complete record of appropriations for local health services and shall issue warrants on them only on requisition of the local or district health board.
 - f. Expenses relating to county fairs, as provided in chapter 174.
 - g. Maintenance of a juvenile detention home under chapter 232.
 - h. Relief of veterans under chapter 250.
 - i. Care and support of the poor under chapter 252.
 - j. Operation, maintenance, and management of a health center under chapter 346A.
 - k. For the use of a nonprofit historical society organized under chapter 504 or 504A, a city-owned historical project, or both.
 - l. Services listed in section 331.424, subsection 1 and section 331.554.
3. Appropriations specifically authorized to be made from the general fund shall not be made from the rural services fund, but may be made from other sources.

85 Acts, ch 195, §40 SF 329; 85 Acts, ch 201, §2 SF 455
 Subsection 1, unnumbered paragraph 1 and paragraph b amended

331.430 Debt service fund.

1. Except as otherwise provided by state law, county revenues from taxes and other sources for debt service shall be credited to the debt service fund of the county. However, moneys pledged or available to service general obligation bonds, and received from sources other than property taxes, shall be deposited in the fund from which the debt is to be retired.
2. The board may make appropriations from the debt service fund for the following debt service:
- a. Judgments against the county, except those authorized by law to be paid from sources other than property tax.
 - b. Interest as it becomes due and the amount necessary to pay, or to create a sinking fund to pay, the principal at maturity of all general obligation bonds issued by the county.
 - c. Payments required to be made from the debt service fund under a lease or lease-purchase agreement.
3. A tax levied for the debt service fund is not invalid if it raises moneys in excess of those needed for a specific purpose. Only excess moneys remaining after retirement of all indebtedness payable from the debt service fund may be transferred from the fund to the fund most closely related to the project for which the indebtedness arose, or to the general fund, subject to the terms of the original bond issue.
4. When the amount in the hands of the treasurer belonging to the debt service fund, after setting aside the sum required to pay interest maturing before the next levy, is sufficient to redeem one or more bonds which by their terms are subject to redemption, the treasurer shall notify the owner of the bonds. If the bonds are not presented for payment or redemption within thirty days after the date of notice, the

interest on the bonds shall cease, and the amount due shall be set aside for payment when presented. Redemptions shall be made in the order of the bond numbers.

85 Acts, ch 156, §2 HF 523
Subsection 2, NEW paragraph c

PART 6

FUNDING DRAINAGE DISTRICTS

331.485 Definitions.

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

1. *"Drainage improvement"* includes the construction, improvement, or repair of the principal structures, works, component parts and accessories of a storm sewer, drainage conduit, channel, or levee for the collection, detention, or discharge of drainage or surface waters.

2. *"Urban drainage district"* or *"district"* means a district defined by a county and one or more cities within the county pursuant to an agreement entered into by the county and cities in accordance with chapter 28E and this part with respect to drainage improvements which the county and cities determine benefit the property located in the cities and the designated unincorporated area of the county.

3. *"Cost"* means the same as defined in section 384.37, subsection 6.

85 Acts, ch 144, §1 SF 568
NEW section

331.486 Assessment of costs of drainage improvements.

A county may assess to property within an urban drainage district the cost of a drainage improvement within the county and drainage facilities extending outside the county. A county is empowered to proceed and construct and to assess the cost of a drainage improvement within a district in the same manner as a city may proceed under division IV of chapter 384 and the provisions of division IV of chapter 384 apply to counties with respect to drainage improvements, the assessment of their costs and the issuance of bonds for the improvements. A county may contract for a drainage improvement within a district under this part pursuant to part 3 of division III of chapter 331.

85 Acts, ch 144, §1 SF 568
NEW section

331.487 Special assessment bonds.

A county may issue special assessment bonds in anticipation of the collection of special assessments for the cost of drainage improvements within a district in the same manner as provided for cities under division IV of chapter 384.

85 Acts, ch 144, §1 SF 568
NEW section

331.488 Chapter 28E agreement.

An agreement entered into between a city and a county in accordance with chapter 28E with respect to a drainage improvement may include among others the following provisions:

1. The sharing of the total cost of the drainage improvement between the city and the county.
2. The amount of total assessments against private property within the city and within the unincorporated area of the county included within the district.
3. The method of specially assessing and determining benefits.
4. The amount of funds, if any, to be contributed by the city and county to the project other than special assessments.
5. The rates to be established and imposed upon property within the drainage district to pay the expenses of operation and maintenance of the drainage improvements.

6. The reduction of the county's debt service tax levy rate against property within a city which is a party to the joint agreement.

85 Acts, ch 144, §1 SF 568
NEW section

331.489 Rates and charges for services and connection.

If a county and city have entered into an agreement pursuant to chapter 28E to create an urban drainage district, the county or city or both may, to the extent and in the manner provided in the agreement, establish, impose, adjust, and provide for the collection of rates to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of a drainage improvement against property within the district and establish, impose, adjust, and provide for the collection of charges for connection to a drainage improvement. Rates and charges must be established by ordinance of the governing body of the county or city imposing the rates or charges. Rates or charges for the services of and connection to the drainage improvement if not paid as provided by the ordinance of the governing body, are a lien upon the premises served or benefited by that improvement and may be certified to the county auditor and collected in the same manner as other taxes.

85 Acts, ch 144, §1 SF 568
NEW section

331.490 Cities subject to debt service tax levy—rates.

If a county and city have entered into a joint agreement pursuant to chapter 28E to create a district and issue county general obligation bonds to fund the costs of a drainage improvement in that district, the county's debt service tax levy for the county general obligation bonds shall not be levied against property located in any city except a city which has entered into the joint agreement.

The county and the cities entering into the joint agreement may provide in the joint agreement for a different rate of the county's debt service tax levy against property in unincorporated areas of the county and property within those cities.

85 Acts, ch 144, §1 SF 568
NEW section

331.491 Authority.

The authority of a city or county under this part with respect to districts and the financing of drainage improvements is in addition to any other authority of a city or county to contract, and levy special assessments and issue bonds to fund the costs.

85 Acts, ch 144, §1 SF 568
NEW section

331.506 Issuance of warrants.

1. Except as provided in subsections 2 and 3, the auditor shall sign or issue a county warrant only after approval of the board by recorded vote. Each warrant shall be numbered and the date, amount, number, and the name of the person to whom issued shall be recorded and filed in the auditor's office. Each warrant shall be made payable to the person performing the service or furnishing the supplies for which the warrant makes payment and the purpose for which the warrant is issued shall be stated on it.

2. The auditor may issue warrants to pay the following claims against the county without prior approval of the board:

a. Witness fees and mileage for attendance before a grand jury, as certified by the county attorney and the foreman of the jury.

b. Witness fees and mileage in trials of criminal actions prosecuted under county ordinance, as certified by the county attorney.

c. Fees and costs payable to the clerk of the district court or other state officers or employees in connection with criminal and civil actions when due, as shown in the statement submitted by the clerk of court under section 602.8109.

- d. Expenses of the grand jury, upon order of a district judge.
3. The board, by resolution, may authorize the auditor to issue warrants to make the following payments without prior approval of the board:
- a. For fixed charges including, but not limited to, freight, express, postage, water, light, telephone service or contractual services, after a bill is filed with the auditor.
- b. For salaries and payrolls if the compensation has been fixed or approved by the board. The salary or payroll shall be certified by the officer or supervisor under whose direction or supervision the compensation is earned.
4. The bills paid under subsections 2 and 3 shall be submitted to the board for review and approval at its next meeting following the payment. The action of the board shall be recorded in the minutes of the board.
5. An officer certifying an erroneous bill or claim against the county is liable on the officer's official bond for a loss to the county resulting from the error.

85 Acts, ch 197, §6 SF 570
Subsection 2, paragraph b amended

331.507 Collection of money and fees.

1. The auditor may collect or receive money due the county except when otherwise provided by law.
2. The auditor is entitled to collect the following fees:
- a. For a transfer of property made in the transfer records, five dollars for each separate parcel of real estate described in a deed, or transfer of title certified by the clerk of the district court. However, the fee shall not exceed fifty dollars for a transfer of property which is described in one instrument of transfer.
- (1) For the purposes of this paragraph, a parcel of real estate includes:
- (a) For real estate located outside of the corporate limits of a city, all contiguous land lying within a numbered section.
- (b) For real estate located within the corporate limits of a city, all contiguous land lying within a platted block or subdivision.
- (2) Within a numbered section, platted block, or subdivision, land separated only by a public street, alley, or highway remains contiguous.
- b. For indexing a change of name for each parcel of real estate owned in the county, five dollars.
3. The auditor shall collect or receive the following fees:
- a. The bee entry fee collected from nonresidents importing bees by the state apiarist as provided under section 160.16.
- b. Fee for services relating to stray animals as provided in section 188.48.
- c. Dog license fees and transfer fees as provided in chapter 351.
4. Fees collected or received by the auditor shall be accounted for and paid into the county treasury quarterly as provided in section 331.902.

85 Acts, ch 97, §1 SF 393; 85 Acts, ch 159, §1 HF 589
Subsection 2, paragraph a struck and rewritten
Subsection 2, paragraph b amended

331.510 Reports by the auditor.

The auditor shall make:

1. A report to the governor of a vacancy, except by resignation, in the office of state representative or senator as provided in section 69.5.
2. A report to the secretary of state of the name, office, and term of office of each appointed or elected county officer within ten days of the officer's election or appointment and qualification.
3. An annual report not later than January 1 to the state comptroller of the valuation by class of property for each taxing district in the county on forms provided by the state comptroller. The valuations reported shall be those valuations used for determining the levy rates necessary to fund the budgets of the taxing districts for the following fiscal year.
4. An annual report not later than January 1 to the governing body of each taxing

district in the county of the assessed valuations of taxable property in the taxing district as reported to the state comptroller.

85 Acts, ch 21, §42 HF 186; 85 Acts, ch 197, §7 SF 570
 Subsection 2 struck and subsequent subsections renumbered

331.602 General duties.

The recorder shall:

1. Record all instruments presented to the recorder's office for recordation upon payment of the proper fees and compliance with other recording requirements as provided by law. The instruments presented for filing or recordation shall have typed or legibly printed on them the names of all signatories including the names of acknowledging officers and witnesses beneath the original signatures.

a. However, if an instrument does not contain typed or printed names, the recorder shall accept the instrument for recordation or filing if it is accompanied by an affidavit, to be recorded with the instrument, correctly spelling in legible print or type the signatures appearing on the instrument.

b. The requirement of paragraph "a" does not apply to military discharges, military instruments, wills, court records or to any other instrument dated before July 4, 1959.

c. Failure to print or type signatures as provided in this subsection does not invalidate the instrument.

2. Rerecord an instrument without fee upon presentation of the original instrument by the owner if an error is made in recording the instrument. The recorder shall also note in the margin of the new record a reference to the original record and in the margin of the original record a reference to the book and page of the new record.

3. If an error is made in indexing an instrument, reindex the instrument without fee.

4. Record the registration of a person registered under the federal Social Security Act who requests recordation, and keep an alphabetical index of the record referring to the name of the person registered.

5. Compile a list of deeds recorded in the recorder's office after July 4, 1951, which are dated or acknowledged more than six months before the date of recording and forward a copy of the list each month to the inheritance tax division of the department of revenue.

6. Carry out duties as a member of a nomination appeals commission as provided in section 44.7.

7. Carry out duties relating to the recordation of oil and gas leases as provided in sections 84.22 and 84.24.

8. Endorse on each notice of an unemployment contribution lien the day, hour, and minute that the lien is received from the Iowa department of job service, index the notice of lien, and record the lien as provided in section 96.14, subsection 3.

9. Carry out duties relating to the registration of vessels as provided in sections 106.5, 106.23, 106.51, 106.52, 106.54 and 106.55.

10. Carry out duties relating to the issuance of hunting, fishing, and trapping licenses as provided in sections 110.10, 110.12, 110.13, 110.14, 110.15 and 110.22.

11. Issue migratory waterfowl stamps as provided in chapter 110B.

12. Record the orders and decisions of the fence viewers and index the record in the name of each adjoining owner of land affected by the order or decision as provided in section 113.10. The recorder shall also note that a judgment has been rendered on an appeal of an order or decision of the fence viewers as provided in section 113.24.

13. Submit annually to the secretary of state by December 1 of each year the names and addresses of each limited partnership owning agricultural land or engaged in farming in the county as provided in section 172C.13.

14. Record without fee the articles of incorporation of farm aid associations as provided in section 176.5.

15. Keep, as a public record, the brand book and supplements supplied by the secretary of agriculture as provided in section 187.11.
16. Record without fee a sheriff's deed for land under foreclosure procedures as provided in section 302.35.
17. Issue snowmobile registrations as provided in sections 321G.4, 321G.6, and 321G.21.
18. Record the measure and plat of a zoning district, building line, or fire limit adopted by a city as provided in section 380.11.
19. Carry out duties relating to the platting of land as provided in chapter 409 and sections 441.65 to 441.71.
20. Submit quarterly to the director of revenue a report of the revenue stamps or sale price and equalized value of real estate sold as provided in section 421.17, subsection 6.
21. Carry out duties relating to the endorsement, indexing, and recording of income tax liens as provided in section 422.26.
22. Carry out duties relating to the taxation of real estate transfers as provided in chapter 428A.
23. Carry out duties relating to the recording and indexing of affidavits and claims affecting real estate as provided in section 448.17.
24. Forward to the director of revenue a certified copy of any deed, bill of sale or other transfer which shows that it is made or intended to take effect at or after the death of the person executing the instrument as provided in section 450.81.
25. Record papers, statements, and certificates relating to the condemnation of property as provided in section 472.38.
26. Record instruments relating to the dissolution of a corporation or renewal of articles of incorporation as provided in sections 491.23 and 491.27.
27. Carry out duties relating to the recordation of articles of incorporation and other instruments for business corporations as provided in section 496A.53.
28. Record the articles of incorporation of a co-operative association received from the secretary of state as provided in section 497.3.
29. Carry out duties relating to recording of articles of incorporation and charters for nonprofit corporations as provided in chapters 504 and 504A.
- 29A. Maintain confidential records of prearranged funeral plans as required under section 523A.2.
30. Carry out duties relating to the recordation of articles of incorporation and other instruments for state banks as provided in chapter 524.
31. Carry out duties relating to the recordation of articles of incorporation and other instruments for credit unions as provided in chapter 533.
32. Carry out duties relating to the recordation of articles of incorporation and other instruments for savings and loan associations as provided in chapter 534.
33. Record, index, and send to the secretary of state instruments relating to limited partnerships as provided in sections 545.206 and 545.1106.
34. Carry out duties relating to the filing of financing statements or instruments as provided in sections 554.9401 to 554.9408.
35. Register the name and description of a farm as provided in sections 557.22 to 557.26.
36. Record conveyances and leases of agricultural land as provided in section 558.44.
37. Collect the recording fee and the auditor's transfer fee for real property being conveyed as provided in section 558.58.
38. Serve as a member of the jury commission to draw jurors as provided in section 608.1.
39. Record and index a notice of title interest in land as provided in section 614.35.
40. Designate the newspapers in which the notices pertaining to the office of recorder shall be published as provided in section 618.7.

41. Record a conveyance of property presented by a commissioner appointed by the district court as provided in section 624.35.
42. Carry out duties relating to the indexing of name changes, and the recorder may charge a fee for indexing as provided in section 674.14.
43. Report quarterly to the board the fees collected as provided in section 331.902.
44. Carry out other duties as provided by law.

85 Acts, ch 195, §41 SF 329
NEW subsection 29A

331.605 Other fees.

The recorder shall collect:

1. For the issuance of a registration or transfer for a vessel or boat:
 - a. A registration fee as provided in section 106.5.
 - b. A writing fee as provided in section 106.53.
 - c. A transfer and writing fee as provided in section 106.44.
2. For issuance of hunting, fishing and trapping licenses:
 - a. The fees specified in section 110.1. The recorder may designate depositories to issue the licenses and collect the appropriate fees as provided in section 110.11.
 - b. The writing fee as provided in section 110.12.
3. For the issuance of a state migratory waterfowl stamp, a fee as provided in section 110B.3.
4. For the issuance of snowmobile registrations, the fees specified in section 321G.4.
5. Other fees as provided by law.

85 Acts, ch 159, §2 HF 589
Subsections 5, 6 and 7 struck and subsequent subsection renumbered

331.653 General duties of the sheriff.

The sheriff shall:

1. Execute and return all writs and other legal process issued to the sheriff by legal authority. The sheriff shall execute and return any legal process in the sheriff's possession at the expiration of the sheriff's term of office and if a vacancy occurs in the office of sheriff, the sheriff's deputies shall execute and return the legal processes in their possession as if the sheriff had continued in office. The sheriff's successor or other officer authorized to discharge the duties of the office of sheriff may execute and return the legal processes on behalf of the outgoing sheriff and the sheriff's deputies, but the outgoing sheriff and the sheriff's deputies remain liable for the execution and return of the legal processes in their possession when the sheriff leaves office or the vacancy occurs.
2. Upon written order of the county attorney, make a special investigation of any alleged infraction of the law within the county and report the findings to the county attorney within a reasonable time. Upon completion of the investigation, the sheriff shall file with the auditor a detailed, sworn statement of the expenses of the investigation accompanied by the written order of the county attorney. The board shall audit and pay the reasonable and necessary expenses of the investigation.
3. Upon leaving office, deliver to the sheriff's successor and take the successor's receipt for all books and papers pertaining to the office except as provided in subsection 1, property attached and levied upon, and prisoners in the county jail. The receipt is sufficient indemnity to the outgoing sheriff.
4. Provide bailiff and other law enforcement service to the district judges, district associate judges, and judicial magistrates of the county upon request.
5. Serve as a member of the joint county-municipal disaster services and emergency planning administration as provided in section 29C.9.
6. Enforce the provisions of chapter 32 relating to the desecration of flags and insignia.

7. Carry out duties relating to election contests as provided in sections 57.6, 62.4 and 62.19.
8. Carry out duties relating to the seizure and disposition of illegal oil and gas supplies as provided in section 84.15.
9. Serve a notice or subpoena received from a board of arbitration as provided in section 90.10.
10. Co-operate with the bureau of labor in the enforcement of child labor laws as provided in section 92.22.
11. Carry out duties relating to the seizure and forfeiture of cigarettes, vehicles and other property used in violation of cigarette tax laws as provided in section 98.32.
12. Observe and inspect any licensed premise for gambling devices and report findings to the license-issuing authority as provided in section 99A.4.
13. Carry out duties relating to the issuance of permits for the possession, transportation and detonation of explosive materials as provided in sections 101A.3, 101A.5, 101A.7, and 101A.8.
14. Seize fish and game taken, possessed or transported in violation of the state fish and game laws as provided in section 109.12.
15. Carry out duties relating to the enforcement of state liquor and beer laws as provided in sections 123.14, 123.117, and 123.118.
16. Carry out duties relating to the seizure, forfeiture, and sale of conveyances used in state liquor law violations as provided in chapter 127 or controlled substance violations as provided in section 127.24.
17. Enforce the payment of the mobile home tax as provided in section 135D.24.
18. Carry out duties relating to the reporting of persons injured in the commission of a crime, either as perpetrators or victims, as provided in sections 147.111 and 147.112.
19. Carry out duties relating to the enforcement of livestock transportation laws as provided in chapter 172B.
20. Investigate disputes in the ownership or custody of branded animals as provided in section 187.10.
21. Destroy any unfit and disabled estray animal as provided in section 188.50.
22. Reserved.
23. Carry out duties relating to the involuntary hospitalization of mentally ill persons as provided in sections 229.7 and 229.11.
24. Carry out duties relating to the investigation of reported child abuse cases and the protection of abused children as provided in section 232.71.
25. Remove, upon court order, an indigent person to the county or state of the person's legal settlement as provided in section 252.18.
26. File a complaint upon receiving knowledge of an indigent person who is ill and may be improved, cured or advantageously treated by medical or surgical treatment or hospital care as provided in section 255.2.
27. Give notice of the time and place of making an appraisement of unneeded school land as provided in sections 297.17 and 297.28.
28. Co-operate with the department of transportation, the department of public safety, and other law enforcement agencies in the enforcement of local and state traffic laws and inspections as provided in sections 321.5 and 321.6.
29. Report the theft and recovery of a registered motor vehicle as provided in section 321.72.
30. Collect unpaid motor vehicle fees and penalties as provided in sections 321.133 to 321.135.
31. If designated by the department of transportation, conduct examinations of applicants for operators', motorized bicycle, and chauffeurs' licenses as provided in section 321.187.
32. Enforce sections 321.372 to 321.379 relating to school buses.
33. Carry out duties relating to the enforcement of laws prohibiting the operation

of a motor vehicle while under the influence of an alcoholic beverage as provided in chapter 321B.

34. Upon request, assist the department of revenue and the state department of transportation in the enforcement of motor fuel tax laws as provided in section 324.76.

35. Have charge of the county jails in the county and custody of the prisoners committed to the jails as provided in chapter 356.

36. Execute a distress warrant issued to collect delinquent personal property taxes as provided in section 445.8.

37. Collect delinquent taxes certified by the treasurer as provided in section 445.49.

38. Notify the department of water, air and waste management of hazardous conditions of which the sheriff is notified as provided in section 455B.386.

39. Carry out duties relating to condemnation of private property as provided under chapter 472.

40. Carry out duties relating to the removal and disposition of abandoned motor vehicles as provided in section 556B.1.

41. Carry out duties relating to the determination of what is included in a homestead as provided in section 561.8.

42. Carry out duties relating to liens for services of animals as provided in chapter 580.

43. Summon persons to serve as jurors as provided in sections 609.30 and 609.31.

44. Carry out duties relating to the summoning of a jury pool as provided in section 609.41.

45. Designate the newspapers in which notices pertaining to the sheriff's office are published as provided in section 618.7.

46. Carry out duties relating to the execution of judgments and orders of the court as provided in chapter 626.

47. Add the amount of an advancement made by the holder of the sheriff's sale certificate to the execution, upon verification by the clerk as provided by section 629.3.

48. Upon appointment of the court, serve as a receiver of property of a judgment debtor as provided in sections 630.7 and 630.9.

49. Carry out duties relating to the attachment of property as provided in chapters 639, 640 and 641.

50. Carry out duties relating to garnishment under chapter 642.

51. Carry out duties relating to an action of replevin as provided in chapter 643.

52. Carry out orders of the court or a judge relating to the service or execution of a writ of habeas corpus as provided under chapter 663.

53. Carry out duties relating to the disposition of lost property as provided in chapter 644.

54. Carry out orders of the court requiring the sheriff to take custody and deposit or deliver trust funds as provided in section 682.30.

55. Carry out legal processes directed by an appellate court as provided in section 686.14.

56. Furnish the bureau of criminal identification with the criminal identification records and other information upon direction by the commissioner of public safety as provided in section 690.1.

57. Take the fingerprints of all persons specified under section 690.2 and forward the fingerprint records to the commissioner of public safety.

58. Report information on crimes committed and furnish disposition reports on persons arrested and criminal complaints or information filed in any court as provided in section 692.15.

59. Carry out duties relating to firearm training and the issuance and revocation of firearm permits as provided in chapter 724.

60. Accept custody of persons handed over to the sheriff by the department of public safety as provided in section 804.28.

61. Carry out duties relating to the forfeiture and judgment of bail as provided in section 811.6.

62. Resume custody of a defendant who is recommitted after bail by order of a magistrate as provided in section 811.7.

63. Carry out duties relating to the confinement of mentally ill persons or dangerous persons as provided in section 812.5.

64. Release a defendant in custody upon receipt of a certificate of release as provided in section 814.14.

65. Upon call of the governor or attorney general, render assistance in the enforcement of the law as provided in section 817.2.

66. Upon court order, take an accused person into custody from the warden of a penal institution and convey the person to the place of trial as provided in rule of criminal procedure 7.

67. Receive and detain a defendant transferred from another county under a change of venue as provided in rule of criminal procedure 10, subsection 9.

68. Carry out duties relating to the execution of a judgment for confinement or other execution as provided in rule of criminal procedure 24.

69. Carry out duties relating to the return of service in civil cases as provided in rule of civil procedure 59.

70. Serve a writ of certiorari as provided in rule of civil procedure 312.

71. Carry out other duties required by law.

85 Acts, ch 67, §41 SF 121

Sheriff to serve as a member of a nomination contest committee under § 44.7 until July 1, 1986; see chapter 602, article 11 and Temporary Court Transition Rules 6.24

Subsection 22 struck

Subsection 44, gender reference editorially changed

331.655 Fees—mileage—expenses.

1. The sheriff shall collect the following fees:

a. For serving a notice and returning it, for the first person served, ten dollars, and each additional person, ten dollars except the fee for serving additional persons in the same household shall be five dollars for each additional service, or if the service of notice cannot be made or several attempts are necessary, the repayment of all necessary expenses actually incurred by the sheriff while attempting in good faith to serve the notice.

b. For each warrant served, fifteen dollars, and the repayment of necessary expenses incurred in executing the warrant, as sworn to by the sheriff, or if service of the warrant cannot be made, the repayment of all necessary expenses actually incurred by the sheriff while attempting in good faith to serve the warrant.

c. For serving and returning a subpoena, for each person served, fifteen dollars, and the necessary expenses incurred while serving subpoenas in criminal cases or relating to the mentally ill process.

d. For summoning a grand or trial jury, all necessary and actual expenses incurred by the sheriff.

e. For summoning a jury to assess the damages to the owners of lands taken for works of internal improvement, and attending them, sixty dollars per day, and necessary expenses incurred. This subsection does not allow a sheriff to make separate charges for different assessments which can be made by the same jury and completed in one day of ten hours.

f. For serving an execution, attachment, order for the delivery of personal property, injunction, or any order of court, and returning it, ten dollars.

g. For making and executing a certificate or deed for lands sold on execution, or a bill of sale for personal property sold, twenty-five dollars.

h. For the time necessarily employed in making an inventory of personal property attached or levied upon, eight dollars per hour.

- i.* For a copy of any paper required by law, made by the sheriff, fifty cents.
 - j.* Mileage at the rate specified in section 79.9 in all cases required by law, going and returning. Mileage fees do apply where provision is made for expenses, and both mileage and expenses shall not be allowed for the same services and for the same trip. If the sheriff transports one or more persons by auto to a state institution or any other destination required by law or if one or more legal papers are served on the same trip, the sheriff is entitled to one mileage, the mileage cost of which shall be prorated to the persons transported or papers served. However, in serving original notices in civil cases and in serving and returning a subpoena, the sheriff shall be allowed mileage in each action where the original notice or subpoena is served, with a minimum mileage of one dollar for each service. The sheriff may refuse to serve original notices in civil cases until the fees and estimated mileage for service have been paid.
 - k.* For attending sale of property, thirty dollars.
 - l.* For conveying one or more persons to a state, county, or private institution by order of court or commission, necessary expenses for the sheriff and the person conveyed and ten dollars per hour for the time necessarily employed in going to and from the institution, the expenses and hourly rate to be charged and accounted for as fees. If the sheriff needs assistance in taking a person to an institution, the assistance shall be furnished at the expense of the county.
 - m.* For serving a warrant for the seizure of intoxicating liquors, one dollar; for the removal and custody of the liquor, actual expenses; for the destruction of the liquor under the order of the court, one dollar and actual expenses; for posting and leaving notices in these cases, one dollar and actual expenses.
 - n.* For each operator's, motorized bicycle or chauffeur's license issued by the sheriff, the fee specified in section 321.192.
 - o.* For posting a notice or advertisement, one dollar.
 - p.* For delivering prisoners under a change of venue, the fee authorized under section 815.8.
2. The mileage fees allowed by law may be retained by the sheriff as an addition to the sheriff's annual salary. In counties having a population of one hundred thousand or more, the county may contract with the sheriff for the use of an automobile on a monthly basis in lieu of payment of mileage in the service of criminal processes.
3. The sheriff shall keep an accurate record of the fees collected in a fee book, make a quarterly report of the fees collected to the board, and pay the fees belonging to the county into the county treasury as provided in section 331.902.
4. The sheriff shall deposit funds collected and held by the sheriff in an approved depository as provided in chapter 453.

85 Acts, ch 118, §1 HF 150
 Subsection 1, paragraphs a, b, c, e, f, g, h, i, k, l and o amended

331.756 Duties of the county attorney.

The county attorney shall:

- 1. Diligently enforce or cause to be enforced in the county, state laws and county ordinances, violations of which may be commenced or prosecuted in the name of the state, county, or as county attorney, except as otherwise provided.
- 2. Appear for the state and the county in all cases and proceedings in the courts of the county to which the state or the county is a party, except actions or proceedings resulting from a change of venue from another county, and appear in the appellate courts in all cases in which the county is a party, and appear in all actions or proceedings which are transferred on a change of venue to another county or which require the impaneling of a jury from another county and in which the county or the state is a party.
- 3. Prosecute all preliminary hearings for charges triable upon indictment.
- 4. Prosecute misdemeanors when not otherwise engaged in the performance of other official duties.

5. Enforce all forfeited bonds and recognizances and prosecute all proceedings necessary for the recovery of debts, revenues, moneys, fines, penalties, and forfeitures accruing to the state or the county or to a school district or road district in the county, and all suits in the county against public service corporations which are brought in the name of the state. To assist in this duty, the county attorney may procure professional collection services provided by persons or organizations which are generally considered to have knowledge and special abilities which are not generally available to state or local government.

6. Commence, prosecute, and defend all actions and proceedings in which a county officer, in the officer's official capacity, or the county is interested or a party.

7. Give advice or a written opinion, without compensation, to the board and other county officers and to school and township officers, when requested by an officer, upon any matters in which the state, county, school, or township is interested, or relating to the duty of the officer in any matters in which the state, county, school, or township may have an interest, but the county attorney shall not appear before the board at a hearing in which the state or county is not interested.

8. Attend the grand jury when necessary for the purpose of examining witnesses before it or giving it legal advice. The county attorney shall procure subpoenas or other process for witnesses and prepare all informations and bills of indictment.

9. Give a receipt to all persons from whom the county attorney receives money in an official capacity and file a duplicate receipt with the county auditor.

10. Make reports relating to the duties and the administration of the county attorney's office to the governor when requested by the governor.

11. Co-operate with the auditor of state to secure correction of a financial irregularity as provided in section 11.15.

12. Submit reports as to the condition and operation of the county attorney's office when required by the attorney general as provided in section 13.2, subsection 7.

13. Institute legal proceedings at the request of a unit or organization commander to recover military property from a person who fails to return the property as provided in section 29A.34.

14. Hear and decide objections to a nomination filed with the county election commissioner as provided in section 44.7.

15. Review the report and recommendations of the campaign finance disclosure commission and proceed to institute the recommended actions or advise the commission that prosecution is not merited as provided in section 56.11, subsection 4.

16. Prosecute or assist in the prosecution of actions to remove public officers from office as provided in section 66.11.

17. Institute legal proceedings against persons who violate laws administered by the bureau of labor as provided in section 91.11.

18. Investigate complaints and prosecute violations of child labor laws as provided in section 92.22.

19. Prosecute violations of employment security laws and rules as provided in section 96.17, subsection 2.

20. Assist, at the request of the director of revenue, in the enforcement of cigar and tobacco tax laws as provided in sections 98.32 and 98.49.

21. Prosecute nuisances as provided in section 99.24.

22. Attend the hearing, interrogate witnesses, and advise a license-issuing authority relating to the revocation of a license for violation of gambling laws as provided in section 99A.7. The county attorney shall also represent the license-issuing authority in appeal proceedings taken under section 99A.6.

23. Represent the state fire marshal in legal proceedings as provided in section 100.20.

24. Prosecute, at the request of the state conservation director or an officer appointed by the state conservation commission, violations of the state fish and game laws as provided in section 109.35.

25. Assist the division of beer and liquor law enforcement in the enforcement of beer and liquor laws as provided in section 123.14. The county attorney shall also prosecute nuisances, forfeitures of abatement bonds, and foreclosures of the bonds as provided in sections 123.62 and 123.86.

26. At the direction of the board, proceed to collect the costs of the care and treatment of substance abusers as provided in section 125.51.

27. Serve as attorney for the county health care facility administrator in matters relating to the administrator's service as a conservator or guardian for a resident of the health care facility as provided in section 135C.24.

28. Commence civil action to remove or abate a nuisance, or an unsanitary, unhealthful, or objectionable condition complained of by the state department of health as provided in section 135D.17.

29. At the request of the commissioner of public health, commence legal action to enjoin the unlawful use of radiation-emitting equipment as provided in section 136C.5.

30. Prosecute, at the request of the attorney general, violations of the law regulating practice professions as provided in section 147.92.

31. Prosecute violations of the Iowa veterinary practice Act as provided in section 169.19.

32. Assist the department of agriculture in the enforcement of the food establishment laws, the Iowa food service sanitation code, and the Iowa hotel sanitation code as provided in sections 170.51, 170A.14 and 170B.18.

33. Institute legal procedures on behalf of the state to prevent violations of the corporate or partnership farming laws as provided in section 172C.3.

34. Prosecute violations of the Iowa dairy industry laws as provided in section 179.11.

35. Prosecute persons who fail to file an annual or special report with the secretary of agriculture under the meat and poultry inspection Act as provided in section 189A.17.

36. Co-operate with the secretary of agriculture in the enforcement of label requirements for food packages as provided in section 191.7.

37. Prosecute violations of the Iowa commercial feed law of 1974 as provided in section 198.13, subsection 3.

38. Co-operate with the secretary of agriculture in the enforcement of the agricultural seed laws as provided in section 199.14.

39. Prosecute violations of the Iowa fertilizer law as provided in section 200.18, subsection 4.

40. Prosecute violations of the Iowa drug and cosmetic Act as requested by the board of pharmacy examiners as provided in section 203A.7.

41. Provide the Iowa department of corrections with information relating to the background and criminal acts committed by each person sentenced to a state correctional institution from the county as provided in section 246.202.

42. Carry out duties relating to the commitment of a mentally retarded person as provided in section 222.18.

43. Proceed to collect, as requested by the county, the reasonable costs for the care, treatment, training, instruction, and support of a mentally retarded person from parents or other persons who are legally liable for the support of the mentally retarded person as provided in section 222.82.

44. At the direction of a district court judge, investigate the financial condition of a person under commitment proceedings to the state psychiatric hospital or those legally responsible for the person as provided in section 225.13.

45. Appear on behalf of the director of the division of mental health in support of an application to transfer a mentally ill person who becomes incorrigible and dangerous from a state hospital for the mentally ill to the Iowa medical and classification center as provided in section 226.30.

46. Carry out duties relating to the hospitalization of persons for mental illness as provided in section 229.12.
47. Carry out duties relating to the collection of the costs for the care, treatment, and support of mentally ill persons as provided in sections 230.25 and 230.27.
48. Carry out duties relating to the care, guidance, and control of juveniles as provided in chapter 232.
49. Prosecute violations of law relating to aid to dependent children, medical assistance, and supplemental assistance as provided in sections 239.20, 249.13 and 249A.14.
50. Commence legal proceedings to enforce the rights of children placed under foster care arrangements as provided in section 242.11.
51. Commence legal proceedings, at the request of the superintendent of the Iowa juvenile home, to recover possession of a child as provided in section 244.12.
52. Furnish, upon request of the governor, a copy of the minutes of evidence and other pertinent facts relating to an application for a pardon, reprieve, commutation, or remission of a fine or forfeiture as provided in section 248.9.
53. Carry out duties relating to the provision of medical and surgical treatment for an indigent person as provided in sections 255.7 and 255.8.
54. Commence legal proceedings to recover school funds as provided in section 302.33.
55. At the request of the state geologist, commence legal proceedings to obtain a copy of the map of a mine or mine extension as provided in section 305.13.
56. Enforce, upon complaint, the performance of duties by officers charged with the responsibilities of controlling or eradicating noxious weeds as provided in section 317.23.
57. Commence legal proceedings to remove billboards and signs which constitute a public nuisance as provided in section 319.11.
58. At the request of the director of transportation, petition the district court to enforce the habitual offender law as provided in section 321.556.
59. Assist, upon request, the transportation regulation authority's legal counsel or the department of transportation's general counsel in the prosecution of violations of common carrier laws and regulations as provided in section 327C.30.
60. Enforce the control of vegetation on railroad property by the railroad corporations as provided in section 327F.29.
61. Appoint a member of the civil service commission for deputy sheriffs as provided in section 341A.2 or 341A.3.
62. Represent the civil service commission for deputy sheriffs in civil suits initiated by the commission for the proper enforcement of the civil service law as provided in section 341A.16.
63. Present to the grand jury at its next session a copy of the report filed by the division of corrections of the department of human services of its inspection of the jails in the county as provided in section 356.43.
64. Represent the township trustees in counties having a population of less than twenty-five thousand except when the interests of the trustees and the county are adverse as provided in section 359.18.
65. Represent the assessor and the board of review in legal proceedings relating to assessments as provided in section 441.41.
66. Represent the state in litigation relating to the inheritance tax if requested by the department of revenue as provided in section 450.1.
67. Institute proceedings to enjoin persons from violating water treatment laws as provided in section 455B.224.
68. Conduct legal proceedings relating to the condemnation of private property as provided in section 472.2.
69. Prosecute persons erecting or maintaining an electric transmission line across a railroad track except as authorized by the state commerce commission at the request of the commission as provided in section 478.29.

70. Institute legal proceedings against violations of insurance laws as provided in sections 511.7 and 515.93.

70A. Accept filings and conduct examinations and audits relating to prearranged funeral plans as required under section 523A.2.

71. Assist, as requested by the attorney general, with the enforcement of the Iowa competition law as provided in section 553.7.

72. Initiate proceedings to enforce provisions relating to the recordation of conveyances and leases of agricultural land as provided in section 558.44.

73. Petition, in the name of the state, against the owner of any land subject to escheat as provided in sections 567.5 and 567.6.

74. Bid on real estate on behalf of the county when necessary to secure the county from loss as provided by section 569.2.

75. Demand payment or security for a debt owed the state as provided in section 641.1.

76. Seek an attachment against the property of a person owing money to the state as provided in section 641.2.

77. Prosecute a complaint to establish paternity and compel support for a child as provided in section 675.19.

78. Give to an accused person a copy of each report of the findings of the criminalistics laboratory in the investigation of an indictable criminal charge against the accused as provided in section 691.4.

79. Notify state and local governmental agencies issuing licenses or permits, of a person's conviction of obscenity laws relating to minors as provided in section 728.8.

80. In the case of appeal from the district court, furnish the attorney general with a copy of the notice of appeal and pertinent material from the district court proceedings as provided in section 814.8.

81. Certify fees and mileage payable to witnesses subpoenaed by the county attorney before the district court as provided in section 815.3.

82. Carry out duties relating to extradition of fugitive defendants as provided in chapter 818.

83. Advise the director of the judicial district department of correctional services of the facts and circumstances surrounding the crime committed and the record and history of the defendant granted probation as provided in section 907.8.

84. Bring an action in the nature of quo warranto as provided in rule of civil procedure 300.

85. Perform other duties required by state law.

85 Acts, ch 195, §42 SF 329
NEW subsection 70A

331.904 Salaries of deputies, assistants and clerks.

1. The annual salary of the first and second deputy officer of the office of auditor, treasurer, and recorder, and the deputy in charge of the motor vehicle registration and title division shall each be an amount not to exceed eighty percent of the annual salary of the deputy's principal officer. In offices where more than two deputies are required, each additional deputy shall be paid an amount not to exceed seventy-five percent of the principal officer's salary. The amount of the annual salary of each deputy shall be certified by the principal officer to the board and, if a deputy's salary does not exceed the limitations specified in this subsection, the board shall certify the salary to the auditor. The board shall not certify a deputy's salary which exceeds the limitations of this subsection.

2. Each deputy sheriff shall receive an annual base salary as determined by the board. Upon certification by the sheriff, the board shall review, and may modify, the annual base salary of each deputy before certifying it to the auditor. The annual base salary of a first or second deputy sheriff shall not exceed eighty-five percent of the annual base salary of the sheriff. The annual base salary of any other deputy sheriff

shall not exceed the annual base salary of the first or second deputy sheriff except that in counties over two hundred fifty thousand population, the annual base salary of any additional deputies shall not exceed seventy-five percent of the annual base salary of the sheriff. The total annual compensation including the annual base salary, overtime pay, longevity pay, shift differential pay, or other forms of supplemental pay and fringe benefits received by a deputy sheriff shall be less than the total annual compensation including fringe benefits received by the sheriff. As used in this subsection, "base salary" means the basic compensation excluding overtime pay, longevity pay, shift differential pay, or other supplemental pay and fringe benefits.

3. The annual salary of each assistant county attorney shall be determined by the county attorney within the budget set for the county attorney's office by the board. The salary of an assistant county attorney shall not exceed eighty-five percent of the maximum salary of a full-time county attorney. The county attorney shall inform the board of the full-time or part-time status of each assistant county attorney. In the case of a part-time assistant county attorney, the county attorney shall inform the board of the approximate number of hours per week the assistant county attorney shall devote to official duties.

4. The board shall determine the compensation of extra help and clerks appointed by the principal county officers.

5. The deputy officers, assistants, clerks, and other employees of the county are also entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties.

85 Acts, ch 195, §43 SF 329

Until July 1, 1986, the annual salary of a first or second deputy clerk to the clerk of the district court shall not exceed 80% of the clerk's salary, and the salary of each additional deputy clerk shall not exceed 75% of the clerk's salary; see chapter 602, article 11, and Temporary Court Transition Rule 6.26

Subsection 1 amended

CHAPTER 347

COUNTY PUBLIC HOSPITALS

347.7 Tax levies.

If a county hospital is established, the board of supervisors, at the time of levying ordinary taxes, shall levy a tax at the rate voted not to exceed fifty-four cents per thousand dollars of assessed value in any one year for the erection and equipment of the hospital, and also a tax not to exceed twenty-seven cents per thousand dollars of value for the improvement, maintenance, and replacements of the hospital, as certified by the board of hospital trustees. However, in counties having a population of two hundred twenty-five thousand or over, the levy for improvements and maintenance of the hospital shall not exceed one dollar and thirty-five cents per thousand dollars of assessed value in any one year. The proceeds of the taxes constitute the county public hospital fund and the fund is subject to review by the board of supervisors in counties over two hundred twenty-five thousand. However, the board of trustees of a county hospital, where funds are available in the county public hospital fund of the county which are unappropriated, may use the unappropriated funds for erecting and equipping hospital buildings and additions thereto without authority from the voters of the county.

No levy shall be made for the improvement, maintenance, or replacements of the hospital until the hospital has been constructed, staffed, and receiving patients. If revenue bonds are issued and outstanding under section 331.461, subsection 1, paragraph "d", the board may levy a tax to pay operating and maintenance expenses in lieu of the authority otherwise contained in this section not to exceed twenty-seven cents per thousand dollars of assessed value or not to exceed one dollar and twenty-one and one-half cents per thousand dollars of assessed value for improvements and maintenance of the hospital in counties having a population of two hundred twenty-five thousand or over.

In addition to levies otherwise authorized by this section, the board of supervisors may levy a tax at the rate, not to exceed twenty-seven cents per thousand dollars of assessed value, necessary to raise the amount budgeted by the board of hospital trustees for support of ambulance service as authorized in section 347.14, subsection 13.

85 Acts, ch 185, §2 SF 103
NEW unnumbered paragraph 3

347.13 Duties and powers.

Said board of hospital trustees shall:

1. Purchase, condemn, or lease a site for such public hospital, and provide and equip suitable hospital buildings.
2. Cause plans and specifications to be made and adopted for all hospital buildings, and advertise for bids, as required by law for other county buildings, before making a contract for the construction of a building.
3. Procure equipment under bidding and contracting requirements prescribed by the board and procure supplies necessary for the operation of the hospital.
4. Have general supervision and care of such grounds and buildings.
5. Employ an administrator, and necessary assistants and employees, and fix their compensation.
6. Have control and supervision over the physicians, nurses, attendants, and patients in the hospital.
7. Cause one of its members to visit and examine said hospital at least twice each month.
8. Provide a suitable room for detention and examination of persons brought before the commissioners of hospitalization of the county, if such hospital is located at the county seat.
9. Determine whether or not any applicant is indigent or tuberculous and entitled to free treatment therein, and to fix the price to be paid by other patients admitted to such hospital for their care and treatment therein.
10. Fix at its regular February meeting in each year, the amount necessary for the improvement and maintenance of the hospital and for support of ambulance service during the ensuing fiscal year, and cause the president and the secretary to certify the amount to the county auditor before March 1 of each year, subject to any limitation in section 347.7.
11. File with the board of supervisors during the fourth week in July of each year, a report covering their proceedings with reference to such hospital, and a statement of all receipts and expenditures during the preceding fiscal year.
12. Accept property by gift, devise, bequest, or otherwise; and, if said board deems it advisable, may, at public sale, sell or exchange any property so accepted upon a concurring vote of a majority of all members of the board of hospital trustees, and apply the proceeds thereof, or property received in exchange therefor, to the purposes enumerated in subsection 13 hereof or for equipment.
13. Submit to the voters at any regular or special election a proposition to sell or lease any sites and buildings, excepting those described in subsection 12 hereof, and upon such proposition being carried by a majority of the total number of votes cast at such election, may proceed to sell such property at either public or private sale, and apply the proceeds only for:
 - a. Retirement of bonds issued and outstanding in connection with the purchase of said property so sold;
 - b. Repairs or improvements to property owned or for the purchase or lease of equipment as the board of hospital trustees may determine.
14. When it is determined by said board that all or a part of the facilities acquired under the provisions of this chapter and operated as a tuberculosis sanatorium are no longer needed for the uses provided or permitted under this chapter, the board may lease to the county or any political subdivision thereof for any public purpose, such facilities or such part thereof as the board deems proper.

15. There shall be published quarterly in each of the official newspapers of the county as selected by the board of supervisors pursuant to section 349.1 the schedule of bills allowed and there shall be published annually in such newspapers the schedule of salaries paid by job classification and category, but not by listing names of individual employees. The names, addresses, salaries, and job classification of all employees paid in whole or in part from a tax levy shall be a public record and open to inspection at reasonable times as designated by the board of trustees.

85 Acts, ch 185, §3 SF 103
Subsection 10 amended

347.14 Powers.

The board of hospital trustees may:

1. Adopt bylaws and rules for its own guidance and for the government of the hospital.
2. Establish and maintain in connection with said hospital a training school for nurses.
3. Establish as a department in connection with said hospital a suitable building for the isolation and detention of persons afflicted with contagious diseases subject to quarantine.
4. Determine whether or not, and if so upon what terms, it will extend the privileges of the hospital to nonresidents of the county.
5. Adopt some suitable name other than county public hospital for hospitals either operating now, in process of construction, or to be established hereafter.
6. Operate said hospital as a tuberculosis sanatorium or provide as a department of such hospital suitable accommodation and means for the care of persons afflicted with tuberculosis.
7. Formulate rules and regulations for the government of tuberculous patients and for the protection of other patients, nurses, and attendants from infection.
8. In counties having a population of one hundred thirty-five thousand inhabitants or over, establish a psychiatric department in connection with the hospital to provide for admission of patients for observation, examination, diagnosis and treatment.
9. Procure and pay premiums on any and all insurance policies required for the prudent management of the hospital, including but not limited to public liability, professional malpractice liability, workers' compensation and vehicle liability. Said insurance may include as additional insureds the board of trustees and employees of the hospital. This subsection applies to all county hospitals whether organized under this chapter, chapter 347A, chapter 37, or otherwise established by law.
10. Do all things necessary for the management, control and government of said hospital and exercise all the rights and duties pertaining to hospital trustees generally, unless such rights of hospital trustees generally are specifically denied by this chapter, or unless such duties are expressly charged by this chapter.
11. The said trustees may in their discretion establish a fund for depreciation as a separate fund. Said funds may be invested in United States government bonds and when so invested the accumulation of interest on the bonds so purchased shall be used for the purposes of said depreciation fund; such investment when so made shall remain in said United States government bonds until such time as in the judgment of the board of trustees it is deemed advisable to use said funds for hospital purposes.
12. Operate a health care facility as defined in section 135C.1 in conjunction with the hospital.
13. Purchase, lease, equip, maintain and operate an ambulance or ambulances to provide necessary and sufficient ambulance service or to contract for such vehicles, equipment, maintenance or service when such ambulance service is not otherwise available.
14. Submit to the voters at a regular or special election a proposition to sell or

lease a county public hospital for use as a private hospital or as a merged area hospital under chapter 145A or to sell or lease a county hospital in conjunction with the establishment of a merged area hospital. The authorization of the board of hospital trustees submitting the proposition may, but is not required to, contain conditions which provide for maintaining hospital care within the county, for the retention of county public hospital employees and staff, and for the continuation of the board of trustees for the purpose of carrying out provisions of contracts. The property listed in section 347.13, subsection 12 may be included in the proposition, but the proceeds from the property shall be used for the purposes listed in section 347.13, subsection 13 or for the purpose of providing health care for residents of the county. Proceeds from the sale or lease of the county hospital or other assets of the board of trustees shall not be used for the prepayment of health care services for residents of the county with the purchaser or lessee of the county hospital or to underwrite the sale or lease of the county hospital. The proposition submitted to the voters of the county shall not be set forth at length, but it shall be in substantially the following form: "Shall the board of hospital trustees ofcounty, state of Iowa, be authorized to (state authorization which may exclude the conditions) in accordance with the terms of authorization approved at the meeting of (cite date) of the board of hospital trustees?" If the proposition is approved by a majority of the total votes cast for and against the proposition at the election, the board of hospital trustees shall proceed to carry out the authorization granted.

85 Acts, ch 185, §4 SF 103
NEW subsection 14

347.25 Election of trustees.

The election of hospital trustees whose offices are established by this chapter or chapter 145A or 347A shall take place at the general election on ballots which shall not reflect a nominee's political affiliation. Nomination shall be made by petition in accordance with chapter 45. The petition form shall be furnished by the county commissioner of elections, signed by fifty eligible electors of the county, and shall be filed with the county commissioner of elections at least fifty-five days prior to the date of the general election. A plurality is sufficient to elect hospital trustees.

If any of the provisions of this section shall be in conflict with any of the laws of this state, then the provisions of this section shall prevail.

85 Acts, ch 135, §1 HF 255
Unnumbered paragraph 1 amended

CHAPTER 347A

COUNTY HOSPITALS PAYABLE FROM REVENUE

347A.3 Tax for maintenance and operation.

If in any year, after payment of the accruing interest on and principal due of revenue bonds issued under chapter 331, division IV, part 4, and payable from the revenues derived from the operation of the county hospital, there is a balance of such revenues insufficient to pay the expenses of operation and maintenance of the hospital, the board of hospital trustees shall certify that fact as soon as ascertained to the board of supervisors of the county, and the board of supervisors shall make the amount of the deficiency for paying the expenses of operation and maintenance of the hospital available from other county funds or shall levy a tax not to exceed one dollar and eight cents per thousand dollars of assessed value in any one year on all the taxable property in the county in an amount sufficient for that purpose. However, general county funds or the proceeds of taxes shall not be used or applied to the payment of the interest on or principal of revenue bonds issued under chapter

331, division IV, part 4, but general county funds or proceeds of taxes may only be used and applied to pay expenses of operation and maintenance of the hospital which cannot be paid from available revenue derived from its operation.

A tax levied under this section for paying the expenses of operation and maintenance of a merged area hospital pursuant to the authority granted a merged area under section 145A.20, shall only be levied on the assessed value of property in that portion of a county which is part of the merged area, in accordance with the plan or merger established, approved, and implemented under sections 145A.3, 145A.4, 145A.5, and 145A.14.

85 Acts, ch 123, §13 HF 746
NEW unnumbered paragraph 2

CHAPTER 356

JAILS AND MUNICIPAL HOLDING FACILITIES

356.4 Separation of men and women.

All jails shall be equipped with separate cells for men and women. Men and women prisoners shall not be allowed in the same cell within a jail at the same time.

85 Acts, ch 21, §43 HF 186
Section struck and rewritten

CHAPTER 357A

RURAL WATER DISTRICTS

357A.2 Petition—deposit.

A petition may at any time be filed with the auditor requesting the supervisors to incorporate and organize a district encompassing an area, not then included in any other district, in any county or any two or more adjacent counties for the purpose of providing an adequate supply of water for domestic purposes to residents of the area who are not served by the water mains of any city water system and who cannot feasibly obtain adequate supplies of water from wells on their own premises.

There shall be filed with the petition a bond with sureties approved by the auditor, or a certified check, credit union certified share draft or cash in an amount sufficient for the payment of all costs and expenses incurred in the proceedings if the district is not finally established.

The petition shall be signed by the owners of at least fifty percent of all land lying within the outside perimeter of the area designated for inclusion in the proposed district, and shall state:

1. The location of the area so designated, describing such area by section, or fraction thereof, and by township and range.
2. The reasons a district is needed.

85 Acts, ch 67, §42 SF 121
Unnumbered paragraph 2 amended

CHAPTER 358

SANITARY DISTRICTS

358.2 Petition—deposit.

Any twenty-five or more eligible electors resident within the limits of any proposed sanitary district may file a petition in the office of the county auditor of the county in which the proposed sanitary district, or the major portion thereof, is located, requesting that there be submitted to the qualified electors of such proposed district the question whether the territory within the boundaries of such proposed district shall be organized as a sanitary district under this chapter. Such petition shall be addressed to the board of supervisors of the county wherein it is filed and shall set forth:

1. An intelligible description of the boundaries of the territory to be embraced in such district.
2. The name of such proposed sanitary district.
3. That the public health, comfort, convenience or welfare will be promoted by the establishment of such sanitary district.
4. The signatures of the petitioners.

No territory shall be included within more than one sanitary district organized under this chapter, and if any proposed sanitary district shall fail to receive a majority of votes cast at any election thereon as hereinafter provided, no petition shall be filed for establishment of such a sanitary district within one year from the date of such previous election.

There shall be filed with the petition a bond with sureties approved by the auditor, or a certified check, credit union certified share draft or cash in an amount sufficient for the payment of all costs and expenses incurred in the proceedings if the district is not finally established.

No preliminary expense shall be incurred before the establishment of the proposed sanitary district by the board in excess of the amount of bond filed by the petitioners. In case it is necessary to incur any expense in addition to the amount of the bond, the board of supervisors shall require the filing of an additional security until the additional bond is filed in sufficient amount to cover the expense.

85 Acts, ch 67, §43 SF 121
Unnumbered paragraph 3 amended

358.9 Selection of trustees—term of office—additional members.

At the election provided for in section 358.7, the names of candidates for trustee of the district shall be written by the voters on blank ballots without formal nomination, and the board of supervisors which had jurisdiction of the proceedings for establishment of the sanitary district, together with the board of supervisors of any other county in which any part of the district is located, shall appoint three trustees from among the five persons receiving the greatest number of votes as trustees of the district. One of the trustees shall be designated to serve a term expiring on the first day of January which is not a Sunday or legal holiday following the next general election, one to serve a term expiring on the first day of January which is not a Sunday or legal holiday two years later, and one to serve a term expiring on the first day of January which is not a Sunday or legal holiday four years later. Thereafter, each term shall be for a term of years established by the board of supervisors, not less than three years or more than six years. Successors to the initial trustees may be chosen by appointment by the same board or boards of supervisors which made the initial appointments or by election, at the option of the remaining trustees. If election is chosen, a successor shall be elected at the general election preceding the expiration of the term to be filled.

Vacancies in the office of trustee of a sanitary district shall be filled by the

remaining members of the board for the period until a successor is chosen in the manner prescribed by this section or by section 69.12, whichever is applicable.

However, for districts formed after July 1, 1984, successors to the initial trustees shall be elected at the next general election or at an annual meeting of the board of trustees called for that purpose. Upon petition of a majority of the landowners owning more than fifty percent of the total land in the district, the board of trustees shall call an annual meeting of the residents of the district to elect successors to trustees of the board. Vacancies shall be filled by the remaining trustees in the same manner as city council members as provided in section 372.13, subsection 2.

In cases where the state of Iowa owns at least four hundred acres of land contiguous to lakes within the district, the state conservation commission shall appoint two members of the board of trustees in addition to the three members provided in this section. The additional two members shall be United States citizens, not less than eighteen years of age, and property owners within the district. The two additional appointive members shall have equal vote and authority with other members of trustees and shall hold office at the pleasure of the state conservation commission.

85 Acts, ch 135, §2 HF 255

Unnumbered paragraph 1 amended

CHAPTER 358A

COUNTY ZONING COMMISSION

358A.7 Changes—protest.

The regulations, restrictions, and boundaries may be amended, supplemented, changed, modified, or repealed. Notwithstanding section 358A.4, as a part of an ordinance changing land from one zoning district to another zoning district or an ordinance approving a site development plan, a board of supervisors may impose conditions on a property owner which are in addition to existing regulations if the additional conditions have been agreed to in writing by the property owner before the public hearing required under this section or any adjournment of the hearing. The conditions must be reasonable and imposed to satisfy public needs which are directly caused by the requested change. In case, however, of a protest against the change signed by the owners of twenty percent or more either of the area included in the proposed change, or of the area immediately adjacent to the proposed change and within five hundred feet of the boundaries of the proposed change, the amendment shall not become effective except by the favorable vote of at least sixty percent of all of the members of the board of supervisors. The provisions of section 358A.6 relative to public hearings and official notice shall apply equally to all changes or amendments.

85 Acts, ch 9, §1 HF 265
Section amended

CHAPTER 358B

COUNTY LIBRARIES

358B.16 Withdrawal from district—termination.

A city may withdraw from the county library district upon a majority vote in favor of withdrawal by the electorate of the city in an election held on a motion by the city council. The election shall be held simultaneously with a general or city election. Notice of a favorable vote to withdraw shall be sent by certified mail to the board of library trustees of the county library and the county auditor prior to January 10, and the withdrawal shall be effective on July 1.

A county may withdraw from the district after a majority of the voters of the unincorporated area of the county voting on the issue favor the withdrawal. The board of supervisors shall call for the election which shall be held at the next general election.

A city or county election shall not be called until a hearing has been held on the proposal to submit a proposition of withdrawal to an election. A hearing may be held only after public notice published as provided in section 362.3 in the case of a city or section 331.305 in the case of a county. A copy of the notice submitted for publication shall be mailed to the county library on or before the date of publication. The proposal presented at the hearing must include a plan for continuing adequate library service with or without all participants and the respective allocated costs and levels of service shall be stated. At the hearing, any interested person shall be given a reasonable time to be heard, either for or against the withdrawal or the plan to accompany it.

A county library district may be terminated if a majority of the electors of the unincorporated area of the county and the cities included in the county library district voting on the issue favor the termination. The election shall be held upon motion of the board of supervisors and simultaneously with a primary, general, or other county election. If the vote favors termination, the termination shall be effective on the succeeding July 1.

An election for withdrawal from or termination of a county library district shall not be held more than once each four years.

85 Acts, ch 125, §1 HF 670
Unnumbered paragraph 4 amended

CHAPTER 359

TOWNSHIPS AND TOWNSHIP OFFICERS

359.42 Township fire protection service, emergency warning system, and ambulance service.

The trustees of each township shall provide fire protection service for the township, exclusive of any part of the township within a benefited fire district and, in counties not providing ambulance services, may provide ambulance service. The trustees may purchase, own, rent or maintain fire protection service or ambulance service apparatus or equipment or both kinds of apparatus or equipment and provide housing for the equipment. The trustees of a township which is located within a county having a population of three hundred thousand or more may also establish and maintain an emergency warning system within the township. The trustees may contract with a public or private agency under chapter 28E for the purpose of providing any service or system required or authorized under this section.

85 Acts, ch 205, §1 HF 768
Section amended

359.43 Tax levy—supplemental levy—districts.

1. The township trustees may levy an annual tax not exceeding forty and one-half cents per thousand dollars of assessed value of the taxable property in the township, excluding property within a benefited fire district or within the corporate limits of a city, for the purpose of exercising the powers and duties specified in section 359.42. However, in a township having a fire protection service or ambulance service agreement or both service agreements with a special charter city having a paid fire department, the township trustees may levy an annual tax not exceeding fifty-four cents per thousand dollars of the assessed value of the taxable property for the services authorized or required under section 359.42 and in a township which is located within a county having a population of three hundred thousand or more, the

township trustees may levy an annual tax not exceeding sixty-seven and one-half cents per thousand dollars of assessed value of taxable property for the services authorized or required under section 359.42.

2. If the levy authorized under subsection 1 is insufficient to provide the services authorized or required under section 359.42, the township trustees may levy an additional annual tax not exceeding twenty and one-fourth cents per thousand dollars of assessed value of the taxable property in the township, excluding any property within the corporate limits of a city, to provide the services.

3. The township trustees may divide the township into tax districts for the purpose of providing the services authorized or required under section 359.42 and may levy a different tax rate in each district, but the tax levied in a tax district for the authorized or required services shall not exceed the tax levy limitations for that township as provided in this section.

85 Acts, ch 205, §2 HF 768
Subsection 1 amended

CHAPTER 364

POWERS AND DUTIES OF CITIES

364.3 Limitation of powers.

The following are limitations upon the powers of a city:

1. A city council shall exercise a power only by the passage of a motion, a resolution, an amendment, or an ordinance.

2. A city shall not provide a penalty in excess of a one hundred dollar fine or in excess of thirty days imprisonment for the violation of an ordinance. An amount equal to ten percent of all fines collected by cities shall be deposited in the court revenue distribution account established in section 602.8108. However, one hundred percent of all fines collected by a city pursuant to section 321.236, subsection 1, shall be retained by the city. The criminal penalty surcharge required by section 911.2 shall be added to a city fine and is not a part of the city's penalty.

3. A city may not set standards and requirements which are lower or less stringent than those imposed by state law, but may set standards and requirements which are higher or more stringent than those imposed by state law, unless a state law provides otherwise.

4. A city may not levy a tax unless specifically authorized by a state law.

85 Acts, ch 195, §44 SF 329
Subsection 2 amended

364.4 Powers—outside of city—leases and lease-purchase contracts.

A city may:

1. Acquire, hold, and dispose of property outside the city in the same manner as within.

2. By contract, extend services to persons outside the city.

3. Enact and enforce ordinances relating to city property and city-extended services outside the city.

4. Enter into leases or lease-purchase contracts for real and personal property in accordance with the following terms and procedures:

a. A city shall lease or lease-purchase real or personal property only for a term which does not exceed the economic life of the property, as determined by the council.

b. A lease or lease-purchase contract entered into by a city may contain provisions similar to those sometimes found in leases between private parties, including the obligation of the lessee to pay any of the costs of operation or ownership of the leased property, and the right to purchase the leased property.

c. A provision of a lease or lease-purchase contract which stipulates that a portion of the rent payments be applied as interest is subject to chapter 74A. Other laws relating to interest rates do not apply.

d. The governing body must follow substantially the same authorization procedure required for the issuance of general obligation bonds issued for the same purpose to authorize a lease or a lease-purchase agreement made payable from the debt service fund, or to authorize any lease or lease-purchase contract which would result in the total of annual lease and lease-purchase payments of the city due from the general fund of the city in any future year for lease or lease-purchase contracts in force on the date of the authorization, excluding payments to exercise purchase options or to pay the expenses of operation or ownership of the property, to exceed ten percent of the last certified general fund budget amount. In all other cases, the authorization procedures of section 384.25 shall apply. Chapter 75 shall not be applicable. A city utility is a separate entity under the provisions of this section whether it is governed by the council or another governing body.

e. A lease or lease-purchase contract to which a city is a party or in which a city has a participatory interest, is an obligation of a political subdivision of this state for the purposes of chapters 502 and 682, and is a lawful investment for banks, trust companies, building and loan associations, savings and loan associations, investment companies, insurance companies, insurance associations, executors, guardians, trustees and any other fiduciaries responsible for the investment of funds.

f. Property that is lease-purchased by a city is exempt under section 427.1, subsection 2.

g. A contract for construction by a private party of property to be leased or lease-purchased by a city is not a contract for a public improvement under section 384.95, subsection 1, except for purposes of section 384.102. However, if a lease-purchase contract is funded in advance by means of the lessor depositing moneys to be administered by a city, with the city's obligation to make rent payments commencing with its receipt of moneys, a contract for construction of the property in question awarded by the city is a public improvement and is subject to division VI of chapter 384.

85 Acts, ch 156, §3 HF 523
NEW subsection 4

CHAPTER 372

ORGANIZATION OF CITY GOVERNMENT

372.13 The council.

1. A majority of all council members is a quorum.
2. A vacancy in an elective city office during a term of office shall be filled, at the council's option, by one of the two following procedures:
 - a. By appointment by the remaining members of the council, except that if the remaining members do not constitute a quorum of the full membership, paragraph "b" shall be followed. The appointment shall be for the period until the next pending election as defined in section 69.12, and shall be made within forty days after the vacancy occurs. If the council chooses to proceed under this paragraph, it shall publish notice in the manner prescribed by section 362.3, stating that the council intends to fill the vacancy by appointment but that the electors of the city or ward, as the case may be, have the right to file a petition requiring that the vacancy be filled by a special election. The council may publish notice in advance if an elected official submits a resignation to take effect at a future date. The council may make an appointment to fill the vacancy after the notice is published or after the vacancy occurs, whichever is later. However, if within fourteen days after publication of the notice or within fourteen days after the appointment is made, whichever is later,

there is filed with the city clerk a petition which requests a special election to fill the vacancy and which is signed by eligible electors who are, or would be if registered, entitled to vote to fill the office in question, equal in number to two percent of those who voted for candidates for the office at the last preceding regular election at which the office was on the ballot, but not less than ten persons, an appointment to fill the vacancy is temporary and the council shall call a special election to fill the vacancy permanently, under paragraph "b".

b. By a special election held to fill the office for the remaining balance of the unexpired term. If the council opts for a special election or a valid petition is filed under paragraph "a", the special election may be held concurrently with any pending election as provided by section 69.12 if by so doing the vacancy will be filled not more than ninety days after it occurs. Otherwise, a special election to fill the office shall be called at the earliest practicable date. If there are concurrent vacancies on the council and the remaining council members do not constitute a quorum of the full membership, a special election shall be called at the earliest practicable date. A special election held under this subsection is subject to sections 376.4 through 376.11, but the dates for actions in relation to the special election shall be calculated with regard to the date for which the special election is called.

3. The council shall appoint a city clerk to maintain city records and perform other duties prescribed by state or city law.

4. Except as otherwise provided by state or city law, the council may appoint city officers and employees, and prescribe their powers, duties, compensation, and terms. The appointment of a city manager must be made on the basis of that individual's qualifications and not on the basis of political affiliation.

5. The council shall determine its own rules and maintain records of its proceedings. City records and documents, or accurate reproductions, shall be kept for at least five years, except that ordinances, resolutions, council proceedings, and records and documents relating to real property transactions or bond issues shall be maintained permanently.

6. Within fifteen days following a regular or special meeting of the council, the clerk shall cause the minutes of the proceedings of the council, including the total expenditure from each city fund, to be published in a newspaper of general circulation in the city. The publication shall include a list of all claims allowed and a summary of all receipts and shall show the gross amount of the claim. Matters discussed in closed session pursuant to section 21.3 shall not be published until entered on the public minutes. However, in cities having more than one hundred fifty thousand population the council shall each month print in pamphlet form a detailed itemized statement of all receipts and disbursements of the city, and a summary of its proceedings during the preceding month, and furnish copies to the city library, the daily newspapers of the city, and to persons who apply at the office of the city clerk, and the pamphlet shall constitute publication as required. Failure by the clerk to make publication is a simple misdemeanor. The provisions of this subsection are applicable in cities in which a newspaper is published, or in cities of two hundred population or over, but in all other cities, posting the statement in three public places in the city which have been permanently designated by ordinance is sufficient compliance with this subsection.

7. By ordinance, the council may divide the city into wards based upon population, change the boundaries of wards, eliminate wards or create new wards.

8. By ordinance, the council shall prescribe the compensation of the mayor, council members, and other elected city officers, but a change in the compensation of the mayor shall not become effective during the term in which the change is adopted, and the council shall not adopt such an ordinance changing the compensation of the mayor or council members during the months of November and December immediately following a regular city election. A change in the compensation of council members shall become effective for all council members at the beginning of

the term of the council members elected at the election next following the change in compensation. Except as provided in section 362.5, an elected city officer shall not receive any other compensation for any other city office or city employment during that officer's term of office, but may be reimbursed for actual expenses incurred. However, if the mayor pro tem performs the duties of the mayor during the mayor's absence or disability for a continuous period of fifteen days or more, the mayor pro tem may be paid for that period such compensation as determined by the council, based upon the mayor pro tem's performance of the mayor's duties and upon the compensation of the mayor.

9. A council member, during the term for which that member is elected, is not eligible for appointment to any city office if the office has been created or the compensation of the office has been increased during the term for which that member is elected. A person who resigns from an elective office is not eligible for appointment to the same office during the time for which that person was elected if during that time, the compensation of the office has been increased.

85 Acts, ch 107, §1 HF 537
Subsection 2, paragraph b amended

CHAPTER 384

CITY FINANCE

384.4 Debt service fund.

A city shall establish a debt service fund and shall certify taxes to be levied for the debt service fund in the amount necessary to pay:

1. Judgments against the city, except those authorized by state law to be paid from other funds.

2. Interest as it becomes due and the amount necessary to pay, or to create a sinking fund to pay, the principal at maturity of all general obligation bonds issued by the city or to pay, or to create a sinking fund to pay, amounts as due on loans received through the Iowa community development loan program*.

3. Payments required to be made from the debt service fund under a lease or lease-purchase agreement.

Moneys pledged or available to service general obligation bonds, and received from sources other than property taxes, must be deposited in the debt service fund.

If a final judgment is entered against a city with a population of five hundred or less for an amount in excess of eighty-eight thousand dollars over and above what is covered by liability insurance, such city may spread the budgeting and payment of that portion not covered by insurance over a period of time not to exceed ten years. Interest shall be paid by the city on the unpaid balance. This paragraph shall only apply to final judgments entered but not fully satisfied prior to March 25, 1976.

85 Acts, ch 156, §4 HF 523
*Iowa community development loan program is in § 7A.41 to 7A.49
NEW subsection 3

384.6 Trust and agency funds.

A city may establish trust and agency funds for the following purposes:

1. Accounting for pension and related employee benefit funds as provided by the city finance committee. A city may make contributions to a retirement system other than the Iowa public employees' retirement system for its city manager, or city administrator performing the duties of city manager, in an annual amount not to exceed the amount that would have been contributed by the employer under section 97B.11. If a police chief or fire chief has submitted a written request to the board of trustees to be exempt from chapter 411, authorized in section 411.3, subsection 1, a city shall make contributions for the chief, in an amount not to exceed the

amount that would have been contributed by the city under section 411.8, subsection 1, paragraph "a", to the international city management association/retirement corporation. A city may certify taxes to be levied for a trust and agency fund in the amount necessary to meet its obligations.

2. Accounting for gifts received by the city for a particular purpose.

3. Accounting for money and property received and handled by the city as trustee or custodian or in the capacity of an agent.

85 Acts, ch 195, §45 SF 329

Unnumbered paragraph 1 amended

384.12 Additional taxes.

A city may certify, for the general fund levy, taxes which are not subject to the limit provided in section 384.1, and which are in addition to any other moneys the city may wish to spend for such purposes, as follows:

1. A tax not to exceed thirteen and one-half cents per thousand dollars of assessed value for the support of a municipal band, subject to the following:

a. Upon receipt of a petition valid under the provisions of section 362.4, the council shall submit to the voters at the next regular city election the question of whether a tax shall be levied.

b. If a majority approves the levy, it may be imposed.

c. The levy can be eliminated by the same procedure of petition and election.

d. A tax authorized by an election held prior to the effective date of the city code may be continued until eliminated by the council, or by petition and election.

2. A tax not to exceed eighty-one cents per thousand dollars of assessed value for development, operation, and maintenance of a memorial building or monument, subject to the provisions of subsection 1.

3. A tax not to exceed thirteen and one-half cents per thousand dollars of assessed value for support of a symphony orchestra, subject to the provisions of subsection 1.

4. A tax not to exceed twenty-seven cents per thousand dollars of assessed value for the operation of cultural and scientific facilities, subject to the provisions of subsection 1, except that the question may be submitted on the council's own motion.

5. A tax to aid in the construction of a county bridge, subject to the provisions of subsection 1, except that the question must be submitted at a special election. The expense of a special election under this subsection must be paid by the county. The notice of the special election must include full details of the proposal, including the location of the proposed bridge, the rate of tax to be levied, and all other conditions.

6. A tax to aid a company incorporated under the laws of this state in the construction of a highway or combination bridge across any navigable boundary river of this state, commencing or terminating in the city and suitable for use as highway, or for both highway and railway purposes. This tax levy is subject to the provisions of subsections 1 and 5. The levy is limited to one dollar and thirty-five cents per thousand dollars of the assessed value of taxable property in the city. The estimated cost of the bridge must be at least ten thousand dollars, and the city aid may not exceed one-half of the estimated cost. The notice of the special election must include the name of the corporation to be aided, and all conditions required of the corporation. Tax moneys received for this purpose may not be paid over by the county treasurer until the city has filed a statement that the corporation has complied with all conditions.

7. If a tax has been voted for aid of a bridge under subsection 6, a further tax may be voted for the purpose of purchasing the bridge, subject to the provisions of subsection 1. The levy under this subsection is limited to three dollars and thirty-seven and one-half cents per thousand dollars of the assessed value of the taxable property in the city, payable in not less than ten annual installments.

8. A tax for the purpose of carrying out the terms of a contract for the use of a bridge by a city situated on a river over which a bridge has been built. The tax may

not exceed sixty-seven and one-half cents per thousand dollars of assessed value each year.

9. A tax for aid to a public transportation company, subject to the procedure provided in subsection 1, except the question must be submitted at a special election. The levy is limited to three and three-eighths cents per thousand dollars of assessed value. In addition to any other conditions the following requirements must be met before moneys received for this purpose may be paid over by the county treasurer:

a. The public transportation company shall provide the city with copies of state and federal income tax returns for the five years preceding the year for which payment is contemplated or for such lesser period of time as the company has been in operation.

b. The city shall, in any given year, be authorized to pay over only such sums as will yield not to exceed two percent of the public transportation company's investment as the same is valued in its tax depreciation schedule, provided that corporate profits and losses for the five preceding years or for such lesser period of time as the company has been in operation shall not average in excess of a two percent net return. Taxes levied under this subsection may not be used to subsidize losses incurred prior to the election required by this subsection.

10. A tax for the operation and maintenance of a municipal transit system, and for the creation of a reserve fund for the system, in an amount not to exceed fifty-four cents per thousand dollars of assessed value each year, when the revenues from the transit system are insufficient for such purposes, but proceeds of the tax may not be used to pay interest and principal on bonds issued for the purposes of the transit system.

11. If a city has entered into a lease of a building or complex of buildings to be operated as a civic center, a tax sufficient to pay the installments of rent and for maintenance, insurance and taxes not included in the lease rental payments.

12. A tax not to exceed thirteen and one-half cents per thousand dollars of assessed value each year for operating and maintaining a civic center owned by a city.

13. A tax not to exceed six and three-fourths cents per thousand dollars of assessed value for planning a sanitary disposal project.

14. A tax not to exceed twenty-seven cents per thousand dollars of assessed value each year for an aviation authority as provided in section 330A.15.

15. If a city has joined with the county to form an authority for a joint county-city building, as provided in section 346.27, and has entered into a lease with the authority, a tax sufficient to pay the annual rent payable under the lease.

16. A tax not to exceed six and three-fourths cents per thousand dollars of assessed value each year for a levee improvement fund in special charter cities as provided in section 420.155.

17. A tax not to exceed twenty and one-half cents per thousand dollars of assessed value each year to maintain an institution received by gift or devise, subject to an election as required under subsection 1.

18. A tax to pay the premium costs on tort liability insurance as provided in section 613A.7.

19. A tax that exceeds any tax levy limit within this chapter, provided; the question has been submitted at a special levy election and received a simple majority of the votes cast on the proposition to authorize the enumerated levy limit to be exceeded for the proposed budget year.

a. The election may be held as specified herein if notice is given by the city council, not later than February 15, to the county commissioner of elections that the election is to be held.

b. An election under this subsection shall be held on the second Tuesday in March and be conducted by the county commissioner of elections in accordance with the law.

c. The proposition to be submitted shall be substantially in the following form:

Vote for *only one* of the following:

Shall the city of (name of city) levy a tax for the purpose of (state purpose of levy election) at a rate of (rate) which will provide \$..... (amount)?

Shall the city of continue under the maximum rate of providing \$..... (amount)?

d. The commissioner of elections conducting the election shall notify the city officials and other county auditors where applicable, of the results within two days of the canvass which shall be held beginning at one o'clock on the second day following the special levy election.

e. Notice of the election shall be published twice in accordance with the provisions of section 362.3, except that the first such notice shall be given at least two weeks before the election.

f. The cost of the election shall be borne by the city.

g. The election provisions of this subsection shall supersede other provisions for elections only to the extent necessary to comply with the provisions hereof.

h. The provisions of this subsection apply to all cities, however organized, including special charter cities which may adopt ordinances where necessary to carry out these provisions.

i. The council shall certify the city's budget with the tax askings not exceeding the amount approved by the special levy election.

85 Acts, ch 195, §46 SF 329
Subsection 19, paragraph c amended

CHAPTER 386

SELF-SUPPORTED MUNICIPAL IMPROVEMENT DISTRICTS

386.3 Establishment of district.

1. Districts may be created by action of the council in accordance with the provisions of this chapter. A district shall:

a. Be comprised of contiguous property wholly within the boundaries of the city. A self-supported municipal improvement district shall be comprised only of property in districts which are zoned for commercial or industrial uses and properties within a duly designated historic district.

b. Be given a descriptive name containing the words "self-supported municipal improvement district".

c. Be comprised of property related in some manner, including but not limited to present or potential use, physical location, condition, relationship to an area, or relationship to present or potential commercial or other activity in an area, so as to be benefited in any manner, including but not limited to a benefit from present or potential use or enjoyment of the property, by the condition, development or maintenance of the district or of any improvement or self-liquidating improvement of the district, or be comprised of property the owners of which have a present or potential benefit from the condition, development or maintenance of the district or of any improvement or self-liquidating improvement of the district.

2. The council shall initiate proceedings for establishing a district upon the filing with its clerk of a petition containing:

a. The signatures of at least twenty-five percent of all owners of property within the proposed district. These signatures must together represent ownership of property with an assessed value of twenty-five percent or more of the assessed value of all of the property in the proposed district.

b. A description of the boundaries of the proposed district or a consolidated description of the property within the proposed district.

c. The name of the proposed district.

d. A statement of the maximum rate of tax that may be imposed upon property within the district. The maximum rate of tax may be stated in terms of separate maximum rates for the debt service tax, the capital improvement fund tax, and the operation tax, or in terms of a maximum combined rate for all three.

e. The purpose of the establishment of the district, which may be stated generally, or in terms of the relationship of the property within the district or the interests of the owners of property within the district, or in terms of the improvements or self-liquidating improvements proposed to be developed for the purposes of the district, either specific improvements, self-liquidating improvements, or general categories of improvements, or any combination of the foregoing.

f. A statement that taxes levied for the self-supported improvement district operation fund shall be used for the purpose of paying maintenance expenses of improvements or self-liquidating improvements financed pursuant to this chapter for a specified length of time, along with any options to renew, if such taxes are to be used for this maintenance purpose.

3. The council shall notify the city planning commission upon the receipt of a petition. It shall be the duty of the city planning commission to make recommendations to the council in regard to the proposed district. The city planning commission shall, with due diligence, prepare an evaluative report for the council on the merit and feasibility of the project. The council shall not hold its public hearings or take further action on the establishment of the district until it has received the report of the city planning commission. In addition to its report, the commission may, from time to time, recommend to the council amendments and changes relating to the project.

If no city planning commission exists, the council shall notify the metropolitan or regional planning commission upon receipt of a petition, and such commission shall have the same duties as the city planning commission set forth in this subsection. If no planning commission exists, the council shall notify the zoning commission upon receipt of a petition, and such commission shall have the same duties as the city planning commission set forth in this subsection. If no planning or zoning commission exists, the council shall call a hearing on the establishment of a district upon receipt of a petition.

4. Upon the receipt of the commission's final report the council shall set a time and place for a meeting at which the council proposes to take action for the establishment of the district, and shall publish notice of the meeting as provided in section 362.3, and the clerk shall send a copy of the notice by certified mail not less than fifteen days before the meeting to each owner of property within the proposed district at the owner's address as shown by the records of the county auditor. If a property is shown to be in the name of more than one owner at the same mailing address, a single notice may be mailed addressed to all owners at that address. Failure to receive a mailed notice is not grounds for objection to the council's taking any action authorized in this chapter.

5. In addition to the time and place of the meeting for hearing on the petition, the notice must state:

a. That a petition has been filed with the council asking that a district be established.

b. The name of the district.

c. The purpose of the district.

d. The property proposed to be included in the district.

e. The maximum rate of tax which may be imposed upon the property in the district.

6. At the time and place set in the notice the council shall hear all owners of property in the proposed district or residents of the city desiring to express their views. The council must wait at least thirty days after the public hearing has been held before it may adopt an ordinance establishing a district which must be com-

prised of all the property which the council finds has the relationship or whose owners have the interest described in subsection 1, paragraph "c". Property included in the proposed district need not be included in the established district. However, no property may be included in the district that was not included in the proposed district until the council has held another hearing after it has published and mailed the same notice as required in subsections 4 and 5 of this section on the original petition to the owners of the additional property, or has caused a notice of the inclusion of the property to be personally served upon each owner of the additional property, or has received a written waiver of notice from each owner of the additional property.

7. Adoption of the ordinance establishing a district requires the affirmative vote of three-fourths of all of the members of the council, or in cities having but three members of the council, the affirmative vote of two members. However if a remonstrance has been filed with the clerk signed by at least twenty-five percent of all owners of property within the proposed district representing ownership of property with an assessed value of twenty-five percent or more of the assessed value of all of the property in the proposed district, the adoption of the ordinance requires a unanimous vote of the council.

8. The clerk shall cause a copy of the ordinance to be filed in the office of the county recorder of each county in which any property within the district is located.

9. At any time prior to adoption of an ordinance establishing a district, the entire matter of establishing such district shall be withdrawn from council consideration if a petition objecting to establishing such district is filed with its clerk containing the signatures of at least forty percent of all owners of property within the proposed district or signatures which together represent ownership of property with an assessed value of forty percent or more of the assessed value of all property within the proposed district.

10. The adoption of an ordinance establishing a district is a legislative determination that the property within the district has the relationship or its owners have the interest required under subsection 1, paragraph "c" and includes all of the property within the area which has that relationship or the owners of which have that interest in the district.

11. Any resident or property owner of the city may appeal the action and the decisions of the council, including the creation of the district and the levying of the proposed taxes for the district, to the district court of the county in which any part of the district is located, within thirty days after the date upon which the ordinance creating the district becomes effective, but the action and decision of the council are final and conclusive unless the court finds that the council exceeded its authority. No action may be brought questioning the regularity of the proceedings pertaining to the establishment of a district or the validity of the district, or the propriety of the inclusion or exclusion of any property within or from the district, or the ability of the city to levy taxes in accordance with the ordinance establishing the district, after thirty days from the date on which the ordinance creating the district becomes effective.

12. The procedural steps for the petitioning and creation of the district may be combined with the procedural steps for the authorization of any improvement or self-liquidating improvement, or the procedural steps for the authorization of any tax, or any combination thereof.

13. The rate of debt service tax referred to in the petition and the ordinance creating the district shall only restrict the amount of bonds which may be issued, and shall not limit the ability of the city to levy as necessary in subsequent years to pay interest and amortize the principal of that amount of bonds.

14. The ordinance creating the district may provide for the division of all of the property within the district into two or more zones based upon a reasonable difference in the relationship of the property or the interest of its owners, whether

the difference is qualitative or quantitative. The ordinance creating the district and establishing the different zones may establish a different maximum rate of tax for each zone, or may provide that the rate of tax for a zone shall be a certain set percentage of the tax levied in the zone which is subject to the highest rate of tax.

85 Acts, ch 113, §1 HF 652
Subsection 1, paragraph a amended

386.8 Operation tax.

A city may establish a self-supported improvement district operation fund, and may certify taxes not to exceed the rate limitation as established in the ordinance creating the district, or any amendment thereto, each year to be levied for the fund against all of the property in the district, for the purpose of paying the administrative expenses of the district, which may include but are not limited to administrative personnel salaries, a separate administrative office, planning costs including consultation fees, engineering fees, architectural fees, and legal fees and all other expenses reasonably associated with the administration of the district and the fulfilling of the purposes of the district. The taxes levied for this fund may also be used for the purpose of paying maintenance expenses of improvements or self-liquidating improvements for a specified length of time with one or more options to renew if such is clearly stated in the petition which requests the council to authorize construction of the improvement or self-liquidating improvement, whether or not such petition is combined with the petition requesting creation of a district. Parcels of property which are assessed as residential property for property tax purposes are exempt from the tax levied under this section except residential properties within a duly designated historic district. A tax levied under this section is not subject to the levy limitation in section 384.1.

85 Acts, ch 113, §2 HF 652
Section amended

386.9 Capital improvement tax.

A city may establish a capital improvement fund for a district and may certify taxes, not to exceed the rate established by the ordinance creating the district, or any subsequent amendment thereto, each year to be levied for the fund against all of the property in the district, for the purpose of accumulating moneys for the financing or payment of a part or all of the costs of any improvement or self-liquidating improvement. However, parcels of property which are assessed as residential property for property tax purposes are exempt from the tax levied under this section except residential properties within a duly designated historic district. A tax levied under this section is not subject to the levy limitations in section 384.1 or 384.7.

85 Acts, ch 113, §3 HF 652
Section amended

386.10 Debt service tax.

A city shall establish a self-supported municipal improvement district debt service fund whenever any self-supported municipal improvement district bonds are issued and outstanding, other than revenue bonds, and shall certify taxes to be levied against all of the property in the district for the debt service fund in the amount necessary to pay interest as it becomes due and the amount necessary to pay, or to create a sinking fund to pay, the principal at maturity of all self-supported municipal improvement district bonds as authorized in section 386.11, issued by the city. However, parcels of property which are assessed as residential property for property tax purposes at the time of the issuance of the bonds are exempt from the tax levied under this section until the parcels are no longer assessed as residential property or until the residential properties are designated as a part of an historic district.

85 Acts, ch 113, §4 HF 652
Section amended

CHAPTER 400

CIVIL SERVICE

400.10 Preferences.

In all examinations and appointments under this chapter, other than promotions and appointments of chief of the police department and chief of the fire department, honorably discharged veterans from the military or naval forces of the United States in any war in which the United States has been engaged, including the Korean Conflict at any time between June 25, 1950 and January 31, 1955, both dates inclusive, and the Vietnam Conflict beginning August 5, 1964, and ending May 7, 1975, both dates inclusive, and who are citizens and residents of this state, shall have five points added to the veteran's grade or score attained in qualifying examinations for appointment to positions and five additional points added to the grade or score if the veteran has a service-connected disability or is receiving compensation, disability benefits or pension under laws administered by the veterans administration. An honorably discharged veteran who has been awarded the Purple Heart for disabilities incurred in action shall be considered to have a service-connected disability. However, the points shall be given only upon passing the exam and shall not be the determining factor in passing.

For the purposes of this section World War II shall be from December 7, 1941, to December 31, 1946, both dates inclusive.

85 Acts, ch 50, §2 SF 266
Unnumbered paragraph 1 amended

CHAPTER 403

URBAN RENEWAL LAW

403.2 Declaration of policy.

1. It is hereby found and declared that there exist in municipalities of the state slum and blighted areas, as herein defined, which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, constitutes an economic and social liability imposing onerous municipal burdens which decrease the tax base and reduce tax revenues, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of slums and blighted areas is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency and consume an excessive proportion of state revenues because of the extra services required for police, fire, accident, hospitalization and other forms of public protection, services and facilities.

2. It is further found and declared that certain slum or blighted areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as provided in this chapter, since the prevailing condition of decay may make impracticable the reclamation of the area by conservation or rehabilitation; that other areas or portions thereof may, through the means provided in this chapter, be susceptible of conservation or rehabilitation in such a manner that the conditions and evils hereinbefore enumerated may be eliminated, remedied or prevented; and that fringe areas can be conserved and rehabilitated through appropriate public action as herein authorized, and through the co-operation and voluntary action of the owners and tenants of property in such areas.

3. It is further found and declared that there exists in this state the continuing need for programs to alleviate and prevent conditions of unemployment; and that it is accordingly necessary to assist and retain local industries and commercial enterprises to strengthen and revitalize the economy of this state and its municipalities; that accordingly it is necessary to provide means and methods for the encouragement and assistance of industrial and commercial enterprises in locating, purchasing, constructing, reconstructing, modernizing, improving, maintaining, repairing, furnishing, equipping, and expanding in this state and its municipalities; that accordingly it is necessary to authorize local governing bodies to designate areas of a municipality as economic development areas for commercial and industrial enterprises; and that it is also necessary to encourage the location and expansion of commercial enterprises to more conveniently provide needed services and facilities of the commercial enterprises to municipalities and the residents of the municipalities. Therefore, the powers granted in this chapter constitute the performance of essential public purposes for this state and its municipalities.

4. It is further found and declared that the powers conferred by this chapter are for public uses and purposes for which public money may be expended and for which the power of eminent domain and police power exercised; and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination.

85 Acts, ch 66, §1 HF 494
NEW subsection 3 and subsequent subsection renumbered

403.4 Resolution of necessity.

No municipality shall exercise the authority herein conferred upon municipalities by this chapter until after its local governing body shall have adopted a resolution finding that:

1. One or more slum, blighted or economic development areas exist in the municipality.

2. The rehabilitation, conservation, redevelopment, development, or a combination thereof, of the area is necessary in the interest of the public health, safety, or welfare of the residents of the municipality.

85 Acts, ch 66, §2 HF 494
Subsections 1 and 2 amended

403.5 Urban renewal plan.

1. A municipality shall not approve an urban renewal project for an urban renewal area unless the governing body has, by resolution, determined the area to be a slum area, blighted area, economic development area or a combination of those areas, and designated the area as appropriate for an urban renewal project. The local governing body shall not approve an urban renewal plan until a general plan for the municipality has been prepared. For this purpose and other municipal purposes, authority is vested in every municipality to prepare, to adopt and to revise from time to time, a general plan for the physical development of the municipality as a whole, giving due regard to the environs and metropolitan surroundings. A municipality shall not acquire real property for an urban renewal project unless the local governing body has approved the urban renewal project in accordance with subsection 4.

2. The municipality may itself prepare or cause to be prepared an urban renewal plan; or any person or agency, public or private, may submit such a plan to a municipality. Prior to its approval of an urban renewal project, the local governing body shall submit such plan to the planning commission of the municipality, if any, for review and recommendations as to its conformity with the general plan for the development of the municipality as a whole. The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within thirty days after receipt of the plan for review. Upon receipt of the recommendations of the planning commission or, if no recommenda-

tions are received within said thirty days, then, without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal project prescribed by subsection 3 hereof.

3. The local governing body shall hold a public hearing on an urban renewal project after public notice thereof by publication in a newspaper having a general circulation in the area of operation of the municipality. The notice shall describe the time, date, place and purpose of the hearing, shall generally identify the urban renewal area covered by the plan, and shall outline the general scope of the urban renewal project under consideration.

4. Following such hearing, the local governing body may approve an urban renewal project if it finds that:

a. A feasible method exists for the location of families who will be displaced from the urban renewal area into decent, safe and sanitary dwelling accommodations within their means and without undue hardship to such families;

b. The urban renewal plan conforms to the general plan of the municipality as a whole; provided, that if the urban renewal area consists of an area of open land to be acquired by the municipality, such area shall not be so acquired except:

(1) If it is to be developed for residential uses, the local governing body shall determine that a shortage of housing of sound standards and design with decency, safety and sanitation exists in the municipality; that the need for housing accommodations has been or will be increased as a result of the clearance of slums in other areas, including other portions of the urban renewal area; that the conditions of blight in the area and the shortage of decent, safe and sanitary housing cause or contribute to an increase in and spread of disease and crime, and constitute a menace to the public health, safety, morals, or welfare; and that the acquisition of the area for residential uses is an integral part of and essential to the program of the municipality.

(2) If it is to be developed for nonresidential uses, the local governing body shall determine that such nonresidential uses are necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives. The acquisition may require the exercise of governmental action, as provided in this chapter, because of defective or unusual conditions of title, diversity of ownership, tax delinquency, improper subdivisions, outmoded street patterns, deterioration of site, economic disuse, unsuitable topography or faulty lot layouts, or because of the need for the correlation of the area with other areas of a municipality by streets and modern traffic requirements, or any combination of such factors or other conditions which retard development of the area.

5. An urban renewal plan may be modified at any time: Provided, that if modified after the lease or sale by the municipality of real property in the urban renewal project area, such modification may be conditioned upon such approval of the owner, lessee or successor in interest as the municipality may deem advisable, and in any event such modification shall be subject to such rights at law or in equity as a lessee or purchaser, or a lessee's or purchaser's successor or successors in interest, may be entitled to assert.

6. Upon the approval by a municipality of an urban renewal plan or of any modification thereof, such plan or modification shall be deemed to be in full force and effect for the respective urban renewal area, and the municipality may then cause such plan or modification to be carried out in accordance with its terms.

7. Notwithstanding any other provisions of this chapter, where the local governing body certifies that an area is in need of redevelopment or rehabilitation as a result of a flood, fire, hurricane, earthquake, storm, or other catastrophe respecting which the governor of the state has certified the need for disaster assistance under Public Law 875, Eighty-first Congress, [64 Stat. L. 1109; 42 U.S.C. § 1855-1855g] or other federal law, the local governing body may approve an urban renewal plan and an

urban renewal project with respect to such area without regard to the provisions of subsection 4 of this section and without regard to provisions of this section requiring a general plan for the municipality and a public hearing on the urban renewal project.

85 Acts, ch 66, §3 HF 494
Subsection 1 amended

403.7 Condemnation of property.

A municipality shall have the right to acquire by condemnation any interest in real property, including a fee simple title thereto, which it may deem necessary for or in connection with an urban renewal project under this chapter. A municipality may exercise the power of eminent domain in the manner provided in chapter 472, and Acts amendatory to that chapter or supplementary to that chapter, or it may exercise the power of eminent domain in the manner now or which may be hereafter provided by any other statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner. However, real property belonging to the state, or any political subdivision of this state, shall not be acquired without its consent, and real property or any right or interest in the property owned by any public utility company, pipeline company, railway or transportation company vested with the right of eminent domain under the laws of this state, shall not be acquired without the consent of the company, or without first securing, after due notice to the company and after hearing, a certificate authorizing condemnation of the property from the board, commission or body having the authority to grant a certificate authorizing condemnation. In a condemnation proceeding, if a municipality proposes to take a part of a lot or parcel of real property, the municipality shall also take the remaining part of the lot or parcel if requested by the owner.

85 Acts, ch 66, §4 HF 494
Section amended

403.17 Definitions.

The following terms wherever used or referred to in this chapter, shall have the following meanings, unless a different meaning is clearly indicated by the context:

1. "Agency" or "urban renewal agency" shall mean a public agency created by section 403.15.
2. "Municipality" shall mean any city in the state.
3. "Public body" shall mean the state or any political subdivision thereof.
4. "Local governing body" shall mean the council or other legislative body charged with governing the municipality.
5. "Mayor" shall mean the mayor of a municipality, or other officer or body having the duties customarily imposed upon the executive head of a municipality.
6. "Clerk" shall mean the clerk or other official of the municipality who is the custodian of the official records of such municipality.
7. "Federal government" shall include the United States or any agency or instrumentality, corporate or otherwise, of the United States.
8. "Slum area" shall mean an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which: By reason of dilapidation, deterioration, age or obsolescence; by reason of inadequate provision for ventilation, light, air, sanitation, or open spaces; by reason of high density of population and overcrowding; by reason of the existence of conditions which endanger life or property by fire and other causes; or which by any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime, and which is detrimental to the public health, safety, morals or welfare.
9. "Blighted area" means an area of a municipality within which the local governing body of the municipality determines that by reason of the presence of a substantial number of slum, deteriorated or deteriorating structures, defective or

inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of these factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, or welfare in its present condition and use. A disaster area referred to in section 403.5, subsection 7, constitutes a "blighted area".

10. "*Urban renewal project*" may include undertakings and activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of slums and blight, may include the designation and development of an economic development area in an urban renewal area, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal program. The undertakings and activities may include:

a. Acquisition of a slum area, blighted area, economic development area, or portion of the areas;

b. Demolition and removal of buildings and improvements;

c. Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the urban renewal area the urban renewal objectives of this chapter in accordance with the urban renewal plan;

d. Disposition of any property acquired in the urban renewal area, including sale, initial leasing or retention by the municipality itself, at its fair value for uses in accordance with the urban renewal plan;

e. Carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan;

f. Acquisition of any other real property in the urban renewal area, where necessary to eliminate unhealthful, insanitary or unsafe conditions, or to lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities;

g. Sale and conveyance of real property in furtherance of an urban renewal project.

11. "*Urban renewal area*" means a slum area, blighted area, economic development area, or combination of the areas, which the local governing body designates as appropriate for an urban renewal project.

12. "*Urban renewal plan*" means a plan, as it exists from time to time, for an urban renewal project. The plan shall:

a. Conform to the general plan for the municipality as a whole except as provided in section 403.5, subsection 7;

b. Be sufficiently complete to indicate the land acquisition, demolition and removal of structures, redevelopment, development, improvements, and rehabilitation proposed to be carried out in the urban renewal area, and to indicate zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

13. "*Real property*" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise.

14. "Bonds" shall mean any bonds, including refunding bonds, notes, interim certificates, certificates of indebtedness, debentures or other obligations.

15. "Obligee" shall include any bondholder, agents or trustees for any bondholders, or any lessor demising to the municipality property used in connection with an urban renewal project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government, when it is a party to any contract with the municipality.

16. "Person" shall mean any individual, firm, partnership, corporation, company, association, joint stock association; and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity for an individual or such entities.

17. "Area of operation" shall mean the area within the corporate limits of the municipality and the area within five miles of such limits, except that it shall not include any area which lies within the territorial boundaries of another incorporated city, unless a resolution shall have been adopted by the governing body of such other city declaring a need therefor.

18. "Board" or "commission" shall mean a board, commission, department, division, office, body or other unit of the municipality.

19. "Public officer" shall mean any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.

20. "Economic development area" means an area of a municipality designated by the local governing body as appropriate for commercial and industrial enterprises.

85 Acts, ch 66, §5-9 HF 494

Subsection 9 amended

Subsection 10, unnumbered paragraph 1 and paragraph a amended

Subsection 11 amended

Subsection 12, paragraph b amended

NEW subsection 20

403.19 Division of revenue from taxation—tax-increment financing.

A municipality may provide by ordinance that taxes levied on taxable property in an urban renewal project each year by or for the benefit of the state, city, county, school district, or other taxing district after the effective date of such ordinance, shall be divided as follows:

1. That portion of the taxes which would be produced by the rate at which the tax is levied each year by or for each of the taxing districts upon the total sum of the assessed value of the taxable property in the urban renewal project, as shown on the assessment roll as of January 1 of the calendar year preceding the effective date of the ordinance, or the assessment roll last equalized prior to the date of initial adoption of the urban renewal plan in the case of projects commenced prior to July 1, 1972, shall be allocated to and when collected be paid into the fund for the respective taxing district as taxes by or for said taxing district into which all other property taxes are paid. For the purpose of allocating taxes levied by or for any taxing district which did not include the territory in an urban renewal project on the effective date of the ordinance or initial adoption of the plan, but to which the territory has been annexed or otherwise included after the effective date, the assessment roll as of January 1 of the calendar year preceding the effective date of the ordinance or initial adoption of the plan shall be used in determining the assessed valuation of the taxable property in the project on the effective date.

2. That portion of the taxes each year in excess of such amount shall be allocated to and when collected be paid into a special fund of the municipality to pay the principal of and interest on loans, moneys advanced to, or indebtedness, whether funded, refunded, assumed, or otherwise, including bonds issued under the authority of section 403.9, subsection 1, incurred by the municipality to finance or refinance, in whole or in part, the redevelopment project, except that taxes for the payment of bonds and interest of each taxing district must be collected against all taxable

property within the taxing district without limitation by the provisions of this subsection. Unless and until the total assessed valuation of the taxable property in an urban renewal project exceeds the total assessed value of the taxable property in such project as shown by the last equalized assessment roll referred to in subsection 1 of this section, all of the taxes levied and collected upon the taxable property in the urban renewal project shall be paid into the funds for the respective taxing districts as taxes by or for said taxing districts in the same manner as all other property taxes. When such loans, advances, indebtedness, and bonds, if any, and interest thereon, have been paid, all moneys thereafter received from taxes upon the taxable property in such urban renewal project shall be paid into the funds for the respective taxing districts in the same manner as taxes on all other property.

3. The portion of taxes mentioned in subsection 2 of this section and the special fund into which they shall be paid, may be irrevocably pledged by a municipality for the payment of the principal and interest on loans, advances, bonds issued under the authority of section 403.9, subsection 1, or indebtedness, incurred by a municipality to finance or refinance, in whole or in part, the urban renewal project.

4. As used in this section the word "taxes" includes, but is not limited to, all levies on an ad valorem basis upon land or real property.

5. A city shall certify to the county auditor on or before December 31 the amount of loans, advances, indebtedness or bonds which qualify for payment from the special fund referred to in subsection 2, and the filing of the certificate shall make it a duty of the auditor to provide for the division of taxes in each subsequent year until the amount of the loans, advances, indebtedness or bond is paid to the special fund. In any year, the county auditor shall, upon receipt of a certified request from a city filed prior to January 1, increase the amount to be allocated under subsection 1 in order to reduce the amount to be allocated in the following fiscal year to the special fund, to the extent that the city does not request allocation to the special fund of the full portion of taxes which could be collected.

6. Tax collections within each taxing district may be allocated to the entire taxing district including the taxes on the valuations determined under subsection 1 and to the special fund created under subsection 2 in the proportion of their taxable valuations determined as provided in this section.

85 Acts, ch 240, §3-5 HF 729
Subsections 1 and 5 amended
NEW subsection 6

CHAPTER 404

URBAN REVITALIZATION TAX EXEMPTIONS

404.2 Conditions mandatory.

A city may only exercise the authority conferred upon it in this chapter after the following conditions have been met:

1. The governing body has adopted a resolution finding that the rehabilitation, conservation, redevelopment, or a combination thereof of the area is necessary in the interest of the public health, safety, or welfare of the residents of the city and the area meets the criteria of section 404.1.

2. The city has prepared a proposed plan for the designated revitalization area. The proposed plan shall include all of the following:

a. A legal description of the real estate forming the boundaries of the proposed area along with a map depicting the existing parcels of real estate.

b. The existing assessed valuation of the real estate in the proposed area, listing the land and building values separately.

c. A list of names and addresses of the owners of record of real estate within the area.

- d. The existing zoning classifications and district boundaries and the existing and proposed land uses within the area.
 - e. Any proposals for improving or expanding city services within the area including but not limited to transportation facilities, sewage, garbage collection, street maintenance, park facilities and police and fire protection.
 - f. A statement specifying whether the revitalization is applicable to none, some, or all of the property assessed as residential, agricultural, commercial or industrial property within the designated area or a combination thereof and whether the revitalization is for rehabilitation and additions to existing buildings or new construction or both. If revitalization is made applicable only to some property within an assessment classification, the definition of that subset of eligible property must be by uniform criteria which further some planning objective identified in the plan. The city shall state how long it is estimated that the area shall remain a designated revitalization area which time shall be longer than one year from the date of designation and shall state any plan by the city to issue revenue bonds for revitalization projects within the area.
 - g. The provisions that have been made for the relocation of persons, including families, business concerns and others, whom the city anticipates will be displaced as a result of improvements to be made in the designated area.
 - h. Any tax exemption schedule that shall be used in lieu of the schedule set out in section 404.3, subsection 1, 2, 3 or 4. This schedule shall not allow a greater exemption, but may allow a smaller exemption, than allowed in the schedule specified in the corresponding subsection of section 404.3.
 - i. The percent increase in actual value requirements that shall be used in lieu of the fifteen and ten percent requirements specified in section 404.3, subsection 7 and in section 404.5. This percent increase in actual value requirements shall not be greater than that provided in this chapter and shall be the same requirements applicable to all existing revitalization areas.
 - j. A description of any federal, state or private grant or loan program likely to be a source of funding for that area for residential improvements and a description of any grant or loan program which the city has or will have as a source of funding for that area for residential improvements.
3. The city has filed a copy of the proposed plan for the designated revitalization area with the city development board by the fourteenth day before the scheduled public hearing.
 4. The city has scheduled a public hearing and notified all owners of record of real property located within the proposed area, the tenants living within the proposed area and the city development board in accordance with section 362.3. In addition to notice by publication, notification shall also be given by ordinary mail to the last known address of the owners of record. The city shall also send notice by ordinary mail addressed to the "occupants" of city addresses located within the proposed area, unless the city council, by reason of lack of a reasonably current and complete address list, or for other good cause, shall have waived such notice. Notwithstanding the provisions of section 362.3, Code 1979, such notice shall be given by the thirtieth day prior to the public hearing.
 5. The public hearing has been held.
 6. A second public hearing has been held if:
 - a. The city development board requests, by certified mail, a second public hearing within thirty days after receipt of the minutes of the first public hearing or;
 - b. The city has received within thirty days after the holding of the first public hearing a valid petition requesting a second public hearing containing the signatures and current addresses of property owners that represent at least ten percent of the privately owned property within the designated revitalization area or;
 - c. The city has received within thirty days after the holding of the first public hearing a valid petition requesting a second public hearing containing the signatures

and current addresses of tenants that represent at least ten percent of the residential units within the designated revitalization area.

At any such second public hearing the city may specifically request those in attendance to indicate the precise nature of desired changes in the proposed plan.

7. The city has adopted the proposed or amended plan for the revitalization area after the requisite number of hearings. The city may subsequently amend this plan after a hearing. Notice of the hearing shall be published as provided in section 362.3, except that at least seven days' notice must be given and the public hearing shall not be held earlier than the next regularly scheduled city council meeting following the published notice.

85 Acts, ch 95, §1 SF 355
Subsection 7 amended

CHAPTER 414

MUNICIPAL ZONING

414.5 Changes—protest.

The regulations, restrictions, and boundaries may, from time to time, be amended, supplemented, changed, modified, or repealed. Notwithstanding section 414.2, as a part of an ordinance changing land from one zoning district to another zoning district or an ordinance approving a site development plan, a council may impose conditions on a property owner which are in addition to existing regulations if the additional conditions have been agreed to in writing by the property owner before the public hearing required under this section or any adjournment of the hearing. The conditions must be reasonable and imposed to satisfy public needs which are directly caused by the requested change. In case, however, of a written protest against a change or repeal which is filed with the city clerk and signed by the owners of twenty percent or more of the area of the lots included in the proposed change or repeal, or by the owners of twenty percent or more of the property which is located within two hundred feet of the exterior boundaries of the property for which the change or repeal is proposed, the change or repeal shall not become effective except by the favorable vote of at least three-fourths of all the members of the council. The provisions of section 414.4 relative to public hearings and official notice apply equally to all changes or amendments.

85 Acts, ch 9, §2 HF 265
Section amended

CHAPTER 421

DEPARTMENT OF REVENUE

421.17 Powers and duties.

In addition to the powers and duties transferred to the director of revenue, the director shall have and assume the following powers and duties:

1. To have and exercise general supervision over the administration of the assessment and tax laws of the state, over boards of supervisors and all other officers or boards of assessment and levy in the performance of their official duties, in all matters relating to assessments and taxation, to the end that all assessments of property and taxes levied thereon be made relatively just and uniform in substantial compliance with the law.

2. To supervise the activity of all assessors and boards of review in the state of Iowa; to co-operate with them in bringing about a uniform and legal assessment of property as prescribed by law.

The director may order the reassessment of all or part of the property in any taxing district in any year. Such reassessment shall be made by the local assessor according to law under the direction of the director and the cost thereof shall be paid in the same manner as the cost of making an original assessment.

The director shall determine the degree of uniformity of valuation as between the various taxing districts of the state and shall have the authority to employ competent personnel for the purpose of performing this duty.

For the purpose of bringing about uniformity and equalization of assessments throughout the state of Iowa, the director shall prescribe rules relating to the standards of value to be used by assessing authorities in the determination, assessment and equalization of actual value for assessment purposes of all property subject to taxation in the state, and such rules shall be adhered to and followed by all assessing authorities.

3. To prescribe and promulgate all forms of books and forms to be used in the listing and assessment of property, and on or before November 1 of each year shall furnish to the county auditor of each county such prescribed forms of assessment rolls and other forms to properly list and assess all property subject to taxation in each county. The department of revenue shall also from time to time prepare and furnish in like manner forms for any and all other blanks, memoranda or instructions which the director deems necessary or expedient for the use or guidance of any of the officers over which the director is authorized by law to exercise supervision.

4. To confer with, advise, and direct boards of supervisors, boards of review, and others obligated by law to make levies and assessments, as to their duties under the laws.

5. To direct proceedings, actions, and prosecutions to be instituted for the enforcement of the laws relating to the penalties, liabilities, and punishment of public officers, and officers or agents of corporations, and other persons or corporations, for failure or neglect to comply with the provisions of the statutes governing the return, assessment and taxation of property; to make or cause to be made complaints against members of boards of review, boards of supervisors or other assessing, reviewing, or taxing officers for official misconduct or neglect of duty. Provided, that employees of the department of revenue shall not during their regular hours of employment engage in the preparation of tax returns for individuals, except in connection with a regular audit thereof.

6. To require city, township, school districts, county, state, or other public officers to report information as to the assessment of property and collection of taxes and such other information as may be needful or desirable in the work of the department in such form and upon such blanks as the director may prescribe.

The director shall require all county recorders and city and county assessors to prepare a quarterly report in the manner and form to be prescribed by the director showing for each warranty deed or contract of sale of real estate, divided between rural and urban, during the last completed quarter the amount of revenue stamps, sale price or consideration, and the equalized value at which that property was assessed that year. This report with such further information as may be required by the director shall be submitted to the department within sixty days after the end of each quarter. The department shall prepare annual summaries of such records of the ratio of assessments to actual sales prices for all counties, and for cities having city assessors, and such information for the preceding year shall be available for public inspection by May 1.

7. To hold public hearings either at the seat of government or elsewhere in the state, and tax the costs thereof; to summon and compel witnesses to appear and give testimony, to administer oaths to said witnesses, and to compel said witnesses to produce for examination records, books, papers, and documents relating to any matter which the director shall have the authority to investigate or determine. Provided, however, that no bank or trust company or its officers or employees shall

be required to divulge knowledge concerning the property of any person when such knowledge was obtained through information imparted as a part of a business transaction with or for such person and in the usual and ordinary course of business of said bank or trust company, and was necessary and proper to the discharge of the duty of said bank or trust company in relation to such business transaction. This proviso shall be additional to other provisions of the law relating to confidential and privileged communications.

8. To cause the depositions of witnesses residing within or without the state, or absent therefrom, to be taken either on written or oral interrogatories, and the clerk of the district court of any county shall upon the order of the director issue a commission for the taking of such depositions. The proceedings therefor shall be the same as the proceedings for the taking of depositions in the district court so far as applicable.

9. To investigate the work and methods of boards of review, boards of supervisors, or other public officers, in the assessment, equalization, and taxation of all kinds of property, and for that purpose the director or employees of the department may visit the counties or localities when deemed necessary so to do.

10. To require any board of review at any time after its adjournment to reconvene and to make such orders as the director shall determine are just and necessary; to direct and order any board of review to raise or lower the valuation of the property, real or personal, in any township, city, or taxing district, to order and direct any board of review to raise or lower the valuation of any class or classes of property in any township, city, or taxing district, and generally to make any order or direction to any board of review as to the valuation of any property, or any class of property, in any township, city, county, or taxing district, which in the judgment of the director may seem just and necessary, to the end that all property shall be valued and assessed in the manner and according to the real intent of the law. For the purpose of this paragraph the words "taxing district" include drainage districts and levee districts.

The director may correct errors or obvious injustices in the assessment of any individual property, but the director shall not reduce the valuation of any individual property except upon the recommendation of the local board of review and no order of the director affecting any valuation shall be retroactive as to any reduction or increase in taxes payable prior to January 1 of the year in which such order is issued, or prior to September 1 of the preceding year in cities under special charter which collect their own municipal levies. Judicial review of the actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act.

The director may order made effective reassessments or revaluations in any taxing district for any taxing year or years and the director may in any year order uniform increases or decreases in valuation of all property or upon any class of property within any taxing district or any area within such taxing district, such orders to be effective in the year specified by the director. For the purpose of this paragraph the words "taxing district" include drainage districts and levee districts.

11. To carefully examine into all cases where evasion or violation of the law for assessment and taxation of property is alleged, complained of, or discovered, and to ascertain wherein existing laws are defective or are improperly or negligently administered, and cause to be instituted such proceedings as will remedy improper or negligent administration of the laws relating to the assessment or taxation of property.

12. To make a summary of the tax situation in the state, setting out the amount of moneys raised by both direct and indirect taxation; and also to formulate and recommend legislation for the better administration of the fiscal laws so as to secure just and equal taxation. To recommend such additions to and changes in the present system of taxation that in the director's judgment are for the best interest of the state and will eliminate the necessity of any levy for state purposes.

13. To transmit biennially to the governor and to each member and member-

elect of the legislature, thirty days before the meeting of the legislature, the report of the director, covering the subject of assessment and taxation, the result of the investigation of the director, recommendations for improvement in the system of taxation in the state, together with such measures as may be formulated for the consideration of the legislature.

14. To publish in pamphlet form the revenue laws of the state and distribute them to the county auditors, assessors, and boards of review.

15. To procure in such manner as the director may determine any information pertaining to the discovery of property which is subject to taxation in this state, and which may be obtained from the records of another state, and may furnish to the board or proper officers of another state, any information pertaining to the discovery of property which is subject to taxation in such state as disclosed by the records in this state.

16. To call upon any state department or institution for technical advice and data which may be of value in connection with the work of assessment and taxation.

17. To certify to the state comptroller on January 1 of each year the aggregate of each state tax for each county for said year.

18. To prepare and issue a state appraisal manual which each county and city assessor shall use in assessing and valuing all classes of property in the state. The appraisal manual shall be continuously revised and the manual and revisions shall be issued to the county and city assessors in such form and manner as prescribed by the director.

19. To issue rules as are necessary, subject to the provisions of chapter 17A, to provide for the uniform application of the exemptions provided in section 427.1 in all assessor jurisdictions in the state.

20. To subpoena from property owners and taxpayers any and all records and documents necessary to assist the department in the determination of the fair market value of industrial real estate. The burden of showing reasonable cause to believe that the documents or records sought by the subpoena are necessary to assist the department under this subsection shall be upon the director.

The provisions of sections 17A.10 to 17A.18 relating to contested cases shall not apply to any matters involving the equalization of valuations of classes of property as authorized by this chapter and chapter 441. This exemption shall not apply to a hearing before the state board of tax review.

21. To establish and maintain a procedure to set off against a debtor's income tax refund or rebate any debt, which is assigned to the department of human services, which the child support recovery unit is attempting to collect on behalf of an individual not eligible as a public assistance recipient, or which the foster care recovery unit of the department of human services is attempting to collect on behalf of a child receiving foster care provided by the department of human services, which has accrued through written contract, subrogation, or court judgment and which is in the form of a liquidated sum due and owing for the care, support or maintenance of a child or which is owed to the state for public assistance overpayments which the office of investigations of the department of human services is attempting to collect on behalf of the state. For purposes of this subsection, "public assistance" means aid to dependent children, medical assistance, food stamps, foster care, and state supplementary assistance. The procedure shall meet the following conditions:

a. Before setoff all outstanding tax liabilities collectible by the department of revenue shall be satisfied except that no portion of a refund or rebate shall be credited against tax liabilities which are not yet due.

b. Before setoff the child support recovery unit established pursuant to section 252B.2, the foster care recovery unit, and the office of investigations shall obtain and forward to the department of revenue the full name and social security number of the debtor. The department of revenue shall co-operate in the exchange of relevant information with the child support recovery unit as provided in section 252B.9, with

the foster care recovery unit, and with the office of investigations. However, only relevant information required by the child support unit, by the foster care recovery unit, or by the office of investigations shall be provided by the department of revenue. The information shall be held in confidence and shall be used for purposes of setoff only.

c. The child support recovery unit, the foster care recovery unit, and the office of investigations shall, at least annually, submit to the department of revenue for setoff the debts described in this subsection, which are at least fifty dollars, on a date to be specified by the department of human services by rule.

d. Upon submission of a claim the department of revenue shall notify the child support recovery unit, the foster care recovery unit, or the office of investigations as to whether the debtor is entitled to a refund or rebate and if so entitled shall notify the unit or office of the amount of the refund or rebate and of the debtor's address on the income tax return.

e. Upon notice of entitlement to a refund or rebate the child support recovery unit, the foster care recovery unit, or the office of investigations shall send written notification to the debtor, and a copy of the notice to the department of revenue, of the unit's or office's assertion of its rights or the rights of an individual not eligible as a public assistance recipient to all or a portion of the debtor's refund or rebate and the entitlement to recover the debt through the setoff procedure, the basis of the assertion, the opportunity to request that a joint income tax refund or rebate be divided between spouses, the debtor's opportunity to give written notice of intent to contest the claim, and the fact that failure to contest the claim by written application for a hearing will result in a waiver of the opportunity to contest the claim, causing final setoff by default. Upon application filed with the department within fifteen days from the mailing of the notice of entitlement to a refund or rebate, the child support recovery unit, the foster care recovery unit, or the office of investigations shall grant a hearing pursuant to chapter 17A. An appeal taken from the decision of a hearing officer and subsequent appeals shall be taken pursuant to chapter 17A.

f. Upon the request of a debtor or a debtor's spouse to the child support recovery unit, the foster care recovery unit, or the office of investigations, filed within fifteen days from the mailing of the notice of entitlement to a refund or rebate, and upon receipt of the full name and social security number of the debtor's spouse, the unit or office shall notify the department of revenue of the request to divide a joint income tax refund or rebate. The department of revenue shall upon receipt of the notice divide a joint income tax refund or rebate between the debtor and the debtor's spouse in proportion to each spouse's net income as determined under section 422.7.

g. The department of revenue shall, after notice has been sent to the debtor by the child support recovery unit, the foster care recovery unit, or the office of investigations, set off the debt against the debtor's income tax refund or rebate. However, if a debtor has made all current child support or foster care payments in accordance with a court order or an assessment of foster care liability for the twelve months preceding the proposed setoff and has regularly made delinquent child support or foster care payments during those twelve months, the child support or foster care recovery unit shall notify the department of revenue not to set off the debt against the debtor's income tax refund or rebate. If a debtor has made all current repayment of public assistance in accordance with a court order or voluntary repayment agreement for the twelve months preceding the proposed setoff and has regularly made delinquent payments during those twelve months, the office of investigations shall notify the department of revenue not to set off the debt against the debtor's income tax refund or rebate. The department shall refund any balance of the income tax refund or rebate to the debtor. The department of revenue shall periodically transfer the amount set off to the child support recovery unit, the foster care recovery unit, or the office of investigations. If the debtor gives timely written

notice of intent to contest the claim the department of revenue shall hold the refund or rebate until final disposition of the contested claim pursuant to chapter 17A or by court judgment. The child support recovery unit, the foster care recovery unit, or the office of investigations shall notify the debtor in writing upon completion of setoff.

22. To employ collection agencies, within or without the state, to collect delinquent taxes, including penalties and interest, administered by the department where the director finds that departmental personnel are unable to collect the delinquent accounts because of a taxpayer's location outside the state or for any other reason. Fees for services, reimbursement, or other remuneration, including attorney fees, paid to collection agencies shall be based upon the amount of tax, penalty, and interest actually collected and shall be paid only after the amount of tax, penalty, and interest is collected. All funds collected must be remitted in full to the department within thirty days from the date of collection from a taxpayer or in a lesser time as the director prescribes. The funds shall be applied toward the taxpayer's account and handled as are funds received by other means. An amount is appropriated from the amount of tax, penalty, and interest actually collected by the collection agency sufficient to pay all fees for services, reimbursement, or other remuneration pursuant to a contract with a collection agency under this subsection. A collection agency entering into a contract with the department for the collection of delinquent taxes pursuant to this subsection is subject to the requirements and penalties of tax information confidentiality laws of this state. All contracts and fees provided for in this subsection are subject to the approval of the governor.

23. To establish and maintain a procedure to set off against a defaulter's income tax refund or rebate the amount that is due because of a default on a guaranteed student or parental loan under chapter 261. The procedure shall meet the following conditions:

a. Before setoff all outstanding tax liabilities collectible by the department of revenue shall be satisfied except that a refund or rebate shall not be credited against tax liabilities which are not yet due.

b. Before setoff the college aid commission shall obtain and forward to the department of revenue the full name and social security number of the defaulter. The department of revenue shall cooperate in the exchange of relevant information with the college aid commission.

c. The college aid commission shall, at least annually, submit to the department of revenue for setoff the guaranteed student loan defaults, which are at least fifty dollars, on a date or dates to be specified by the college aid commission by rule.

d. Upon submission of a claim, the department of revenue shall notify the college aid commission whether the defaulter is entitled to a refund or rebate of at least fifty dollars and if so entitled shall notify the commission of the amount of the refund or rebate and of the defaulter's address on the income tax return. Section 422.72, subsection 1, does not apply to this paragraph.

e. Upon notice of entitlement to a refund or rebate, the college aid commission shall send written notification to the defaulter, and a copy of the notice to the department of revenue, of the commission's assertion of its rights to all or a portion of the defaulter's refund or rebate and the entitlement to recover the amount of the default through the setoff procedure, the basis of the assertion, the defaulter's opportunity to request that a joint income tax refund or rebate be divided between spouses, the defaulter's opportunity to give written notice of intent to contest the claim, and the fact that failure to contest the claim by written application for a hearing before a specified date will result in a waiver of the opportunity to contest the claim, causing final setoff by default. Upon application, the commission shall grant a hearing pursuant to chapter 17A. An appeal taken from the decision of a hearing officer and any subsequent appeals shall be taken pursuant to chapter 17A.

f. Upon the timely request of a defaulter or a defaulter's spouse to the college

aid commission and upon receipt of the full name and social security number of the defaulter's spouse, the commission shall notify the department of revenue of the request to divide a joint income tax refund or rebate. The department of revenue shall upon receipt of the notice divide a joint income tax refund or rebate between the defaulter and the defaulter's spouse in proportion to each spouse's net income as determined under section 422.7.

g. The department of revenue shall, after notice has been sent to the defaulter by the college aid commission, set off the amount of the default against the defaulter's income tax refund or rebate if both the amount of the default and the refund or rebate are at least fifty dollars. The department shall refund any balance of the income tax refund or rebate to the defaulter. The department of revenue shall periodically transfer the amount set off to the college aid commission. If the defaulter gives written notice of intent to contest the claim, the commission shall hold the refund or rebate until final disposition of the contested claim pursuant to chapter 17A or by court judgment. The commission shall notify the defaulter in writing upon completion of setoff.

24. To enter into reciprocal agreements with the departments of revenue of other states that have enacted legislation, that is substantially equivalent to the setoff procedure in subsection 23. A reciprocal agreement shall also be approved by the college aid commission. The agreement shall authorize the department to provide by rule for the setoff of state income tax refunds or rebates of defaulters from states with which Iowa has a reciprocal agreement and to provide for sending lists of names of Iowa defaulters to the states with which Iowa has a reciprocal agreement for setoff of that state's income tax refunds.

25. To establish and maintain a procedure to set off against a debtor's income tax refund or rebate any debt which is in the form of a liquidated sum due, owing, and payable to the clerk of the district court as a criminal fine, civil penalty, surcharge, or court costs. The procedure shall meet the following conditions:

a. Before setoff all outstanding tax liabilities collectible by the department shall be satisfied except that no portion of a refund or rebate shall be credited against tax liabilities which are not yet due.

b. Before setoff the clerk of the district court shall obtain and forward to the department the full name and social security number of the debtor. The department shall cooperate in the exchange of relevant information with the clerk. However, only relevant information required by the clerk shall be provided by the department. The information shall be held in confidence and shall be used for purposes of setoff only.

c. The clerk shall, at least quarterly and monthly if practicable, submit to the department for setoff the debts described in this subsection, which are at least fifty dollars.

d. Upon submission of a claim the department shall notify the clerk if the debtor is entitled to a refund or rebate and of the amount of the refund or rebate and the debtor's address on the income tax return.

e. Upon notice of entitlement to a refund or rebate the clerk shall send written notification to the debtor of the clerk's assertion of its rights to all or a portion of the debtor's refund or rebate and the entitlement to recover the debt through the setoff procedure, the basis of the assertion, the opportunity to request that a joint income tax refund or rebate be divided between spouses, and the debtor's opportunity to give written notice of intent to contest the amount of the claim. The clerk shall send a copy of the notice to the department.

f. Upon the request of a debtor or a debtor's spouse to the clerk, filed within fifteen days from the mailing of the notice of entitlement to a refund or rebate, and upon receipt of the full name and social security number of the debtor's spouse, the clerk shall notify the department of the request to divide a joint income tax refund or rebate. The department shall upon receipt of the notice divide a joint income tax refund or rebate between the debtor and the debtor's spouse in proportion to each spouse's net income as determined under section 422.7.

g. The department shall, after notice has been sent to the debtor by the clerk, set off the debt against the debtor's income tax refund or rebate. The department shall transfer at least quarterly and monthly if practicable, the amount set off to the clerk. If the debtor gives timely written notice of intent to contest the amount of the claim, the department shall hold the refund or rebate until final determination of the correct amount of the claim. The clerk shall notify the debtor in writing upon completion of setoff.

26. To provide that in the case of multiple claims to refunds or rebates filed under subsections 21, 23, and 25 that priority shall be given to claims filed by the child support recovery unit or the foster care recovery unit under subsection 21, next priority shall be given to claims filed by the college aid commission under subsection 23, next priority shall be given to claims filed by the office of investigations under subsection 21, and last priority shall be given to claims filed by a clerk of the district court under subsection 25.

85 Acts, ch 197, §8, 9 SF 570

Subsection 25 and 1985 amendment to subsection 26 effective July 1, 1986; 85 Acts, ch 197, §49

NEW subsection 25 and subsequent subsection renumbered

Subsection 26 amended

CHAPTER 422

INCOME, CORPORATION, SALES AND BANK TAX

422.3 Definitions controlling chapter.

For the purpose of this chapter and unless otherwise required by the context:

1. The word "*taxpayer*" includes any person, corporation, or fiduciary who is subject to a tax imposed by this chapter.
2. "*Department*" means the department of revenue.
3. "*Court*" means the district court in the county of the taxpayer's residence.
4. "*Director*" means the director of revenue.
5. "*Internal Revenue Code of 1954*" means the Internal Revenue Code of 1954, as amended to and including January 1, 1985.

85 Acts, ch 230, §3 SF 561

1985 amendment to subsection 5 retroactive to January 1, 1984, for tax years beginning on or after that date; 85

Acts, ch 230, §13

Subsection 5 amended

422.5 Tax imposed—applicable to federal employees.

1. A tax is imposed upon every resident and nonresident of the state which tax shall be levied, collected, and paid annually upon and with respect to the entire taxable income as defined in this division at rates as follows:

- a. On the first one thousand dollars of taxable income, or any part thereof, one-half of one percent.
- b. On the second thousand dollars of taxable income, or any part thereof, one and one-fourth percent.
- c. On the third thousand dollars of taxable income, or any part thereof, two and three-fourths percent.
- d. On the fourth thousand dollars of taxable income, or any part thereof, three and one-half percent.
- e. On the fifth, sixth, and seventh thousand dollars of taxable income, or any part thereof, five percent.
- f. On the eighth and ninth thousand dollars of taxable income, or any part thereof, six percent.
- g. On the tenth through the fifteenth thousand dollars of taxable income or any part thereof, seven percent.
- h. On the sixteenth through the twentieth thousand dollars of taxable income or any part thereof, eight percent.

i. On the twenty-first through the twenty-fifth thousand dollars of taxable income or any part thereof, nine percent.

j. On the twenty-sixth through the thirtieth thousand dollars of taxable income or any part thereof, ten percent.

k. On the thirty-first through the fortieth thousand dollars of taxable income or any part thereof, eleven percent.

l. On the forty-first through the seventy-fifth thousand dollars of taxable income or any part thereof, twelve percent.

m. On all taxable income over seventy-five thousand dollars, thirteen percent.

n. The tax imposed upon the taxable income of a nonresident shall be computed by reducing the amount determined pursuant to paragraphs "a" through "m" by the amounts of nonrefundable credits under this division and by multiplying this resulting amount by a fraction of which the nonresident's net income allocated to Iowa, as determined in section 422.8, subsection 2, is the numerator and the nonresident's total net income computed under section 422.7 is the denominator. This provision also applies to individuals who are residents of Iowa for less than the entire tax year.

o. There is imposed upon every resident and nonresident of this state, including estates and trusts, the greater of the tax determined in paragraphs "a" through "n" or the state alternative minimum tax equal to nine percent of the state alternative minimum taxable income of the taxpayer as computed under this paragraph.

The state alternative minimum taxable income of a taxpayer is equal to the taxpayer's state taxable income, as computed with the deductions in section 422.9, with the following adjustments:

(1) Add items of tax preference included in federal alternative minimum taxable income under section 57 of the Internal Revenue Code of 1954. In the case of an estate or trust, the items of tax preference shall be apportioned between the estate or trust and the beneficiaries in accordance with rules prescribed by the director. For purposes of computing the items of tax preference, the gain or loss from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt or from the sale or exchange of property as a result of actual notice of foreclosure shall not be taken into account in computing net capital gain if all of the following conditions are met:

(a) The forfeiture, transfer, or sale or exchange was done for the purpose of establishing a positive cash flow.

(b) Immediately before the forfeiture, transfer, or sale or exchange, the taxpayer's debt to asset ratio exceeded seventy-five percent as computed under generally accepted accounting practices.

(c) The taxpayer's net worth at the end of the tax year is less than seventy-five thousand dollars.

In determining a taxpayer's net worth at the end of the tax year a taxpayer shall include any asset transferred within one hundred twenty days prior to the end of the tax year without adequate and full consideration in money or money's worth. In determining the taxpayer's debt to asset ratio, the taxpayer shall include any asset transferred, within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange, without adequate and full consideration in money or money's worth. For purposes of this subsection, actual notice of foreclosure includes, but is not limited to, bankruptcy or written notice from a creditor of the creditor's intent to foreclose where there is reasonable belief that the creditor can force a sale of the property.

(2) Subtract the applicable exemption amount as follows:

(a) Seventeen thousand five hundred dollars for a married person who files separately or for an estate or trust.

(b) Twenty-six thousand dollars for a single person or an unmarried head of household.

(c) Thirty-five thousand dollars for a married couple which files a joint return.

(3) Subtract the amount of the net operating loss computed in section 422.9, subsection 3, for a tax year other than the current year which was carried back or carried forward to the current year under section 422.9, subsection 3, paragraph "a", "b" or "c". However, in the case of a net operating loss computed for a tax year beginning after December 31, 1982 which is carried back or carried forward to the current taxable year, the net operating loss shall be reduced by the amount of the items of tax preference arising in such year which was taken into account in computing the net operating loss in section 422.9, subsection 3.

The state alternative minimum tax of a taxpayer whose items of tax preference include the gain or loss from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt or from the sale or exchange of property as a result of actual notice of foreclosure where the fair market value of the taxpayer's assets exceeds the taxpayer's liabilities immediately before such forfeiture, transfer, or sale or exchange shall not be greater than such excess, including any asset transferred within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange.

In the case of a resident, including a resident estate or trust, the state's apportioned share of the state alternative minimum tax is one hundred percent of the state alternative minimum tax computed in this subsection. In the case of a nonresident, including a nonresident estate or trust, or an individual, estate or trust that is domiciled in the state for less than the entire tax year, the state's apportioned share of the state alternative minimum tax is the amount of tax computed under this subsection, reduced by the applicable credits in sections 422.10, 422.11, 422.11A and 422.12 and this result multiplied by a fraction with a numerator of the sum of state net income allocated to Iowa as determined in section 422.8, subsection 2, and tax preference items attributable to Iowa and with a denominator of the sum of total net income computed under section 422.7 and all tax preference items. In computing this fraction, those items excludable under subparagraph (1) shall not be used in computing the tax preference items. Married taxpayers electing to file separate returns or separately on a combined return must allocate the minimum tax computed in this subsection in the proportion that each spouse's respective preference items under section 57 of the Internal Revenue Code of 1954 bear to the combined preference items of both spouses.

2. However, no tax shall be imposed on any resident or nonresident whose net income, as defined in section 422.7, is five thousand dollars or less; but in the event that the payment of tax under this division would reduce the net income to less than five thousand dollars, then the tax shall be reduced to that amount which would result in allowing the taxpayer to retain a net income of five thousand dollars. The preceding sentence does not apply to estates or trusts. For the purpose of this paragraph, the entire net income, including any part thereof not allocated to Iowa, shall be taken into account. If the combined net income of a husband and wife exceeds five thousand dollars, neither of them shall receive the benefit of this paragraph, and it is immaterial whether they file a joint return or separate returns. A person who is claimed as a dependent by another person as defined in section 422.12 shall not receive the benefit of this paragraph if the person claiming the dependent has net income exceeding five thousand dollars or the person claiming the dependent and the person's spouse have combined net income exceeding five thousand dollars.

3. A resident of Iowa who is on active duty in the armed forces of the United States, as defined in Title 10, United States Code, section 101, for more than six continuous months, shall not include any income received for such service performed on or after January 1, 1969, or prior to January 1, 1977, in computing the tax imposed by this section.

4. The tax herein levied shall be computed and collected as hereinafter provided.

5. The provisions of this division shall apply to all salaries received by federal officials or employees of the United States government as provided for herein.

6. A person who is disabled, is sixty-two years of age or older or is the surviving spouse of an individual or survivor having an insurable interest in an individual who would have qualified for the exemption under this paragraph for this tax year and receives one or more annuities from the United States civil service retirement and disability trust fund, and whose net income, as defined in section 422.7, is sufficient to require that the tax be imposed upon it under this section, may determine final taxable income for purposes of imposition of the tax by excluding the amount of annuities received from the United States civil service retirement and disability trust fund, which are not already excluded in determining net income, as defined in section 422.7, up to a maximum each tax year of five thousand five hundred dollars for a person who files a separate state income tax return and eight thousand dollars total for a husband and wife who file a joint state income tax return. However, a surviving spouse who is not disabled or sixty-two years of age or older can only exclude the amount of annuities received as a result of the death of the other spouse. The amount of the exemption shall be reduced by the amount of any social security benefits received. For the purpose of this section, the amount of annuities received from the United States civil service retirement and disability trust fund taxable under the Internal Revenue Code of 1954 shall be included in net income for purposes of determining eligibility under the five thousand dollar or less exclusion.

7. Upon determination of the latest cumulative inflation factor, the director of revenue shall multiply each dollar amount set forth in subsection 1, paragraphs "a" through "m" of this section, and each dollar amount specified in this section as the maximum amount of annuities received which may be excluded in determining final taxable income, by this cumulative inflation factor, shall round off the resulting product to the nearest one dollar, and shall incorporate the result into the income tax forms and instructions for each tax year.

8. Income of an individual which is excluded from gross income under the Internal Revenue Code of 1954 as a result of the provisions of the Hostage Relief Act of 1980, 94 stat. 1967, shall not be included as income in computing the tax imposed by this section.

9. In addition to the other taxes imposed by this section, a tax is imposed on the amount of a lump sum distribution for which the taxpayer has elected under section 402(e) of the Internal Revenue Code of 1954 to be separately taxed for federal income tax purposes for the tax year. The rate of tax is equal to twenty-five percent of the separate federal tax imposed on the amount of the lump sum distribution. A nonresident is liable for this tax only on that portion of the lump sum distribution allocable to Iowa. The total amount of the lump sum distribution subject to separate federal tax shall be included in net income for purposes of determining eligibility under the five thousand dollar or less exclusion.

85 Acts, ch 243, §1, 2 SF 24

1985 amendments adding new paragraph o to subsection 1 and striking unnumbered paragraph 10 retroactive to January 1, 1985, for tax years beginning on or after that date; 85 Acts, ch 243, §6

For taxpayers with capital gains transactions occurring between January 1, 1985, and May 1, 1985, the 1985 Iowa minimum tax may be computed under the law in effect on December 31, 1984; 85 Acts, ch 243, §6

Computation of Iowa minimum tax for a tax year beginning in 1984; see 85 Acts, ch 243, §4

Local earnings tax; §422B.5 et seq.

Unnumbered paragraphs numbered and lettered; subsections lettered as paragraphs

Subsection 1, NEW paragraph o

Unnumbered paragraph 10 (former last paragraph) struck

422.7 "Net income"—how computed.

The term "net income" means the adjusted gross income as properly computed for federal income tax purposes under the Internal Revenue Code of 1954, with the following adjustments:

1. Subtract interest and dividends from federal securities.
2. Add interest and dividends from foreign securities and from securities of state and other political subdivisions exempt from federal income tax under the Internal Revenue Code of 1954.

3. Where the adjusted gross income includes capital gains or losses, or gains or losses from property other than capital assets, and such gains or losses have been determined by using a basis established prior to January 1, 1934, an adjustment may be made, under rules prescribed by the director, to reflect the difference resulting from the use of a basis of cost or January 1, 1934, fair market value, less depreciation allowed or allowable, whichever is higher. Provided that the basis shall be fair market value as of January 1, 1955, less depreciation allowed or allowable, in the case of property acquired prior to that date if use of a prior basis is declared to be invalid.

4. Subtract installment payments received by a beneficiary under an annuity which was purchased under an employee's pension or retirement plan when the commuted value of said installments has been included as a part of the decedent employee's estate for Iowa inheritance tax purposes.

5. Add the amount by which the basis of qualified depreciable property is required to be increased for depreciation purposes under the Internal Revenue Code Amendments Act of 1964 to the extent that such amount equals the net amount of the special deduction allowed on the basis of the amount by which the depreciable basis of such qualified property was required to be reduced for depreciation purposes under the Internal Revenue Code Amendments Act of 1962. The "net amount of the special deduction" shall be computed by taking the sum of the amounts by which the basis of qualified property was required to be decreased for depreciation purposes for the years 1962 and 1963 and subtracting from it the sum of the amounts by which the basis of such property was required to be increased, prior to 1964, for depreciation or disposition purposes under the Internal Revenue Code Amendments Act of 1962.

6. Individual taxpayers and married taxpayers who file a joint federal income tax return and who elect to file a joint return, separate returns or separate filing on a combined return for Iowa income tax purposes, may avail themselves of the disability income exclusion and shall compute the amount of the disability income exclusion subject to the limitations for joint federal income tax return filers provided by section 105(d) of the Internal Revenue Code of 1954. The disability income exclusion provided in section 105(d) of the Internal Revenue Code of 1954, as amended up to and including December 31, 1982, continues to apply for state income tax purposes for tax years beginning on or after January 1, 1984.

7. Add to the taxable income of trusts, that portion of trust income excluded from federal taxable income under section 641(c) of the Internal Revenue Code of 1954.

8. Married taxpayers who file a joint federal income tax return and who elect to file separate returns or separate filing on a combined return for Iowa income tax purposes, may avail themselves of the expensing of business assets and capital loss provisions of sections 179(a) and 1211(b) respectively of the Internal Revenue Code of 1954 and shall compute the amount of expensing of business assets and capital loss subject to the limitations for joint federal income tax return filers provided by sections 179(b) and 1211(b) respectively of the Internal Revenue Code of 1954.

9. Subtract the amount of the work incentive programs credit allowable for the taxable year under section 40 or the jobs tax credit allowable for the tax year under section 44B of the Internal Revenue Code of 1954 to the extent that the credit increased federal adjusted gross income.

10. Married taxpayers, who file a joint federal income tax return and who elect to file separate returns or separate filing on a combined return for state income tax purposes, shall include in net income any unemployment compensation benefits received subject to the limitations for joint federal income tax return filers provided in section 85 of the Internal Revenue Code of 1954.

11. Subtract the amount of the alcohol fuel credit allowable for the tax year under section 44E of the Internal Revenue Code of 1954 to the extent that the credit increased federal adjusted gross income.

12. Married taxpayers, who file a joint federal income tax return and who elect

to file separate returns or separate filing on a combined return for state income tax purposes, may avail themselves of the dividend exclusion provisions of section 116(a) of the Internal Revenue Code of 1954 and shall compute the dividend exclusion subject to the limitations for joint federal income tax return filers provided by section 116(a) of the Internal Revenue Code of 1954.

13. The exclusion of interest income provided by section 128 of the Internal Revenue Code of 1954 is not applicable in computing Iowa net income for tax years beginning on or after January 1, 1981 and before January 1, 1984.

14. The deduction for a married couple where both persons are wage earners which is provided by section 221 of the Internal Revenue Code of 1954 is not applicable in computing Iowa net income for tax years beginning on or after January 1, 1982.

15. The deduction allowed under section 162(h) of the Internal Revenue Code of 1954 is not applicable in computing Iowa net income for any tax year beginning on or before December 31, 1980. The deduction allowed under section 604 of the Tax Reform Act of 1976, as amended up to and including December 31, 1980, is allowable in computing Iowa net income, for tax years beginning on or before December 31, 1980, under provisions effective for the year for which the return is made. The deduction allowed under section 162(h) of the Internal Revenue Code of 1954 is not applicable in computing Iowa net income for any tax year beginning on or after January 1, 1981. The deduction allowed under section 604 of the Tax Reform Act of 1976, as amended up to and including December 31, 1980, is allowable in computing Iowa net income for tax years beginning on or after January 1, 1981. The maximum allowable deduction, other than for travel expense, shall not exceed fifty dollars per day, where the taxpayer elects on the Iowa return to be governed by section 604 of the Tax Reform Act of 1976, as amended up to and including December 31, 1980, unless the taxpayer itemized expenses.

16. Add the amounts deducted and subtract the amounts included as income as a result of the treatment provided sale-leaseback agreements under section 168(f)(8) of the Internal Revenue Code of 1954 to the extent that the amounts deducted and the amounts included in income are not otherwise deductible or included in income under the Internal Revenue Code of 1954. Entitlement to depreciation on any property included in a sale-leaseback agreement shall be determined under the Internal Revenue Code of 1954, excluding section 168(f)(8) in making the determination.

17. Subtract the amount of unemployment compensation to be included in Iowa net income for any tax year. Add back the amount of unemployment compensation computed under section 85 of the Internal Revenue Code of 1954, as amended up to and including December 31, 1981. This subsection is effective only for the tax year beginning on or after January 1, 1982 and before December 31, 1982.

18. If the adjusted gross income includes income or loss from a small business operated by the taxpayer, an additional deduction shall be allowed in computing the income or loss from the small business if the small business hired for employment in the state during its annual accounting period ending with or during the taxpayer's tax year any of the following:

a. A handicapped individual domiciled in this state at the time of the hiring meets any of the following conditions:

(1) Has a physical or mental impairment which substantially limits one or more major life activities.

(2) Has a record of that impairment.

(3) Is regarded as having that impairment.

b. An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has been convicted of a felony in this or any other state or the District of Columbia.

- (2) Is on parole pursuant to chapter 906.
- (3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.
- (4) Is in a work release program pursuant to chapter 246, division IX.
- c. An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1 applies.

The amount of the additional deduction is equal to fifty percent of the wages paid to individuals named in paragraphs "a", "b", and "c" who were hired for the first time by that business during the annual accounting period for work done in the state. This additional deduction is allowed for the wages paid to those individuals successfully completing a probationary period during the twelve months following the date of first employment by the business and shall be deducted at the close of the annual accounting period.

The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the twelve-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the Iowa department of job service, the additional deduction shall be allowed.

A taxpayer who is a partner of a partnership or a shareholder of a subchapter S corporation, may deduct that portion of wages qualified under this subsection paid by the partnership or subchapter S corporation based on the taxpayer's pro rata share of the profits or losses from the partnership or subchapter S corporation.

For purposes of this subsection, "*physical or mental impairment*" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems or any mental or psychological disorder, including mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.

For purposes of this subsection, "*small business*" means small business as defined in section 220.1, subsection 28, except that it shall also include the operation of a farm.

19. Married taxpayers, who file a joint federal income tax return and who elect to file separate returns or who elect separate filing on a combined return for state income tax purposes, shall include in net income any social security benefits or tier 1 railroad retirement benefits received to the same extent as those benefits are taxable on the taxpayer's joint federal return for that year under section 86 of the Internal Revenue Code of 1954. The benefits included in net income must be allocated between the spouses in the ratio of the social security benefits or tier 1 railroad retirement benefits received by each spouse to the total of these benefits received by both spouses.

20. Subtract the unemployment compensation benefits for tax years beginning on January 1, 1979 to the extent those benefits had been included in net income on a return filed before January 1, 1981 and were excluded from income under Act section 1075 of the Tax Reform Act of 1984.* Notwithstanding the statute of limitations specified in section 422.73, subsection 2, taxpayers who would be barred from claiming a refund or credit from an overpayment resulting from the change made by Act section 1075 of the Tax Reform Act of 1984* are entitled to receive a refund or credit if they file a claim with the department on or before June 30, 1986.

85 Acts, ch 230, §4 SF 561

*Pub. L. No. 98-369, 98 Stat. 494

NEW subsection 20

422.8 Allocation of income earned in Iowa and other states.

Under rules prescribed by the director, net income of individuals, estates and trusts shall be allocated as follows:

1. The amount of income tax paid to another state or foreign country by a resident taxpayer of this state on income derived from sources outside of Iowa shall be allowed as a credit against the tax computed under this chapter, except that the credit shall not exceed what the amount of the Iowa tax would have been on the same income which was taxed by the other state or foreign country. The limitation on this credit shall be computed according to the following formula: Income earned outside of Iowa and taxed by another state or foreign country shall be divided by the total income of the resident taxpayer of Iowa. This quotient multiplied times the net Iowa tax as determined on the total income of the taxpayer as if entirely earned in Iowa shall be the maximum tax credit against the Iowa net tax.

2. Nonresident's net income allocated to Iowa is the net income, or portion thereof, which is derived from a business, trade, profession, or occupation carried on within this state or income from any property, trust, estate, or other source within Iowa. If any business, trade, profession, or occupation is carried on partly within and partly without the state, only the portion of the net income which is fairly and equitably attributable to that part of the business, trade, profession, or occupation carried on within the state is allocated to Iowa for purposes of section 422.5, subsection 1, paragraph "n" and section 422.13 and income from any property, trust, estate, or other source partly within and partly without the state is allocated to Iowa in the same manner, except that annuities, interest on bank deposits and interest-bearing obligations, and dividends are allocated to Iowa only to the extent to which they are derived from a business, trade, profession, or occupation carried on within the state. However, income received by an individual who is a resident of another state is not allocated to Iowa if the income is subject to an income tax imposed by the state where the individual resides, and if the state of residence allows a similar exclusion for income received in that state by residents of Iowa. In order to implement the exclusions, the director shall designate by rule the states which allow a similar exclusion for income received by residents of Iowa, and may enter into agreements with other states to provide that similar exclusions will be allowed, and to provide suitable withholding requirements in each state.

3. Taxable income of resident and nonresident estates and trusts shall be allocated in the same manner as individuals.

4. The amount of minimum tax paid to another state or foreign country by a resident taxpayer of this state from preference items derived from sources outside of Iowa shall be allowed as a credit against the tax computed under this division except that the credit shall not exceed what the amount of state alternative minimum tax would have been on the same preference items which were taxed by the other state or foreign country. The limitation on this credit shall be computed according to the following formula: The total of preference items earned outside of Iowa and taxed by another state or foreign country shall be divided by the total of preference items of the resident taxpayer of Iowa. In computing this quotient, those items excludable under section 422.5, subsection 1, paragraph "o", subparagraph (1) shall not be used in computing the preference items. This quotient multiplied times the net state alternative minimum tax as determined in section 422.5, subsection 1, paragraph "o" on the total of preference items as if entirely earned in Iowa shall be the maximum tax credit against the Iowa alternative minimum tax. However, the maximum tax credit will not be allowed to the extent that the minimum tax imposed by the other state or foreign country is less than the maximum tax credit computed above.

⁸⁵ Acts, ch 243, §3 SF 24

⁸⁶ New subsection 4 retroactive to January 1, 1985, for tax years beginning on or after that date; 85 Acts, ch 243,

NEW subsection 4

422.10 Research activities credit.

The taxes imposed under this division shall be reduced by a state tax credit for increasing research activities in this state. For individuals, the credit shall equal six and one-half percent of the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures. For purposes of this section, an individual may claim a research credit for qualifying research expenditures incurred by a partnership, subchapter S corporation, and estate or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of a partnership, subchapter S corporation, or estate or trust. For purposes of this section, "qualifying expenditures for increasing research activities" means the qualifying expenditures as defined for the federal credit for increasing research activities computed under section 30 of the Internal Revenue Code of 1954, as amended to and including January 1, 1983. The research activities credit is applicable for taxable years beginning after December 31, 1985 to the same extent that the credit is applicable for federal income tax purposes for taxable years beginning after December 31, 1985.

Any credit in excess of the tax liability less personal exemption and child care credits provided in section 422.12 for the taxable year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following taxable year.

85 Acts, ch 230, §5 SF 561

Amendment retroactive to January 1, 1985, for tax years beginning on or after that date; 85 Acts, ch 230, §14

See Code editor's note

Unnumbered paragraph 1 amended

422.11A New jobs tax credit.

The taxes imposed under this division, less credits allowed under sections 422.10, 422.11 and 422.12, shall be reduced by a new jobs tax credit. An industry which has entered into an agreement under chapter 280B and which has increased its base employment level by at least ten percent within the time set in the agreement or, in the case of an industry without a base employment level, adds new jobs within the time set in the agreement is entitled to this new jobs tax credit for the tax year selected by the industry. In determining if the industry has increased its base employment level by ten percent or added new jobs, only those new jobs directly resulting from the project covered by the agreement and those directly related to those new jobs shall be counted. The amount of this credit is equal to the product of six percent of the taxable wages upon which an employer is required to contribute to the state unemployment compensation fund, as defined in section 96.19, subsection 20, times the number of new jobs existing in the tax year that directly result from the project covered by the agreement or new jobs that directly result from those new jobs. The tax year chosen by the industry shall either begin or end during the period beginning with the date of the agreement and ending with the date by which the project is to be completed under the agreement. An individual may claim the new jobs tax credit allowed a partnership, subchapter S corporation, or estate or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of a partnership, subchapter S corporation, or estate or trust. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten tax years or until depleted, whichever is the earlier. For purposes of this section, "agreement", "industry", "new job" and "project" mean the same as defined in section 280B.2 and "base employment level" means the number of full-time jobs an industry employs at the plant site which is covered by an agreement under chapter 280B on the date of that agreement.

85 Acts, ch 32, §80 SF 395

NEW section

422.21 Form and time of return.

Returns shall be in the form the director may, from time to time, prescribe, and shall be filed with the department on or before the last day of the fourth month after the expiration of the tax year except that co-operative associations as defined in section 6072(d) of the Internal Revenue Code of 1954 shall file their returns on or before the fifteenth day of the ninth month following the close of the taxable year. If, under the Internal Revenue Code of 1954, a corporation is required to file a return covering a tax period of less than twelve months, the state return shall be for the same period and shall be due forty-five days after the due date of the federal tax return, excluding any extension of time to file. In case of sickness, absence, or other disability, or if good cause exists, the director may allow further time for filing returns. The director shall cause to be prepared blank forms for the returns and shall cause them to be distributed throughout the state and to be furnished upon application, but failure to receive or secure the form does not relieve the taxpayer from the obligation of making a return that is required. The department may as far as consistent with the Code draft income tax forms to conform to the income tax forms of the internal revenue department of the United States government. Each return by a taxpayer upon whom a tax is imposed by section 422.5, subsection 1, paragraph "g" shall show the county of the residence of the taxpayer.

The department shall make available to persons required to make personal income tax returns under the provisions of this chapter, and when such income is derived mainly from salaries and wages or from the operation of a business or profession, a form which shall take into consideration the normal deductions and credits allowable to any such taxpayer, and which will permit the computation of the tax payable without requiring the listing of specific deductions and credits. In arriving at schedules for payment of taxation under such forms the department shall as nearly as possible base such schedules upon a total of deductions and credits which will result in substantially the same payment as would have been made by such taxpayer were the taxpayer to specifically list his allowable deductions and credits. In lieu of such return any taxpayer may elect to list permissible deductions and credits as provided by law. It is the intent and purpose of this provision to simplify the procedure of collection of personal income tax, and the director shall have the power in any case when deemed necessary or advisable to require any taxpayer, who has made a return in accordance with the schedule herein provided for, to make an additional return in which all deductions and credits are specifically listed. The department may revise the schedules adopted in connection with such simplified form whenever such revision is necessitated by changes in federal income tax laws, or to maintain the collection of substantially the same amounts from taxpayers as would be received were the specific listing of deductions and credits required.

The department shall provide space on the prescribed income tax form, wherein the taxpayer shall enter the name of the school district of the taxpayer's residence. Such place shall be indicated by prominent type. A nonresident taxpayer shall so indicate. If such information is not supplied on the tax return it shall be deemed an incomplete return.

The director shall determine for the 1979 and subsequent calendar years the annual and cumulative inflation factors for those calendar years to be applied to tax years beginning on or after January 1 of that calendar year. The director shall compute the new dollar amounts as specified therein to be adjusted in section 422.5 by the latest cumulative inflation factor and round off the result to the nearest one dollar. The annual and cumulative inflation factors determined by the director are not rules as defined in section 17A.2, subsection 7.

85 Acts, ch 230, §6 SF 561

1985 amendment to unnumbered paragraph 1 retroactive to January 1, 1985, for tax years beginning on or after that date; 85 Acts, ch 230, §14

Unnumbered paragraph 1 amended

422.27 Final report of fiduciary—conditions.

1. A final account of a personal representative shall not be allowed by any court until thirty days after written notice is given to the department of the proposed discharge of the personal representative and unless the account shows, and the judge of the court finds, that all taxes imposed by this division upon the personal representative, which have become payable, have been paid, and that all taxes which may become due are secured by bond, deposit or otherwise. The certificate of the director and the receipt for the amount of the tax certified shall be conclusive as to the payment of the tax to the extent of the certificate.

2. For the purpose of facilitating the settlement and distribution of estates held by fiduciaries, the director may, on behalf of the state, agree upon the amount of taxes at any time due or to become due from such fiduciaries under the provisions of this division, and payment in accordance with such agreement shall be full satisfaction of the taxes to which the agreement relates.

85 Acts, ch 148, §1 HF 761

Amendment effective for final reports filed on or after July 1, 1985; 85 Acts, ch 148, §10
Subsection 1 amended

422.33 Corporate tax imposed—credit.

1. A tax is hereby imposed upon each corporation organized under the laws of this state, and upon every foreign corporation doing business in this state, annually in an amount computed by applying the following rates of taxation to the net income received by the corporation during the income year:

a. On the first twenty-five thousand dollars of taxable income, or any part thereof, the rate of six percent.

b. On taxable income between twenty-five thousand dollars and one hundred thousand dollars or any part thereof, the rate of eight percent.

c. On taxable income between one hundred thousand dollars and two hundred fifty thousand dollars or any part thereof, the rate of ten percent.

d. On taxable income of two hundred fifty thousand dollars or more, the rate of twelve percent.

2. If the trade or business of the corporation is carried on entirely within the state, or if the trade or business consists of the operation of a farm and the property is located entirely within the state, the tax shall be imposed on the entire net income, but if such trade or business is carried on partly within and partly without the state, or if the trade or business consists of the operation of a farm and the property is located partly within and partly without the state, the tax shall be imposed only on the portion of the net income reasonably attributable to the trade or business within the state, said net income attributable to the state to be determined as follows:

a. Nonbusiness interest, dividends, rents and royalties, less related expenses, shall be allocated within and without the state in the following manner:

(1) Nonbusiness interest, dividends, and royalties from patents and copyrights shall be allocable to this state if the taxpayer's commercial domicile is in this state.

(2) Nonbusiness rents and royalties received from real property located in this state are allocable to this state.

(3) Nonbusiness rents and royalties received from tangible personal property are allocable to this state to the extent that the property is utilized in this state; or in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property is utilized. The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown, or unascertainable by the taxpayer tangible personal property is utilized in the state

in which the property was located at the time the rental or royalty payor obtained possession.

(4) Nonbusiness capital gains and losses from the sale or other disposition of assets shall be allocated as follows:

Gains and losses from the sale or other disposition of real property located in this state are allocable to this state.

Gains and losses from the sale or other disposition of tangible personal property are allocable to this state if the property had a situs in this state at the time of the sale or disposition or if the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

Gains and losses from the sale or disposition of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

b. Net nonbusiness income of the above class having been separately allocated and deducted as above provided, the remaining net business income of the taxpayer shall be allocated and apportioned as follows:

(1) Business interest, dividends, rents, and royalties shall be reasonably apportioned within and without the state under rules adopted by the director.

(2) Capital gains and losses from the sale or other disposition of assets shall be apportioned to the state based upon the business activity ratio applicable to the year the gain or loss is determined if the corporation determines Iowa taxable income by a sales, gross receipts or other business activity ratio. If the corporation has only allocable income, capital gains and losses from the sale or other disposition of assets shall be allocated in accordance with paragraph "a", subparagraph (4).

(3) Where income is derived from business other than the manufacture or sale of tangible personal property, the income shall be specifically allocated or equitably apportioned within and without the state under rules of the director.

(4) Where income is derived from the manufacture or sale of tangible personal property, the part attributable to business within the state shall be in that proportion which the gross sales made within the state bear to the total gross sales.

(5) Where income consists of more than one class of income as provided in subparagraphs (1) to (4) of this paragraph, it shall be reasonably apportioned by the business activity ratio provided in rules adopted by the director.

(6) The gross sales of the corporation within the state shall be taken to be the gross sales from goods delivered or shipped to a purchaser within the state regardless of the f.o.b. point or other conditions of the sale, excluding deliveries for transportation out of the state.

For the purpose of this section, the word "sale" shall include exchange, and the word "manufacture" shall include the extraction and recovery of natural resources and all processes of fabricating and curing. The words "tangible personal property" shall be taken to mean corporeal personal property, such as machinery, tools, implements, goods, wares, and merchandise, and shall not be taken to mean money deposits in banks, shares of stock, bonds, notes, credits, or evidence of an interest in property and evidences of debt.

3. If any taxpayer believes that the method of allocation and apportionment hereinbefore prescribed, as administered by the director and applied to the taxpayer's business, has operated or will so operate as to subject the taxpayer to taxation on a greater portion of the taxpayer's net income than is reasonably attributable to business or sources within the state, the taxpayer shall be entitled to file with the director a statement of the taxpayer's objections and of such alternative method of allocation and apportionment as the taxpayer believes to be proper under the circumstances with such detail and proof and within such time as the director may reasonably prescribe; and if the director shall conclude that the method of allocation and apportionment theretofore employed is in fact inapplicable and inequitable, the director shall redetermine the taxable income by such other method of allocation and apportionment as seems best calculated to assign to the state for taxation the

portion of the income reasonably attributable to business and sources within the state, not exceeding, however, the amount which would be arrived at by application of the statutory rules for apportionment.

4. In addition to all taxes imposed under this division, there is imposed upon each corporation doing business within the state a state minimum tax for tax preference equal to seventy percent of the state's apportioned share of the federal minimum tax. The state's apportioned share of the federal minimum tax is a percent equal to the ratio of the federal minimum tax on preferences attributable to Iowa to the federal minimum tax on all preferences. The director shall prescribe rules for the determination of the amount of the federal minimum tax on preferences attributable to Iowa which shall be based as much as equitably possible on the allocation and apportionment provisions of subsections 2 and 3. For purposes of this subsection, "federal minimum tax" means the federal minimum tax for tax preferences computed under sections 55 to 58 of the Internal Revenue Code of 1954 for the tax year.

5. The taxes imposed under this division shall be reduced by a state tax credit for increasing research activities in this state equal to six and one-half percent of the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to the total qualified research expenditures. For purposes of this subsection, "qualifying expenditures for increasing research activities" means the qualifying expenditures as defined for the federal credit for increasing research activities computed under section 30 of the Internal Revenue Code of 1954, as amended to and including January 1, 1983. The research activities credit is applicable for taxable years beginning after December 31, 1985 to the same extent that the credit is applicable for federal income tax purposes for taxable years beginning after December 31, 1985.

Any credit in excess of the tax liability for the taxable year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on its final, completed return credited to the tax liability for the following taxable year.

6. The taxes imposed under this division shall be reduced by a state tax credit equal to five percent of the taxpayer's investment in the initial offering of securities by the Iowa venture capital fund established by the Iowa development commission and governed by a chapter 496A corporation and the Iowa venture capital fund Act*. Any credit in excess of the tax liability for the taxable year may be credited to the tax liability for the following three taxable years or until depleted in less than three years.

7. The taxes imposed under this division shall be reduced by a new jobs tax credit. An industry which has entered into an agreement under chapter 280B and which has increased its base employment level by at least ten percent within the time set in the agreement or, in the case of an industry without a base employment level, adds new jobs within the time set in the agreement is entitled to this new jobs tax credit for the tax year selected by the industry. In determining if the industry has increased its base employment level by ten percent or added new jobs, only those new jobs directly resulting from the project covered by the agreement and those directly related to those new jobs shall be counted. The amount of this credit is equal to the product of six percent of the taxable wages upon which an employer is required to contribute to the state unemployment compensation fund, as defined in section 96.19, subsection 20, times the number of new jobs existing in the tax year that directly result from the project covered by the agreement or new jobs that directly result from those new jobs. The tax year chosen by the industry shall either begin or end during the period beginning with the date of the agreement and ending with the date by which the project is to be completed under the agreement. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for

the following ten tax years or until depleted in less than the ten years. For purposes of this section, "agreement", "industry", "new job" and "project" mean the same as defined in section 280B.2 and "base employment level" means the number of full-time jobs an industry employs at the plant site which is covered by an agreement under chapter 280B on the date of that agreement.

85 Acts, ch 32, §81 SF 395; 85 Acts, ch 230, §7 SF 561

*Sections 28.61-28.66

1985 amendment to subsection 5 retroactive to January 1, 1985, for tax years beginning on or after that date; 85 Acts, ch 230, §14

See Code editor's note

Subsection 5, unnumbered paragraph 1 amended

NEW subsection 7

422.42 Definitions.

The following words, terms, and phrases, when used in this division, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Person" includes any individual, firm, copartnership, joint adventure, association, corporation, municipal corporation, estate, trust, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.

2. "Sales" means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

3. "Retail sale" or "sale at retail" means the sale to a consumer or to any person for any purpose, other than for processing, for resale of tangible personal property or taxable services, or for resale of tangible personal property in connection with taxable services, and includes the sale of gas, electricity, water, and communication service to retail consumers or users, but does not include agricultural breeding livestock and domesticated fowl, or commercial fertilizer, agricultural limestone, or herbicide, pesticide, insecticide, food and medication and agricultural drain tile and installation thereof which are to be used in disease control, weed control, insect control, or health promotion of plants or livestock produced as part of agricultural production for market, and does not include electricity, steam or any taxable service when purchased and used in the processing of tangible personal property intended to be sold ultimately at retail. When used by a manufacturer of food products, electricity, steam, and other taxable services are sold for processing when used to produce marketable food products for human consumption, including but not limited to, treatment of material to change its form, context or condition, in order to produce the food product, maintenance of quality or integrity of the food product, changing or maintenance of temperature levels necessary to avoid spoilage or to hold the food product in marketable condition, maintenance of environmental conditions necessary for the safe or efficient use of machinery and material used to produce the food product, sanitation and quality control activities, formation of packaging, placement into shipping containers, and movement of the material or food product until shipment from the building of manufacture. Tangible personal property is sold for processing within the meaning of this subsection only when it is intended that the property will, by means of fabrication, compounding, manufacturing, or germination become an integral part of other tangible personal property intended to be sold ultimately at retail, or will be consumed as fuel in creating heat, power, or steam for processing including grain drying, for providing heat or cooling for livestock buildings or for generating electric current, or be consumed in self-propelled implements of husbandry engaged in agricultural production, or the property is a chemical, solvent, sorbent, or reagent, which is directly used and is consumed, dissipated, or depleted, in processing personal property which is intended to be sold ultimately at retail, and which may not become a component or integral part of the finished product. The distribution to the public of free newspapers or shoppers guides is a retail sale for purposes of the processing exemption.

4. "Business" includes any activity engaged in by any person or caused to be

engaged in by the person with the object of gain, benefit, or advantage, either direct or indirect.

5. "*Retailer*" includes every person engaged in the business of selling tangible goods, wares, merchandise or taxable services at retail, or the furnishing of gas, electricity, water, and communication service, and tickets or admissions to places of amusement and athletic events as provided in this division or operating amusement devices or other forms of commercial amusement from which revenues are derived; provided, however, that when in the opinion of the director it is necessary for the efficient administration of this division to regard any salesmen, representatives, truckers, peddlers, or canvassers, as agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain tangible personal property sold by them irrespective of whether or not they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the director may so regard them, and may regard such dealers, distributors, supervisors, employers, or persons as retailers for the purposes of this division.

6. "*Gross receipts*" means the total amount of the sales of retailers, valued in money, whether received in money or otherwise; provided, however,

a. That discounts for any purpose allowed and taken on sales shall not be included if excessive sales tax is not collected from the purchaser, nor shall the sale price of property returned by customers when the total sale price thereof is refunded either in cash or by credit.

b. That in transactions in which tangible personal property is traded toward the purchase price of other tangible personal property the gross receipts are only that portion of the purchase price which is payable in money to the retailer if the following conditions are met:

(1) The tangible personal property traded to the retailer is the type of property normally sold in the regular course of the retailer's business.

(2) The tangible personal property traded to the retailer is intended by the retailer to be ultimately sold at retail and will be subject to the tax under section 422.43 when sold or is intended to be used by the retailer or another in the remanufacturing of a like item.

7. "*Relief agency*" means the state, any county, city and county, city or district thereof, or any agency engaged in actual relief work.

8. The word "*taxpayer*" includes any person within the meaning of subsection 1 hereof, who is subject to a tax imposed by this division, whether acting on the person's own behalf or as a fiduciary.

9. Sales of building materials, supplies and equipment to owners, contractors, subcontractors or builders, for the erection of buildings or the alteration, repair or improvement of real property, are retail sales in whatever quantity sold. Where the owner, contractor, subcontractor or builder is also a retailer holding a retail sales tax permit and transacting retail sales of building materials, supplies, and equipment, the person shall purchase such items of tangible personal property without liability for the tax if such property will be subject to the tax at the time of resale or at the time it is withdrawn from inventory for construction purposes. The sales tax shall be due in the reporting period when the materials, supplies, and equipment are withdrawn from inventory for construction purposes or when sold at retail.

10. The use within this state of tangible personal property by the manufacturer thereof, as building materials, supplies or equipment, in the performance of construction contracts or for any other purpose except for resale or processing, shall, for the purpose of this division, be construed as a sale at retail thereof by the manufacturer who shall be deemed to be the consumer of such tangible personal property. The tax shall be computed upon the cost to the manufacturer of the fabrication or production thereof.

11. "*Place of business*" shall mean any warehouse, store, place, office, building or structure where goods, wares or merchandise are offered for sale at retail or where

any taxable amusement is conducted or each office where gas, water, heat, communication or electric services are offered for sale at retail.

12. "Casual sales" means:

a. Sales or the rendering, furnishing or performing of a nonrecurring nature of tangible personal property or services by the owner, if the seller, at the time of the sale, is not engaged for profit in the business of selling tangible personal property or services taxed under section 422.43.

b. The sale of all or substantially all of the tangible personal property or services held or used by a retailer in the course of the retailer's trade or business for which the retailer is required to hold a sales tax permit when the retailer sells or otherwise transfers the trade or business to another person who shall engage in a similar trade or business.

13. "Services" means all acts or services rendered, furnished, or performed, other than services performed on tangible personal property delivered into interstate commerce, or services used in processing of tangible personal property for use in taxable retail sales or services, for an "employer" as defined in section 422.4, subsection 15, for a valuable consideration by any person engaged in any business or occupation specifically enumerated in this division. The tax shall be due and collectible when the service is rendered, furnished, or performed for the ultimate user thereof.

"Services used in the processing of tangible personal property" includes the reconditioning or repairing of tangible personal property of the type normally sold in the regular course of the retailer's business and which is held for sale upon which the gross receipts tax under this division or the use tax under chapter 423 will be paid when the tangible personal property is sold.

14. "User" means the immediate recipient of the services who is entitled to exercise a right of power over the product of such services.

15. "Value of services" means the price to the user exclusive of any direct tax imposed by the federal government or by this division.

16. "Gross taxable services" means the total amount received in money, credits, property, or other consideration, valued in money, from services rendered, furnished, or performed in this state except where such service is performed on tangible personal property delivered into interstate commerce or is used in processing of tangible personal property for use in taxable retail sales or services and embraced within the provisions of this division. However, the taxpayer may take credit in the taxpayer's report of gross taxable services for an amount equal to the value of services rendered, furnished, or performed when the full value of such services thereof is refunded either in cash or by credit. Taxes paid on gross taxable services represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon a subsequent payment of the tax due hereunder, but if any such accounts are thereafter collected by the taxpayer, a tax shall be paid upon the amounts so collected.

Where a retailer or amusement operator sells merchandise by means of vending machines or operates music or amusement devices by coin-operated machines at more than one location within the state, the office, building or place where the books, papers and records of the taxpayer are kept shall be deemed to be the taxpayer's place of business.

Every operator of a vending machine or amusement device equipment, the receipts from the operation of which are taxable under section 422.43, shall by means of a sticker identify each such machine operated by the operator to show the valid sales tax permit number issued to the operator under which the sales tax concerning the operation of each given machine is being reported and remitted to the department. The stickers shall be provided by the department and it shall be the duty of each operator to place and maintain same in a place easily seen by the user on each machine operated by the operator. Failure to so identify such machines shall be a simple misdemeanor.

422.43 Tax imposed.

1. There is imposed a tax of four percent upon the gross receipts from all sales of tangible personal property, consisting of goods, wares, or merchandise, except as otherwise provided in this division, sold at retail in the state to consumers or users; a like rate of tax upon the gross receipts from the sales, furnishing or service of gas, electricity, water, heat, and communication service, including the gross receipts from such sales by any municipal corporation furnishing gas, electricity, water, heat, and communication service to the public in its proprietary capacity, except as otherwise provided in this division, when sold at retail in the state to consumers or users; a like rate of tax upon the gross receipts from all sales of tickets or admissions to places of amusement, fairs, and athletic events except those of elementary and secondary educational institutions; and a like rate of tax upon that part of private club membership fees or charges paid for the privilege of participating in any athletic sports provided club members.

2. There is imposed a tax of four percent upon the gross receipts derived from the operation of all forms of amusement devices and games of skill, games of chance, raffles and bingo games as defined in chapter 99B, operated or conducted within the state of Iowa, the tax to be collected from the operator in the same manner as is provided for the collection of taxes upon the gross receipts of tickets or admission as provided in this section. The tax shall also be imposed upon the gross receipts derived from the sale of lottery tickets or shares pursuant to chapter 99E. The tax on the lottery tickets or shares shall be included in the sales price and distributed to the general fund as provided in section 99E.10.

3. The tax thus imposed covers all receipts from the operation of games of skill, games of chance, raffles and bingo games as defined in chapter 99B, and musical devices, weighing machines, shooting galleries, billiard and pool tables, bowling alleys, pinball machines, slot-operated devices selling merchandise not subject to the general sales taxes and on all receipts from devices or systems where prizes are in any manner awarded to patrons and upon the receipts from fees charged for participation in any game or other form of amusement, and generally upon the gross receipts from any source of amusement operated for profit, not specified in this section, and upon the gross receipts from which no tax is collected for tickets or admission, but no tax shall be imposed upon any activity exempt from sales tax under section 422.45, subsection 3. Every person receiving gross receipts from the sources defined in this section is subject to all provisions of this division relating to retail sales tax and other provisions of this chapter as applicable.

4. There is imposed a like rate of tax upon the gross receipts from the sales of engraving, photography, retouching, printing, and binding services. For the purpose of this division, the sales of engraving, photography, retouching, printing, and binding services are sales of tangible property.

5. There is imposed a like rate of tax upon the gross receipts from the sales of vulcanizing, recapping, and retreading services. For the purpose of this division, the sales of vulcanizing, recapping, and retreading services are sales of tangible property.

6. There is imposed a tax of four percent upon the gross receipts from the sales of optional service or warranty contracts which provide for the furnishing of labor and materials and require the furnishing of any taxable service enumerated under this section. The gross receipts are subject to tax even if some of the services furnished are not enumerated under this section. For the purpose of this division, the sale of an optional service or warranty contract is a sale of tangible personal property. Additional sales, services or use tax shall not be levied on services, parts, or labor provided under optional service or warranty contracts which are subject to tax under this section.

7. There is hereby imposed a like rate of tax upon the gross receipts from the renting of any and all rooms, apartments, or sleeping quarters in any hotel, motel, inn, public lodging house, rooming house, or tourist court, or in any place where

sleeping accommodations are furnished to transient guests for rent, whether with or without meals. "Renting" and "rent" include any kind of direct or indirect charge for such rooms, apartments, sleeping quarters, or the use thereof. For the purposes of this division, such renting is regarded as a sale of tangible personal property at retail. However, such tax shall not apply to the gross receipts from the renting of a room, apartment, or sleeping quarters while rented by the same person for a period of more than thirty-one consecutive days.

8. All revenues arising under the operation of the provisions of this section shall become part of the state general fund.

9. Nothing herein shall legalize any games of skill or chance or slot-operated devices which are now prohibited by law.

10. There is imposed a tax of four percent upon the gross receipts from the rendering, furnishing, or performing of services as defined in section 422.42.

11. The following enumerated services are subject to the tax imposed on gross taxable services: Alteration and garment repair; armored car; automobile repair; battery, tire and allied; investment counseling, excluding investment services of trust departments; bank service charges; barber and beauty; boat repair; car wash and wax; carpentry; roof, shingle, and glass repair; dance schools and dance studios; dry cleaning, pressing, dyeing, and laundering; electrical and electronic repair and installation; rental of tangible personal property; excavating and grading; farm implement repair of all kinds; flying service; furniture, rug, upholstery repair and cleaning; fur storage and repair; golf and country clubs and all commercial recreation; house and building moving; household appliance, television, and radio repair; jewelry and watch repair; machine operator; machine repair of all kinds; motor repair; motorcycle, scooter, and bicycle repair; oilers and lubricators; office and business machine repair; painting, papering, and interior decorating; parking facilities; pipe fitting and plumbing; wood preparation; licensed executive search agencies; private employment agencies, excluding services for placing a person in employment where the principal place of employment of that person is to be located outside of the state; sewing and stitching; shoe repair and shoeshine; storage warehousing of raw agricultural products; telephone answering service; test laboratories, except tests on humans; termite, bug, roach, and pest eradicators; tin and sheet metal repair; turkish baths, massage, and reducing salons; weighing; welding; well drilling; wrapping, packing, and packaging of merchandise other than processed meat, fish, fowl and vegetables; wrecking service; wrecker and towing; cable television; campgrounds; carpet and upholstery cleaning; gun and camera repair; janitorial and building maintenance or cleaning; lawn care, landscaping and tree trimming and removal; lobbying service; pet grooming; reflexology; security and detective services; tanning beds or salons; and water conditioning and softening. For purposes of this subsection, gross taxable services from rental includes rents, royalties, and copyright and license fees. For purposes of this subsection, "lobbying service" means the rendering, furnishing or performing, for a fee, salary or other compensation, activities which are intended or used for the purpose of encouraging the passage, defeat, or modification of legislation or for influencing the decision of the members of a legislative committee or subcommittee or the representing, for a fee, salary or other compensation, on a regular basis an organization which has as one of its purposes the encouragement of the passage, defeat or modification of legislation or the influencing of the decision of the members of a legislative committee or a subcommittee. "Lobbying service" does not include the activities of a federal, state, or local government official or employee acting within the course of the official's or employee's duties or a representative of the news media engaged only in the reporting and dissemination of news and editorials.

85 Acts, ch 32, §83 SF 395; 85 Acts, ch 195, §47 SF 329
Local sales and services tax; §422B.8 et seq.

See Code editor's note
Subsections 2, 3, and 11 amended

422.45 Exemptions.

There are hereby specifically exempted from the provisions of this division and from the computation of the amount of tax imposed by it, the following:

1. The gross receipts from sales of tangible personal property services rendered, furnished, or performed which this state is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this state.

2. The gross receipts from the sales, furnishing or service of transportation service except the rental of recreational vehicles, recreational boats, or motor vehicles subject to registration which are registered for a gross weight of thirteen tons or less.

3. The gross receipts from sales of educational, religious, or charitable activities, where the entire proceeds therefrom are expended for educational, religious, or charitable purposes, except the gross receipts from games of skill, games of chance, raffles and bingo games as defined in chapter 99B.

4. The gross receipts from sales of vehicles subject to registration or subject only to the issuance of a certificate of title.

5. The gross receipts or from services rendered, furnished, or performed and of all sales of goods, wares or merchandise used for public purposes to any tax-certifying or tax-levying body of the state of Iowa or governmental subdivision thereof, including the state board of regents, state department of human services, state department of transportation, any municipally owned solid waste facility which sells all or part of its processed waste as fuel to a municipally owned public utility and all divisions, boards, commissions, agencies or instrumentalities of state, federal, county or municipal government which have no earnings going to the benefit of an equity investor or stockholder except sales of goods, wares or merchandise or from services rendered, furnished, or performed and used by or in connection with the operation of any municipally owned public utility engaged in selling gas, electricity or heat to the general public.

The exemption provided by this subsection shall also apply to all such sales of goods, wares or merchandise or from services rendered, furnished, or performed and subject to use tax under the provisions of chapter 423.

6. The gross receipts from "casual sales".

7. A private nonprofit educational institution in this state or a tax-certifying or tax-levying body or governmental subdivision of the state, including the state board of regents, state department of human services, state department of transportation, a municipally owned solid waste facility which sells all or part of its processed waste as fuel to a municipally owned public utility, and all divisions, boards, commissions, agencies or instrumentalities of state, federal, county or municipal government which do not have earnings going to the benefit of an equity investor or stockholder may make application to the department for the refund of the sales, services, or use tax upon the gross receipts of all sales of goods, wares or merchandise, or from services rendered, furnished, or performed, to a contractor, used in the fulfillment of a written contract with the state of Iowa, any political subdivision of the state, or a division, board, commission, agency or instrumentality of the state or a political subdivision, or a private nonprofit educational institution in this state, if the property becomes an integral part of the project under contract and at the completion of the project becomes public property, or is devoted to educational uses; except goods, wares or merchandise or services rendered, furnished, or performed used in the performance of any contract in connection with the operation of any municipal utility engaged in selling gas, electricity, or heat to the general public; and except goods, wares, and merchandise used in the performance of a contract for a "project" under chapter 419 as defined in that chapter other than goods, wares or merchandise used in the performance of a contract for a "project" under chapter 419 for which a bond issue was or will have been approved by a municipality prior to July 1, 1968, or for which the goods, wares, or merchandise becomes an integral part of the project

under contract and at the completion of the project becomes public property or is devoted to educational uses.

a. Such contractor shall state under oath, on forms provided by the department, the amount of such sales of goods, wares or merchandise or services rendered, furnished, or performed and used in the performance of such contract, and upon which sales or use tax has been paid, and shall file such forms with the governmental unit or private nonprofit educational institution which has made any written contract for performance by said contractor. Such forms shall be filed by the contractor with the governmental unit or educational institution before final settlement is made.

b. Such governmental unit or educational institution shall, not more than six months after the final settlement has been made, make application to the department for any refund of the amount of such sales or use tax which shall have been paid upon any goods, wares or merchandise, or services rendered, furnished, or performed, such application to be made in the manner and upon forms to be provided by the department, and the department shall forthwith audit such claim and, if approved, request the comptroller to issue a warrant to such governmental unit or educational institution in the amount of such sales or use tax which has been paid to the state of Iowa under such contract.

c. Any contractor who shall willfully make false report of tax paid under the provisions of this subsection shall be guilty of a simple misdemeanor and in addition thereto shall be liable for the payment of the tax with penalty and interest thereon.

8. The gross receipts of all sales of goods, wares, or merchandise, or services, used for educational purposes to any private nonprofit educational institution in this state. The exemption provided by this subsection shall also apply to all such sales of goods, wares or merchandise, or services, subject to use tax under the provisions of chapter 423.

9. Gross receipts from the sales of newspapers, free newspapers or shoppers guides and the printing and publishing thereof, and envelopes for advertising.

10. The gross receipts from sales of tangible personal property used or to be used as railroad rolling stock for transporting persons or property, or as materials or parts therefor.

11. The gross receipts from the sale of motor fuel and special fuel consumed for highway use or in watercraft where the fuel tax has been imposed and paid and no refund has been or will be allowed and the gross receipts from the sales of gasohol, as defined in section 324.2.

12. Gross receipts from the sale of all foods for human consumption which are eligible for purchase with food coupons issued by the United States department of agriculture pursuant to regulations in effect on July 1, 1974, regardless of whether the retailer from which the foods are purchased is participating in the food stamp program. However, as used in this subsection, "foods" does not include candy, candy-coated items, and other candy products; beverages, excluding tea and coffee, and all mixes and ingredients used to produce such beverages, which do not contain a primary dairy product or dairy ingredient base or which contain less than fifteen percent natural fruit or vegetable juice; foods prepared on or off the premises of the retailer which are consumed on the premises of the retailer; foods sold by caterers and hot or cold foods prepared for immediate consumption off the premises of the retailer. "Foods prepared for immediate consumption" include any food product upon which an act of preparation, including but not limited to, cooking, mixing, sandwich making, blending, heating or pouring, has been performed by the retailer so the food product may be immediately consumed by the purchaser.

13. The gross receipts from the sale of prescription drugs, as defined in section 155.3, subsection 10, if dispensed for human use or consumption by a registered pharmacist licensed under chapter 155, a physician and surgeon licensed under chapter 148, an osteopath licensed under chapter 150, an osteopathic physician and

surgeon licensed under chapter 150A, a dentist licensed under chapter 153, or a podiatrist licensed under chapter 149.

14. Gross receipts from the sale of insulin, hypodermic syringes, and diabetic testing materials for human use or consumption.

15. Gross receipts from the sale or rental of prosthetic, orthotic or orthopedic devices for human use. For purposes of this subsection, "orthopedic devices" means those devices prescribed to be used for orthopedic purposes by a physician and surgeon licensed under chapter 148, an osteopath licensed under chapter 150, an osteopathic physician and surgeon licensed under chapter 150A, a dentist licensed under chapter 153, or a podiatrist licensed under chapter 149.

16. Gross receipts from the sale of oxygen prescribed by a licensed physician or surgeon, osteopath, or osteopathic physician or surgeon for human use or consumption.

17. The gross receipts from the sale of horses, commonly known as draft horses, when purchased for use and so used as a draft horse.

18. Gross receipts from the sale of tangible personal property, except vehicles subject to registration, to a person regularly engaged in the business of leasing if the period of the lease is for more than one year, such tangible personal property, and the leasing of such property is subject to taxation under this division. Tangible personal property exempt under this subsection if made use of for any purpose other than leasing or renting, the person claiming the exemption under this subsection shall be liable for the tax that would have been due except for this subsection. The tax shall be computed upon the original purchase price. The aggregate of the tax paid on the leasing or rental of such tangible personal property, not to exceed the amount of the sales tax owed, shall be credited against such tax. This sales tax shall be in addition to any sales or use tax that may be imposed as a result of the disposal of such tangible personal property.

19. The gross receipts from the sale of property which is a container, label, carton, pallet, packing case, wrapping paper, twine, bag, bottle, shipping case or other similar article or receptacle sold to retailers or manufacturers for the purpose of packaging or facilitating the transportation of tangible personal property sold at retail.

20. The gross receipts from sales or services rendered, furnished or performed by a county or city. This exemption does not apply to the tax specifically imposed under section 422.43 on the gross receipts from the sales, furnishing or service of gas, electricity, water, heat and communication service to the public by a municipal corporation in its proprietary capacity and does not apply to fees paid to cities and counties for the privilege of participating in any athletic sports.

21. The gross receipts from the sales by a trade shop to a printer of lithographic-offset plates, photoengraved plates, engravings, negatives, color separations, typesetting, the end products of image modulation, or any base material used as a carrier for light-sensitive emulsions to be used by the printer to complete a finished product for sale at retail. For purposes of this subsection, "trade shop" means a business which is not normally engaged in printing and which sells supplies to printers, including but not limited to, those supplies enumerated in this subsection.

22. The gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to the following nonprofit corporations:

a. Residential care facilities and intermediate care facilities for the mentally retarded and residential care facilities for the mentally ill licensed by the department of health under chapter 135C.

b. Residential facilities for mentally retarded children licensed by the department of human services pursuant to chapter 237.

c. Rehabilitation facilities that provide accredited rehabilitation services to persons with disabilities which are accredited by the commission on accreditation of rehabilitation facilities or the accreditation council for services for mentally retarded

and other developmentally disabled persons and adult day care services approved for reimbursement by the state department of human services.

d. Community mental health centers accredited by the department of human services pursuant to chapter 225C.

23. The gross receipts from the sales of special fuel for diesel engines consumed or used in the operation of ships, barges, or waterborne vessels which are used primarily in or for the transportation of property or cargo, or the conveyance of persons for hire on rivers bordering on the state if the fuel is delivered by the seller to the purchaser's barge, ship, or waterborne vessel while it is afloat upon such a river.

24. The gross receipts from the rental of motion picture films, video and audio tapes, video and audio discs, records, photos, copy, scripts or other media used for the purpose of transmitting that which can be seen, heard or read, if either of the following conditions are met:

a. The lessee imposes a charge for the viewing or the rental of such media and the charge for the viewing or the rental is subject to taxation under this division or chapter 423.

b. The lessee broadcasts the contents of such media for public viewing or listening.

The exemption provided for in this subsection applies to all payments on or after July 1, 1984.

25. The gross receipts from services rendered, furnished or performed by specialized flying implements of husbandry used for agricultural aerial spraying and aerial commercial and charter transportation services.

26. The gross receipts from the sale or rental, on or after July 1, 1987, of farm machinery and equipment, including replacement parts which are depreciable for state and federal income tax purposes, if the following conditions are met:

a. The farm machinery and equipment shall be directly and primarily used in production of agricultural products.

b. The farm machinery and equipment shall constitute self-propelled implements or implements customarily drawn or attached to self-propelled implements or the farm machinery or equipment is a grain dryer.

Vehicles subject to registration, as defined in section 423.1, or replacement parts for such vehicles, shall not be eligible for this exemption.

27. The gross receipts from the sale or rental, on or after July 1, 1987 or on or after July 1, 1985, in the case of an industry which has entered into an agreement under chapter 280B prior to the sale or lease, of industrial machinery, equipment and computers, including replacement parts which are depreciable for state and federal income tax purposes, if the following conditions are met:

a. The industrial machinery, equipment and computers shall be directly and primarily used in the manner described in section 428.20 in processing tangible personal property or in research and development of new products or processes of manufacturing, refining, purifying, combining of different materials or packing of meats to be used for the purpose of adding value to products, or in processing or storage of data or information by an insurance company, financial institution or commercial enterprise. As used in this paragraph:

(1) "Insurance company" means an insurer organized under chapters 508, 515, 518, 519, 520 or authorized to do business in Iowa as an insurer and having fifty or more persons employed in this state excluding licensed insurance agents.

(2) "Financial institutions" means as defined in section 527.2, subsection 4.

(3) "Commercial enterprise" includes businesses and manufacturers conducted for profit and includes centers for data processing services to insurance companies, financial institutions, businesses and manufacturers but excludes professions and occupations and nonprofit organizations.

b. The industrial machinery, equipment and computers must be real property within the scope of section 427A.1, subsection 1, paragraphs "e" or "j", and must be subject to taxation as real property.

However, the provisions of chapters 404 and 427B which result in the exemption from taxation of property for property tax purposes do not preclude the property from receiving this exemption if the property otherwise qualifies.

The gross receipts from the sale or rental of hand tools are not exempt. The gross receipts from the sale or rental of pollution control equipment qualifying under paragraph "a" shall be exempt.

The gross receipts from the sale or rental of industrial machinery, equipment, and computers, including pollution control equipment, within the scope of section 427A.1, subsection 1, paragraphs "h" and "i", shall not be exempt.

28. The gross receipts of all sales of goods, wares, or merchandise used, or from services rendered, furnished or performed in the construction and equipping of the Iowa world trade center for that portion of the project funded by the state of Iowa as authorized in chapter 18C. This subsection is repealed November 30, 1989.

29. The gross receipts from the rendering, furnishing or performing of the following service: design and installation of new industrial machinery or equipment, including electrical and electronic installation.

30. The gross receipts from the sale of wood chips or sawdust used in the production of agricultural livestock or fowl.

31. The gross receipts from the rendering, furnishing or performing of additional services taxed by 1985 Iowa Acts, chapter 32 pursuant to a written services contract in effect on April 1, 1985. This exemption is repealed June 30, 1986.

85 Acts, ch 32, §84-86 SF 395; 85 Acts, ch 33, §506 HF 225; 85 Acts, ch 195, §48 SF 329; 85 Acts, ch 231, §17 SF 565; 85 Acts, ch 245, §1 SF 580; 85 Acts, ch 247, §1 SF 564

Unpaid taxes on transactions occurring between July 1, 1980, and July 1, 1985, and exempt under subsection 22, are no longer due after July 1, 1985; 85 Acts, ch 247, §2

Subsections 2, 12 and 20 amended
NEW subsections 22-31

422.47A Refunds—industrial machinery, equipment and computers.

1. Sales, services, and use taxes paid on the purchase or rental of industrial machinery, equipment and computers, including replacement parts which are depreciable for state and federal income tax purposes, shall be refunded to the purchaser or renter provided all of the following conditions are met:

a. The purchase or rental was made during the period beginning July 1, 1985 and ending June 30, 1987.

b. The tax was paid to the retailer or timely paid to the department by the user if section 423.14 is applicable.

c. The claim is filed on forms provided by the department and is filed during the three months following the fiscal year in which the purchase or rental was made.

d. The industrial machinery and equipment and computers shall be directly and primarily used in the manner described in section 428.20 in processing tangible personal property or in research and development of new products or processes of manufacturing, refining, purifying, combining of different materials or packing of meats to be used for the purpose of adding value to products, or in processing or storage of data or information by an insurance company, financial institution or commercial enterprise. As used in this paragraph:

(1) "Insurance company" means an insurer organized under chapters 508, 515, 518, 519, 520 or authorized to do business in Iowa as an insurer and having fifty or more persons employed in this state excluding licensed insurance agents.

(2) "Financial institutions" means as defined in section 527.2, subsection 4.

(3) "Commercial enterprise" includes businesses and manufacturers conducted for profit and includes centers for data processing services to insurance companies, financial institutions, businesses and manufacturers but excludes professions and occupations and nonprofit organizations.

e. The industrial machinery, equipment or any computer must be real property within the scope of section 427A.1, subsection 1, paragraph "e" or "j", and must be subject to taxation as real property.

However, the provisions of chapters 404 and 427B which result in the exemption from taxation of property for property tax purposes shall not preclude the property from receiving this refund if the property otherwise qualifies.

Any tax paid on hand tools shall not be eligible for a refund. Any tax paid on pollution control equipment qualifying under paragraphs "a" through "d" of this subsection shall be eligible for a refund. Any tax paid on industrial machinery, equipment or computers, including pollution control equipment, within the scope of section 427A.1, subsection 1, paragraphs "h" and "i", shall not be eligible for refund.

2. A claim for refund timely filed under subsection 1 shall be paid by the department within ninety days after receipt of the claim. A claimant who makes an erroneous application for refund shall be liable for payment of any refund paid plus interest at the rate in effect under section 421.7. In addition, a claimant who willfully makes a false application for refund is guilty of a simple misdemeanor and is liable for a penalty equal to fifty percent of the refund claimed. Refunds, penalties, and interest due under this section may be enforced and collected in the same manner as the tax imposed by this division.

85 Acts, ch 32, §87 SF 395
NEW section

422.47B Refunds—farm machinery and equipment.

1. Sales, services, and use taxes paid on the purchase or rental of farm machinery and equipment, including replacement parts which are depreciable for state and federal income tax purposes, shall be refunded to the purchaser or renter provided all of the following conditions are met:

a. The purchase or rental was made during the period beginning July 1, 1985 and ending June 30, 1987.

b. The tax was paid to the retailer or timely paid to the department by the user if section 423.14 is applicable.

c. The claim is filed on forms provided by the department and is filed during the three months following the fiscal year in which the purchase or rental was made.

d. The farm machinery and equipment shall be directly and primarily used in production of agricultural products.

e. The farm machinery and equipment shall constitute self-propelled implements or implements customarily drawn or attached to self-propelled implements or the farm machinery or equipment is a grain dryer.

Vehicles subject to registration, as defined in section 423.1, or replacement parts for such vehicles, shall not be eligible for the refund for farm machinery and equipment.

2. A claim for refund timely filed under subsection 1 shall be paid by the department within ninety days after receipt of the claim. A claimant who makes an erroneous application for refund shall be liable for payment of any refund paid plus interest at the rate in effect under section 421.7. In addition, a claimant who willfully makes a false application for refund is guilty of a simple misdemeanor and is liable for a penalty equal to fifty percent of the refund claimed. Refunds, penalties, and interest due under this section may be enforced and collected in the same manner as the tax imposed by this division.

85 Acts, ch 32, §87 SF 395
NEW section

422.61 Definitions.

In this division, unless the context otherwise requires:

1. "Financial institution" means a state bank as defined in section 524.103, subsection 19, a national banking association having its principal office within this state, a trust company, a federally chartered savings and loan association, a financial institution chartered by the federal home loan bank board, an association incorpo-

rated or authorized to do business under chapter 534, or a production credit association.

2. "Taxable year" means the calendar year or the fiscal year ending during a calendar year, for which the tax is payable. "Fiscal year" includes a tax period of less than twelve months if, under the Internal Revenue Code of 1954, a corporation is required to file a tax return covering a tax period of less than twelve months.

3. "Taxpayer" means a financial institution subject to any tax imposed by this division.

4. "Net income" means the net income of the financial institution computed in accordance with section 422.35, with the exception that interest and dividends from federal securities shall not be subtracted, no federal income taxes paid or accrued shall be subtracted, and notwithstanding the provisions of sections 262.41 and 262.51 or any other provisions of the law, income from obligations of the state and its political subdivisions and any amount of franchise taxes paid or accrued under this division during the taxable year shall be added.

85 Acts, ch 230, §8 SF 561
1985 amendment to subsection 2 retroactive to January 1, 1985, for tax years beginning on or after that date; 85 Acts, ch 230, §14
Subsection 2 amended

422.62 Due and delinquent dates.

The franchise tax is due and payable on the first day following the end of the taxable year of each financial institution, and is delinquent after the last day of the fourth month following the due date or forty-five days after the due date of the federal tax return, excluding extensions of time to file, whichever is the later. Every financial institution shall file a return as prescribed by the director on or before the delinquency date. This section is effective for all taxable years ending on or after January 1, 1970. As to fiscal years ending prior to May 9, 1970, the time for filing a return is extended to the last day of the fourth month following that date.

85 Acts, ch 230, §9 SF 561
1985 amendment retroactive to January 1, 1985, for tax years beginning on or after that date; 85 Acts, ch 230, §14
Section amended

422.68 Powers and duties.

1. The director shall have the power and authority to prescribe all rules not inconsistent with the provisions of this chapter, necessary and advisable for its detailed administration and to effectuate its purposes.

2. The director may, for administrative purposes, divide the state into districts, provided that in no case shall a county be divided in forming a district.

3. The director may destroy useless records and returns, reports, and communications of any taxpayer filed with or kept by the department after those returns, records, reports, or communications have been in the custody of the department for a period of not less than three years or such time as the director prescribes by rule. However, after the accounts of a person have been examined by the director and the amount of tax and penalty due have been finally determined, the director may order the destruction of any records previously filed by that taxpayer, notwithstanding the fact that those records have been in the custody of the department for a period less than three years. These records and documents shall be destroyed in the manner prescribed by the director.

4. The department may make photostat, microfilm or other photographic copies of records, reports and other papers either filed by the taxpayer or prepared by the department. When such photostat or microfilm copies have been made, the department may destroy such original records in such manner as prescribed by the director. Such photostat or microfilm copies, when no longer of use, may be destroyed as provided in subsection 3. Such photostat, microfilm, or other photographic records shall be admissible in evidence when duly certified and authenticated by the officer having custody and control thereof.

85 Acts, ch 230, §10 SF 561
Subsection 3 amended

422.69 Funds.

1. All fees, taxes, interest and penalties imposed under this chapter shall be paid to the department of revenue in the form of remittances payable to the state treasurer and the department of revenue shall transmit each payment daily to the state treasurer.

2. Unless otherwise provided the fees, taxes, interest and penalties collected under this chapter shall be credited to the general fund.

3. Of the taxes, interests and penalties collected under division IV which are credited to the general fund, an amount equal to the amount estimated by the department not to exceed thirty-five million dollars annually, adjusted as the department deems necessary, shall be set aside into a separate "machinery and equipment refund account" to be used to pay the refunds entitled to under sections 422.47A and 422.47B. The moneys in this separate account shall not be considered part of the state general fund for purposes of the Iowa economic emergency fund under section 8.55. This subsection is repealed April 1, 1988.

85 Acts, ch 32, §88 SF 395; 85 Acts, ch 258, §13 SF 434
NEW subsection 3

422.73 Correction of errors—refunds, credits and carrybacks.

1. If it shall appear that, as a result of mistake, an amount of tax, penalty, or interest has been paid which was not due under the provisions of division IV of this chapter or chapter 423, then such amount shall be credited against any tax due, or to become due, on the books of the department from the person who made the erroneous payment, or such amount shall be refunded to such person by the department. A claim for refund or credit that has not been filed with the department within five years after the tax payment upon which a refund or credit is claimed became due, or one year after such tax payment was made, whichever time is the later, shall not be allowed by the director.

A credit, action, or claim for refund of sales and use taxes voluntarily paid shall not be allowed to the extent that the credit, action, or claim for refund is based upon an alleged mistake of law regarding the validity or legality under the laws or Constitution of the United States or under the Constitution of the State of Iowa, of the tax imposed by division IV of this chapter or by chapter 423. This section prevails over any other statutes authorizing sales or use tax refunds or claims.

2. If it appears that an amount of tax, penalty, or interest has been paid which was not due under division II, III or V of this chapter, then that amount shall be credited against any tax due on the books of the department by the person who made the excessive payment, or that amount shall be refunded to the person or with the person's approval, credited to tax to become due. A claim for refund or credit that has not been filed with the department within three years after the return upon which a refund or credit claimed became due, or within one year after the payment of the tax upon which a refund or credit is claimed was made, whichever time is the later, shall not be allowed by the director. If, as a result of a carryback of a net operating loss or a net capital loss, the amount of tax in a prior period is reduced and an overpayment results, the claim for refund or credit of the overpayment shall be filed with the department within the three years after the return for the taxable year of the net operating loss or net capital loss became due. Notwithstanding the period of limitation specified, the taxpayer shall have six months from the day of final disposition of any income tax matter between the taxpayer and the internal revenue service with respect to the particular tax year to claim an income tax refund or credit, provided the taxpayer has notified the department of revenue in writing no later than six months after the expiration of the three-year limitations period of the existence of this income tax matter.

Notwithstanding the period of limitation specified, the taxpayer shall have until June 30, 1983, to file a refund claim for a tax paid on the amount of a lump sum distribution for which the taxpayer has elected under section 402(e) of the Internal

Revenue Code of 1954 to be separately taxed for federal income tax purposes for the tax year beginning on January 1, 1977 and ending December 31, 1977, and for the tax year beginning on January 1, 1979 and ending December 31, 1979. Interest shall not accrue during the extended period for refund claims authorized by this section.

3. A credit, action or claim for refund arising or existing from a carryback of a net operating loss or net capital loss from tax years ending on or before December 31, 1978 is not allowed, unless the action or claim was received by the department prior to July 1, 1984. This subsection prevails over any other statutes authorizing income tax refunds or claims.

4. Notwithstanding subsection 2, a claim for credit or refund of the income tax paid is considered timely if the claim is filed with the department on or before June 30, 1986, if the taxpayer's federal income tax was forgiven under section 692(c) of the Internal Revenue Code of 1954 because the taxpayer died after November 17, 1978 as a result of wounds or injury incurred due to military or terroristic action outside the United States. To the extent the federal income tax was forgiven under section 692(c) of the Internal Revenue Code of 1954 for the tax year, the Iowa income tax is also forgiven.

85 Acts, ch 230, §11 SF 561
NEW subsection 4

CHAPTER 422B

LOCAL OPTION TAXES

422B.1 Authorization—election—imposition and repeal.

1. A city or a county may impose by ordinance of the city council or the board of supervisors local option taxes authorized by this chapter, subject to this section.

2. A local option tax shall be imposed only after an election at which a majority of those voting on the question favors imposition and shall then be imposed until repealed as provided in subsection 7, paragraph "a". If the tax is a local earnings tax imposed by a city, it shall only apply within the corporate boundaries of that city and if imposed by a county, it shall only apply to unincorporated areas of that county. If the tax is a local vehicle tax imposed by a county, it shall apply to all incorporated and unincorporated areas of the county. If the tax is a local sales and services tax imposed by a county, it shall only apply to those incorporated areas and the unincorporated area of that county in which a majority of those voting in the area on the tax favor its imposition. For purposes of the local sales and services tax, all cities contiguous to each other shall be treated as part of one incorporated area and the tax would be imposed in each of those contiguous cities only if the majority of those voting in the total area covered by the contiguous cities favor its imposition.

3. Upon its own motion or upon receipt of a petition signed by eligible electors of the city equal in number to five percent of the persons of the city who voted in the last preceding state general election requesting imposition of a local earnings tax, the city council shall direct within thirty days of its motion or receipt of the petition the county commissioner of elections to submit the question of the imposition to the qualified electors of the city.

4. Upon its own motion or upon receipt of a petition signed by eligible electors of the unincorporated area of the county equal in number to five percent of the persons of the unincorporated area of the county who voted at the last preceding state general election requesting imposition of a local earnings tax, the county board of supervisors shall direct within thirty days of its motion or receipt of the petition the county commissioner of elections to submit the question of the imposition to the qualified electors of the unincorporated area of the county.

5. a. A county board of supervisors shall direct within thirty days the county commissioner of elections to submit the question of imposition of a local vehicle tax

or a local sales and services tax to the qualified electors of the incorporated and unincorporated areas of the county upon receipt of a petition, requesting imposition of a local vehicle tax or a local sales and services tax, signed by eligible electors of the whole county equal in number to five percent of the persons in the whole county who voted at the last preceding state general election. In the case of a local vehicle tax, the petition requesting imposition shall specify the rate of tax and the classes, if any, that are to be exempt. If more than one valid petition is received, the earliest received petition shall be used.

b. The question of the imposition of a local sales and services tax shall be submitted to the qualified electors of the incorporated and unincorporated areas of the county upon receipt by the county commissioner of elections of the motion or motions, requesting such submission, adopted by the governing body or bodies of the city or cities located within the county or of the county, for the unincorporated areas of the county, representing at least one half of the population of the county. Upon adoption of such motion, the governing body of the city or county, for the unincorporated areas, shall submit the motion to the county commissioner of elections and in the case of the governing body of the city shall notify the board of supervisors of the adoption of the motion. The county commissioner of elections shall keep a file on all the motions received and, upon reaching the population requirements, shall publish notice of the ballot proposition concerning the imposition of the local sales and services tax. A motion ceases to be valid at the time of the holding of the regular election for the election of members of the governing body which adopted the motion. The county commissioner of elections shall eliminate from the file any motion that ceases to be valid. The manner provided under this paragraph for the submission of the question of imposition of a local sales and services tax is an alternative to the manner provided in paragraph "a".

6. The county commissioner of elections shall submit the question of imposition of a local option tax at a state general election or at a special election held at the time of a city regular election in the case of a tax imposed by a county or at a state general election or city regular election in the case of a tax imposed by a city which may not be held sooner than sixty days after publication of notice of the ballot proposition. The ballot proposition shall specify the type and rate of tax and in the case of a vehicle tax the classes that will be exempt and in the case of a local sales and services tax the date it will be imposed. The ballot proposition shall also specify the approximate amount of local option tax revenues that will be used for property tax relief and shall contain a statement as to the specific purpose or purposes for which the revenues shall otherwise be expended. The rate of a local earnings tax shall be in increments of one percent but not in excess of four percent as set by the governing body of the city or county seeking to impose the tax. The rate of the vehicle tax shall be in increments of one dollar per vehicle as set by the petition seeking to impose the tax. The rate of a local sales and services tax shall not be more than one percent as set by the governing body. The state commissioner of elections shall establish by rule the form for the ballot proposition which form shall be uniform throughout the state.

7. a. If a majority of those voting on the question of imposition of a local option tax favor imposition of a local option tax, the governing body of that city or that county, as applicable, shall impose the tax at the rate specified for an unlimited period. However, in the case of a local sales and services tax, the county shall not impose the tax in any incorporated area or the unincorporated area if the majority of those voting on the tax in that area did not favor its imposition. For purposes of the local sales and services tax, all cities contiguous to each other shall be treated as part of one incorporated area and the tax would be imposed in each of those contiguous cities only if the majority of those voting in the total area covered by the contiguous cities favor its imposition. The local option tax may be repealed or the rate increased or decreased only after an election at which a majority of those voting

on the question of repeal or rate change favor the repeal or rate change. The election at which the question of repeal or rate change is offered shall be called and held in the same manner and under the same conditions as provided in subsections 3, 4, 5, and 6 for the election on the imposition of the local option tax. However, in the case of a local sales and services tax where the tax has not been imposed countywide, the question of repeal or imposition shall be voted on only by the qualified electors of the areas of the county where the tax has been imposed or has not been imposed, as appropriate.

b. Within ten days of the election at which a majority of those voting on the question favors the imposition, repeal, or change in the rate of a local option tax, the governing body shall give written notice to the director of revenue or, in the case of a local vehicle tax, to the director of the department of transportation, of the result of the election.

8. More than one of the authorized local option taxes may be submitted at a single election and the different taxes shall be separately implemented as provided in this section.

9. Local option taxes authorized to be imposed as provided in this chapter are a local earnings tax, a local sales and services tax, and a local vehicle tax. The rate of the taxes shall be up to four percent in increments of one percent for the earnings tax, and in increments of one dollar per vehicle for a vehicle tax all as set by the governing body of the city or county seeking to impose the earnings tax or as set on the petition seeking to impose the vehicle tax. The rate of a local sales and services tax shall not be more than one percent as set by the governing body.

85 Acts, ch 32, §89 SF 395; 85 Acts, ch 198, §6 SF 583

NEW section

Subsections 1 and 9 amended

422B.2 Local vehicle tax.

An annual local vehicle tax at the rate per vehicle specified on the ballot proposition may be imposed by a county on every vehicle which is required to be registered by the state and is registered with the county treasurer to a person residing within the county where the tax is imposed at the time of the renewal of the registration of the vehicle. The local vehicle tax shall be imposed only on the renewals of registrations and shall be payable during the registration renewal periods provided under section 321.40.

The county imposing the tax shall provide for the exemption of each class, if any, of vehicles for which an exemption was listed on the ballot proposition.

For the purpose of the tax authorized by this section, "person" and "registration year" mean the same as defined in section 321.1, and "vehicle" means motor vehicle as defined in section 321.1 which is subject to registration under section 321.18, and which is registered with the county treasurer.

85 Acts, ch 32, §90 SF 395

NEW section

422B.3 Administration.

A local vehicle tax or change in the rate shall be imposed January 1 immediately following a favorable election for registration years beginning on or after that date and the repeal of the tax shall be as of December 31 following a favorable election for registration years beginning after that date.

Local officials shall confer with the director of the department of transportation for assistance in drafting the ordinance imposing a local vehicle tax. A certified copy of the ordinance shall be filed with the director as soon as possible after passage. The director shall inform the appropriate county treasurers and provide assistance to them for the collection of all local vehicle taxes and any penalties, crediting local vehicle tax receipts excluding penalties to a "local vehicle tax fund" established in the office of the county treasurer. From the local vehicle tax fund, the treasurer shall remit monthly, by direct deposit in the same manner as provided in section 384.11,

to each city in the county the amount collected from residents of the city during the preceding calendar month and to the county the amount collected from the residents of the unincorporated area during the preceding calendar month. Moneys received by a city or county from this fund shall be credited to the general fund of the city or county to be used solely for public transit or shall be credited to the street construction fund of that city or the secondary road fund of that county to be used for the purposes specified in section 312.6. Any penalties collected shall be credited to the county general fund to be used to defray the cost to the county of administering the local vehicle tax.

85 Acts, ch 32, §91 SF 395
NEW section

422B.4 Payment—penalties.

Taxpayers shall pay a local vehicle tax to the county treasurer at the time of application for the renewal of the registration of the vehicle under chapter 321 for the registration year. The county treasurer shall require a person applying for the renewal of the registration of a vehicle to state the person's residence and shall not renew a registration certificate of a vehicle on which a local vehicle tax is due until the local vehicle tax is paid.

Payment of a local vehicle tax shall be evidenced by a notation on the state registration certificate. The director of the department of transportation shall prescribe by rule the type of notation. A local vehicle tax shall not be refunded even when state registration fees are refunded.

Penalties for late payment which are comparable to the penalties for late payment of state registration fees shall be imposed by the ordinance imposing a local vehicle tax. Willful violation of a local vehicle tax ordinance is a simple misdemeanor.

85 Acts, ch 32, §92 SF 395
NEW section

422B.5 Local earnings tax.

1. A city or county may impose an annual earnings tax at the rate on the ballot proposition on the adjusted gross income from wages, salaries, commissions, and other compensation specified in paragraph "a" received or earned by resident and nonresident individuals, except individuals who are state or county employees:

a. Adjusted gross income from wages, salaries, commissions, and other compensation of resident and nonresident individuals, except individuals who are state or county employees, derived from work performed or services rendered within the city or unincorporated area of the county imposing the tax.

2. For purposes of the local earnings tax "resident individual" means an individual taxpayer whose principal place of residence at the end of the taxpayer's tax year is located in the city or unincorporated area of the county where the tax is imposed, "nonresident individual" means an individual who is not a resident individual and "adjusted gross income from wages, salaries, commissions, and other compensation" means the gross income from such compensation less those deductions allowable for state and federal tax purposes which are attributable to the earning of such compensation. The department of revenue shall adopt rules for determining the adjusted gross income of such compensation. If the compensation received for work performed or services rendered is for work performed or services rendered both within and without the area where the tax is imposed, the amount of compensation of an individual derived from work performed or services rendered that is subject to the local earnings tax shall be reasonably apportioned to the city or unincorporated area of the county, as applicable, by means of rules adopted by the department of revenue. The department shall also provide rules for allocation of other types of income on which the earnings tax is imposed.

3. Returns for the local earnings tax shall be in the form as the director of revenue may prescribe, and shall be filed with the department on or before the last day of

the fourth month after the expiration of the tax year. All local earnings tax returns shall cover a calendar year. Each taxpayer required to file a return shall show on the return the city of residence on the last day of the tax year, if applicable, and shall show the county of residence on the last day of the tax year.

4. a. Every withholding agent and every employer as defined in chapter 422 and further defined in the Internal Revenue Code of 1954 as defined in chapter 422, with respect to income tax collected at source, making payment of wages to either a resident employee or employees, or a nonresident employee or employees, working in the city or unincorporated area of the county, shall deduct and withhold from the wages an amount which will approximate the employees' annual tax liability on a calendar year basis, calculated on tables provided by the department of revenue.

b. A withholding agent required to deduct and withhold tax under paragraph "a" shall deposit for each calendar quarterly period, on or before the last day of the month following the close of the quarterly period, on forms prescribed by the director, the tax required to be withheld under paragraph "a".

5. Every resident and nonresident of the city or county imposing a local earnings tax shall make and sign a return if the individual has income of five hundred dollars or more which is subject to the earnings tax.

85 Acts, ch 32, §93 SF 395
NEW section

422B.6 Administration.

A local earnings tax or change in the rate shall be imposed January 1 following the favorable election for tax years beginning on or after January 1 and repeal of the tax shall be as of December 31 following the favorable election for tax years beginning after December 31.

The director of revenue shall administer the provisions of a local earnings tax as nearly as possible in conjunction with the administration of state income tax laws. The director shall provide appropriate forms, or provide on the regular state tax forms, for reporting local earnings tax.

An ordinance imposing a local earnings tax shall adopt by reference the applicable provisions of the appropriate sections of chapter 422, division II. All powers and requirements of the director in administering the state income tax law apply to the administration of a local earnings tax, including but not limited to, the provisions of sections 422.4, 422.16, 422.20, 422.21, 422.22 to 422.31, 422.68, and 422.72 to 422.75. Local officials shall confer with the director of revenue and obtain the director's assistance in drafting the ordinance imposing a local earnings tax. A certified copy of the ordinance shall be filed with the director as soon as possible after passage.

The director, in consultation with local officials, shall collect and account for a local earnings tax and any interest and penalties. The director shall credit local earnings tax receipts and any interest and penalties collected from returns filed on or before November 1 of the calendar year following the tax year for which the local earnings tax is imposed to a "local earnings tax fund" established in the office of the treasurer of state. All local earnings tax receipts and any interest and penalties received or refunded from returns filed after November 1 of the calendar year following the tax year for which the local earnings tax is imposed shall be deposited in or withdrawn from the state general fund and shall be considered part of the cost of administering the local earnings tax.

85 Acts, ch 32, §94 SF 395
NEW section

422B.7 Payment to local government—use of receipts.

1. On or before January 15, the director of revenue shall make an accounting of the local earnings tax receipts and any interest and penalties collected from returns filed on or before November 1 of the preceding year and shall certify to the treasurer

of state this amount collected. The treasurer of state shall remit within fifteen days of the certification by the director of revenue to each city and county which has imposed a local earnings tax the amount in the local earnings tax fund collected as a result of its tax.

2. Local earnings tax moneys received by a city or county may be expended for any lawful purpose of the city or county which imposed the tax.

85 Acts, ch 32, §95 SF 395
NEW section

422B.8 Local sales and services tax.

A local sales and services tax at the rate of not more than one percent may be imposed by a county on the gross receipts taxed by the state under chapter 422, division IV. A local sales and services tax shall be imposed on the same basis as the state sales and services tax and may not be imposed on the sale of any property or on any service not taxed by the state. However, notwithstanding that the gross receipts from the sale or rental of the tangible personal property described in section 422.45, subsections 26 and 27 are taxable during the period beginning July 1, 1985 and ending June 30, 1987, a local sales and services tax shall not be imposed on the sale or rental of such property. A local sales and services tax is applicable to transactions within those incorporated and unincorporated areas of the county where it is imposed and shall be collected by all persons required to collect state gross receipts taxes. All cities contiguous to each other shall be treated as part of one incorporated area and the tax would be imposed in each of those contiguous cities only if the majority of those voting in the total area covered by the contiguous cities favor its imposition.

The amount of the sale, for purposes of determining the amount of the local sales and services tax, does not include the amount of any state gross receipts taxes.

A tax permit other than the state tax permit required under section 422.53 shall not be required by local authorities.

85 Acts, ch 32, §96 SF 395
NEW section

422B.9 Administration.

A local sales and services tax shall be imposed either January 1, April 1, July 1 or October 1 following the notification of the director of revenue.

A local sales and services tax shall be repealed only on March 31, June 30, September 30, or December 31. At least forty days before the imposition or repeal of the tax, a county shall provide notice of the action by certified mail to the director of revenue.

The director of revenue shall administer a local sales and services tax as nearly as possible in conjunction with the administration of state gross receipts tax laws. The director shall provide appropriate forms or provide on the regular state tax forms for reporting local sales and services tax liability.

The ordinance of a county board of supervisors imposing a local sales and services tax shall adopt by reference the applicable provisions of the appropriate sections of chapter 422, division IV. All powers and requirements of the director to administer the state gross receipts tax law are applicable to the administration of a local sales and services tax law, including but not limited to, the provisions of sections 422.25, subsection 4, 422.30, 422.48 to 422.52, 422.54 to 422.58, 422.67, 422.68, 422.69, subsection 1, and 422.70 to 422.75. Local officials shall confer with the director of revenue for assistance in drafting the ordinance imposing a local sales and services tax. A certified copy of the ordinance shall be filed with the director as soon as possible after passage.

The director, in consultation with local officials, shall collect and account for a local sales and services tax. The director shall certify each quarter the amount of local sales and services tax receipts and any interest and penalties to be credited to the "local sales and services tax fund" established in the office of the treasurer of state.

All local tax moneys and interest and penalties received or refunded one hundred eighty days or more after the date on which the county repeals its local sales and services tax shall be deposited in or withdrawn from the state general fund.

85 Acts, ch 32, §97 SF 395
NEW section

422B.10 Payment to local governments.

1. The treasurer of state shall credit the local sales and services tax receipts and interest and penalties from a county to the county's account in the local sales and services tax fund.

2. The treasurer of state, pursuant to rules of the director of revenue, shall remit at least quarterly to the board of supervisors, if the tax was imposed in the unincorporated areas, and each city where the tax was imposed its share of the county's account in the local sales and services tax fund as computed under subsections 3 and 4.

3. Seventy-five percent of each county's account shall be remitted on the basis of the county's population residing in the unincorporated area where the tax was imposed and those incorporated areas where the tax was imposed as follows:

a. To the board of supervisors a pro rata share based upon the percentage of the above population of the county residing in the unincorporated area of the county where the tax was imposed according to the most recent certified federal census.

b. To each city in the county where the tax was imposed a pro rata share based upon the percentage of the city's population residing in the county to the above population of the county according to the most recent certified federal census.

4. Twenty-five percent of each county's account shall be remitted based on the sum of property tax dollars levied by the board of supervisors if the tax was imposed in the unincorporated areas and each city in the county where the tax was imposed during the three-year period beginning July 1, 1982 and ending June 30, 1985 as follows:

a. To the board of supervisors a pro rata share based upon the percentage of the total property tax dollars levied by the board of supervisors during the above three-year period.

b. To each city council where the tax was imposed a pro rata share based upon the percentage of property tax dollars levied by the city during the above three-year period of the above total property tax dollars levied by the board of supervisors and each city where the tax was imposed during the above three-year period.

5. Local sales and services tax moneys received by a city or county may be expended for any lawful purpose of the city or county.

85 Acts, ch 32, §98 SF 395
NEW section

CHAPTER 423

USE TAX

423.1 Definitions.

The following words, terms, and phrases when used in this chapter shall have the meanings ascribed to them in this section:

1. "Use" means and includes the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, except that it shall not include processing, or the sale of that property in the regular course of business. Property used in "processing" within the meaning of this subsection shall mean and include (a) any tangible personal property including containers which it is intended shall, by means of fabrication, compounding, manufacturing, or germination, become an integral part of other tangible personal property intended to be sold

ultimately at retail, (b) fuel which is consumed in creating power, heat, or steam for processing or for generating electric current, or (c) chemicals, solvents, sorbents, or reagents, which are directly used and are consumed, dissipated, or depleted in processing personal property, which is intended to be sold ultimately at retail, and which may not become a component or integral part of the finished product. The distribution to the public of free newspapers or shoppers guides shall be deemed a retail sale for purposes of the processing exemption.

2. "Purchase" means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

3. "Purchase price" means the total amount for which tangible personal property is sold, valued in money, whether paid in money or otherwise; provided:

a. That cash discounts taken on sales are not included.

b. That in transactions, except those subject to paragraph "c", in which tangible personal property is traded toward the purchase price of other tangible personal property the purchase price is only that portion of the purchase price which is payable in money to the retailer if the following conditions are met:

(1) The tangible personal property traded to the retailer is the type of property normally sold in the regular course of the retailer's business.

(2) The tangible personal property traded to the retailer is intended by the retailer to be ultimately sold at retail and will be subject to the tax under section 422.43 or this chapter when sold or is intended to be used by the retailer or another in the remanufacturing of a like item.

c. That in transactions between persons, neither of which is a retailer of vehicles subject to registration, in which a vehicle subject to registration is traded toward the purchase price of another vehicle subject to registration, the purchase price is only that portion of the purchase price represented by the difference between the total purchase price of the vehicle subject to registration acquired and the amount of the vehicle subject to registration traded.

4. "Tangible personal property" means tangible goods, wares, merchandise, optional service or warranty contracts, vulcanizing, recapping, or retreading services, engraving, photography, retouching, printing, or binding services, and gas, electricity, and water when furnished or delivered to consumers or users within this state.

5. "Retailer" means and includes every person engaged in the business of selling tangible personal property for use within the meaning of this chapter; provided, however, that when in the opinion of the director it is necessary for the efficient administration of this chapter to regard any salespersons, representatives, truckers, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the director may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for purposes of this chapter.

6. "Retailer maintaining a place of business in this state" or any like term, shall mean and include any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within this state under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily, or whether such retailer or subsidiary is admitted to do business within this state pursuant to chapter 494.

7. "Vehicles subject to registration" means any vehicle subject to registration pursuant to section 321.18.

8. "Person" and "taxpayer" shall have the same meaning as defined in section 422.42.

9. "Trailer" shall mean every trailer, as is now or may be hereafter so defined by the motor vehicle law of this state, which is required to be registered or is subject only to the issuance of a certificate of title under such motor vehicle law.

10. Definitions contained in section 422.42 shall apply to the provisions of this chapter according to their context.

11. "Street railways" shall mean and include urban transportation systems.

12. "Department" and "director" shall have the same meaning as defined in section 422.3.

13. "Certificate of title" means a certificate of title issued for a vehicle under chapter 321.

14. "Mobile home" means mobile home as defined in section 321.1, subsection 68, paragraph "a".

85 Acts, ch 32, §101 SF 395; 85 Acts, ch 231, §18 SF 565
 Subsection 1, unnumbered paragraph 2 struck
 NEW subsection 14

423.4 Exemptions.

The use in this state of the following tangible personal property is hereby specifically exempted from the tax imposed by this chapter:

1. Tangible personal property, the gross receipts from the sale of which are required to be included in the measure of the tax imposed by division IV of chapter 422, and any amendments made or which may hereafter be made thereto. This exemption does not include vehicles subject to registration or subject only to the issuance of a certificate of title.

2. All articles of tangible personal property brought into the state of Iowa by a nonresident individual thereof for the individual's use or enjoyment while within the state.

3. Services exempt from taxation by provisions of section 422.45.

4. Tangible personal property, the gross receipts from the sale of which are exempted from the retail sales tax by the terms of section 422.45, except subsection 4 and subsection 6 of section 422.45 as it relates to the sale of vehicles subject to registration or subject only to the issuance of a certificate of title.

5. Advertisement and promotional material and matter, seed catalogs, envelopes for same, and other similar material temporarily stored in this state which are acquired outside of Iowa and which, subsequent to being brought into this state, are sent outside of Iowa, either singly or physically attached to other tangible personal property sent outside of Iowa.

6. Tangible personal property used or to be used as railroad rolling stock for transporting persons or property, or as materials or parts therefor.

7. Vehicles, as defined in subsections 4, 6, 8, 9 and 10 of section 321.1, except such vehicles subject to registration which are designed primarily for carrying persons, when purchased for lease and actually leased to a lessee for use outside the state of Iowa and the subsequent sole use in Iowa is in interstate commerce or interstate transportation. This subsection shall be retroactive to January 1, 1973.

8. Tangible personal property which, by means of fabrication, compounding, or manufacturing, become an integral part of vehicles, as defined in subsections 4, 6, 8, 9 and 10 of section 321.1, manufactured for lease and actually leased to a lessee for use outside the state of Iowa and the subsequent sole use in Iowa is in interstate commerce or interstate transportation. Vehicles subject to registration which are designed primarily for carrying persons are excluded from this subsection. This subsection shall be retroactive to January 1, 1973.

9. Vehicles subject to registration which are transferred from a business or individual conducting a business within this state as a sole proprietorship or partnership to a corporation formed by the sole proprietorship or partnership for the purpose of continuing the business when all of the stock of the corporation so formed is owned by the sole proprietor and the sole proprietor's spouse or by all the partners in the case of a partnership. This exemption is equally available where the vehicles subject to registration are transferred from a corporation to a sole proprietorship or partnership formed by that corporation for the purpose of continuing the business

when all of the incidents of ownership are owned by the same person or persons who were stockholders of the corporation.

10. Vehicles registered under chapter 326 and used substantially in interstate commerce, section 423.5 notwithstanding. For purposes of this subsection, "substantially in interstate commerce" means that a minimum of twenty-five percent of the miles operated by the vehicle accrues in states other than Iowa. This subsection applies only to vehicles which are registered for a gross weight of thirteen tons or more.

11. Mobile homes the use of which has previously been subject to the tax imposed under this chapter and for which that tax has been paid.

12. Mobile homes to the extent of the portion of the purchase price of the mobile home which is not attributable to the cost of the tangible personal property used in the processing of the mobile home. For purposes of this exemption, the portion of the purchase price which is not attributable to the cost of the tangible personal property used in the processing of the mobile home is forty percent.

85 Acts, ch 231, §19 SF 565
NEW subsections 10, 11 and 12

CHAPTER 425

HOMESTEAD TAX CREDITS AND REIMBURSEMENT

425.26 Proof of claim.

Every claimant shall give the department of revenue, in support of the claim reasonable proof of:

1. Age and total disability, if any;
2. Property taxes due or rent constituting property taxes paid, including the portion of gross rent paid for providing utilities, services, furniture, furnishings, and personal property appliances, and the name and address of the owner or manager of the property rented and a statement whether the claimant is related by blood, marriage or adoption to the owner or manager of the property rented;
3. Homestead credit allowed against property taxes due;
4. Changes of homestead;
5. Household membership;
6. Household income;
7. Size and nature of property claimed as the homestead; and
8. A statement that the property taxes due and used for purposes of this division have been or will be paid by the claimant, unless the claim is filed on behalf of a deceased claimant by the claimant's legal guardian, spouse, or attorney or by the executor or administrator of the claimant's estate, and that there are no delinquent property taxes on the homestead.

The director may require any additional proof necessary to support a claim.

85 Acts, ch 67, §44 SF 121
Subsection 9 struck

CHAPTER 427

PROPERTY EXEMPT AND TAXABLE

427.1 Exemptions.

The following classes of property shall not be taxed:

1. *Federal and state property.* The property of the United States and this state, including state university, university of science and technology, and school lands. The exemption herein provided shall not include any real property subject to

taxation under any federal statute applicable thereto, but such exemption shall extend to and include all machinery and equipment owned exclusively by the United States or any corporate agency or instrumentality thereof without regard to the manner of the affixation of such machinery and equipment to the land or building upon or in which such property is located, until such time as the Congress of the United States shall expressly authorize the taxation of such machinery and equipment.

2. *Municipal and military property.* The property of a county, township, city, school corporation, levee district, drainage district or military company of the state of Iowa, when devoted to public use and not held for pecuniary profit, except property of a municipally owned electric utility held under joint ownership and property of an electric power facility financed under chapter 28F which shall be subject to assessment and taxation under provisions of chapters 428 and 437. The exemption for property owned by a city or county also applies to property which is operated by a city or county as a library, art gallery or museum, conservatory, botanical garden or display, observatory or science museum, or as a location for holding athletic contests, sports or entertainment events, expositions, meetings or conventions, or leased from the city or county for any such purposes. Food and beverages may be served at the events or locations without affecting the exemptions, provided the city has approved the serving of food and beverages on the property if the property is owned by the city or the county has approved the serving of food and beverages on the property if the property is owned by the county.

3. *Public grounds and cemeteries.* Public grounds, including all places for the burial of the dead; and crematoriums with the land, not exceeding one acre, on which they are built and appurtenant thereto, so long as no dividends or profits are derived therefrom.

4. *Fire equipment and grounds.* Fire engines and all implements for extinguishing fires, and the publicly owned buildings and grounds used exclusively for keeping them and for meetings of fire companies.

5. *Public securities.* Bonds or certificates issued by any municipality, school district, drainage or levee district, river-front improvement commission or county within the state of Iowa. No deduction from the assessment of the shares of stock of any bank or trust company shall be permitted because such bank or trust company holds such bonds as are exempted above.

6. *Property of associations of war veterans.* The property of any organization composed wholly of veterans of any war, when such property is devoted entirely to its own use and not held for pecuniary profit.

7. *Property of cemetery associations.* Burial grounds, mausoleums, buildings and equipment owned and operated by cemetery associations and used exclusively for the maintenance and care of the cemeteries devoted to interment of human bodies and human remains. The exemption granted by this subsection shall not apply to any property used for the practice of mortuary science.

8. *Libraries and art galleries.* All grounds and buildings used for public libraries, public art galleries, and libraries and art galleries owned and kept by private individuals, associations, or corporations, for public use and not for private profit.

9. *Property of religious, literary, and charitable societies.* All grounds and buildings used or under construction by literary, scientific, charitable, benevolent, agricultural, and religious institutions and societies solely for their appropriate objects, not exceeding three hundred twenty acres in extent and not leased or otherwise used or under construction with a view to pecuniary profit. However, an organization mentioned in this subsection whose primary objective is to preserve land in its natural state may own or lease land not exceeding three hundred twenty acres in each county for its appropriate objects. All deeds or leases by which such property is held shall be filed for record before the property herein described shall be omitted from the assessment. All such property shall be listed upon the tax rolls

of the district or districts in which it is located and shall have ascribed to it an actual fair market value and an assessed or taxable value, as contemplated by section 441.21, whether such property be subject to a levy or be exempted as herein provided and such information shall be open to public inspection.

10. *Personal property of institutions and students.* Moneys and credits belonging exclusively to the institutions named in subsections 7, 8, and 9 and devoted solely to sustaining them, but not exceeding in amount or income the amount prescribed by their charters or articles of incorporation; and the books, papers, pictures, works of art, apparatus, and other personal property belonging to such institutions and used solely for the purposes contemplated in said subsections and the like property of students in such institutions used for their education.

11. *Property of educational institutions.* Real estate owned by any educational institution of this state as a part of its endowment fund, to the extent of one hundred sixty acres in any civil township except any real property acquired after January 1, 1965, by any educational institution as a part of its endowment fund or upon which any income is derived or used, directly or indirectly, for full or partial payment for services rendered, shall be taxed beginning with the levies applied for taxes payable in the year 1967, at the same rate as all other property of the same class in the taxing district in which the real property is located. The property acquired prior to January 1, 1965, and held or owned as part of the endowment fund of an educational institution shall be subject to assessment and levy in the assessment year 1974 for taxes payable in 1975. All the property shall be listed on the assessment rolls in the district in which the property is located and an actual fair market value and an assessed or taxable value be ascribed to it, as contemplated by section 441.21, irrespective of whether an exemption under this subsection may be or is affirmed, and the information shall be open to public inspection; it being the intent of this section that the property be valued whether or not it be subject to a levy. Every educational institution claiming an exemption under this subsection shall file with the assessor not later than February 1 of the year for which the exemption is requested, a statement upon forms to be prescribed by the director of revenue, describing and locating the property upon which exemption is claimed. Property which is located on the campus grounds and used for student union purposes may serve food and beverages without affecting its exemption received pursuant to subsection 9 or this subsection.

12. *Homes for soldiers.* The buildings, grounds, furniture, and household equipment of homes owned and operated by organizations of soldiers, sailors, or marines of any of the wars of the United States when used for a home for disabled soldiers, sailors, or marines and not operated for pecuniary profit.

13. *Agricultural produce.* Growing agricultural and horticultural crops and products, except commercial orchards and vineyards, and all horticultural and agricultural produce harvested by or for the person assessed within one year previous to the listing, all wool shorn from the person's sheep within such time, all poultry, ten stands of bees, honey and beeswax produced during that time and remaining in the possession of the producer, and all livestock.

14. *Rent.* Obligations for rent not yet due and owned by the original payee.

15. *Family equipment.* All tangible personal property customarily located and used in or about the residence or residences of the owner of said property; all wearing apparel and food used or to be used by the owner or the owner's family; and all personal effects.

16. *Farm equipment—drays—tools.* The farming utensils of any person who makes a livelihood by farming, the team, wagon, and harness of the teamster or dray hauler who makes a living by their use in hauling for others, and the tools of any mechanic, not in any case to exceed one thousand one hundred eleven dollars in taxable value.

17. *Government lands.* Government lands entered and located, or lands purchased from this state, for the year in which the entry, location, or purchase is made.

18. *Fraternal beneficiary funds.* The accumulations and funds held or possessed by fraternal beneficiary associations for the purposes of paying the benefits contemplated by section 512.2, or for the payment of the expenses of such associations.

19. *Capital stock of companies.* The shares of capital stock of telegraph and telephone companies, freight-line and equipment companies, transmission line companies as defined in section 437.1, express companies, corporations engaged in merchandising as defined in section 428.16, domestic corporations engaged in manufacturing as defined in section 428.20, and manufacturing corporations organized under the laws of other states having their main operating offices and principal factories in the state of Iowa, and corporations not organized for pecuniary profit.

20. *Public airports.* Any lands, the use of which (without charge by or compensation to the holder of the legal title thereto) has been granted to and accepted by the state or any political subdivision thereof for airport or aircraft landing area purposes.

21. *Grain.* Grain handled, as defined under section 428.35.

22. *Pension and welfare plans.* All intangible property held pursuant to any pension, profit sharing, unemployment compensation, stock bonus or other retirement, deferred benefit or employee welfare plan the income from which is exempt from taxation under divisions II and III of chapter 422.

23. *Statement of objects and uses filed.* A society or organization claiming an exemption under subsection 6 or subsection 9 of this section shall file with the assessor not later than February 1 a statement upon forms to be prescribed by director of revenue, describing the nature of the property upon which the exemption is claimed and setting out in detail any uses and income from the property derived from the rentals, leases or other uses of the property not solely for the appropriate objects of the society or organization. Upon the filing and allowance of the claim, the claim shall be allowed on the property for successive years without further filing as long as the property is used for the purposes specified in the original claim for exemption. When the property is sold or transferred, the county recorder shall provide notice of the transfer to the assessor. The notice shall describe the property transferred and the name of the person to whom title to the property is transferred. The assessor, in arriving at the valuation of any property of the society or organization, shall take into consideration any uses of the property not for the appropriate objects of the organization and shall assess in the same manner as other property, all or any portion of the property involved which is leased or rented and is used regularly for commercial purposes for a profit to a party or individual. If a portion of the property is used regularly for commercial purposes an exemption shall not be allowed upon property so used and the exemption granted shall be in the proportion of the value of the property used solely for the appropriate objects of the organization, to the entire value of the property. An exemption shall not be granted upon property upon or in which persistent violations of the laws of the state are permitted. A claimant of an exemption shall, under oath, declare that no violations of law will be knowingly permitted or have been permitted on or after January 1 of the year in which a tax exemption is requested. Claims for exemption shall be verified under oath by the president or other responsible head of the organization. A society or organization which ceases to use the property for the purposes stated in the claim shall provide written notice to the assessor of the change in use.

24. *Delayed claims.* In any case where no such claim for exemption has been made to the assessor prior to the time the assessor's books are completed, such claims may be filed with the local board of review or with the county auditor not later than July 1 of the year for which such exemption from taxation is claimed, and a proper assessment shall be made either by the board of review or by the county auditor, if said property is all or in part subject to taxation.

25. *Mandatory denial.* No exemption shall be granted upon any property which is the location of federally licensed devices not lawfully permitted to operate under the laws of the state.

26. *Revoking exemption.* Any taxpayer or any taxing district may make application to the director of revenue for revocation for any exemption, based upon alleged violations of the provisions of this chapter. The director of revenue may also on the director's own motion set aside any exemption which has been granted upon property for which exemption is claimed under this chapter. The director of revenue shall give notice by certified mail to the societies or organizations claiming an exemption upon property, exemption of which is questioned before or by the director of revenue, and any order made by the director of revenue revoking or modifying such exemption shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court having jurisdiction in the county in which such property is located, and must be filed within thirty days after any order revoking such exemption is made by the director of revenue.

27. *Tax provisions for armed forces.* If any person enters any branch of the armed service of the United States in time of national emergency, all personal property used in making the livelihood, in excess of three hundred dollars in value, of such person shall be assessed but no tax shall be due if such person upon return from service, or in event of the person's death if the person's executor, administrator or next of kin, executes an affidavit to the county assessor that such property was not used in any manner during the person's absence, the tax as assessed thereon shall be waived and no payment shall be required.

28. *Goods stored by warehouse operator.* All personal property intended for ultimate sale or resale, with or without additional processing, manufacturing, fabricating, compounding or servicing, stored in a warehouse of any person, copartnership or corporation engaged in the business of storing goods for profit as defined in section 554.7201 et seq., provided such personal property is not offered for sale or sold by the owner at retail directly from the public warehouse.

29. *Personal property.* All personal property in transit.

30. *Rural water sales.* The real and personal property of a nonprofit corporation engaged in the distribution and sale of water to rural areas when devoted to public use and not held for pecuniary profit.

31. *Assessed value of exempt property.* Each county and city assessor shall determine the assessment value that would be assigned to the property if it were taxable and value all tax exempt property within the assessor's jurisdiction. A summary report of tax exempt property shall be filed with the director of revenue and the local board of review on or before April 16 of each year on forms prescribed by the director of revenue.

32. *Pollution control.* Pollution-control property as defined in this subsection shall be exempt from taxation to the extent provided in this subsection, upon compliance with the provisions of this subsection.

This exemption shall apply to new installations of pollution-control property beginning on January 1 after the construction or installation of the property is completed. This exemption shall apply beginning on January 1, 1975, to existing pollution-control property if its construction or installation was completed after September 23, 1970.

This exemption shall be limited to the market value, as defined in section 441.21, of the pollution-control property. If the pollution-control property is assessed with other property as a unit, this exemption shall be limited to the net market value added by the pollution-control property, determined as of the assessment date.

Application for this exemption shall be filed with the assessing authority not later than the first of February of the first year for which the exemption is requested, on forms provided by the department of revenue. The application shall describe and locate the specific pollution-control property to be exempted.

The application for a specific pollution-control property shall be accompanied by a certificate of the executive director of the department of water, air and waste

management certifying that the primary use of the pollution-control property is to control or abate pollution of any air or water of this state or to enhance the quality of any air or water of this state.

A taxpayer may seek judicial review of a determination of the executive director or, on appeal, of the water, air and waste management commission in accordance with the provisions of chapter 17A.

The water, air and waste management commission of the department of water, air and waste management shall adopt rules relating to certification under this subsection and information to be submitted for evaluating pollution-control property for which a certificate is requested. The revenue department shall adopt any rules necessary to implement this subsection, including rules on identification and valuation of pollution-control property. All rules adopted shall be subject to the provisions of chapter 17A.

For the purposes of this subsection "pollution-control property" means personal property or improvements to real property, or any portion thereof, used primarily to control or abate pollution of any air or water of this state or used primarily to enhance the quality of any air or water of this state. In the event such property shall also serve other purposes or uses of productive benefit to the owner of the property, only such portion of the assessed valuation thereof as may reasonably be calculated to be necessary for and devoted to the control or abatement of pollution or to the enhancement of the quality of the air or water of this state shall be exempt from taxation under this subsection.

For the purposes of this subsection "pollution" means air pollution as defined in section 455B.131 or water pollution as defined in section 455B.171. "Water of the state" means the water of the state as defined in section 455B.171. "Enhance the quality" means to diminish the level of pollutants below the air or water quality standards established by the water, air and waste management commission of the department of water, air and waste management.

33. *Impoundment structures.* The impoundment structure and any land underlying an impoundment located outside any incorporated city, which are not developed or used directly or indirectly for nonagricultural income-producing purposes and which are maintained in a condition satisfactory to the soil conservation district commissioners of the county in which the impoundment structure and the impoundment are located. Any person owning land which qualifies for a property tax exemption under this subsection shall apply to the county assessor each year before the first of July for the exemption. The application shall be made on forms prescribed by the department of revenue. The first application shall be accompanied by a copy of the water storage permit approved by the department of water, air and waste management and a copy of the plan for the construction of the impoundment structure and the impoundment. The construction plan shall be used to determine the total acre-feet of the impoundment and the amount of land which is eligible for the property tax exemption status. The county assessor shall annually review each application for the property tax exemption under this subsection and submit it, with the recommendation of the soil conservation district commissioners, to the board of supervisors for approval or denial. Any applicant for a property tax exemption under this subsection may appeal the decision of the board of supervisors to the district court. As used in this subsection, "impoundment" means any reservoir or pond which has a storage capacity of at least eighteen acre-feet of water or sediment at the time of construction; "storage capacity" means the total area below the crest elevation of the principal spillway including the volume of any excavation in such area; and "impoundment structure" means any dam, earthfill or other structure used to create an impoundment.

34. *Low-rent housing.* The property owned and operated by a nonprofit organization providing low-rent housing for the elderly and the physically and mentally handicapped. The exemption granted under the provisions of this subsection shall

apply only until the terms of the original low-rent housing development mortgage is paid in full or expires, subject to the provisions of subsections 23 and 24.

35. Coal which is held in inventory to be used for methane gas production or other purposes by a person, corporation, partnership, or other business entity, except coal held in inventory which is owned by a person, corporation, partnership, or other business entity whose property is assessed by the department of revenue pursuant to sections 428.24 to 428.29 or chapters 433 to 438.

36. *Natural conservation or wildlife areas.* Wetlands, recreational lakes, forest covers, rivers and streams, river and stream banks, and open prairies as designated by the board of supervisors of the county in which located. The board of supervisors shall annually designate the real property, not to exceed in the aggregate for the fiscal year beginning July 1, 1983 the greater of one percent of the acres assessed as agricultural land or three thousand acres in each county, for which this exemption shall apply. For subsequent fiscal years, the limitation on the maximum acreage of real property that may be granted exemptions shall be the limitation for the previous fiscal year, unless the amount of acreage granted exemptions for the previous fiscal year equaled the limitation for that year, then the limitation for the subsequent fiscal year is the limitation for the previous fiscal year plus an increase, not to exceed three hundred acres, of ten percent of that limitation. The procedures of this subsection shall be followed for each assessment year to procure an exemption for the fiscal year beginning in the assessment year. The exemption shall be only for the fiscal year for which it is granted, except that an exemption granted for wetlands shall be for three fiscal years. A parcel of property may be granted subsequent exemptions. The exemption shall only be granted for parcels of property of two acres or more.

Application for this exemption shall be filed with the commissioners of the soil conservation district in which the property is located, or if not located in a district, to the board of supervisors, not later than April 15 of the assessment year, on forms provided by the department of revenue. However, in the case of an exemption granted for wetlands an application does not have to be filed for the second and third years of the three-year exemption period. The application shall describe and locate the property to be exempted and have attached to it an aerial photo of that property on which is outlined the boundaries of the property to be exempted. In the case of an open prairie which is or includes a gully area susceptible to severe erosion, an approved erosion control plan must accompany the application. Upon receipt of the application, the commissioners or the board of supervisors, if the property is not located in a soil conservation district, shall certify whether the property is eligible to receive the exemption. The commissioners or board shall not withhold certification of the eligibility of property because of the existence upon the property of an abandoned building or structure which is not used for economic gain. If the commissioners certify that the property is eligible, the application shall be forwarded to the board of supervisors by May 1 of that assessment year with the certification of the eligible acreage. An application must be accompanied by an affidavit signed by the applicant that if an exemption is granted, the property will not be used for economic gain during the assessment year in which the exemption is granted.

Before the board of supervisors may designate real property for the exemption, it shall establish priorities for the types of real property for which an exemption may be granted and the amount of acreage. These priorities may be the same as or different than those for previous years. The board of supervisors shall get the approval of the governing body of the city before an exemption may be granted to real property located within the corporate limits of that city. A public hearing shall be held with notice given as provided in section 23.2 at which the proposed priority list shall be presented. After the public hearing, the board of supervisors shall adopt by resolution the proposed priority list or another priority list. Property upon which are located abandoned buildings or structures shall have the lowest priority on the list adopted, except where the board of supervisors determines that a structure has

historic significance. The board of supervisors shall also provide for a procedure where the amount of acres for which exemptions are sought exceeds the amount the priority list provides for that type or in the aggregate for all types.

After receipt of an application with its accompanying certification and affidavit and the establishment of the priority list, the board of supervisors may grant a tax exemption under this subsection using the established priority list as a mandate. Real property designated for the tax exemption shall be designated by May 15 of the assessment year in which begins the fiscal year for which the exemption is granted. Notification shall be sent to the county auditor and the applicant.

The board of supervisors does not have to grant tax exemptions under this subsection, grant tax exemptions in the aggregate of the maximum acreage which may be granted exemptions, or grant a tax exemption for the total acreage for which the applicant requested the exemption. Only real property in parcels of two acres or more which is wetlands, recreational lakes, forest cover, river and stream, river and stream banks or open prairie and which is utilized for the purposes of providing soil erosion control or wildlife habitat or both, and which is subject to property tax for the fiscal year for which the tax exemption is requested is eligible for the exemption under this subsection. However, in addition to the above, in order for a gully area which is susceptible to severe erosion to be eligible, there must be an erosion control plan for it approved by the commissioners of the soil conservation district in which it is located or the state soil conservation committee if not located in a district. In the case of an exemption for river and stream or river and stream banks, the exemption shall not be granted unless there is included in the exemption land located at least thirty-three feet from the ordinary high water mark of the river and stream or river and stream banks. Property shall not be denied an exemption because of the existence upon the property of an abandoned building or structure which is not used for economic gain. If the real property is located within a city, the approval of the governing body must be obtained before the real property may be eligible for an exemption. For purposes of this subsection:

a. "*Wetlands*" means land preserved in its natural condition which is mostly under water, which produces little economic gain, which has no practical use except for wildlife or water conservation purposes, and the drainage of which would be lawful, feasible and practical and would provide land suitable for the production of livestock, dairy animals, poultry, fruit, vegetables, forage and grains. "*Wetlands*" includes adjacent land which is not suitable for agricultural purposes due to the presence of the land which is under water.

b. "*Open prairies*" includes hillside and gully areas which have a permanent grass cover but does not include native prairies meeting the criteria of the state conservation commission.

c. "*Forest cover*" means land which is predominantly wooded.

d. "*Recreational lake*" means a body of water, which is not a river or stream, owned solely by a nonprofit organization and primarily used for boating, fishing, swimming and other recreational purposes.

e. "*Used for economic gain*" includes, but is not limited to, using property for the storage of equipment, machinery, or crops.

37. *Native prairie.* Land designated as native prairie by a county conservation board or by the state conservation commission in an area not served by a county conservation board. Application for the exemption shall be made on forms provided by the department of revenue. The application forms shall be filed with the assessing authority not later than the first of February of the year for which the exemption is requested. The application must be accompanied by an affidavit signed by the applicant that if the exemption is granted, the property will not be used for economic gain during the assessment year in which the exemption is granted. If the property is used for economic gain during the assessment year in which the exemption is granted, the property shall lose its tax exemption and shall be taxed at the rate levied

by the county for the fiscal year beginning in that assessment year. The first annual application shall be accompanied by a certificate from the county conservation board serving the area in which the property is located or if none exists, the state conservation commission stating that the land is native prairie. The county conservation board or the state conservation commission shall issue the certificate if the board or commission finds that the land has never been cultivated, is unimproved, is primarily a mixture of warm season grasses interspersed with flowering plants, and meets the other criteria established by the state conservation commission for native prairie. A taxpayer may seek judicial review of a decision of a board or the commission according to chapter 17A. The state conservation commission shall adopt rules to implement this subsection.

38. *Land certified as a wildlife habitat.* The owner of agricultural land may designate not more than two acres of the land for use as a wildlife habitat. After inspection, if the land meets the standards established by the commission for a wildlife habitat under section 110.3, the state conservation commission shall certify the designated land as a wildlife habitat and shall send a copy of the certification to the appropriate assessor. The commission may subsequently withdraw certification of the designated land if it fails to meet the established standards for a wildlife habitat and the assessor shall be given written notice of the decertification.

39. Railroad right-of-way and improvements on the right-of-way only during that period of time that the Iowa railway finance authority holds an option to purchase the right-of-way under section 307B.24.

85 Acts, ch 32, §102 SF 395

1985 amendment to subsection 32 retroactive to January 1, 1985; 85 Acts, ch 243, §5

Subsection 32, unnumbered paragraphs 1 and 2 amended

CHAPTER 427A

PERSONAL PROPERTY TAX CREDIT

427A.1 Personal property tax credit.

1. All tangible property except that which is assessed and taxed as real property is subject to the personal property tax credits provided in this chapter, unless the property is taxed, licensed, or exempt from taxation under other provisions of law. For the purposes of property taxation only, the following shall be assessed and taxed, unless otherwise qualified for exemption, as real property:

- a. Land and water rights.
- b. Substances contained in or growing upon the land, before severance from the land, and rights to such substances. However, growing crops shall not be assessed and taxed as real property, and this paragraph is also subject to the provisions of section 441.22.
- c. Buildings, structures or improvements, any of which are constructed on or in the land, attached to the land, or placed upon a foundation whether or not attached to the foundation. However, property taxed under chapter 135D shall not be assessed and taxed as real property.
- d. Buildings, structures, equipment, machinery or improvements, any of which are attached to the buildings, structures, or improvements defined in paragraph "c" of this subsection.
- e. Machinery used in manufacturing establishments. The scope of property taxable under this paragraph is intended to be the same as, and neither broader nor narrower than, the scope of property taxable under section 428.22 prior to July 1, 1974.
- f. Property taxed under chapter 499B.
- g. Rights to space above the land.
- h. Property assessed by the department of revenue pursuant to sections 428.24 to 428.29, or chapters 433, 434 and 436 to 438.

i. Property used but not owned by the persons whose property is defined in paragraph "h" of this subsection, which would be assessed by the department of revenue if the persons owned the property. However, this paragraph does not change the manner of assessment or the authority entitled to make the assessment.

j. (1) Computers. As used in this paragraph, "computer" means stored program processing equipment and all devices fastened to the computer by means of signal cables or communication media that serve the function of signal cables, but does not include point of sales equipment.

(2) Computer output microfilming equipment.

(3) Key entry devices that prepare information for input to a computer.

(4) All equipment that produces a final output from one of the facilities listed in subparagraphs (1), (2) and (3) of this paragraph.

k. Transmission towers and antennae not a part of a household.

2. As used in subsection 1, "attached" means any of the following:

a. Connected by an adhesive preparation.

b. Connected in a manner so that disconnecting requires the removal of one or more fastening devices, other than electric plugs.

c. Connected in a manner so that removal requires substantial modification or alteration of the property removed or the property from which it is removed.

3. Notwithstanding the definition of "attached" in subsection 2, property is not "attached" if it is a kind of property which would ordinarily be removed when the owner of the property moves to another location. In making this determination the assessing authority shall not take into account the intent of the particular owner.

4. Notwithstanding the other provisions of this section, property described in this section, if held solely for sale, lease or rent as part of a business regularly engaged in selling, leasing or renting such property, and if the property is not yet sold, leased, rented or used by any person, shall not be assessed and taxed as real property. This subsection does not apply to any land or building.

5. Nothing in this section shall be construed to permit an item of property to be assessed and taxed in this state more than once in any one year.

6. The assessing authority shall annually reassess property which is assessed and taxed as real property, but which would be regarded as personal property except for this section. This section shall not be construed to limit the assessing authority's powers to assess or reassess under other provisions of law.

7. The director of revenue shall promulgate rules subject to chapter 17A to carry out the intent of this section.

85 Acts, ch 32, §103 SF 395

Subsection 1 paragraph j, subparagraph (1) amended

427A.9 Additional personal property tax credit.

Each taxpayer entitled to the personal property tax credit granted pursuant to sections 427A.1 to 427A.5 of this chapter is granted an additional personal property tax credit against the taxpayer's assessed value of personal property which would otherwise be taxable in the tax year.

The amount of the additional personal property tax credit shall be a fixed amount for each tax year. The amount of the additional personal property tax credit shall be increased for the extended tax year beginning January 1, 1974, and ending June 30, 1975, and shall be increased for each tax year immediately following a tax year in which the growth of state general fund revenues, adjusted for changes in rate or basis, exceeds five and one-half percent, except that the amount of the additional personal property tax credit for taxes payable in each year of the fiscal period beginning July 1, 1977 and ending June 30, 1979 shall not exceed the amount of the additional personal property tax credit allowed for taxes payable in the fiscal year beginning July 1, 1976 and ending June 30, 1977, the amount of the additional personal property tax credit for taxes payable in the fiscal year beginning July 1, 1980 and ending June 30, 1981 shall not exceed the amount of the additional personal

property tax credit allowed for taxes payable in the fiscal year beginning July 1, 1979 and ending June 30, 1980, and the amount of the additional personal property tax credit for taxes payable in the fiscal year beginning July 1, 1986 and ending June 30, 1987 shall not exceed the amount of the additional personal property tax credit allowed for taxes payable in the fiscal year beginning July 1, 1985 and ending June 30, 1986. An increase in the additional personal property tax credit, once granted, shall continue for each succeeding tax year. For the purposes of this chapter the state comptroller may estimate the state percent of growth if necessary to avoid delay in the collection of taxes. All taxes on personal property shall be repealed as provided in the following section. The director of revenue and the state comptroller, jointly, shall determine the amount of the credit for each such tax year. Such amount shall be the maximum amount, rounded to the nearest ten dollars, which will permit complete funding of the replacement obligation under this division, including the replacement obligation for the tax credit granted pursuant to sections 427A.1 to 427A.5, out of the appropriation provided in this chapter.

Notwithstanding the provisions of this section which require an increase in general fund revenues in excess of five and one-half percent, adjusted for changes in rate or basis, to increase the personal property tax credit, the amount of the personal property tax credit, to be allowed for taxes payable in the fiscal year beginning July 1, 1982 and ending June 30, 1983 and in the fiscal year beginning July 1, 1985 and ending June 30, 1986 shall be increased as provided in this section.

As used in this division "additional personal property tax credit" means the additional personal property tax credit granted pursuant to this section.

As used in this division "tax year" means the year in which taxes are payable.

No application shall be required for the additional personal property tax credit. The assessor and county auditor shall take all necessary action to assure that each taxpayer receives the credit.

85 Acts, ch 32, §104 SF 395
Unnumbered paragraphs 2 and 3 amended

427A.10 Phaseout of tax.

Effective on July 1, 1987, all taxes on personal property as defined in section 427A.1 are repealed. For assessment years beginning on or after January 1, 1986 personal property shall not be listed or assessed. This section shall prevail over all inconsistent statutes.

85 Acts, ch 32, §105 SF 395
See Code editor's note
Section amended

427A.12 Replacement fund.

1. A personal property tax replacement fund is established as a permanent fund in the office of the treasurer of state, for the purpose of reimbursing the taxing districts for their loss of revenue from personal property taxes due to the provisions of this chapter, determined as provided in this section.

2. On or before January 15, 1974, the county auditor of each county shall prepare a statement listing for each taxing district in the county:

a. The total assessed value of all personal property assessed for taxation as of January 1, 1973, excluding livestock but including other personal property eligible for tax credits granted by this chapter.

b. The millage rate of each taxing district levied in 1972 and payable in 1973.

c. The personal property tax replacement base for each taxing district, which shall be equal to the amount determined pursuant to paragraph "a" of this subsection multiplied by the millage rate specified in paragraph "b".

3. The county auditor shall certify and forward one copy each of the statement to the state comptroller and to the director of revenue not later than January 15, 1974. The director of revenue shall make any necessary corrections and certify to the state comptroller the amount of the personal property tax replacement base for each taxing district in the state, determined pursuant to subsection 2.

4. The personal property tax replacement base for each taxing district shall be permanent and shall not be adjusted, except that the state comptroller shall make any necessary corrections and shall make appropriate adjustments to reflect mergers, annexations and other changes in taxing districts or their boundaries.

5. For each state fiscal year ending with or before the year in which the ninth increase in the additional personal property tax credit under this division becomes effective, each taxing district shall be reimbursed from the personal property tax replacement fund in an amount equal to its personal property tax replacement base multiplied by a fraction the numerator of which is the total assessed value of all personal property, excluding livestock, in the taxing district on which taxes are not payable during such fiscal year because of the various tax credits granted by this chapter, and the denominator of which is the total assessed value of all personal property in the taxing district, excluding livestock but including other personal property eligible for tax credits granted by this chapter. For the half year beginning January 1, 1974, and ending June 30, 1974, the amount of reimbursement shall be half the amount determined pursuant to this subsection. The county auditor shall certify and forward to the state comptroller and the director of revenue, at the times and in the form directed by the director of revenue, any information needed for the purposes of this subsection. The director of revenue shall make any necessary corrections and certify the appropriate information to the state comptroller.

6. For each state fiscal year beginning on or after July 1, 1987, each taxing district shall be reimbursed from the personal property tax replacement fund in an amount equal to its personal property tax replacement base.

7. The amount due each taxing district shall be paid in the form of warrants payable to the respective county treasurers by the state comptroller on May 15 of each fiscal year, taking into consideration the relative budget and cash position of the state resources. For the fiscal year beginning July 1, 1984 and ending June 30, 1985, one-half of the amount due each taxing district shall be paid to the respective county treasurers by the state comptroller on May 15, 1985. For the fiscal year beginning July 1, 1985 and ending June 30, 1986, and for each succeeding fiscal year the amount due each taxing district shall be paid in the form of warrants payable to the respective county treasurers by the state comptroller on July 15 and May 15 of that fiscal year, taking into consideration the relative budget and cash position of the state resources. The July 15 payment shall be equal to the amount paid on May 15 of the preceding fiscal year and the payments received shall be an account receivable for each taxing district for the preceding fiscal year. The May 15 payment is equal to one-half of the amount of the additional personal property tax credit payable for the fiscal year. The county treasurer shall pay the proceeds to the various taxing districts in the county.

8. It is the intent of the general assembly that the amounts appropriated by this division shall be sufficient to pay in full the amounts due to all taxing districts. If, for any fiscal year the amount appropriated to the personal property tax replacement fund is insufficient to pay in full the amounts due to all taxing districts, then the amount of each payment shall be reduced by the same percentage, so that the aggregate payments to all taxing districts shall be equal to the amount appropriated for such payments.

85 Acts, ch 32, §106 SF 395
Subsection 6 amended

427A.13 Appropriation.

There is appropriated from the general fund of the state to the personal property tax replacement fund the following sums, or so much thereof as may be necessary, to carry out the provisions of this chapter as amended by this division. For the fiscal year beginning July 1, 1973, and ending June 30, 1974, there is appropriated the sum of thirty-one million nine hundred thousand dollars. For the fiscal year beginning July 1, 1974, and ending June 30, 1975, and each succeeding fiscal year, there is

appropriated the sum of thirty-five million seven hundred thousand dollars. For each year of the fiscal period beginning July 1, 1977 and ending June 30, 1979 the total appropriation shall be thirty-eight million six hundred thousand dollars. For the fiscal year beginning July 1, 1983 and ending June 30, 1984, the total appropriation shall be forty-six million two hundred thousand dollars. For the fiscal year beginning July 1, 1984 and ending June 30, 1985, the total appropriation shall be twenty-three million one hundred thousand dollars. For the fiscal year beginning July 1, 1985 and ending June 30, 1986, and each succeeding fiscal year, the total appropriation shall be an amount equal to the amount paid on May 15 of the preceding fiscal year plus one-half of the amount needed to fund the additional personal property tax credit payable in that fiscal year. In each fiscal year for which an increase in the additional personal property tax credit becomes effective as provided in this division, the appropriation under this section shall be increased by three million eight hundred thousand dollars, and this increased appropriation shall continue for each succeeding fiscal year. For the fiscal year beginning July 1, 1987 the total appropriation shall be fifty-nine million dollars. For the fiscal year beginning July 1, 1988, and for each succeeding fiscal year, the total appropriation shall be sixty-eight million dollars per year.

85 Acts, ch 32, §107 SF 395
Section amended

CHAPTER 427B

INDUSTRIAL PROPERTY—SPECIAL TAX PROVISIONS

427B.1 Actual value added exemption from tax—public hearing.

A city council, or a county board of supervisors as authorized by section 427B.2, may provide by ordinance for a partial exemption from property taxation of the actual value added to industrial real estate by the new construction of industrial real estate, research-service facilities, warehouses, distribution centers and the acquisition of or improvement to machinery and equipment assessed as real estate pursuant to section 427A.1, subsection 1, paragraph "e". New construction means new buildings and structures and includes new buildings and structures which are constructed as additions to existing buildings and structures. New construction does not include reconstruction of an existing building or structure which does not constitute complete replacement of an existing building or structure or refitting of an existing building or structure, unless the reconstruction of an existing building or structure is required due to economic obsolescence and the reconstruction is necessary to implement recognized industry standards for the manufacturing and processing of specific products and the reconstruction is required for the owner of the building or structure to continue to competitively manufacture or process those products which determination shall receive prior approval from the city council of the city or the board of supervisors of the county upon the recommendation of the Iowa development commission. The exemption shall also apply to new machinery and equipment assessed as real estate pursuant to section 427A.1, subsection 1, paragraph "e", unless the machinery or equipment is part of the normal replacement or operating process to maintain or expand the existing operational status. "Research-service facilities" means a building or group of buildings devoted primarily to research and development activities, including, but not limited to, the design and production or manufacture of prototype products for experimental use, and corporate-research services which do not have a primary purpose of providing on-site services to the public. Warehouse means a building or structure used as a public warehouse for the storage of goods pursuant to chapter 554, article 7, except that it does not mean a building or structure used primarily to store raw agricultural products or from which goods are sold at retail. Distribution center means a building

or structure used primarily for the storage of goods which are intended for subsequent shipment to retail outlets. Distribution center does not mean a building or structure used primarily to store raw agricultural products, used primarily by a manufacturer to store goods to be used in the manufacturing process, used primarily for the storage of petroleum products, or used for the retail sale of goods.

The ordinance may be enacted not less than thirty days after a public hearing is held in accordance with section 358A.6 in the case of a county, or section 362.3 in the case of a city. The ordinance shall designate the length of time the partial exemption shall be available and may provide for an exemption schedule in lieu of that provided in section 427B.3. However, an alternative exemption schedule adopted shall not provide for a larger tax exemption in a particular year than is provided for that year in the schedule contained in section 427B.3.

85 Acts, ch 232, §1 SF 576
Unnumbered paragraph 1 amended

427B.10 Property subject to special valuation.

For property defined in section 427A.1, subsection 1, paragraphs "e" and "j" acquired or initially leased after December 31, 1981 and on or before January 1, 1985, the taxpayer's valuation shall be limited to thirty percent of the net acquisition cost of the property. For purposes of this section, "net acquisition cost" means the acquired cost of the property including all foundations and installation cost less any excess cost adjustment.

For purposes of this section and sections 427B.11 to 427B.14:

1. Property assessed by the department of revenue pursuant to sections 428.24 to 428.29, or chapters 433, 434 and 436 to 438 shall not receive the benefits of this section and sections 427B.11 to 427B.14.

2. Property acquired on or before December 31, 1981 which was owned or used on or before December 31, 1981 by a related person shall not receive the benefits of this section and sections 427B.11 to 427B.14.

3. Property acquired after December 31, 1981 which was owned and used by a related person shall not receive any additional benefits under this section and sections 427B.11 to 427B.14.

4. Property which was owned or used on or before December 31, 1981 and subsequently acquired by an exchange of like property shall not receive the benefits of this section and sections 427B.11 to 427B.14.

5. Property which was acquired after December 31, 1981 and subsequently exchanged for like property shall not receive any additional benefits under this section and sections 427B.11 to 427B.14.

6. Property acquired on or before December 31, 1981 which is subsequently leased to a taxpayer or related person who previously owned the property shall not receive the benefits of this section and sections 427B.11 to 427B.14.

7. Property acquired after December 31, 1981 which is subsequently leased to a taxpayer or related person who previously owned the property shall not receive any additional benefits under this section and sections 427B.11 to 427B.14.

For purposes of this section, "related person" means a person who owns or controls the taxpayer's business and another business entity from which property is acquired or leased or to which property is sold or leased. Business entities are owned or controlled by the same person if the same person directly or indirectly owns or controls fifty percent or more of the assets or any class of stock or who directly or indirectly has an interest of fifty percent or more in the ownership or profits.

85 Acts, ch 32, §108 SF 395
Unnumbered paragraph 1 amended

DIVISION III

SPECIAL VALUATION FOR MACHINERY AND COMPUTERS ACQUIRED
OR LEASED AFTER JANUARY 1, 1985**427B.17 Property subject to special valuation.**

For property defined in section 427A.1, subsection 1, paragraphs "e" and "j" acquired or initially leased after January 1, 1985 the taxpayer's valuation shall be limited to thirty percent of the net acquisition cost of the property. For purposes of this section, "net acquisition cost" means the acquired cost of the property including all foundations and installation cost less any excess cost adjustment.

For purposes of this section:

1. Property assessed by the department of revenue pursuant to sections 428.24 to 428.29, or chapters 433, 434 and 436 to 438 shall not receive the benefits of this section.
2. Property acquired on or before January 1, 1985 which was owned or used on or before January 1, 1985 by a related person shall not receive the benefits of this section.
3. Property acquired after January 1, 1985 which was owned and used by a related person shall not receive any additional benefits under this section.
4. Property which was owned or used on or before January 1, 1985 and subsequently acquired by an exchange of like property shall not receive the benefits of this section.
5. Property which was acquired after January 1, 1985 and subsequently exchanged for like property shall not receive any additional benefits under this section.
6. Property acquired on or before January 1, 1985 which is subsequently leased to a taxpayer or related person who previously owned the property shall not receive the benefits of this section.
7. Property acquired after January 1, 1985 which is subsequently leased to a taxpayer or related person who previously owned the property shall not receive any additional benefits under this section.

For purposes of this section, "related person" means a person who owns or controls the taxpayer's business and another business entity from which property is acquired or leased or to which property is sold or leased. Business entities are owned or controlled by the same person if the same person directly or indirectly owns or controls fifty percent or more of the assets or any class of stock or who directly or indirectly has an interest of fifty percent or more in the ownership or profits.

Property assessed pursuant to this section shall not be eligible to receive a partial exemption under sections 427B.1 to 427B.6.

85 Acts, ch 32, §109 SF 395
NEW section

CHAPTER 428A

TAXATION OF REAL ESTATE TRANSFERS

428A.1 Amount of tax on transfers.

There is imposed on each deed, instrument, or writing by which any lands, tenements, or other realty in this state shall be granted, assigned, transferred, or otherwise conveyed, a tax determined in the following manner: When there is no consideration or when the deed instrument or writing is executed and tendered for recording as an instrument corrective of title, and so states, there shall be no tax. When there is consideration and the actual market value of the real property transferred is in excess of five hundred dollars, the tax shall be fifty-five cents for each five hundred dollars or fractional part of five hundred dollars in excess of five hundred dollars. The term "consideration" as used in this chapter, means the full

amount of the actual sale price of the real property involved, paid or to be paid, including the amount of an incumbrance or lien on the property, whether assumed or not by the grantee. It shall be presumed that the sale price so stated shall include the value of all personal property transferred as part of the sale unless the dollar value of said personal property is stated on the instrument of conveyance. When the dollar value of the personal property included in the sale is so stated, it shall be deducted from the consideration shown on the instrument for the purpose of determining the tax.

At the time each deed, instrument, or writing by which any real property in this state is granted, assigned, transferred, or otherwise conveyed is presented for recording to the county recorder, a declaration of value signed by at least one of the sellers or one of the buyers or their agents shall be submitted to the county recorder. A declaration of value is not required for those instruments described in section 428A.2, subsections 2 to 13 and 16 to 18, or if a transfer is the result of acquisition of lands, whether by contract or condemnation, for public purposes through an exercise of the power of eminent domain. The declaration of value shall state the full consideration paid for the real property transferred. If agricultural land, as defined in section 172C.1, is purchased by a corporation, limited partnership, trust, alien or nonresident alien, the declaration of value shall include the name and address of the buyer, the name and address of the seller, a legal description of the agricultural land, and identify the buyer as a corporation, limited partnership, trust, alien, or nonresident alien. The county recorder shall not record the declaration of value, but shall enter on the declaration of value information the director of revenue requires for the production of the sales/assessment ratio study and transmit all declarations of value to the city or county assessor in whose jurisdiction the property is located. The city or county assessor shall enter on the declaration of value the information the director of revenue requires for the production of the sales/assessment ratio study and transmit one copy of each declaration of value to the director of revenue, at times as directed by the director of revenue. The assessor shall retain one copy of each declaration of value for three years from December 31 of the year in which the transfer of realty for which the declaration was filed took place. The director of revenue shall, upon receipt of the information required to be filed under this chapter by the city or county assessor, send to the office of the secretary of state that part of the declaration of value which identifies a corporation, limited partnership, trust, alien, or nonresident alien as a purchaser of agricultural land as defined in section 172C.1.

85 Acts, ch 96, §1 SF 359
Amendment effective January 1, 1986; 85 Acts, ch 96, §2
Unnumbered paragraph 2 amended

CHAPTER 432

INSURANCE COMPANIES TAXATION

Disposition of tax increase, effective July 1, 1985; see 85 Acts, ch 239, §8

432.2 Mutual service corporations.

Notwithstanding section 432.1, a hospital service corporation, medical service corporation, pharmaceutical service corporation, optometric service corporation and any other service corporation operating under chapter 514 shall pay as taxes to the director of revenue an amount equal to two percent of the gross amount of payments received during the preceding calendar year for subscriber contracts covering residents in this state after deducting the amounts returned to subscribers upon canceled subscriber contracts and rejected applications. Section 432.1, subsections 3 and 4, apply to the tax imposed by this section.

85 Acts, ch 239, §1 HF 570
NEW section

CHAPTER 442

SCHOOL FOUNDATION PROGRAM

Assessed value of open spaces included in valuation base; payments are property tax, not miscellaneous income; 85 Acts, ch 260, §6

442.4 Enrollment.

1. Basic enrollment for the budget year beginning July 1, 1979 and each subsequent budget year is determined by adding the resident pupils who were enrolled on the second Friday of September in the base year in public elementary and secondary schools of the district and in public elementary and secondary schools in another district or state for which tuition is paid by the district. For the school year beginning July 1, 1975, and each succeeding school year, pupils enrolled in prekindergarten programs other than special education programs are not included in basic enrollment.

Resident pupils of high school age for which the district pays tuition to attend an Iowa area school are included in basic enrollment on a full-time equivalent basis as of the second Friday of September in the base year for the budget year beginning July 1, 1979 and each subsequent budget year.

Shared-time and part-time pupils of school age, irrespective of the districts in which the pupils reside, are included in basic enrollment as of the second Friday of September in the base year for the budget year beginning July 1, 1979 and each subsequent budget year, in the proportion that the time for which they are enrolled or receive instruction for the school year is to the time that full-time pupils carrying a normal course schedule, at the same grade level, in the same school district, for the same school year, are enrolled and receive instruction. Tuition charges to the parent or guardian of a shared-time or part-time out-of-district pupil shall be reduced by the amount of any increased state aid occasioned by the counting of the pupil.

Pupils attending a university laboratory school are not counted in any district's basic enrollment, but the laboratory school shall report them directly to the department of public instruction.

A school district shall certify its basic enrollment to the department of public instruction by September 25 of each year, and the department shall promptly forward the information to the state comptroller. For purposes of determining whether a district is entitled to an advance for increasing enrollment a determination of actual enrollment shall be made on the second Friday of September in the budget year by counting the pupils in the same manner and to the same extent that they are counted in determining basic enrollment, but substituting the count in the budget year for the count in the base year. In addition, a school district shall determine its additional enrollment because of special education defined in section 442.38, on December 1 of each year and if the district is entitled to an advance for special education, it shall certify its additional enrollment because of special education to the department of public instruction by December 15 of each year, and the department shall promptly forward the information to the state comptroller.

2. An adjusted enrollment for each district shall be computed as follows:

a. For the school year beginning July 1, 1980, and each subsequent school year, the adjusted enrollment for a school district is equal to the larger of the following:

- (1) The basic enrollment for the base year.
- (2) The basic enrollment for the budget year.

If a school district uses subparagraph (2) of this paragraph for its adjusted enrollment and the district's actual enrollment for the budget year is larger than the adjusted enrollment computed under subparagraph (2) of this paragraph, the district may be eligible to receive an advance for increasing enrollment under section 442.28.

b. For the school year beginning July 1, 1979, if a district has a decrease from the basic enrollment in the base year to the basic enrollment in the budget year the state comptroller shall compute an amount to be added to the basic enrollment for the budget year. The amount to be added is equal to one hundred percent of the basic enrollment decrease to the extent that it does not exceed two and one-half percent of the base year's basic enrollment, and fifty percent of the remaining basic enrollment decrease. If the school district's basic enrollment in the base year is equal to or less than the basic enrollment for budget year the adjusted enrollment shall equal the basic enrollment for the budget year.

3. For the school year beginning July 1, 1980, and each subsequent school year, budget enrollment means the sum of the following:

a. Twenty-five percent of the basic enrollment for the school year beginning July 1, 1979. However, if the basic enrollment of a school district for a budget year is more than fifteen percent higher than the basic enrollment of the district for the base year, the school district's basic enrollment for the budget year shall be used thereafter for the calculation required under this paragraph in lieu of using the basic enrollment for the school year beginning July 1, 1979.

b. Seventy-five percent of the adjusted enrollment computed under subsection 2, paragraph "a," of this section.

c. Adjustments made by the state comptroller under subsection 5 of this section.

4. For the school year beginning July 1, 1984 and each subsequent school year, if a school district's basic enrollment for the budget year is larger than its budget enrollment for the budget year, the district shall use its basic enrollment for the budget year in lieu of its budget enrollment for the budget year for computations required in this chapter.

5. For the school year beginning July 1, 1984 and each succeeding school year, if an amount equal to the district cost per pupil for the budget year minus the amount included in the district cost per pupil for the budget year to compensate for the cost of special education support services for a school district for the budget year times the budget enrollment of the school district for the budget year is less than one hundred two percent times an amount equal to the district cost per pupil for the base year minus the amount included in the district cost per pupil for the base year to compensate for the cost of special education support services for a school district for the base year times the budget enrollment for the school district for the base year, the state comptroller shall increase the budget enrollment for the school district for the budget year to a number which will provide that one hundred two percent amount.

6. For the school year beginning July 1, 1980, and each subsequent school year, weighted enrollment is the budget enrollment as modified by application of the special education weighting plan in section 281.9 and the supplementary weighting plan in this chapter.

Commencing with the school year beginning July 1, 1981 and each school year thereafter, the weighted enrollment shall be determined on the basis of a count of a district's additional enrollment because of special education, as defined in section 442.38, on December 1 of the base year.

85 Acts, ch 85, §1 HF 682

Amendment retroactive to March 1, 1985, for the school year beginning July 1, 1985; 85 Acts, ch 85, §3
Subsection 3, paragraph a amended

442.7 State percent of growth—allowable growth.

1. For school years subsequent to the school year beginning July 1, 1978, a state percent of growth for the budget year shall be computed by the state comptroller prior to September 15 in the base year and forwarded to the commissioner of public instruction. The state percent of growth shall be an average of the following four percentages of growth except as otherwise provided in paragraph "c" of this subsection:

a. The difference in the receipts of state general fund revenues computed or estimated as follows:

(1) The percentage of change between the revenues received during the second year preceding the base year and the revenues received during the year preceding the base year.

(2) The percentage of change between the revenues received during the year preceding the base year and the revenues received during the base year.

However, for computing the state percent of growth to be used for the school year beginning July 1, 1987, the revenues received as a result of the increase in taxes in 1985 Iowa Acts, chapter 32 or as a result of the inclusion of additional items subject to tax in 1985 Iowa Acts, chapter 32 shall not be considered revenues received for the state general fund for purposes of determining the percentages under subparagraph (1) or (2).

b. The difference in the gross national product implicit price deflator published by the bureau of economic analysis, United States department of commerce, computed or estimated as a percentage of change for the following:

(1) From the value for the quarter ending December 31 eighteen months prior to the beginning of the base year to the value for the quarter ending December 31 six months prior to the beginning of the base year.

(2) From the value for the quarter ending December 31 six months prior to the beginning of the base year to the value for the quarter ending December 31 six months prior to the beginning of the budget year.

The computation of the percentage change in the gross national product implicit price deflator shall be based, to the extent possible, on the latest available values for these deflators published by the bureau of economic analysis.

c. If the average of the percentages computed or estimated under paragraph "b" of this subsection exceeds the average of the percentages computed or estimated under paragraph "a" of this subsection, the state percent of growth shall be the average of the two percentages of growth computed or estimated under paragraph "a" of this subsection.

2. Notwithstanding subsection 1 of this section, for the school year beginning July 1, 1980 only, the state percent of growth is the average of the two percentages of growth computed under subsection 1, paragraph "b," of this section.

3. If the state percent of growth so computed is negative, that percentage shall not be used and the state percent of growth shall be zero.

4. Each year prior to September 15 the state comptroller shall recompute the state percent of growth for the previous year using adjusted estimates and the actual figures available. The difference between the recomputed state percent of growth for the base year and the original computation shall be added to or subtracted from the state percent of growth for the budget year, as applicable. However, for the budget school year beginning July 1, 1980 only, the state comptroller shall recompute the state percent of growth for the previous year using adjusted estimates and the actual figures available based only upon the consumer price index.

With regard to values of gross national product implicit price deflators, the recomputation of the state percent of growth for the previous year shall be made only with respect to the value of the deflator for the quarter which occurred subsequent to the calculation of the state percent of growth for the previous year. If subsection 1, paragraph "c," of this section is used in the calculation of the state percent of growth for the previous year, the calculation made in subsection 1, paragraph "b," of this subsection shall not be used in the recomputation of the state percent of growth for the previous year.

For the school year beginning July 1, 1981, the recomputation of the state percent of growth for the year beginning July 1, 1980 computed prior to September 15, 1980 and added to or subtracted from the state percent of growth for the school year beginning July 1, 1981 shall also include a percent equal to the difference between

the estimate made of the percentage of growth in the receipts of state general fund revenue by the state comptroller prior to September 15, 1978 in computing the state percent of growth for the school year beginning July 1, 1979 and the actual figures of the percentage of growth in the receipts of state general fund revenue.

5. Notwithstanding subsections 1 through 4, for the school year beginning July 1, 1984, if the estimate of the ending fund balance of the state general fund for the fiscal year beginning July 1, 1984 and ending June 30, 1985, as estimated by the state comptroller in January, 1984, is equal to or greater than thirty million dollars and the state foundation base increases to eighty percent pursuant to section 442.3, the state percent of growth, including the recomputations required under subsection 4, is six and two-tenths percent.

6. The basic allowable growth per pupil for the budget year shall be computed by multiplying the state cost per pupil for the base year times the state percent of growth for the budget year.

7. The allowable growth per pupil for each school district is the basic allowable growth per pupil, for the budget year modified as follows:

a. If the state cost per pupil for the budget year exceeds the district cost per pupil for the budget year, the basic allowable growth per pupil for the budget year is modified to equal one hundred ten percent of the product of the state cost per pupil for the base year times the state percent of growth for the budget year. However, the basic allowable growth per pupil for the budget year under this paragraph shall not exceed the difference between the state cost per pupil for the budget year and the district cost per pupil for the budget year. For purposes of this paragraph the state cost per pupil and the district cost per pupil shall not include special education support service costs, and the district cost per pupil for the budget year shall not include that portion of the district cost per pupil created by additions or subtractions to the allowable growth per pupil for the budget year and for prior school years beginning with the school year commencing July 1, 1977, as provided under paragraph "b" of this subsection.

b. By the school budget review committee under section 442.13.

c. For the school year beginning July 1, 1975 only, by adding to the basic allowable growth per pupil for the budget year an amount to compensate for the costs of special education support services provided through the area education agency. The total amount for each area shall be based upon the program plans submitted by the special education director of the area education agency as required by section 273.5, which shall be modified as necessary and approved by the department of public instruction according to the criteria and limitations of section 273.5 and chapter 281. The amount of additional allowable growth per pupil for the budget year for each district in an area shall be determined by dividing the total amount for the area so determined by the weighted enrollment of the area for the budget year.

d. For the school year beginning July 1, 1976 and ending with the school year beginning July 1, 1980, by adding to the basic allowable growth an amount to compensate for the additional costs of special education support services provided through the area education agency. For the school years beginning July 1, 1978 and July 1, 1979 only, the total amount for each area shall be equal to the total amount approved for special education support services for the base year times one hundred percent plus the state percent of growth. In addition to the amount provided in this paragraph to each area for the school years beginning July 1, 1978 and July 1, 1979 to compensate for the additional costs of special education support services, each area may be granted by the state board an additional amount to serve children newly identified as requiring the services pursuant to plans submitted by the special education director of the area education agency as required by section 273.5. The total of additional amounts granted throughout the state by the state board for the school year beginning July 1, 1978 shall not exceed the total amount approved for

special education support services for the school year beginning July 1, 1977 times four and eighty-seven hundredths percent, and for the school year beginning July 1, 1979 shall not exceed the total amount approved for special education support services for the school year beginning July 1, 1978 times three percent. For the school year beginning July 1, 1980 the total amount for the state for special education support services shall not exceed the total amount approved for special education support services for the base year times one hundred percent plus the state percent of growth, and the total amount for each area shall be determined by the state board of public instruction pursuant to plans submitted by the special education director of the area education agency as required by section 273.5, which shall be modified as necessary and approved by the state board of public instruction according to the criteria and limitations of section 273.5 and chapter 281 and within the total amount for the state provided in this paragraph. The amount of additional allowable growth per pupil for the budget year for each district in an area shall be determined by dividing the total amount for the area so determined by the weighted enrollment of the area for the budget year.

e. For the school years prior to the school year beginning July 1, 1981, for the additional allowable growth computed under paragraphs "c" and "d" of this subsection, the state board of public instruction, in co-operation with the appropriate personnel of the area education agency, shall determine the amounts for each area education agency, as required and the state comptroller shall calculate the amounts of additional allowable growth for each district necessary to fund the total special education support services costs as increased for the budget year under paragraph "d" of this subsection, and shall calculate the amounts due from each district to its area education agency by multiplying the additional allowable growth per pupil necessary to fund the total special education support services costs as increased for the budget year under paragraph "d" of this subsection by the weighted enrollment in the district for the budget year. The state comptroller shall deduct the amounts so calculated for each school district from the state aid due to the district pursuant to this chapter and shall pay the amounts to the area education agencies on a quarterly basis during each school year. The state comptroller shall notify each school district of the amount of state aid deducted for this purpose and the balance of state aid will be paid to the district. If a district does not qualify for state aid under this chapter in an amount sufficient to cover its amount due to the area education agency as calculated by the state comptroller, the school district shall pay the deficiency to the area education agency from other moneys received by the district, on a quarterly basis during each school year.

f. By the state comptroller under section 442.35.

g. For the school year beginning July 1, 1981 and succeeding school years, the amount included in the district cost per pupil in weighted enrollment for special education support services costs for each district in an area education agency for a budget year is the amount included in the district cost per pupil in weighted enrollment for special education support services costs in the base year plus the allowable growth added to state cost per pupil for special education support services costs for the budget year, except as provided in paragraph "h". Funds shall be paid to area education agencies as provided in section 442.25.

h. For the school year beginning July 1, 1983 and succeeding school years, the state board of public instruction may direct the state comptroller to increase or reduce the allowable growth added to district cost per pupil in weighted enrollment for a budget year for special education support services costs in an area education agency in the base year based upon special education support services needs in the area. However, an increase in the allowable growth can only be granted by action of the state board to restore a previous reduction or portion of a reduction in allowable growth for that year or the previous year.

8. For the school year beginning July 1, 1981 and succeeding school years, the

allowable growth added to state cost per pupil for special education support services costs is the amount included in state cost per pupil for special education support services costs for the base year times the state percent of growth for the budget year. However, for the school year beginning July 1, 1981, no allowable growth shall be added, except as provided under subsection 9.

9. Allowable growth. For the school year beginning July 1, 1981, the state comptroller shall add to the allowable growth of affected school districts, an amount equal to the difference between the amount per pupil in weighted enrollment for the approved budget for the school year beginning July 1, 1980 for special education support services in that area education agency and the amount per pupil in weighted enrollment for the amount certified to generate funds for the school year beginning July 1, 1980 for special education support services in the area education agency and shall adjust the state cost per pupil accordingly.

85 Acts, ch 14, §1 HF 87; 85 Acts, ch 32, §110 SF 395; 85 Acts, ch 212, §21 HF 686

Subsection 1, unnumbered paragraph 1 amended

Subsection 1, paragraph a, NEW unnumbered paragraph 2

Subsection 7, paragraph i struck

442.9 District cost per pupil—district cost—additional school district property tax levy.

1. The state comptroller shall determine the additional school district property tax levy for each school district, which is in addition to the foundation property tax levy, as follows:

a. As used in this chapter, "*district cost per pupil*" for the school year beginning July 1, 1975, and subsequent school years means district cost per pupil in weighted enrollment. The district cost per pupil for the budget year is equal to the district cost per pupil for the base year plus the allowable growth. However, district cost per pupil does not include additional allowable growth added for programs for gifted and talented children, for programs for returning dropouts, and for educational improvement projects under chapter 260A or for school districts that have a negative balance of funds raised for special education instruction programs under section 442.13, subsection 14, paragraph "b", and does not include additional allowable growth established by the school budget review committee for a single school year only.

b. The district cost for the budget year is equal to the district cost per pupil for the budget year multiplied by the weighted enrollment, plus commencing with the budget year beginning July 1, 1985 additional district cost added for moneys received by a school district under section 302.3, Code 1981, as provided in section 442.21, and plus the additional district cost allocated to the district under section 442.27 to fund media services and educational services provided through the area education agency. A school district may not increase its district cost for the budget year except to the extent that an excess tax levy is authorized by the school budget review committee as provided in section 442.13.

c. The amount to be raised by the additional school district property tax levy is equal to the district cost for the budget year, less the product of the state or district foundation base and the weighted enrollment.

2. No later than May 1 of each year, the state comptroller shall notify the county auditor of each county the amount, in dollars and cents per thousand dollars of assessed value, of the additional property tax levy in each school district in the county. Each county auditor shall spread the additional property tax levy for each school district over all taxable property in the district.

85 Acts, ch 14, §2 HF 87; 85 Acts, ch 67, §45 SF 121

Amendment to subsection 1, paragraph b, takes effect for the school year beginning July 1, 1985; 85 Acts, ch 14,

§5

Subsection 1, paragraphs a and b amended

442.12 School budget review committee.

A school budget review committee is established, consisting of the commissioner of public instruction, the state comptroller, and three members appointed by the

governor to represent the public and to serve three-year staggered terms. The committee shall meet and hold hearings each year and shall continue in session until it has reviewed budgets of school districts, as provided in section 442.13. It may call in school board members and employees as necessary for the hearings. Legislators shall be notified of hearings concerning school districts in their constituencies.

The committee shall adopt its own rules of procedure. The commissioner of public instruction shall serve as chairperson, and the state comptroller shall serve as secretary. The committee members representing the public are entitled to receive a per diem equal to the per diem of members of the board of public instruction, and their necessary travel and other expenses while engaged in their official duties. Expense payments shall be made from appropriations to the department of public instruction.

85 Acts, ch 212, §21 HF 686
Section amended

442.13 Duties of the committee.

1. The school budget review committee may recommend the revision of any rules, regulations, directives, or forms relating to school district budgeting and accounting, confer with local school boards or their representatives and make recommendations relating to any budgeting or accounting matters, and may direct the commissioner of public instruction or the state comptroller to make studies and investigations of school costs in any school district.

2. The committee shall report to each session of the general assembly, which report shall include any recommended changes in laws relating to school districts, and shall specify the number of hearings held annually, the reasons for the committee's recommendations, information about the amounts of property tax levied by school districts for a cash reserve, and other information the committee deems advisable.

3. The committee shall review the proposed budget and certified budget of each school district, and may make recommendations. The committee may make decisions affecting budgets to the extent provided in this chapter. The costs and computations referred to in this section relate to the budget year unless otherwise expressly stated.

4. Subject to the minimum for the school years beginning July 1, 1974, and July 1, 1975, as provided in section 442.7, the committee may establish a modified allowable growth by reducing the allowable growth:

a. If the district cost per pupil exceeds the state cost per pupil.

b. If in the committee's judgment the district cost is unreasonably high in relation to the comparative cost factors of similar districts, even if the district cost per pupil does not exceed the state cost per pupil.

5. If a district has unusual circumstances, creating an unusual need for additional funds, including but not limited to the following circumstances, the committee may grant supplemental aid to the district from any funds appropriated to the department of public instruction for the use of the school budget review committee for this purpose, and such aid shall be miscellaneous income and shall not be included in district cost; or may establish a modified allowable growth for the district by increasing its allowable growth; or both:

a. Any unusual increase or decrease in enrollment.

b. Unusual natural disasters.

c. Unusual transportation problems and for which the per pupil transportation costs are substantially higher than the state average per pupil transportation costs due to sparsity of the population, topographical factors, and other obstacles which hinder the efficient transportation of pupils.

d. Unusual initial staffing problems.

e. The closing of a nonpublic school, wholly or in part.

f. Substantial reduction in miscellaneous income due to circumstances beyond the control of the district.

g. Unusual necessity for additional funds to permit continuance of a course or program which provides substantial benefit to pupils.

h. Unusual need for a new course or program which will provide substantial benefit to pupils, if the district establishes such need and the amount of necessary increased cost.

i. Unusual need for additional funds for special education or compensatory education programs.

j. Year-round or substantially year-round attendance programs which apply toward graduation requirements, including but not limited to trimester or four-quarter programs. Enrollment in such programs shall be adjusted to reflect equivalency to normal school year attendance.

k. Severe hardship due to the exclusion of miscellaneous income from computations under this chapter. For the school year beginning July 1, 1973, the committee shall increase the district's allowable growth to the extent necessary to prevent such hardship.

l. Transportation equipment needs which become necessary because of the furnishing of transportation to nonpublic school pupils under chapter 285.

m. Enrollment decrease caused by the availability of transportation to nonpublic school pupils in a district.

n. Costs of special education programs and services for children requiring special education who are living in a state-supported institution, charitable institution, or licensed boarding home which does not maintain a school and the child has not been counted in the weighted enrollment under section 281.9.

o. Any unique problems of districts to include minority problems, vandalism, civil disobedience and other costs incurred by school districts.

6. If a nonpublic school closes wholly or in part, the committee may authorize an increase in the district general fund tax levy, but only to the extent necessary to cover the cost of absorbing the former nonpublic school pupils into the public school system. The school board shall establish the amount of necessary increased cost to the satisfaction of the school budget review committee before an increase in tax levy is authorized.

7. The committee may authorize a district to spend a reasonable and specified amount from its unexpended cash balance for the purpose or purposes of furnishing, equipping, and contributing to the construction of a new building or structure for which the voters of the district have approved a bond issue as provided by law or a tax as provided in chapter 278 and for major building repairs as defined in section 297.5. No other expenditure, including but not limited to expenditures for salaries or recurring costs, shall be authorized under this subsection. Expenditures authorized under this subsection shall not be included in allowable growth or district cost, and the portion of the unexpended cash balance which is authorized to be spent shall be regarded as if it were miscellaneous income. Any part of such amount which is not actually spent for the authorized purpose shall revert to its former status as part of the unexpended cash balance.

8. The committee may approve or modify the initial base year district cost of any district which changes accounting procedures.

9. When the committee makes a decision under subsections 3 to 8, it shall make all necessary changes in the district cost, budget, and tax levy. It shall give written notice of its decision, including all such changes, to the school board through the state comptroller.

10. All decisions by the committee under this chapter shall be made in accordance with reasonable and uniform policies which shall be consistent with this chapter. All such policies of general application shall be stated in rules adopted in accordance with chapter 17A. The committee shall take into account the intent of this chapter to equalize educational opportunity, to provide a good education for all the children of Iowa, to provide property tax relief, to decrease the percentage of

school costs paid from property taxes, and to provide reasonable control of school costs. The committee shall also take into account the amount of funds available.

11. Failure by any school district to provide information or appear before the committee as requested for the accomplishment of review or hearing shall constitute justification for the committee to instruct the state comptroller to withhold any state aid to that district until the committee's inquiries are satisfied completely.

12. The committee shall review the recommendations of the commissioner of public instruction relating to the special education weighting plan, and shall establish a weighting plan for each school year after the school year commencing July 1, 1975, and report the plan to the commissioner of public instruction.

13. The committee may recommend that two or more school districts jointly employ and share the services of any school personnel, or acquire and share the use of classrooms, laboratories, equipment, and facilities as specified in section 280.15.

14. For the budget school year beginning July 1, 1983 and succeeding school years, as soon as possible following June 30 of the base year, the school budget review committee shall determine for each school district the balance of funds, whether positive or negative, raised for special education instruction programs under the special education weighting plan established in section 281.9. The committee shall certify the balance of funds for each school district to the state comptroller.

In determining the balance of funds of a school district under this subsection, the committee shall subtract the amount of any reduction in state aid that occurred as a result of a reduction in allotments made by the governor with the concurrence of the executive council under section 8.31.

a. If the amount certified for a school district to the state comptroller under this subsection for the base year is positive, the state comptroller shall subtract the amount of the positive balance from the amount of state aid remaining to be paid to the district during the budget year. If the positive amount exceeds the amount of state aid that remains to be paid to the district, the school district shall pay the remainder on a quarterly basis prior to June 30 of the budget year to the state comptroller from other funds received by the district. The state comptroller shall determine the amount of the positive balance that would have been local property tax revenues and shall increase the district's total state school aids available under this chapter for the next following budget year by the amount so determined and shall reduce the district's tax levy computed under section 442.9 for the next following budget year by the amount necessary to compensate for the increased state aid.

b. If the amount certified for a school district to the state comptroller under this subsection for the base year is negative, the state comptroller shall determine the amount of the deficit that would have been state aid and the amount that would have been property taxes for each eligible school district.

For the budget school year beginning July 1, 1982 and each subsequent school year, there is appropriated from the general fund of the state to the school budget review committee an amount equal to the state aid portion of five percent of the receipts for special education instruction programs in each district that has a positive balance determined under paragraph "a" for the base year, or the state aid portion of the positive balance determined under paragraph "a" for the base year, whichever is less, totaled on a statewide basis, to be used for supplemental aid payments to school districts. Except as otherwise provided in this paragraph, supplemental aid paid to a district is equal to the state aid portion of the district's deficit balance. The school budget review committee shall direct the state comptroller to make the payments to school districts under this paragraph.

A school district is eligible to receive supplemental aid payments during the budget year if the school district certifies to the school budget review committee that for the year following the budget year it will request the school budget review committee to instruct the state comptroller to increase the district's allowable

growth and will fund the allowable growth increase either by using moneys from its unexpended cash balance to reduce the district's property tax levy or by using cash reserve moneys to equal the amount of the deficit that would have been property taxes and any part of the state aid portion of the deficit not received as supplemental aid. The state comptroller shall make the necessary adjustments to the school district's budget to provide the additional allowable growth and shall make the supplemental aid payments.

If the amount appropriated under this paragraph is insufficient to make the supplemental aid payments, the state comptroller shall prorate the payments on the basis of the amount appropriated.

15. Annually the school budget review committee shall review the amount of property tax levied by each school district for a cash reserve authorized in section 298.10. If in the committee's judgment, the amount of a district's cash reserve levy is unreasonably high, the committee shall instruct the state comptroller to reduce that district's tax levy computed under section 442.9 for the following budget year by the amount the cash reserve levy is deemed excessive. A reduction in a district's property tax levy for a budget year under this subsection does not affect the district's authorized budget.

85 Acts, ch 2, §1 HF 100; 85 Acts, ch 212, §21 HF 686

Amendment retroactive to June 30, 1984; 85 Acts, ch 2, §2

Subsections 1 and 12 amended

Subsection 14, unnumbered paragraph 1 amended and NEW unnumbered paragraph 2

442.21 Temporary school fund.

If the board of directors of a school district certified an amount to the state comptroller to be added to basic allowable growth per pupil for the budget year beginning July 1, 1984 under section 442.7, subsection 7, paragraph "i", Code 1985, the amount certified shall be added to the district cost of the school district commencing with the budget year beginning July 1, 1985.

85 Acts, ch 14, §3 HF 87

Takes effect for the school year beginning July 1, 1985; 85 Acts, ch 14, §5

NEW section

442.23 Rules.

The commissioner of public instruction, after consultation with the state comptroller, may adopt rules and definitions of terms as necessary and proper for the administration of this chapter.

85 Acts, ch 212, §21, HF 686

Section amended

442.28 Advance for increasing enrollment.

If a district's actual enrollment for the budget year, determined under section 442.4, is higher than its budget enrollment for the budget year, the district is entitled to an advance from the state of an amount equal to its district cost per pupil less the amount per pupil for special education support services, computed as a part of district cost under the provisions of section 442.7 for the budget year multiplied by the difference between the actual enrollment for the budget year and the budget enrollment for the budget year. However, if a district's actual enrollment for the budget year is more than fifteen percent higher than its basic enrollment for the budget year, the advance shall be calculated using seventy-five percent of the difference between the district's actual enrollment for the budget year and its basic enrollment for the budget year. The advance shall be miscellaneous income.

If a district receives an advance under this section for a budget year, the state comptroller shall determine the amount of the advance which would have been met by local property tax revenues if the actual enrollment for the budget year or the budget enrollment for the budget year plus seventy-five percent of the difference between the actual enrollment for the budget year and the basic enrollment for the budget year, had been used in determining district cost for that budget year, shall

reduce the district's total state school aids available under this chapter for the next following budget year by the amount so determined, and shall increase the district's tax levy computed under section 442.9, for the next following budget year by the amount necessary to compensate for the reduction in state aid, so that the local property tax for the next following year will be increased only by the amount which it would have been increased in the budget year if the enrollment calculated in this section could have been used to establish the levy.

There is appropriated each year from the general fund of the state the amount required to pay advances authorized under this section, which shall be paid to school districts in the same manner as other state aids are paid under section 442.26.

85 Acts, ch 85, §2 HF 682

Amendment retroactive to March 1, 1985, for the school year beginning July 1, 1985; 85 Acts, ch 85, §3 Unnumbered paragraphs 1 and 2 amended

442.39 Supplementary weighting plan.

In order to provide additional funds for school districts which send their resident pupils to another school district or to an area school for classes, which jointly employ and share the services of teachers under section 280.15, or which use the services of a teacher employed by another school district, a supplementary weighting plan for determining enrollment is adopted as follows:

1. Pupils in a regular curriculum attending all their classes in the district in which they reside and taught by teachers employed by that district, are assigned a weighting of one.

2. Pupils attending classes in another school district or an area school, attending classes taught by a teacher who is employed jointly under section 280.15, or attending classes taught by a teacher who is employed by another school district, are assigned a weighting of one plus five tenths times the percent of the pupil's school day during which the pupil attends classes in another district or area school, attends classes taught by a teacher who is jointly employed under section 280.15, or attends classes taught by a teacher who is employed by another school district if the school budget review committee certifies to the state comptroller that the shared classes or teachers would otherwise not be implemented without the assignment of additional weighting. However, in lieu of the additional weighting of five tenths, the school budget review committee shall assign an additional weighting of one tenth times the percent of the pupil's school day in which a pupil attends classes in another district or an area school, attends classes taught by a teacher who is employed jointly under section 280.15, or attends classes taught by a teacher who is employed by another district, in districts that have a substantial number of students in any of grades seven through twelve sharing more than one class or teacher.

3. A pupil eligible for the weighting plan provided in section 281.9 is not eligible for the weighting plan provided in this section.

4. For the school year beginning July 1, 1983 and succeeding school years, a school district receiving additional funds under subsection 2 for its pupils at the ninth grade level and above that are enrolled in sequential mathematics courses at the advanced algebra level and above; chemistry, advanced chemistry, physics or advanced physics courses; or foreign language courses at the second year level and above shall have an additional weighting of one pupil added to its total.

85 Acts, ch 211, §1 HF 210

1985 amendment to subsection 2 effective July 1, 1986; possible limit on funding for budget year beginning July 1, 1986; 85 Acts, ch 211, §2, 3

Subsection 2 amended

442.44 Appropriation for foreign language courses.

The state comptroller shall pay to each school district in this state an amount equal to fifty dollars times the sum of the number of pupils who successfully complete a yearlong course in Latin, German, French or Spanish at the third or fourth year level and for the number of pupils who successfully complete a yearlong course in another foreign language at the first or second year level.

Payment for a budget year shall be determined on the basis of the full-time equivalent enrollment in the courses for the base year.

The department of public instruction shall adopt rules under chapter 17A to carry out this section.

For the school year beginning July 1, 1985 and each succeeding school year, there is appropriated from the general fund of the state to the state comptroller the sum of five hundred thousand dollars, or so much thereof as is necessary, to make the payments to school districts required by this section. If the funds appropriated are insufficient to make the payments required under this section, the state comptroller shall prorate the payments to school districts. Moneys received by a school district under this section are miscellaneous income. Moneys received by a school district for pupils enrolled in foreign language courses shall be used only for purchase of equipment, supplies, and services that benefit the foreign language program of the school district.

85 Acts, ch 263, §26, 27 HF 747
Unnumbered paragraphs 1 and 4 amended

CHAPTER 442A

IOWA ADVANCE FUNDING AUTHORITY

442A.1 Short title.

This chapter may be cited as the "Iowa Advance Funding Authority Act."

85 Acts, ch 34, §1 SF 79
NEW section

442A.2 Legislative findings.

The general assembly finds as follows:

1. The establishment of the authority is in all respects for the benefit of the people of the state of Iowa and the improvement of the financing procedures for Iowa's schools.

2. The authority will be performing an essential governmental function in the exercise of the powers and duties conferred upon it by this chapter.

3. Iowa schools face a serious and increasing problem with cash flow difficulties caused, among other factors, by increasing reliance on state school foundation aid, delays in the payment of state school foundation aid, and the periodic payment of property taxes for school purposes.

4. As a result of their increasing cash flow difficulties, Iowa schools have had to borrow on a short-term basis larger amounts of funds more often, thus increasing their borrowing costs significantly.

5. The short-term borrowing costs of Iowa schools are a direct burden on the taxpayers of the state.

6. It is necessary to create the authority to provide a means for Iowa schools to reduce substantially or eliminate their short-term borrowing costs and thus reduce costs to the taxpayers.

7. All of the purposes stated in this section are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned or granted.

85 Acts, ch 34, §2 SF 79
NEW section

442A.3 Definitions.

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

1. "School" includes each public school district as defined in chapter 274, area education agency as defined in chapter 273 and merged area school as defined in chapter 280A.

2. "Authority" means the Iowa advance funding authority created by this chapter.
3. "Board" means the governing board of the authority created in section 442A.5.
4. "Notes" means notes, warrants, loan agreements, and all other forms of evidence of indebtedness now or hereafter authorized for schools. "Purchase of notes" includes lending money to schools or any other forms of financing of schools by the authority.
5. "Bonds" means bonds, notes and other obligations issued by the authority pursuant to this chapter.

85 Acts, ch 34, §3 SF 79
NEW section

442A.4 Iowa advance funding authority.

The Iowa advance funding authority is created. It is a public instrumentality and agency of the state exercising public and essential governmental functions, established for the purposes of reducing the cash flow difficulties faced by Iowa schools, improving the financial procedures of Iowa schools, and reducing the short-term borrowing costs of Iowa schools.

85 Acts, ch 34, §4 SF 79
NEW section

442A.5 Governing board.

1. The powers of the authority are vested in and exercised by a board consisting of five members, including the treasurer of state, the commissioner of public instruction, and the state comptroller, and two members appointed by the governor, subject to confirmation by the senate. The state officials may designate representatives to serve on the board for them. As far as possible, the governor shall appoint members who are knowledgeable or experienced in the school systems of this state or finance.

2. The governor shall appoint the members of the authority for terms of six years, beginning and ending as provided in section 69.19. An appointed member of the authority may be removed from office by the governor for misfeasance, malfeasance, or willful neglect of duty or other just cause, after notice and hearing, unless the notice and hearing are expressly waived in writing by the member.

3. Three members of the board constitute a quorum.

4. The appointed members of the authority receive forty dollars per diem for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

5. The appointed members of the authority shall give bond as required for public officers in chapter 64.

6. Meetings of the authority shall be held at the call of the chairperson or when a majority of the members so request.

7. The members shall elect a chairperson, vice chairperson and secretary annually, and other officers as they determine necessary:

85 Acts, ch 34, §5 SF 79
Initial terms; 85 Acts, ch 34, §20
NEW section

442A.6 General powers.

The board has all of the general powers needed to carry out its purposes and duties and exercise its specific powers, including but not limited to the power to:

1. Issue its negotiable bonds as provided in this chapter in order to finance its programs.
2. Have perpetual succession as a public authority.
3. Sue and be sued in its own name.
4. Make and execute agreements, contracts, and other instruments, with any public or private entity.
5. Hire and compensate legal counsel, notwithstanding chapter 13.

6. Invest or deposit moneys of the authority, subject to any agreement with bondholders, in any manner determined by the authority, notwithstanding chapters 452 and 453.

7. Procure insurance and other credit enhancement arrangements including but not limited to municipal bond insurance and letters of credit.

8. Fix and collect fees and charges for its services.

9. Accept appropriations, gifts, grants, loans, or other aid from public or private entities.

10. Adopt rules consistent with this chapter, and subject to chapter 17A.

11. The authority is exempt from chapter 18.

85 Acts, ch 34, §6 SF 79
NEW section

442A.7 Staff.

The executive director and staff of the Iowa finance authority, pursuant to chapter 220, shall also serve as executive director and staff of the advance funding authority, respectively. The executive director shall not, directly or indirectly, exert influence to induce any other officers or employees of the state to adopt a political view, or to favor a political candidate for office.

85 Acts, ch 34, §7 SF 79; 85 Acts, ch 252, §56 SF 577
NEW section

442A.8 Advance funding program.

1. The authority shall establish a statewide advance funding program for the purchase from schools of notes issued in anticipation of the receipt of moneys for school purposes or for making loans to schools to alleviate cash flow difficulties and to otherwise improve the financial well-being of the schools.

2. The authority may issue its bonds and use the proceeds from the bonds for the purpose of making loans to or purchasing the notes of any school for the use of the various funds of the school for any lawful school purpose excluding debt service. Bonds issued pursuant to this section may be secured by a pledge of payments made to the authority by the school, to be derived from the receipt of anticipated funds evidenced by the notes of the school, including a pooling of payments of notes from two or more participating schools. The authority may also issue refunding bonds, including advance refunding bonds, for the purpose of refunding previously issued bonds.

3. The authority may issue its bonds in principal amounts which, in the opinion of the authority, are necessary to provide sufficient funds for achievement of its corporate purposes, the payment of interest on its bonds, the establishment of reserves to secure its bonds, the costs of issuance of its bonds, and all other expenditures of the authority incident to and necessary or convenient to carry out its purposes and powers. The bonds are investment securities and negotiable instruments within the meaning of and for purposes of the uniform commercial code.

4. Bonds issued under this section are payable solely and only out of the moneys, assets, or revenues of the authority and are not an indebtedness of this state, and this state is not liable on the bonds. Bonds issued under this chapter shall contain on their face a statement that the state is not liable.

5. The proceeds of bonds issued by the authority and not required for immediate disbursement may be invested in any investment approved by the board and specified in the trust indenture or resolution pursuant to which the bonds are issued without regard to any limitation otherwise provided by law.

6. The bonds of the authority shall be:

a. In a form, issued in denominations, executed in a manner, and payable over terms and with rights of redemption, as the board prescribes in the resolution authorizing their issuance.

b. Negotiable instruments under the laws of the state and may be sold at prices,

at public or private sale, and in a manner, as prescribed by the board. Chapters 23, 74, 74A and 75 do not apply to their sale or issuance.

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

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

8. Bonds must be authorized by a resolution of the board. However, a resolution authorizing the issuance of bonds may delegate to an officer of the authority the power to negotiate and fix the details of an issue of bonds by an appropriate certificate of the authorized officer.

85 Acts, ch 34, §8 SF 79
NEW section

442A.9 Moneys of the authority.

1. Moneys of the authority, except as otherwise provided in this chapter, shall be paid to the authority and shall be deposited in a bank or other financial institution designated by the authority. The moneys shall be withdrawn on the order of the person authorized by the authority. Deposits shall be secured in the manner determined by the authority. The auditor of state or the auditor's legally authorized representatives may periodically examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments, and any other records and papers relating to its financial standing, and the authority is not required to pay a fee for the examination.

2. The authority may contract with the holders of its bonds as to the custody, collection, security, investment, and payment of moneys of the authority, of moneys held in trust or otherwise for the payment of bonds, and to carry out the contract. Moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of the moneys may be secured in the same manner as moneys of the authority, and banks and trust companies may give security for the deposits.

3. Subject to a contract with bondholders, and to the approval of the state comptroller, the authority shall prescribe a system of accounts.

4. The authority shall submit to the governor, the auditor of state, and the state comptroller, within thirty days of its receipt, a copy of the report of every external examination of the books and accounts of the authority other than copies of the reports of examinations made by the auditor of state.

85 Acts, ch 34, §9 SF 79
NEW section

442A.10 Powers not restricted—law complete in itself.

This chapter is not a restriction or limitation on powers which the authority or a school has under the laws of this state, but is cumulative to any such powers. No proceedings, referendum, notice, or approval is required for the creation of the authority or the issuance of obligations or an instrument as security except as provided in this chapter.

85 Acts, ch 34, §10 SF 79
NEW section

442A.11 Limitation of liability.

Members of the board and persons acting in the authority's behalf, while acting within the scope of their employment or agency, are not subject to personal liability resulting from carrying out the powers and duties given in this chapter.

85 Acts, ch 34, §11 SF 79
NEW section

442A.12 Conflicts of interest.

1. If a member or employee other than the executive director of the authority has an interest, either direct or indirect, in a contract to which the authority is or is to be a party, the interest shall be disclosed to the authority in writing and shall be set forth in the minutes of a meeting of the authority. The member having the interest shall not participate in action by the board with respect to that contract.

2. This section does not limit the right of a member of the board to acquire an interest in bonds, or limit the right of a member to have an interest in a bank or other financial institution in which the funds of the authority are deposited or which is acting as trustee or paying agent under a trust indenture to which the authority is a party.

3. The executive director shall not have an interest in a bank or other financial institution in which the funds of the authority are deposited or which is acting as trustee or paying agent under a trust indenture to which the authority is a party. The executive director shall not receive, in addition to fixed salary or compensation, any money or valuable thing, either directly or indirectly, or through any substantial interest in any other corporation or business unit, for negotiating, procuring, recommending, or aiding in any loan made by the authority, nor shall the executive director be pecuniarily interested, either as principal, co-principal, agent, or beneficiary, either directly or indirectly or through any substantial interest in any other corporation or business unit, in any loan.

85 Acts, ch 34, §12 SF 79
NEW section

442A.13 Exemption from competitive bid laws.

The authority and contracts made by it in carrying out its public and essential governmental functions under sections 442A.6 and 442A.8 are exempt from the laws of the state which provide for competitive bids and hearings in connection with contracts.

85 Acts, ch 34, §13 SF 79
NEW section

442A.14 Annual report.

1. The authority shall submit to the governor and the general assembly, not later than December 31 of each year, a report setting forth:

- a. Its operations and accomplishments.
- b. Its receipts and expenditures during the previous fiscal year, in accordance with the classifications it establishes for its operating and capital accounts.
- c. Its assets and liabilities at the end of the previous fiscal year and the status of reserve, special, and other funds.
- d. A schedule of its bonds outstanding at the end of the previous fiscal year, together with a statement of the amounts redeemed and issued during the fiscal year.
- e. A statement of its proposed and projected activities.
- f. Recommendations to the governor and general assembly, as it deems necessary.

2. The annual report shall identify performance goals of the authority, and clearly indicate the extent of progress during the reporting period, in attaining the goals.

85 Acts, ch 34, §14 SF 79
NEW section

442A.15 Assistance by state officers, agencies and departments.

State officers and state departments and agencies may render services to the authority within their respective functions as requested by the authority.

85 Acts, ch 34, §15 SF 79
NEW section

442A.16 Authority of schools.

A school may issue and sell or pledge its notes to the authority or the authority's designated agent or trustee. Schools may enter into contracts and agreements with the authority to effectuate the purposes of this chapter. In acting pursuant to this section, schools are exempt from all laws of the state which provide for competitive bids and hearings in connection with such sales, pledges, contracts and agreements.

85 Acts, ch 34, §16 SF 79
NEW section

442A.17 Liberal interpretation.

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

85 Acts, ch 34, §17 SF 79
NEW section

CHAPTER 445**COLLECTION OF TAXES****445.39 Interest as penalty.**

If the first installment of taxes is not paid by the delinquent date specified in section 445.37, the installment shall become due and draw interest, as a penalty, of one percent per month until paid, from the delinquent date following the levy; and if the last half is not paid by April 1 following the levy, the same interest shall be charged from the date the last half became delinquent. However, after April 1 in a fiscal year when late certification of the tax list results in a penalty date later than October 1 for the first installment, penalties on delinquent first installments shall accrue as if certification were made on the previous June 30. The interest penalty imposed under this section shall be computed to the nearest whole dollar and the amount of interest shall not be less than one dollar.

85 Acts, ch 112, §1 HF 640
Section amended

CHAPTER 448**TAX DEED****448.12 Limitation of actions.**

An action for the recovery of real estate sold for the nonpayment of taxes shall not be brought after five years from the execution and recording of the treasurer's deed, unless the owner is, at the time of the sale, a minor, mentally ill person, or an inmate in an adult correctional institution, in which case such action must be brought within five years after such disability is removed.

85 Acts, ch 21, §44 HF 186
Section amended

CHAPTER 450

INHERITANCE TAX

450.3 Property included.

The tax hereby imposed shall be collected upon the net market value and shall go into the general fund of the state to be determined as herein provided, of any property passing:

1. By will or under the statutes of inheritance of this or any other state or country.

2. By deed, grant, sale, gift or transfer made within three years of the death of the grantor or donor, which is not a bona fide sale for an adequate and full consideration in money or money's worth and which is in excess of the annual gift tax exclusion allowable for each donee under section 2503, subsections b and e of the Internal Revenue Code of 1954 as defined in section 422.3. If both spouses consent, a gift made by one spouse to a person who is not the other spouse is considered, for the purposes of this subsection, as made one half by each spouse under the same terms and conditions provided for in section 2513 of the Internal Revenue Code of 1954 as defined in section 422.3.

3. By deed, grant, sale, gift or transfer made or intended to take effect in possession or enjoyment after the death of the grantor or donor. A transfer of property in respect of which the transferor reserves to the transferor a life income or interest shall be deemed to have been intended to take effect in possession or enjoyment at death, provided, that if the transferor reserves to the transferor less than the entire income or interest, the transfer shall be deemed taxable thereunder only to the extent of a like proportion of the value of the property transferred.

4. To the extent of any property with respect to which the decedent has at the time of death a general power of appointment, or with respect to which the decedent has within three years of death exercised or released a general power of appointment by a disposition which is of a nature that if it were a transfer of property owned by the decedent, the property would be includable in the decedent's gross estate under this section whether the general power was created before or after the taking effect of this chapter. A transfer involving creation of a general power of appointment shall be treated as a transfer of a fee or equivalent interest in the property subject thereto to the donee of the power. Any transfer involving creation of any other power of appointment shall be treated, except when an election is made under subsection 7, as the transfer of a life estate or term of years in the property subject thereto to the donee of the power and as the transfer of the remainder interests to those who would take if the power is not exercised.

5. Property which is held in joint tenancy by the decedent and any other person or persons or any deposit in banks, or other institution in their joint names and payable to either or to the survivor, except such part as may be proven to have belonged to the survivor; or any interest of a decedent in property owned by a joint stock or other corporate body whereby the survivor or survivors become beneficially entitled to the decedent's interest upon the death of a shareholder. However, if such property is so held by the decedent and the surviving spouse as the only co-owners, one half of such property is not subject to taxation under the provisions of this chapter, but if the surviving spouse proves that the surviving spouse contributed to acquisition of such property an amount, in money or other property, greater than one half of the cost of the property held in joint tenancy, the portion of such property which is not subject to taxation under the provisions of this chapter shall be the proportion which the actual contribution by the surviving spouse is of the total contribution to acquisition of such property. The tax imposed upon the passing of property under the provisions of this subsection shall apply to property held under all such contracts or agreements whether made before or after the taking effect of this chapter.

6. When the decedent shall have disposed of the decedent's estate in any manner to take effect at the decedent's death with a request secret or otherwise that the beneficiary give, pay to, or share the property or any interest therein received from the decedent, with other person or persons, or to so dispose of beneficial interests conferred by the decedent upon the beneficiaries as that the property so passing would be taxable under the provisions of this chapter if passing directly by will or deed from the decedent owner to those to receive the gift from the beneficiary, compliance with such request shall constitute a transfer taxable under the provisions of this chapter, at the highest rate possible in like cases of transfers by will or deed.

7. Which qualifies as a qualified terminable interest property as defined in section 2056(b)(7)(B) of the Internal Revenue Code of 1954 as defined in section 422.3, shall, if an election is made, be treated and considered as passing in fee, or its equivalent, to the surviving spouse in the estate of the donor-grantor. Property on which the election is made shall be included in the gross estate of the surviving spouse and shall be deemed to have passed in fee from the surviving spouse to the persons succeeding to the remainder interest, unless the property was sold, distributed, or otherwise disposed of prior to the death of the surviving spouse. A sale, disposition, or disposal of the property prior to the death of the surviving spouse shall void the election, and shall subject the property disposed of, less amounts received or retained by the surviving spouse, to tax in the donor-grantor's estate in the same manner as if the tax had been deferred under sections 450.44 through 450.49.

Unless the will or trust instrument provides otherwise, the estate of the surviving spouse shall have the right to recover from the persons succeeding to the remainder interests, the additional tax imposed, if any, without interest, on the surviving spouse by reason of the election being made. The amount of tax recovered, if any, shall be a credit in the donee's estate against the tax imposed on the qualified terminable interest property.

An election under this subsection can only be made if an election in relation to the qualified terminable interest property is also made for federal estate tax purposes.

The director of revenue shall adopt and promulgate all rules necessary for the enforcement and administration of this subsection including the form and manner of making the election.

85 Acts, ch 148, §2, 3 HF 761; 85 Acts, ch 230, §12 SF 561

1985 amendment to subsection 2 retroactive to July 1, 1984, for estates of persons dying on or after that date; 85 Acts, ch 230, §15

1985 amendment to subsection 4 effective for estates of decedents dying on or after January 1, 1988; 85 Acts, ch 148, §10; for law in effect before that date, see 1985 Code

Subsection 7 effective for estates of decedents dying on or after July 1, 1985; 85 Acts, ch 148, §10

Subsections 2 and 4 amended

NEW subsection 7

450.58 Final settlement to show payment.

The final settlement of the account of a personal representative shall not be accepted or allowed until thirty days after written notice is given to the department of the proposed discharge of the personal representative and unless it shows, and the court finds, that all taxes imposed by this chapter upon any property or interest in property that is made payable by the personal representative and to be settled by the account, has been paid, and that the receipt of the department of revenue for the tax has been obtained as provided in section 450.64. Any order contravening this section is void.

85 Acts, ch 148, §4 HF 761

Amendment effective for final reports filed on or after July 1, 1985; 85 Acts, ch 148, §10

Section amended

450.94 Return—determination—appeal.

1. "Taxpayer" as used in this section means a person liable for the payment of tax as stated in section 450.5.

2. The taxpayer shall file an inheritance tax return on forms to be prescribed by

the director of revenue. When an inheritance tax return is filed, the department shall examine it and determine the correct amount of tax. If the amount paid is less than the correct amount due, the department shall notify the taxpayer of the total amount due together with any penalty and interest which shall be a sum certain if paid on or before the last day of the month in which the notice is postmarked, or on or before the last day of the following month if the notice is postmarked after the twentieth day of a month and before the first day of the following month.

3. If the amount paid is greater than the correct tax, penalty and interest due, the department shall refund the excess, with interest after sixty days from the date of payment at the rate in effect under section 421.7, under the rules prescribed by the director. However, the director shall not allow a claim for refund or credit that has not been filed with the department within three years after the tax payment upon which a refund or credit is claimed became due, or one year after the tax payment was made, whichever time is the later. A determination by the department of the amount of tax, penalty and interest due, or the amount of refund for excess tax paid, is final unless the person aggrieved by the determination appeals to the director for a revision of the determination within ninety days from the postmark date of the notice of determination of tax, penalty and interest due or refund owing. The director shall grant a hearing, and upon the hearing the director shall determine the correct tax, penalty and interest or refund due, and notify the appellant of the decision by certified mail. The decision of the director is final unless the appellant seeks judicial review of the director's decision under section 450.59 within sixty days after the postmark date of the notice of the director's decision.

4. Payments received must be credited first to the penalty and interest accrued and then to the tax due.

5. The amount of tax imposed under this chapter shall be assessed according to one of the following:

a. Within three years after the return is filed with respect to property reported on the final inheritance tax return.

b. At any time after the tax became due with respect to property not reported on the final inheritance tax return, but not later than three years after the omitted property is reported to the department on an amended return or on the final inheritance tax return if one was not previously filed.

In addition to the applicable periods of limitations for examination and determination specified in paragraphs "a" and "b", the department may make an examination and determination at any time within six months from the date of receipt by the department of written notice from the taxpayer of the final disposition of any matter between the taxpayer and the internal revenue service with respect to the federal estate, gift, or generation skipping transfer tax. In order to begin the running of the six months assessment period, the notice shall be in writing in form sufficient to inform the department of the final disposition of any matter with respect to the federal estate, gift, or generation skipping transfer tax, and a copy of the federal document showing the final disposition or final federal adjustments shall be attached to the notice.

85 Acts, ch 148, §5 HF 761

Subsection 5, unnumbered paragraph 2, effective for audit and assessment limitation periods expiring on or after July 1, 1985; 85 Acts, ch 148, §10

Subsection 5, NEW unnumbered paragraph 2

CHAPTER 452

SECURITY OF THE REVENUE

452.10 Custody of public funds—investment or deposit—consolidation for investment.

The treasurer of state and the treasurer of each political subdivision shall at all times keep all funds coming into their possession as public money, in a vault or safe, to be provided for that purpose, or in one or more depositories. However, the treasurer of state and the treasurer of each political subdivision shall invest, unless otherwise provided, any of the public funds not currently needed for operating expenses in notes, certificates, bonds, prime eligible bankers acceptances, commercial paper rated within the two highest classifications of prime as established by at least one of the standard rating services approved by the superintendent of banking pursuant to chapter 17A, perfected repurchase agreements, or other evidences of indebtedness which are obligations of or guaranteed by the United States of America or any of its agencies; or in time deposits in depositories as provided in chapter 453 and receive time certificates of deposit therefor; or in savings accounts in depositories. The total investment in commercial paper of any one corporation is limited to an amount not more than twenty percent of the total stockholders' equity of that corporation. The treasurer of state may invest any of the funds in the treasurer's custody in any of the investments authorized for the Iowa public employees' retirement system in section 97B.7, subsection 2, paragraph "b" except that investment in common stocks is not permitted. As used in this section, "depository" means a financial institution designated as a legal depository under chapter 453.

Notwithstanding any provision of the Code to the contrary, a treasurer of a city as defined in section 411.1, subsection 18, may invest any public funds of the city not currently needed for operating expenses in investments authorized in section 411.7, subsection 2, and pursuant to section 97B.7, subsection 2, paragraph "b", and section 511.8, except common, preferred, or guaranteed stock and may hold, purchase, sell, assign, transfer or dispose of any of these investments as well as the proceeds of these investments. The city council shall implement appropriate investment policies to be followed by the city treasurer and shall periodically review the performance of the investments made by the city treasurer pursuant to such policies under this paragraph.

Two or more cities within the same county, or two contiguous counties may execute an agreement under chapter 28E for the purpose of consolidating their public funds for purposes of investment. The treasurer who is designated in the agreement as the person responsible for accounting and investment may deposit the consolidated funds in one or more banks or depository institutions which would be lawful depositories under chapter 453 for the cities or counties that are parties to the agreement, or may invest the funds as provided in this section, or as may be provided in the agreement.

85 Acts, ch 194, §1 SF 296
NEW unnumbered paragraph 2

CHAPTER 453

DEPOSIT OF PUBLIC FUNDS

453.1 Deposits in general—definitions.

1. All funds held in the hands of the following officers or institutions shall be deposited in one or more depositories first approved by the appropriate governing body as indicated: For the treasurer of state, by the executive council; for judicial officers and court employees, by the supreme court; for the county treasurer, recorder, auditor, sheriff, by the board of supervisors; for the city treasurer, by the city council; for the county public hospital or merged area hospital, by the board of hospital trustees; for a memorial hospital, by the memorial hospital commission; for a school corporation, by the board of school directors; for a city utility or combined utility system established under chapter 388, by the utility board; for a regional library established under chapter 303B, by the regional board of library trustees; and for an electric power agency as defined in section 28F.2, by the governing body of the electric power agency. However, the treasurer of state and the treasurer of each political subdivision shall invest all funds not needed for current operating expenses in time certificates of deposit in approved depositories pursuant to this chapter or in investments permitted by section 452.10. The list of public depositories and the amounts severally deposited in the depositories are matters of public record. This subsection does not limit the definition of "public funds" contained in subsection 2.

2. As used in this chapter unless the context otherwise requires:

a. "*Depository*" means a bank or any office of a bank whose accounts are insured by the federal deposit insurance corporation, or a savings and loan association or a savings bank or any branch of a savings and loan association or savings bank whose accounts are insured by the federal savings and loan insurance corporation, or a credit union insured by the national credit union administration.

b. "*Public funds*" and "*public deposits*" mean the moneys of the state or a political subdivision or instrumentality of the state including a county, school corporation, special district, drainage district, unincorporated town or township, municipality, or municipal corporation or any agency, board, or commission of the state or a political subdivision; any court or public body noted in subsection 1; a legal or administrative entity created pursuant to chapter 28E; an electric power agency as defined in section 28F.2; and federal and state grant moneys of a quasi-public state entity that are placed in a depository pursuant to this chapter.

3. A deposit of public funds in a depository pursuant to this chapter shall be secured as follows:

a. If a depository is a savings and loan association, a savings bank, or an office of a savings and loan association or savings bank, then the public deposits in those depositories shall be secured pursuant to sections 453.16 through 453.19 and sections 453.23 and 453.24.

b. If a depository is a bank, credit union, or an office of a bank or credit union, then the public deposits in those depositories shall be secured pursuant to sections 453.22 through 453.24.

4. Ambiguities in the application of this section shall be resolved in favor of preventing the loss of public funds on deposit in a depository.

85 Acts, ch 194, §2 SF 296
Section amended

453.16 Security for deposit of public funds.

1. Before a deposit of public funds is made by a public officer with a depository institution in excess of the amount insured by federal deposit insurance or federal savings and loan insurance, and before the investment of public funds in investments authorized in section 452.10 which either are not obligations of or guaranteed by the

United States government or any of its agencies, are in excess of the amount insured by federal deposit insurance or federal savings and loan insurance, or are investments by the treasurer of state specifically authorized by section 452.10 to be made as additional investments under section 97B.7, subsection 2, paragraph "b", the public officer shall obtain security for the deposit or investment by one or more of the following:

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

b. The depository institution may deposit, maintain, pledge and assign for the benefit of the public officer in the manner provided in this chapter, securities approved by the public officer, the market value of which is not less than one hundred ten percent of the total deposits of public funds placed by that public officer in the depository institution. The securities shall consist of any of the following:

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

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

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

(4) To the extent of the guarantee, loans, obligations, or nontransferable letters of credit upon which the payment of principal and interest is fully secured or guaranteed by the United States of America or an agency or instrumentality of the United States of America.

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

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

85 Acts, ch 194, §3 SF 296
Subsection 1, paragraph b amended

453.17 Deposit of securities.

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

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

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

c. The securities shall be deposited with the federal reserve bank of Chicago, Illinois or the federal home loan bank of Des Moines, Iowa pursuant to a bailment agreement or a pledge custody agreement.

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

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

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

4. Upon written request from the appropriate public officer but not less than quarterly, a depository institution shall report the par value and the market value of any pledged collateral and the total deposits of public funds of that officer in the depository institution.

85 Acts, ch 194, §4 SF 296
Subsection 1, paragraph c amended

453.20 Depository institution liability; procedure upon default; sale of security. Repealed by 85 Acts, ch 194, §14 SF 296. See §453.23.

453.22 Required collateral.

1. The depository shall pledge the required collateral securities to the treasurer of state by depositing the collateral securities in restricted accounts of the treasurer of state, including but not limited to pledge-custody accounts, at a federal reserve bank, the United States central credit union, a trust department of another commercial bank or with another financial institution which has been designated by the treasurer of state that is not owned or controlled directly or indirectly by the same depository or holding company. The depository shall deliver to the treasurer of state a security agreement which provides the treasurer of state with a valid and perfected security interest in the required collateral. The market value of the required collateral shall not be less than one hundred ten percent of the total public funds placed on deposit in the depository.

2. The treasurer of state shall adopt the following rules:

a. Providing for valuation of collateral if the market value of a security is not readily determinable.

b. Establishing reporting requirements.

c. Establishing procedures for substituting different securities consistent with subsection 3.

d. Establishing administrative procedures necessary to implement this chapter and other rules as may be necessary to accomplish the purposes of this chapter.

e. Designating financial institutions eligible to be custodian of pledged collateral.

f. Establishing fee schedules to cover costs incurred for opening and closing accounts and substitution of collateral.

3. The securities used to secure public deposits shall be acceptable to the treasurer of state and shall be one or more of the following:

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

b. Public bonds or obligations of this state or a political subdivision of this state.

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

d. To the extent of the guarantee, loans, obligations, or nontransferable letters of credit upon which the payment of principal and interest is fully secured or guaranteed by the United States of America or an agency or instrumentality of the United States of America.

e. First lien mortgages which are valued according to practices acceptable to the treasurer of state.

f. Corporate bonds rated within the two highest classifications of prime as established by at least one of the standard rating services approved by the superintendent of banking pursuant to chapter 17A.

g. A bond of a surety company approved by the United States treasury department.

4. A depository may borrow collateral used for a pledge if the collateral is free of any liens, security interests, claims, or encumbrances.

5. The superintendent of banking shall adopt rules for uniform methods, documentation and forms for pledging required collateral securities by banks under this chapter.

85 Acts, ch 194, §5 SF 296
NEW section

453.23 Payment of losses.

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

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

3. If a depository is closed by its primary regulatory officials, the public body with deposits in the depository shall notify the treasurer of state of the amount of any claim within thirty days of the closing. The treasurer of state shall implement the following procedures:

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

b. The loss to public depositors shall be satisfied, first through any applicable deposit insurance and then through the sale of securities pledged by the defaulting depository, and then the assets of the defaulting depository. The priority of claims are those established pursuant to section 524.1312, subsection 2, section 533.22, subsection 1, paragraph "b", or section 534.517. To the extent permitted by federal law, in the distribution of an insolvent federally chartered depository's assets, the order of payment of liabilities if its assets are insufficient to pay in full all its liabilities for which claims are made shall be in the same order as for the equivalent type of state chartered depository as provided in section 524.1312, subsection 2, section 533.22, subsection 1, paragraph "b", or section 534.517.

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

d. If the loss to public funds is not covered by insurance and the proceeds of the failed depository's assets which are liquidated within thirty days of the closing of the depository and pledged collateral, the treasurer shall provide coverage of the remaining loss as follows:

(1) If the loss was incurred in a bank, then any further payments to cover the loss will come from the state sinking fund for public deposits in banks. If the funds are inadequate to cover the entire loss, then the treasurer shall make an assessment against other banks who hold public funds. The assessment shall be determined by multiplying the total amount of the remaining loss to all public depositors by a percentage that represents the average of public funds deposits held by all banks during the preceding twelve month period ending on the last day of the month immediately preceding the month the depository was closed. Each bank shall pay its assessment to the treasurer within three business days after it receives notice of

assessment. If a bank fails to pay its assessment when due, the treasurer shall satisfy the assessment by selling securities pledged by that bank. Idle balances in the fund are to be invested by the treasurer with earnings credited to the fund. Fees paid by banks for administration of this chapter will be credited to the fund and the treasurer may deduct actual costs of administration from the fund.

(2) If the loss was incurred in a credit union, then any further payments to cover the loss will come from the state sinking fund for public deposits in credit unions. If the funds are inadequate to cover the entire loss, then the treasurer shall make an assessment against other credit unions who hold public funds. The assessment shall be determined by multiplying the total amount of the remaining loss to public depositors by a percentage that represents the average of public funds deposits held by all credit unions during the preceding twelve month period ending on the last day of the month immediately preceding the month the depository was closed. Each credit union shall pay its assessment to the treasurer within three business days after it receives notice of assessment. If a credit union fails to pay its assessment when due, the treasurer shall satisfy the assessment by selling securities pledged by that credit union. Idle balances in the fund are to be invested by the treasurer with earnings credited to the fund. Fees paid by credit unions for administration of this chapter will be credited to the fund and the treasurer may deduct actual costs of administration from the fund.

(3) If the loss was incurred in a savings and loan or a savings bank, then any further payments to cover the loss will come from the state sinking fund for public deposits in savings and loan associations and savings banks. If the funds are inadequate to cover the entire loss, then the treasurer shall make an assessment against other savings and loans and savings banks who hold public funds. The assessment shall be determined by multiplying the total amount of the remaining loss to public depositors by a percentage that represents the average of public funds deposits held by all savings and loans and savings banks during the preceding twelve month period ending on the last day of the month immediately preceding the month the depository was closed. Each savings and loan and savings bank shall pay its assessment to the treasurer within three business days after it receives notice of assessment. If a savings and loan or savings bank fails to pay its assessment when due, the treasurer shall initiate a lawsuit to collect the assessment. If a savings and loan association or a savings bank is found to have failed to pay the assessment as required by this subparagraph, the court shall order it to pay the assessment, court costs of the action, reasonable attorney's fees based upon the amount of time the attorney general's office spent preparing and bringing the action, and reasonable expenses incurred by the treasurer of state's office.

e. Any amount realized from the sale of collateral pursuant to paragraph "d", subparagraphs (1) and (2) in excess of the amount of a depository's assessment, shall continue to be held by the treasurer, in the same interest bearing investments available for public funds, as collateral until that depository provides substitute collateral or is otherwise entitled to its release.

f. Following collection of the assessments, the state treasurer shall distribute funds to the public depositors of the failed depository according to their validated claims. If the assets available are less than the total deposits, the treasurer shall prorate the claims. A public depositor receiving payment under this section shall assign to the treasurer any interest the public depositor may have in funds that subsequently become available to depositors of the defaulting depository.

85 Acts, ch 194, §6 SF 296
NEW section

453.24 Liability.

When public deposits are made in accordance with this chapter, a public body depositing public funds or its agents, employees, officers, and board members are exempt from liability for any loss resulting from the loss of a depository in the

absence of negligence, malfeasance, misfeasance or nonfeasance on the part of the official. If the treasurer of state sells a depository's collateral securities, the depository shall deposit additional collateral to meet required collateral levels.

In making an assessment against depositories holding public funds as a result of a failure, the treasurer of state is exempt from any liability for loss, damage or expense to a depository which has accepted public funds.

85 Acts, ch 194, §7 SF 296
NEW section

453.25 State sinking funds created.

There are created in the treasurer of state's office the following funds:

1. A state sinking fund for public deposits in banks.
2. A state sinking fund for public deposits in credit unions.
3. A state sinking fund for public deposits in savings and loan associations and savings banks.

The funds shall be used to receive and disperse moneys pursuant to section 453.23, subsection 3, paragraph "d".

85 Acts, ch 194, §8 SF 296
NEW section

CHAPTER 454

STATE SINKING FUND FOR PUBLIC DEPOSITS

Repealed effective July 1, 1985 by 84 Acts, ch 1230, § 29;
see ch 453 and §453.25

Treasurer to transfer moneys to state sinking fund for public deposits
in banks; 85 Acts, ch 194, §13

CHAPTER 455

LEVEE AND DRAINAGE DISTRICTS AND IMPROVEMENTS ON PETITION OR BY MUTUAL AGREEMENT

455.33 Dismissal or establishment—permanent easement.

The board shall at said meeting, or at an adjourned session thereof, consider the costs of construction of said improvement as shown by the reports of the engineer and the amount of damages and compensation awarded to all claimants, and if, in its opinion, such costs of construction and amount of damages awarded create a greater burden than should justly be borne by the lands benefited by the improvement, it shall then dismiss the petition and assess the costs and expenses to the petitioners and their sureties, but if it finds that such cost and expense is not a greater burden than should be justly borne by the land benefited by the improvement, it shall finally and permanently locate and establish said district and improvement.

Following its establishment, the drainage district is deemed to have acquired by permanent easement all right-of-way for drainage district ditches, tile lines, settling basins and other improvements, unless they are acquired by fee simple, in the dimensions shown on the survey and report made in compliance with sections 455.17 and 455.18 or as shown on the permanent survey, plat and profile, if one is made. The permanent easement includes the right of ingress and egress across adjoining land and the right of access for maintenance, repair, improvement and inspection. The owner or lessee shall be reimbursed for any crop damages incurred in the maintenance, repair, improvement and inspection.

85 Acts, ch 163, §1 HF 678
NEW unnumbered paragraph 2

455.50 Public highways and state-owned lands.

When any public highway or other public land extends into or through a levee or drainage district, the commissioners to assess benefits shall ascertain and return in their report the amount of benefits and the apportionment of costs and expenses to such highway or other public land, and the board of supervisors shall assess the same against such highway and land.

Such assessments against primary highways and other state-owned lands under the jurisdiction of the state department of transportation shall be paid by the state department from the primary road fund on due certification of the amount by the county treasurer to the department, and against all secondary roads and other county owned lands under the jurisdiction of the board of supervisors, from county funds.

When any state-owned lands under the jurisdiction of the state conservation commission are situated within a levee or drainage district, the commissioners to assess benefits shall ascertain and return in their report the amount of benefits and the apportionment of costs and expenses to such lands and the board of supervisors shall assess the same against such lands. However, the commissioners shall not assess benefits to property below the ordinary high water mark in a sovereign state-owned lake, marsh or stream under the jurisdiction of the state conservation commission.

The assessments against lands under the jurisdiction of the state conservation commission may be paid by the executive council on certification of the amount by the county treasurer. There is appropriated from any funds in the general fund not otherwise appropriated amounts sufficient to pay the certified assessments.

85 Acts, ch 267, §3 SF 575

Unnumbered paragraphs 3 and 4 amended

455.64 Installment payments—waiver.

If the owner of any land against which a levy exceeding one hundred dollars has been made and certified shall, within thirty days from the date of such levy, agree in writing endorsed upon any improvement certificate referred to in section 455.77, or in a separate agreement, that in consideration of having a right to pay the owner's assessment in installments, the owner will not make any objection as to the legality of the assessment for benefit, or the levy of the taxes against the property, then such owner shall have the following options:

1. To pay one-third of the amount of such assessment at the time of filing such agreement; one-third within twenty days after the engineer in charge shall certify to the auditor that the improvement is one-half completed; and the remaining one-third within twenty days after the improvement has been completed and accepted by the board. All such installments shall be without interest if paid at said times, otherwise said assessments shall bear interest from the date of the levy at a rate not exceeding that permitted by chapter 74A, payable annually, and be collected as other taxes on real estate, with like penalty for delinquency.

2. To pay such assessments in not less than ten nor more than twenty equal installments, the number to be fixed by the board and interest at the rate fixed by the board, not exceeding that permitted by chapter 74A. The first installment of each assessment, or the total amount if less than one hundred dollars is due and payable on July 1 next succeeding the date of the levy, unless the assessment is filed with the county treasurer after May 31 in any year. The first installment shall bear interest on the whole unpaid assessment from the date of acceptance of the work by the board to the first day of December following the due date. The succeeding annual installments, with interest on the whole unpaid amount, to the first day of December following the due date, are respectively due on July 1 annually, and must be paid at the same time and in the same manner as the first semiannual payment of ordinary taxes. All future installments of an assessment may be paid on any date by payment of the then outstanding balance plus interest accrued to the date of payment. Each installment of an assessment with interest on the unpaid balance is

delinquent after the thirtieth day of September next after its due date, and bears the same delinquent interest with the same penalties as ordinary taxes. When collected, the interest and penalties must be credited to the same drainage fund as the drainage special assessment.

The provisions of this section and of sections 455.65 to 455.68 may within the discretion of the board, also be made applicable to repairs and improvements made under the provisions of section 455.135.

85 Acts, ch 163, §2 HF 678
Subsection 2 amended

455.111 Completion of work—report—notice.

When the work to be done under any contract is completed to the satisfaction of the engineer in charge of construction, the engineer shall so report and certify to the board, which shall fix a day to consider the report and shall give notice of the time and purpose of the meeting by ordinary mail to the landowners of the district and the date fixed for considering the report shall be not less than ten days after the date of mailing.

85 Acts, ch 163, §3 HF 678
Section amended

455.127A Abandoned right-of-way.

If a railroad or other utility has abandoned the use of its right-of-way for the purpose it was originally acquired or has sold its right-of-way to a person who will use it for a purpose other than for which it was originally acquired, the prior right or privilege of the drainage district to pass through the right-of-way of the railroad or utility shall become a permanent easement in favor of the drainage district for drainage purposes including the right of ingress and egress through adjacent property and the right of access for maintenance, repair, improvement and inspection. The permanent easement has the same dimensions as originally specified in the engineer's report and survey, or as acquired by use or as subsequently acquired.

If a railroad or other utility has abandoned the use of its right-of-way for the purpose it was originally acquired or has sold its right-of-way to a person who will use it for a purpose other than for which it was originally acquired in segments, each segment shall be assessed for benefits in the same proportion as the area of the segment bears to the area of the right-of-way through the forty-acre tract.

85 Acts, ch 163, §4 HF 678
NEW section

455.128 Annexation of additional lands.

After the establishment of a levee or drainage district, if the board becomes convinced that additional lands contiguous to the district, and without regard to county boundaries, are benefited by the improvement or that the same are then receiving benefit or will be benefited by a repair or improvement to said district as contemplated in section 455.135, it may adopt, with or without a petition from owners of the proposed annexed lands, a resolution of necessity for the annexation of such additional land and appoint an engineer with the qualifications provided in this chapter to examine such additional lands, to make a survey and plat thereof showing their relation, elevation, and condition of drainage with reference to such established district, and to make and file with the auditor a report as in this chapter provided for the original establishment of such district, said report to specify the character of the benefits received.

In the event the additional lands are a part of an existing drainage district, as an alternative procedure to that established by the foregoing provisions of this section, the lands may be annexed in either of the following methods:

1. A petition, proposing that the lands be included in a contiguous drainage district and signed by at least twenty percent of the landowners of those lands to be annexed, shall be filed with the governing board of each affected district.

The board of the district in which the lands are presently included may, at its next regular meeting or at a special meeting called for that purpose, adopt a resolution approving and consenting to the annexation; or

2. Whenever the owners of all of the land proposed to be annexed file a petition with the governing boards of the affected districts, the consent of the board in which the lands are then located shall not be required to consent to the annexation, and the board of the annexing district may proceed as provided in this section.

3. If either method of annexation provided for in subsections 1 and 2 of this section is completed, the board of the district to which the lands are to be annexed may adopt a resolution of necessity for the annexation of the additional lands, as provided in this section.

The right of remonstrance, as provided under section 455.34, does not apply to the owners of lands being involuntarily annexed to an established district.

85 Acts, ch 163, §5 HF 678
NEW unnumbered paragraph 3

455.129 Proceedings on report.

If the report recommends the annexation of the lands or any portion of them, the board shall consider the report, plats, and profiles and if satisfied that any of the lands are materially benefited by the district and that annexation is feasible, expedient, and for the public good, it shall proceed in all respects as to notice, hearing, appointment of appraisers to fix damages and as to hearing on the annexation; and if the annexation is finally made, as to classification and assessment of benefits to the annexed lands only, to the same extent and in the same manner as provided in the establishment of an original district. However, the annexation and classification of the annexed lands for benefits may be determined at one hearing. Those parties having an interest in the lands proposed to be annexed have the right to receive notice, to make objections, to file claims for damages, to have hearing, to take appeals and to do all other things to the same extent and in the same manner as provided in the establishment of an original district.

85 Acts, ch 163, §6 HF 678
Section amended

455.130 Levy on annexed lands.

After annexation is made the board may levy upon the annexed lands an assessment sufficient to equal the assessments for benefit originally paid by the lands of equal classification if the finding by the board as provided by section 455.128 was that the lands should have been included in the district when originally established, plus their proportionate share of the costs of any enlargement or extension of drains required to serve the annexed lands. If the finding of the board as provided in section 455.128 was based on the fact that additional lands are now benefited by virtue of the repair, improvement, or the change of the topographical conditions made to the district and were not benefited by the district as originally established, then the board shall levy upon the annexed lands an assessment sufficient to pay their proportionate share of the costs of the repair or improvement which was the basis for the lands being annexed. If the board finds that the lands are presently receiving benefits from the district but that some were reasonably omitted from the original establishment because of the change of the topographical conditions, the assessments levied upon the annexed lands shall be limited to a proportionate share of the costs of current and future maintenance, repairs and improvements.

85 Acts, ch 163, §7 HF 678
Section amended

455.135 Repair.

1. When any levee or drainage district has been established and the improvement constructed, the improvement shall be at all times under the supervision of the board of supervisors except as otherwise provided for control and management by a board

of trustees and the board shall keep the improvement in repair as provided in this section.

a. The board at any time on its own motion, without notice, may order done whatever is necessary to restore or maintain a drainage or levee improvement in its original efficiency or capacity, and for that purpose may remove silt and debris, repair any damaged structures, remove weeds and other vegetable growth, and whatever else may be needed to restore or maintain such efficiency or capacity or to prolong its useful life.

b. The board may at any time obtain an engineer's report regarding the most feasible means of repairing a drainage or levee improvement and the probable cost of making the repair. If the engineer advises, or the board otherwise concludes that permanent restoration of a damaged structure is not feasible at the time, the board may order temporary construction it deems necessary to the continued functioning of the improvement. If in maintaining and repairing tile lines the board finds from an engineer's report it is more economical to construct a new line than to repair the existing line, the new line may be considered to be a repair.

c. If the estimated cost of any repair exceeds ten thousand dollars, or seventy-five percent of the original total cost of the district and subsequent improvements, whichever is the greater amount, the board shall set a date for a hearing on the matter of making the proposed repairs, and shall give notice as provided in sections 455.20 to 455.24. If a hearing is required and the estimated cost of the repair exceeds twenty-five thousand dollars, an engineer's report or a report from the soil conservation district conservationist shall be presented at the hearing. The requirement of a report may be waived by the board if a prior report on the repair exists and that report is less than ten years old. The board shall not divide proposed repairs into separate programs in order to avoid the notice and hearing requirements of this paragraph. At the hearing the board shall hear objections to the feasibility of the proposed repairs, and following the hearing the board shall order that the repairs it deems desirable and feasible be made. Any interested party has the right of appeal from such orders in the manner provided in this chapter.

d. The right of remonstrance does not apply to repairs as defined in this section.

2. In the case of minor repairs, or in the eradication of brush and weeds along the open ditches, not in excess of five thousand dollars where the board finds that a saving to the district will result it may cause the repairs or eradication to be done by secondary road equipment, or weed fund equipment, and labor of the county and then reimburse the secondary road fund or the weed fund from the fund of the drainage district thus benefited.

3. When the board deems it necessary it may repair or reconstruct the outlet of any private tile line which empties into a drainage ditch of any district and assess the costs in each case against the land served by the private tile line.

4. For the purpose of this subsection, an "improvement" in a drainage or levee district in which any ditch, tile drain or other facility has previously been constructed is a project intended to expand, enlarge or otherwise increase the capacity of any existing ditch, drain or other facility above that for which it was designed.

a. When the board determines that improvements are necessary or desirable, it shall appoint an engineer to make surveys as seem appropriate to determine the nature and extent of the needed improvements, and to file a report showing what improvements are recommended and their estimated costs, which report may be amended before final action. If the estimated cost of the improvements does not exceed five thousand dollars, or twenty-five percent of the original cost of the district and subsequent improvements, whichever is the greater amount, the board may order the work done without notice. The board shall not divide proposed improvements into separate programs in order to avoid the limitation for making improvements without notice. If the board deems it desirable to make improvements where the estimated cost exceeds that limit, it shall set a date for a hearing on the matter of

constructing the proposed improvements and also on the matter of whether there shall be a reclassification of benefits for the cost of the proposed improvements, and shall give notice as provided in sections 455.20 to 455.24. At the hearing the board shall hear objections to the feasibility of the proposed improvements and arguments for or against a reclassification presented by or for any taxpayer of the district. Following the hearing the board shall order that the improvements it deems desirable and feasible be made, and shall also determine whether there should be a reclassification of benefits for the cost of improvements. If it is determined that a reclassification of benefits should be made the board shall proceed as provided in section 455.45.

b. If the estimated cost of the improvements as defined in this subsection exceeds twenty thousand dollars, or the original cost of the district plus the cost of subsequent improvements in the district, whichever is the greater amount, a majority of the landowners, owning in the aggregate more than seventy percent of the total land in the district, may file a written remonstrance against the proposed improvements, at or before the time fixed for hearing on the proposed improvements, with the county auditor, or auditors in case the district extends into more than one county. If a remonstrance is filed, the board shall discontinue and dismiss all further proceedings on the proposed improvements and charge the costs incurred to date for the proposed improvements to the district. Any interested party may appeal from such orders in the manner provided in this chapter. However, this section does not affect the procedures of section 455.142 covering the common outlet.

5. Where under the laws in force prior to 1904, drainage ditches and levees were established and constructed without fixing at the time of establishment a definite boundary line for the body of land to be assessed for the cost thereof, the body of land which was last assessed to pay for the repair thereof shall also be considered as the established district for the purpose of this section.

6. The governing body of the district may, by contract or conveyance, acquire, within or without the district, the necessary lands or easements for making repairs or improvements under this section, including easements for borrow and easements for meander, and in addition thereto, the same may be obtained in the manner provided in the original establishment of the district, or by exercise of the power of eminent domain as provided for in chapter 472. If additional right of way is required for any repair or improvement under this section, the same may be acquired in the same manner as provided for the acquisition of right of way in the original establishment of a district, except that where notice and hearing are not otherwise required under this section notice as provided in this chapter to owners, lienholder of record, and occupants of the land from which right of way is to be acquired shall suffice.

7. In existing districts where the stream has by erosion appropriated lands beyond its original right of way and it is more economical and feasible to acquire an easement for such erosion and meander than to undertake containment of the stream in its existing right of way, the board may, in the discharge of the duties enjoined upon it by this section, effect such acquisition as to the whole or part of the course. Right of way so taken shall be classed an improvement for the purpose of procedure under this section.

8. If the drainage records on file in the auditor's office for a particular district do not define specifically the land taken for right of way for drainage purposes, the board may at any time upon its own motion employ a land surveyor to make a survey and report of the district and to actually define the right of way taken for drainage purposes. After the land surveyor has filed the survey and report with the board, the board shall fix a date for hearing on the report and shall serve notice of the hearing upon all landowners and lienholders of record and occupants of the lands traversed by the right of way in the manner and for the time required for service of original notices in the district court. At the hearing the board shall specifically define the land taken for the right-of-way. Once established, the right-of-way constitutes a perma-

ment easement in favor of the drainage district for drainage purposes including the right of ingress and egress across adjoining land and the right of access for maintenance, repair, improvement and inspection. A person aggrieved by the action or failure to act of the board under this subsection may appeal only in compliance with sections 455.92 through 455.108.

85 Acts, ch 163, §8, 9 HF 678
 Subsection 1, paragraph c amended
 Subsection 8 amended

455.147 Levy under reclassification.

If the amount finally charged against a district exceeds twenty-five percent of the original cost of the improvement, the board may order a reclassification as provided for the original classification of a district and upon the final adoption of the new classification and apportionment shall proceed to levy that amount upon all lands, highways, and railway rights of way and property within the district, in accordance with the new classification and apportionment. An assessment made under this section on a tract, parcel or lot within the district which is computed at less than two dollars shall be fixed at the sum of two dollars.

85 Acts, ch 163, §10 HF 678
 Section amended

CHAPTER 455B

DEPARTMENT OF WATER, AIR AND WASTE MANAGEMENT

455B.131 Definitions.

When used in this division II, unless the context otherwise requires:

1. "*Air contaminant*" means dust, fume, mist, smoke, other particulate matter, gas, vapor (except water vapor), odorous substance, radioactive substance, or any combination thereof.

2. "*Air contaminant source*" means any and all sources of emission of air contaminants whether privately or publicly owned or operated.

Air contaminant source includes, but is not limited to, all types of businesses, commercial and industrial plants, works, shops, and stores, heating and power plants and stations, buildings and other structures of all types including single and multiple family residences, office buildings, hotels, restaurants, schools, hospitals, churches and other institutional buildings, automobiles, trucks, tractors, buses, aircraft, and other motor vehicles, garages, vending and service locations and stations, railroad locomotives, ships, boats, and other water-borne craft, portable fuel-burning equipment, indoor and outdoor incinerators of all types, refuse dumps and piles, and all stack and other chimney outlets from any of the foregoing.

An air contaminant source does not include a fire truck or other fire apparatus operated by an organized fire department.

3. "*Air pollution*" means presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is or may reasonably tend to be injurious to human, plant, or animal life, or to property, or which unreasonably interferes with the enjoyment of life and property.

4. "*Atmosphere*" means all space outside of buildings, stacks or exterior ducts.

5. "*Emission*" means a release of one or more air contaminants into the outside atmosphere.

6. "*Person*" means an individual, partnership, copartnership, co-operative, firm, company, public or private corporation, political subdivision, agency of the state, trust, estate, joint stock company, an agency or department of the federal government or any other legal entity, or a legal representative, agent, officer, employee or assigns of such entities.

7. *"Political subdivision"* means any municipality, township, or county, or district, or authority, or any portion, or combination of two or more thereof.

8. *"Major stationary source"* means a stationary air contaminant source which directly emits, or has the potential to emit, one hundred tons or more of an air pollutant per year including a major source of fugitive emissions of a pollutant as determined by rule by the commission or the administrator of the United States environmental protection agency.

9. *"Schedule and timetable of compliance"* means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.

85 Acts, ch 44, §1 SF 391
Subsection 2, NEW unnumbered paragraph 3

455B.171 Definitions.

When used in this part 1 of division III, unless the context otherwise requires:

1. *"Sewage"* means the water-carried waste products from residences, public buildings, institutions, or other buildings, including the bodily discharges from human beings or animals together with such ground water infiltration and surface water as may be present.

2. *"Industrial waste"* means any liquid, gaseous, radioactive, or solid waste substance resulting from any process of industry, manufacturing, trade or business or from the development of any natural resource.

3. *"Other waste"* means heat, garbage, municipal refuse, lime, sand, ashes, offal, oil, tar, chemicals and all other wastes which are not sewage or industrial waste.

4. *"Water pollution"* means the contamination of any water of the state so as to create a nuisance or render such water unclean, noxious or impure so as to be actually harmful, detrimental or injurious to public health, safety or welfare, to domestic, commercial, industrial, agricultural or recreational use or to livestock, wild animals, birds, fish or other aquatic life.

5. *"Sewer system"* means pipelines or conduits, pumping stations, force mains, vehicles, vessels, conveyances, injection wells, and all other constructions, devices and appliances appurtenant thereto used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal or disposal to any water of the state. To the extent that they are not subject to section 402 of the federal Water Pollution Control Act, ditches, pipes, and drains that serve only to collect, channel, direct, and convey nonpoint runoff from precipitation are not considered as sewer systems for the purposes of this Act. [66GA, ch 1204]

6. *"Treatment works"* means any plant, disposal field, lagoon, holding or flow-regulating basin, pumping station, or other works installed for the purpose of treating, stabilizing or disposing of sewage, industrial waste or other wastes.

7. *"Disposal system"* means a system for disposing of sewage, industrial waste and other wastes and includes sewer systems, treatment works, point sources and dispersal systems.

8. *"Federal Water Pollution Control Act"* means the federal Water Pollution Control Act of 1972, Pub. L. No. 92-500, as published in 33 U.S.C. secs. 1251-1376, as amended through December 31, 1981.

9. *"Water of the state"* means any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.

10. *"Person"* means any agency of the state or federal government or institution thereof, any municipality, governmental subdivision, interstate body, public or private corporation, individual, partnership, or other entity and includes any officer or governing or managing body of any municipality, governmental subdivision, interstate body, or public or private corporation.

11. "*Effluent standard*" means any restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, radiological and other constituents which are discharged from point sources into any water of the state including an effluent limitation, a water quality related effluent limitation, a standard of performance for a new source, a toxic effluent standard or other limitation.

12. "*Point source*" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

13. "*Pollutant*" means sewage, industrial waste or other waste.

14. "*New source*" means any building, structure, facility or installation, from which there is or may be the discharge of a pollutant, the construction of which is commenced after the publication of proposed federal rules prescribing a standard of performance which will be applicable to such source, if such standard is promulgated.

15. "*Schedule of compliance*" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with any effluent standard, water quality standard, or any other requirement of this part of this division or any rule promulgated pursuant thereto.

16. "*Sewer extension*" means pipelines or conduits constituting main sewers, lateral sewers or trunk sewers used for conducting pollutants to a larger interceptor sewer or to a point of ultimate disposal.

17. "*Water supply distribution system extension*" means any extension to the pipelines or conduits which carry water directly from the treatment facility, source or storage facility to the consumer's service connection.

18. "*Production capacity*" means the amount of potable water which can be supplied to the distribution system in a twenty-four-hour period.

19. "*Public water supply system*" means a system for the provision to the public of piped water for human consumption, if the system has at least fifteen service connections or regularly serves at least twenty-five individuals. The term includes any source of water and any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

20. "*Maximum contaminant level*" means the maximum permissible level of any physical, chemical, biological or radiological substance in water which is delivered to any user of a public water supply system.

21. "*Private water supply*" means any water supply for human consumption which has less than fifteen service connections and regularly serves less than twenty-five individuals.

22. "*Private sewage disposal system*" means a system which provides for the treatment or disposal of domestic sewage from four or fewer dwelling units or the equivalent of less than sixteen individuals on a continuing basis.

23. "*Semi-public sewage disposal system*" means a system for the treatment or disposal of domestic sewage which is not a private sewage disposal system and which is not owned by a city, a sanitary sewer district, or a designated and approved management agency under section 1288 of the federal Water Pollution Control Act (33 U.S.C. §1288).

24. "*Abandoned well*" means a water well which is no longer in use or which is in such a state of disrepair that continued use for the purpose of accessing ground water is unsafe or impracticable.

25. "*Contractor*" means a person engaged in the business of well construction or reconstruction.

26. "*Reconstruction*" means replacement or removal of all or a portion of the casing of a water well.

27. "Water well" means an excavation that is drilled, cored, bored, augered, washed, driven, dug, jetted or otherwise constructed for accessing groundwater. "Water well" does not include an open ditch or drain tiles.

28. "Construction" means the physical act or process of making a water well including, but not limited to, siting, excavation, construction and the installation of equipment and materials necessary to maintain and operate the well.

85 Acts, ch 176, §1 HF 649
NEW subsections 24 through 28

455B.172 Jurisdiction of department and local boards.

1. The department is the agency of the state to prevent, abate, or control water pollution and to conduct the public water supply program.

2. The department is the state agency designated to carry out the state responsibilities related to private water supplies and private sewage disposal systems for the protection of the health of the citizens of this state. The commission shall adopt minimum standards and provide model standards for private water supplies and private sewage disposal facilities for use of the local boards of health. Each local board of health is the agency to regulate private water supplies and private sewage disposal systems, but the department shall maintain jurisdiction over discharges to a water of the state. Each local board of health shall adopt standards relating to the design and construction of private water supplies and private sewage disposal facilities, which standards shall not be lower than the minimum standards adopted by the commission.

3. a. The department is the state agency to regulate the construction, reconstruction and abandonment of all of the following water wells:

(1) Those used as part of a public water supply system as defined in section 455B.171.

(2) Those used for the withdrawal of water for which a permit is required pursuant to 455B.268, subsection 1.

(3) Those used for the purpose of monitoring groundwater quantity and quality required or installed pursuant to directions or regulations of the department.

b. A local board of health is the agency to regulate the construction, reconstruction and abandonment of water wells not otherwise regulated by the department. The local board of health shall not adopt standards relative to the construction, reconstruction and abandonment of wells less stringent than those adopted by the department.

4. The department is the state agency to regulate the registration of water well contractors pursuant to section 455B.187.

5. Pursuant to chapter 28E, the department may delegate its authority for regulation of the construction, reconstruction and abandonment of water wells specified in subsection 3 or the registration of water well contractors specified in subsection 4 to boards of health or other agencies which have adequate authority and ability to administer and enforce the requirements established by law or rule.

85 Acts, ch 176, §2 HF 649
NEW subsections 3, 4 and 5

455B.173 Duties.

The commission shall:

1. Develop comprehensive plans and programs for the prevention, control and abatement of water pollution.

2. Establish, modify, or repeal water quality standards, pretreatment standards and effluent standards. The effluent standards may provide for maintaining the existing quality of the water of the state where the quality thereof exceeds the requirements of the water quality standards.

If the federal environmental protection agency has promulgated an effluent standard or pretreatment standard pursuant to section 301, 306 or 307 of the federal

Water Pollution Control Act, a pretreatment or effluent standard adopted pursuant to this section shall not be more stringent than the federal effluent or pretreatment standard for such source. This section may not preclude the establishment of a more restrictive effluent limitation in the permit for a particular point source if the more restrictive effluent limitation is necessary to meet water quality standards, the establishment of an effluent standard for a source or class of sources for which the federal environmental protection agency has not promulgated standards pursuant to section 301, 306 or 307 of the federal Water Pollution Control Act. Except as required by federal law or regulation, the commission shall not adopt an effluent standard more stringent with respect to any pollutant than is necessary to reduce the concentration of that pollutant in the effluent to the level due to natural causes, including the mineral and chemical characteristics of the land, existing in the water of the state to which the effluent is discharged. Notwithstanding any other provision of this part of this division, any new source, the construction of which was commenced after October 18, 1972, and which was constructed as to meet all applicable standards of performance for the new source or any more stringent effluent limitation required to meet water quality standards, shall not be subject to any more stringent effluent limitations during a ten-year period beginning on the date of completion of construction or during the period of depreciation or amortization of the pollution control equipment for the facility for the purposes of section 167 and 169 or both sections of the Internal Revenue Code of 1954, whichever period ends first.

3. Establish, modify or repeal rules relating to the location, construction, operation, and maintenance of disposal systems and public water supply systems and specifying the conditions under which the executive director shall issue, revoke, suspend, modify or deny permits for the operation, installation, construction, addition to or modification of any disposal system or public water supply system, or for the discharge of any pollutant or for the disposal of water wastes resulting from poultry and livestock operations. The rules specifying the conditions under which the executive director shall issue permits for the construction of an electric power generating facility subject to chapter 476A shall provide for issuing a conditional permit upon the submission of engineering descriptions, flow diagrams and schematics that qualitatively and quantitatively identify effluent streams and alternative disposal systems that will provide compliance with effluent standards or limitations.

No rules shall be adopted which regulate the hiring or firing of operators of disposal systems or public water supply systems except rules which regulate the certification of operators as to their technical competency.

A publicly owned treatment works whose discharge meets the final effluent limitations which were contained in its discharge permit on the date that construction of the publicly owned treatment works was approved by the department shall not be required to meet more stringent effluent limitations for a period of ten years from the date the construction was completed and accepted but not longer than twelve years from the date that construction was approved by the department.

4. Co-operate with other state or interstate water pollution control agencies in establishing standards, objectives, or criteria for the quality of interstate waters originating or flowing through this state.

5. Establish, modify or repeal rules relating to drinking water standards for public water supply systems. Such standards shall specify maximum contaminant levels or treatment techniques necessary to protect the public health and welfare. The drinking water standards must assure compliance with federal drinking water standards adopted pursuant to the federal Safe Drinking Water Act.

6. Establish, modify or repeal rules relating to inspection, monitoring, record keeping and reporting requirements for the owner or operator of any public water supply or any disposal system or of any source which is an industrial user of a publicly or privately owned disposal system.

7. Adopt a statewide plan for the provision of safe drinking water under emergency circumstances. All public agencies, as defined in chapter 28E, shall co-operate in the development and implementation of the plan. The plan shall detail the manner in which the various state and local agencies shall participate in the response to an emergency. The department may enter into any agreement, subject to approval of the commission, with any state agency or unit of local government or with the federal government which may be necessary to establish the role of such agencies in regard to the plan. This plan shall be co-ordinated with disaster emergency plans.

8. Formulate and adopt specific and detailed statewide standards pursuant to chapter 17A for review of plans and specifications and the construction of sewer systems and water supply distribution systems and extensions to such systems not later than October 1, 1977. The standards shall be based on criteria contained in the "Recommended Standards for Sewage Works" and "Recommended Standards for Water Works" (Ten States Standards) as adopted by the Great Lakes-Upper Mississippi River board of state sanitary engineers, design manuals published by the department, applicable federal guidelines and standards, standard textbooks, current technical literature and applicable safety standards. The material standards for polyvinyl chloride pipe shall not exceed the specifications for polyvinyl chloride pipe in designations D-1784-69, D-2241-73, D-2564-76, D-2672-76, D-3036-73 and D-3139-73 of the American society of testing and material. The rules adopted which directly pertain to the construction of sewer systems and water supply distribution systems and the review of plans and specifications for such construction shall be known respectively as the Iowa Standards for Sewer Systems and the Iowa Standards for Water Supply Distribution Systems and shall be applicable in each governmental subdivision of the state. Exceptions shall be made to the standards so formulated only upon special request to and receipt of permission from the department. The department shall publish the standards and make copies of such standards available to governmental subdivisions and to the public.

9. Adopt, modify or repeal rules relating to the construction and reconstruction of water wells, the proper abandonment of wells, and the registration of water well contractors. The rules shall include those necessary to protect the public health and welfare, and to protect the waters of the state. The rules may include, but are not limited to, establishing fees for registration of water well contractors, requiring the submission of well driller's logs, formation samples or well cuttings, water samples, information on test pumping and requiring inspections. Fees shall be based upon the reasonable cost of conducting the water well contractor registration program.

85 Acts, ch 176, §3 HF 649
NEW subsection 9

455B.187 Water well construction.

A contractor shall not engage in well construction or reconstruction without first registering as required in department rules. Water wells shall not be constructed, reconstructed, or abandoned by a person except as provided in this part or rules adopted pursuant to this part. Within thirty days after construction or reconstruction of a well, a contractor shall provide well information required by rule to the department and the Iowa geological survey.

85 Acts, ch 176, §4 HF 649
Section 455B.187, Code 1985, transferred to §455B.191 in Code Supplement 1985
NEW section

455B.188 Provision for emergency replacement of water wells.

Rules adopted to implement section 455B.172, subsection 3, paragraph "b"; 455B.173, subsection 9; and section 455B.187 shall specifically provide for the immediate replacement or reconstruction of water wells in response to the sudden and unforeseen loss or serious impairment of a well for its intended use. These provisions shall include the granting of emergency authorizations and registration of well contractors pursuant to section 455B.187 and may include the granting of variances and exemptions from technical standards as appropriate.

85 Acts, ch 176, §5 HF 649
NEW section

455B.191 Penalties—burden of proof.

1. Any person who violates any provision of part 1 of division III of this chapter or any permit, rule, standard, or order issued under part 1 of division III of this chapter shall be subject to a civil penalty not to exceed five thousand dollars for each day of such violation. The civil penalty shall be an alternative to any criminal penalty provided under part 1 of division III of this chapter.

2. Any person who willfully or negligently discharges any pollutants in violation of section 455B.183 or 455B.186 or in violation of any condition or limitation included in any permit issued under section 455B.183 or in violation of any water quality standard or effluent standard or, with respect to the introduction of pollutants into publicly owned treatment works, violates a pretreatment standard or toxic effluent standard, shall be punished by a fine not to exceed ten thousand dollars for each day of violation. If the conviction is for a violation committed by a person after the person's first conviction under this section, the punishment shall be a fine not to exceed twenty thousand dollars for each day of violation.

3. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under part 1 of division III of this chapter, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under part 1 of division III of this chapter or by any permit, rule, regulation, or order issued under part 1 of division III of this chapter, shall upon conviction be punished by a fine of not more than ten thousand dollars or by imprisonment in the county jail for not more than six months or by both such fine and imprisonment.

4. The attorney general shall, at the request of the executive director with approval of the commission, institute any legal proceedings, including an action for an injunction or a temporary injunction, necessary to enforce the penalty provisions of part 1 of division III of this chapter or to obtain compliance with the provisions of part 1 of division III of this chapter or any rules promulgated or any provision of any permit issued under part 1 of division III of this chapter. In any such action, any previous findings of fact of the executive director or the commission after notice and hearing shall be conclusive if supported by substantial evidence in the record when the record is viewed as a whole.

5. In all proceedings with respect to any alleged violation of the provisions of this part 1 of division III or any rule established by the commission or the department, the burden of proof shall be upon the commission or the department except in an action for contempt as provided in section 455B.182.

6. If the attorney general has instituted legal proceedings in accordance with this section, all related issues which could otherwise be raised by the alleged violator in a proceeding for judicial review under section 455B.178 shall be raised in the legal proceedings instituted in accordance with this section.

Transferred in Code Supplement 1985 from §455B.187 in Code 1985

455B.261 Definitions.

As used in this part of division III, unless the context otherwise requires:

1. "Flood plains" means the area adjoining a river or stream which has been or may be covered by flood water.
2. "Floodway" means the channel of a river or stream and those portions of the flood plains adjoining the channel which are reasonably required to carry and discharge the flood water or flood flow of any river or stream.
3. "Surface water" means the water occurring on the surface of the ground.
4. "Ground water" means that water occurring beneath the surface of the ground.
5. "Diffused waters" means waters from precipitation and snowmelt which is not a part of any watercourse or basin including capillary soil water.
6. "Depleting use" means the storage, diversion, conveyance, or other use of a

supply of water if the use may impair rights of lower or surrounding users, may impair the natural resources of the state, or may injure the public welfare if not controlled.

7. *“Beneficial use”* means the application of water to a useful purpose that inures to the benefit of the water user and subject to the user’s dominion and control but does not include the waste or pollution of water.

8. *“Nonregulated use”* means any beneficial use of water by any person of less than twenty-five thousand gallons per day.

9. *“Regulated use”* means any depleting use except a use specifically designated as a nonregulated use.

10. *“Permit”* means a written authorization issued by the department to a permittee which authorizes diversion, storage, or withdrawal of water limited as to quantity, time, place, and rate in accordance with this part or authorizes construction, use, or maintenance of a structure, dam, obstruction, deposit, or excavation in a floodway or flood plain in accordance with the principles and policies of protecting life and property from floods as specified in this part.

11. *“Permittee”* means a person who obtains a permit from the department authorizing the person to take possession by diversion or otherwise and to use and apply an allotted quantity of water for a designated beneficial use, and who makes actual use of the water for that purpose or a person who obtains a permit from the department authorizing construction, use, or maintenance of a structure, dam, obstruction, deposit, or excavation in a floodway or flood plain for a designated purpose.

12. *“Waste”* means any of the following:

a. Permitting ground water or surface water to flow, or taking it or using it in any manner so that it is not put to its full beneficial use.

b. Transporting ground water from its source to its place of use in such a manner that there is an excessive loss in transit.

c. Permitting or causing the pollution of a water-bearing strata through any act which will cause salt water, highly mineralized water, or otherwise contaminated water to enter it.

13. *“Watercourse”* means any lake, river, creek, ditch, or other body of water or channel having definite banks and bed with visible evidence of the flow or occurrence of water, except lakes or ponds without outlet to which only one landowner is riparian.

14. *“Basin”* means a specific subsurface water-bearing reservoir having reasonably ascertainable boundaries.

15. *“Established average minimum flow”* means the average minimum flow for a given watercourse at a given point determined and established by the commission. The “average minimum flow” for a given watercourse shall be determined by the following factors:

a. Average of minimum daily flows occurring during the preceding years chosen by the commission as more nearly representative of changing conditions and needs of a given drainage area at a particular time.

b. Minimum daily flows shown by experience to be the limit at which further withdrawals would be harmful to the public interest in any particular drainage area.

c. The minimum daily flows shown by established discharge records and experiences to be definitely harmful to the public interest.

The determination shall be based upon available data, supplemented, when available data are incomplete, with whatever evidence is available.

85 Acts, ch 7, §1 SF 163
Subsection 8 amended

455B.262 Declaration of policy and planning requirements.

1. It is recognized that the protection of life and property from floods, the prevention of damage to lands from floods, and the orderly development, wise use,

protection, and conservation of the water resources of the state by their considered and proper use is of paramount importance to the welfare and prosperity of the people of the state, and to realize these objectives, it is the policy of the state to correlate and vest the powers of the state in a single agency, the department, with the duty and authority to assess the water needs of all water users at five-year intervals for the twenty years beginning January 1, 1985, and ending December 31, 2004, utilizing a data base developed and managed by the Iowa geological survey, and to prepare a general plan of water allocation in this state considering the quantity and quality of water resources available in this state designed to meet the specific needs of the water users. The department shall also develop and the commission shall adopt no later than June 30, 1986, a plan for delineation of flood plain and floodway boundaries for selected stream reaches in the various river basins of the state. Selection of the stream reaches and assignment of priorities for mapping of the selected reaches shall be based on consideration of flooding characteristics, the type and extent of existing and anticipated flood plain development in particular stream reaches, and the needs of local governmental bodies for assistance in delineating flood plain and floodway boundaries. The plan of flood plain mapping shall be for the period from June 30, 1986, to December 31, 2004. After the commission adopts a plan of flood plain mapping, the department shall submit a progress report and proposed implementation schedule to the general assembly biennially. The commission may modify the flood plain mapping plan as needed in response to changing circumstances.

2. The general welfare of the people of the state requires that the water resources of the state be put to beneficial use which includes ensuring that the waste or unreasonable use, or unreasonable methods of use of water be prevented, and that the conservation and protection of water resources be required with the view to their reasonable and beneficial use in the interest of the people, and that the public and private funds for the promotion and expansion of the beneficial use of water resources be invested to the end that the best interests and welfare of the people are served.

3. Water occurring in a basin or watercourse, or other body of water of the state, is public water and public wealth of the people of the state and subject to use in accordance with this chapter, and the control and development and use of water for all beneficial purposes is vested in the state, which shall take measures to ensure the conservation and protection of the water resources of the state. These measures shall include the protection of specific surface and groundwater sources as necessary to ensure long-term availability in terms of quantity and quality to preserve the public health and welfare.

85 Acts, ch 7, §2 SF 163; 85 Acts, ch 91, §1 SF 511
Subsection 1 amended
Subsections 2 and 3 amended

455B.263 Duties.

1. The commission shall deliver to the general assembly by January 15, 1987, a plan embodying a general groundwater protection strategy for this state which considers the effects of potential sources of groundwater contaminations on groundwater quality. The plan shall evaluate the ability of existing laws and programs to protect groundwater quality and recommend any necessary additional or alternative laws and programs. The department shall develop the plan with the assistance of and in consultation with representatives of agriculture, industry, and public and other interests. The commission shall report to the general assembly on the status and implementation of the plan on a biennial basis. This section does not preclude the implementation of existing or new laws or programs which may protect groundwater quality.

2. The commission shall designate the official representative of this state on all comprehensive water resources planning groups for which state participation is

provided. The commission shall coordinate state planning with local and national planning and, in safeguarding the interests of the state and its people, shall undertake the resolution of any conflicts that may arise between the water resources policies, plans, and projects of the federal government and the water resources policies, plans, and projects of the state, its agencies, and its people. This section does not limit or supplant the functions, duties, and responsibilities of other state or local agencies or institutions with regard to planning of water-associated projects within the particular area of responsibility of those state or local agencies or institutions.

3. The commission shall enter into negotiations and agreements with the federal government relative to the operation of, or the release of water from, any project that has been authorized or constructed by the federal government when the commission deems the negotiations and agreements to be necessary for the achievement of the policies of this state relative to its water resources.

4. The commission, on behalf of the state, shall enter into negotiations with the federal government relative to the inclusion of conservation storage features for water supply in any project that has been authorized by the federal government when the commission deems the negotiations to be necessary for the achievement of the policies of this state, however, an agreement reached pursuant to these negotiations does not bind the state until enacted into law by the general assembly.

5. A water user who benefits from the development by the federal government of conservation storage for water supply shall be encouraged to assume the responsibility for repaying to the federal government any reimbursable costs incurred in the development, and a user who accepts benefits from the developments financed in whole or part by the state shall assume by contract the responsibility of repaying to the state the user's reasonable share of the state's obligations in accordance with a basis which will assure payment within the life of the development. An appropriation, diversion, or use shall not be made by a person of any waters of the state that have been stored or released from storage either under the authority of the state or pursuant to an agreement between the state and the federal government until the person has assumed by contract the person's repayment responsibility. However, this subsection does not infringe upon any vested property interests.

6. In its contracts with water users for the payment of state obligations incurred in the development of conservation storage for water supply, the commission shall include the terms deemed reasonable and necessary:

- a. To protect the health, safety, and general welfare of the people of the state.
- b. To achieve the purposes of this chapter.
- c. To provide that the state is not responsible to any person if the waters involved are insufficient for performance.

The commission may designate and describe any such contract, and describe the relationships to which it relates, as a sale of storage capacity, a sale of water release services, a contract for the storage or sale of water, or any similar terms suggestive of the creation of a property interest. The term of the contracts shall be commensurate with the investment and use concerned, but the commission shall not enter into any such contract for a term in excess of the maximum period provided for water use permits.

7. The commission shall procure flood control works and water resources projects from or by cooperation with any agency of the United States, by cooperation with the cities and other subdivisions of the state under the laws of the state relating to flood control and use of water resources, and by cooperation with the action of landowners in areas affected by the works or projects when the commission deems the projects to be necessary for the achievement of the policies of this state.

8. The commission shall promote the policies set forth in this part and shall represent this state in all matters within the scope of this part. The commission shall adopt rules pursuant to chapter 17A as necessary to transact its business and for the administration and exercise of its powers and duties.

9. In carrying out its duties, the commission may accept gifts, contributions, donations and grants, and use them for any purpose within the scope of this part.

85 Acts, ch 7, §3 SF 163
Subsection 1 struck and rewritten

455B.264 Jurisdiction—water and flood plains.

1. The commission has jurisdiction over the public and private waters in the state and the lands adjacent to the waters necessary for the purposes of carrying out this part. The commission may construct flood control works or any part of the works. In the construction of the works, in making surveys and investigations, or in formulating plans and programs relating to the water resources of the state, the commission may cooperate with an agency of another state or the United States, or with any other person.

2. Upon application by any person for permission to divert, pump, or otherwise take waters from any watercourse, underground basin or watercourse, drainage ditch, or settling basin within this state for any purpose other than a nonregulated use, the executive director shall investigate the effect of the use upon the natural flow of the watercourse, the effect of the use upon the owners of any land which might be affected by the use, the effect of the use upon prior users of the water source and contracts made under section 455B.263 and whether the use is consistent with the principles and policies of beneficial use.

3. Upon application by any person for approval of the construction or maintenance of any structure, dam, obstruction, deposit, or excavation to be erected, used, or maintained in or on the flood plains of any river or stream, the department shall investigate the effect of the construction or maintenance project on the efficiency and capacity of the floodway. In determining the effect of the proposal the department shall consider fully its effect on flooding or of flood control for any proposed works and adjacent lands and property, on the wise use and protection of water resources, on the quality of water, on fish, wildlife, and recreational facilities or uses, and on all other public rights and requirements.

85 Acts, ch 7, §4 SF 163
Subsection 2 amended

455B.265 Permits for diversion, storage, and withdrawal.

1. In its consideration of applications for permits, the department shall give priority in processing to persons in the order that the applications are received, except where the application of this processing priority system prevents the prompt approval of routine applications or where the public health, safety or welfare will be threatened by delay. If the department determines after investigation that the diversion, storage or withdrawal is consistent with the principles and policies of beneficial use and ensuring conservation, the department shall grant a permit. Regardless of the request in the application, the executive director or the commission on appeal may determine the duration and frequency of withdrawal and the quantity of water to be diverted, stored or withdrawn pursuant to the permit. Each permit granted after July 1, 1986, shall include conditions requiring routine conservation practices, and requiring implementation of emergency conservation measures after notification by the department.

2. If an application is received by July 1, 1986, the department shall grant a permit for the continuation of a beneficial use of water that was a nonregulated use prior to July 1, 1985, and now requires a permit pursuant to section 455B.268. However, the permit is subject to conditions requiring routine and emergency conservation measures and to modification or cancellation under section 455B.271. Applications received after July 1, 1986 for those uses shall be determined pursuant to subsection 1.

3. Permits shall be granted for a period of ten years; however, permits for withdrawal of water may be granted for less than ten years if geological data on the

capacity of the aquifer and the rate of its recharge are indeterminate, and permits for the storage of water may be granted for the life of the structure unless revoked by the commission. A permit granted shall remain as an appurtenance of the land described in the permit through the date specified in the permit and any extension of the permit or until an earlier date when the permit or its extension is canceled under section 455B.271. Upon application for a permit prior to the termination date specified in the permit, a permit may be renewed by the department for a period of ten years.

85 Acts, ch 7, §5 SF 163
Section struck and rewritten

455B.266 Priority allocation.

1. After any event described in paragraphs "a" through "d" of this subsection has occurred, the department shall investigate and, if appropriate, may implement the priority allocation plan provided in subsection 2. The department shall require existing permittees to implement appropriate emergency conservation measures. The pertinent public notice and hearing requirements of subsection 4 of this section and sections 455B.271 and 455B.278 shall apply to the implementation of the plan.

a. Receipt of a petition by twenty-five affected persons or a governmental subdivision requesting that the priority allocation plan be implemented due to a substantial local water shortage.

b. Receipt of information from a state or federal natural resource, research or climatological agency indicating that a drought of local or state magnitude is imminent.

c. Issuance by the governor of a proclamation of a disaster emergency due to a drought or other event affecting water resources of the state.

d. Determination by the department in conjunction with the office of disaster services of a local crisis which affects availability of water.

2. Notwithstanding a person's possession of a permit or the person's use of water being a nonregulated use, the department may suspend or restrict usage of water by category of use on a local or statewide basis in the following order:

a. Water conveyed across state boundaries.

b. Uses of water primarily for recreational or aesthetic purposes.

c. Uses of water for the irrigation of hay, corn, soybeans, oats, grain sorghum or wheat.

d. Uses of water for the irrigation of crops other than hay, corn, soybeans, oats, grain sorghum or wheat.

e. Uses of water for manufacturing or other industrial processes.

f. Uses of water for generation of electrical power for public consumption.

g. Uses of water for livestock production.

h. Uses of water for human consumption and sanitation supplied by rural water districts, municipal water systems, or other public water supplies as defined in section 455B.171.

i. Uses of water for human consumption and sanitation supplied by a private water supply as defined in section 455B.171.

3. Unless the governor has issued a proclamation described in subsection 1, paragraph "c", the department shall not impose a suspension of water use or a further restriction, other than conservation, on the uses of water provided in subsection 2, paragraphs "g" through "i" or on users of water pursuant to a contract with the state as provided in section 455B.263, subsections 5 and 6.

4. Suspension or restrictions of water usage applicable to otherwise nonregulated water users shall be by emergency order of the executive director which the department shall cause to be published in local newspapers of general circulation and broadcast by local media. The emergency order shall state an effective date of the suspension or restriction and shall be immediately effective on such date unless stayed, modified or vacated at a hearing before the commission or by a court.

85 Acts, ch 7, §6 SF 163
Section struck and rewritten

455B.267 Permits for beneficial use—prohibitions.

1. The executive director or the commission may issue a permit for beneficial use of water in a watercourse if the established average minimum water flow is preserved.
2. A use of water shall not be authorized if it will impair the effect of this chapter or any other pollution control law of this state.
3. A permit shall not be issued or continued if it will impair the navigability of any navigable watercourse.
4. A permit to divert, store or withdraw water shall not be issued or continued if it will unreasonably impair the long-term availability of water from a surface or groundwater source in terms of quantity or quality, or otherwise adversely affect the public health or welfare.

85 Acts, ch 7, §7 SF 163
NEW subsection 4

455B.268 When permit required.

1. A permit shall be required for the following:
 - a. Except for a nonregulated use, a person diverting, storing or withdrawing water from any surface or groundwater source.
 - b. A person who diverts water or any material from the surface directly into an underground watercourse or basin.
2. The commission may adopt, modify, or repeal rules pursuant to chapter 17A specifying the conditions under which the executive director may authorize specific nonrecurring minor uses of water for periods not to exceed one year through registration.
3. Notwithstanding any exemptions from permit requirements, nothing in this part exempts water users from requirements for reporting which the commission adopts by rule.

85 Acts, ch 7, §8 SF 163
Subsection 1 amended

455B.271 Modification or cancellation of permits.

Each permit issued under section 455B.265 is irrevocable for its term and for any extension of its term except as follows:

1. A permit may be modified or canceled by the department with the consent of the permittee.
2. Subject to appeal to the commission, a permit may be modified or canceled by the executive director if any of the following occur:
 - a. There is a breach of the terms of the permit.
 - b. There is a violation of the law pertaining to the permit by the permittee or the permittee's agents.
 - c. There is a circumstance of nonuse as provided in section 455B.272.
 - d. The department finds that modification or cancellation is necessary to protect the public health or safety, to protect the public interests in lands or waters, to require conservation measures or to prevent substantial injury to persons or property in any manner. Before the modification or cancellation is effective, the department shall give at least thirty days' written notice mailed to the permittee at the permittee's last known address, stating the grounds of the proposed modification or cancellation and giving the permittee an opportunity to be heard on the proposal.
3. By written emergency order to the permittee, the department may suspend or restrict operations under a permit if the executive director finds it necessary in an emergency to protect the public health, to protect the public interest in waters against imminent danger of substantial injury in any manner or to an extent not expressly authorized by the permit, to implement the priority allocation system of section 455B.266, or to protect persons or property against imminent danger. The department may require the permittee to take measures necessary to prevent or remedy the injury. The emergency order shall state the effective date of the suspen-

sion or restriction and shall be immediately effective on that date unless stayed, modified or vacated at a hearing before the commission or by a court.

85 Acts, ch 7, §9, 10 SF 163
 Subsection 2, paragraph d amended
 Subsection 3 amended

455B.281 Compensation for well interference.

If an investigation by the department, using information provided by the applicant or permittee and the complainant, discloses that a proposed or existing permitted use or combination of such uses is causing or will cause the delivery system to fail in a well which supplies water for a nonregulated use, the department may condition issuance or continuation of a permit upon payment by the permittee of compensation for all or a portion of the cost of a replacement water supply system or remedial measures necessitated by the interference. However, such condition may be imposed only after the parties demonstrate to the department that a good faith effort to negotiate a mutually agreeable compensation has been made and has failed.

Determination of the amount of compensation for the well interference shall be made a part of the determination of the department in accordance with section 455B.265 or 455B.271. The department may require the submission of itemized estimates of the cost of remedial repairs or a replacement water supply system. In determining appropriate compensation, the department shall consider the age and condition of the affected well or pumping system and its reasonableness as a method of obtaining groundwater in light of the history of development of groundwater in the surrounding area. When compensation is required for all or part of the cost of construction of a replacement water supply system or reconstruction of an affected well, the construction or reconstruction must comply with applicable well construction standards. A permittee is not required to pay compensation before having an opportunity to do test pumping authorized by the department and supervised by the department or designee.

The determination of the department shall be subject to administrative and judicial review and shall be the exclusive remedy for such interference.

85 Acts, ch 7, §11 SF 163
 NEW section

455B.301 Definitions.

As used in this part 1 of division IV, unless the context clearly indicates a contrary intent:

1. *"Public agency"* means a public agency as defined in section 28E.2.
2. *"Private agency"* means a private agency as defined in section 28E.2.
3. *"Sanitary disposal project"* means all facilities and appurtenances including all real and personal property connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of solid waste without creating a significant hazard to the public health or safety, and which are approved by the executive director.
4. *"Sanitary landfill"* means a landfill associated with a sanitary disposal project to facilitate the final disposition of solid waste.
5. *"Solid waste"* means garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities. Solid waste may include vehicles, as defined by section 321.1, subsection 1. However, this division does not prohibit the use of dirt, stone, brick, or similar inorganic material for fill, landscaping, excavation or grading at places other than a sanitary disposal. Solid waste does not include hazardous waste as defined in section 455B.411 or source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979.
6. *"Resource recovery system"* means the recovery and separation of ferrous

metals and nonferrous metals and glass and aluminum and the preparation and burning of solid waste as fuel for the production of electricity.

85 Acts, ch 241, §1, 2 HF 750
 Amendments effective April 1, 1986; 85 Acts, ch 241, §5
 NEW subsection 4 and subsequent subsections renumbered
 Subsection 5 amended

455B.304 Rules established.

The commission shall establish rules for the proper administration of this part 1 of division IV which shall reflect and accommodate as far as is reasonably possible the current and generally accepted methods and techniques for treatment and disposition of solid waste which will serve the purposes of part 1 of this division, and which shall take into consideration the factors, including others which it deems proper, such as existing physical conditions, topography, soils and geology, climate, transportation, and land use, and which shall include but are not limited to rules relating to the establishment and location of sanitary disposal projects, sanitary practices, inspection of sanitary disposal projects, collection of solid waste, disposal of solid waste, pollution controls, the issuance of permits, approved methods of private disposition of solid waste, the general operation and maintenance of sanitary disposal projects, and the implementation of part 1 of this division. The rules shall require that each sanitary disposal project has a sufficient number of water wells to adequately monitor the quality of ground water adjacent to the sanitary disposal project site. Prior to issuance of rules or amendments to rules, the commission shall hold at least one public hearing on the proposed rules or amendments, and shall give notice of the hearing at least thirty days in advance by publishing notice in a newspaper of general circulation in the state.

The commission shall adopt rules that allow the use of wet or dry sludge from publicly owned treatment works for land application. A sale of wet or dry sludge for the purpose of land application shall be accompanied by a written agreement signed by both parties which contains a general analysis of the contents of the sludge. The heavy metal content of the sludge shall not exceed that allowed by rules of the commission. An owner of a publicly owned treatment works which sells wet or dry sludge is not subject to criminal liability for acts or omissions in connection with a sale, and is not subject to any action by the purchaser to recover damages for harm to person or property caused by sludge that is delivered pursuant to a sale unless it is a result of a violation of the written agreement or if the heavy metal content of the sludge exceeds that allowed by rules of the commission. Nothing in this section shall provide immunity to any person from action by the department pursuant to section 455B.307. The rules promulgated under this paragraph shall be generally consistent with those rules of the department existing on January 1, 1982 regarding the land application of municipal sewage sludge except that they may provide for different methods of application for wet sludge and dry sludge.

85 Acts, ch 58, §1 HF 469
 Unnumbered paragraph 1 amended

455B.309 Groundwater fund.

1. A groundwater fund is created in the state treasury. Moneys received from the tonnage fee and from other sources designated for purposes related to groundwater monitoring and groundwater quality standards shall be deposited in the state treasury to the credit of the fund. Any unexpended balance in the groundwater fund at the end of each fiscal year shall be retained in the fund.

2. The department may use the fund for any of the following purposes:

- a. The administration of a groundwater monitoring program.
- b. The development of groundwater quality standards.
- c. Research in alternative methods of solid waste disposal including recycling programs.
- d. Abatement and cleanup of threats to the public safety and environment

resulting from a sanitary landfill when an owner or operator of the facility is unable to effectuate the abatement or cleanup. However, not more than ten percent of the fund may be used for this purpose in any given year without legislative authorization for that purpose.

85 Acts, ch 241, §3 HF 750
Effective April 1, 1986; 85 Acts, ch 241, §5
NEW section

455B.310 Tonnage fee imposed.

1. Except as provided in subsection 3, the operator of a sanitary landfill shall pay to the department a tonnage fee for each ton or equivalent volume of solid waste received and disposed of at the sanitary landfill during the preceding reporting period. The department shall determine by rule the volume which is equivalent to a ton of waste.

2. The tonnage fee is twenty-five cents per ton of solid waste.

3. Solid waste disposal facilities with special provisions which limit the site to the disposal of construction and demolition waste and solid waste materials approved by the department for lining or capping or for construction berms, dikes or roads in a sanitary disposal project or sanitary landfill are exempt from the tonnage fees imposed under this section.

4. All tonnage fees received by the department under this section shall be paid to a groundwater fund created under section 455B.309.

5. Fees imposed by this section shall be paid to the department on an annual basis. Fees are due on April 15 for the previous calendar year. The payment shall be accompanied by a return in the form prescribed by the department.

6. A person required to pay fees by this section who fails or refuses to pay the fees imposed by this section shall be assessed a penalty of fifteen percent of the fee due. The penalty shall be paid in addition to the fee due.

85 Acts, ch 241, §4 HF 750
Effective April 1, 1986; 85 Acts, ch 241, §5
NEW section

PART 5

HAZARDOUS WASTE MANAGEMENT

Sections 455B.411, subsections 5, 8, and 9; 455B.412,
subsections 2-4; and 455B.413-455B.421 partially suspended
until July 1, 1987; 85 Acts, ch 260, §12 HF 476
"Toxic Cleanup Days" pilot program; 85 Acts, ch 79, §1 HF 728

455B.412 Duties of the commission.

The commission shall:

1. Develop comprehensive plans and programs for the state for the management of hazardous waste. In the development of plans and programs, the commission shall recognize the need for assuring that suitable facilities and sites for treatment and disposal are available for hazardous wastes generated in Iowa. As part of the hazardous waste management plan, the commission shall conduct a study of hazardous waste management in Iowa and shall report its findings to the general assembly not later than eighteen months after July 1, 1979. The study shall include the following:

a. A description of current sources of hazardous waste within the state, including the types and quantities of hazardous wastes.

b. A description of current hazardous waste transportation, storage, treatment and disposal practices and costs within the state.

c. A description of practices and methods that would reduce at the source the amount of hazardous waste generated and an estimate of the cost of these practices.

d. Identification and evaluation of alternatives to land disposal of hazardous wastes.

e. Identification of the general geologic and other criteria for a site for land

disposal of hazardous wastes and the areas in Iowa that might meet the general criteria if alternatives to land disposal are not feasible.

f. The proper role and activities of the state in addition to those established in sections 455B.411 to 455B.421 and the federal Solid Waste Disposal Act in facilitating safe and efficient disposal of hazardous waste, including but not limited to a determination of the most appropriate procedures for receiving public comments and approving permits for siting hazardous waste disposal facilities.

g. The estimated private and public capital and annual operating costs of implementing the hazardous waste management plan recommended by the commission.

2. Adopt rules establishing criteria for identifying the characteristics of hazardous wastes and listing hazardous wastes that are subject to sections 455B.411 to 455B.421. The commission shall consider toxicity, persistence and degradability in nature, potential for accumulation in tissue, and related factors including flammability, corrosiveness, and other hazardous characteristics.

3. Adopt rules, applicable to generators or transporters of or owners or operators of facilities for the treatment, storage, or disposal of hazardous waste listed or identified by the commission under subsection 2 of this section, as necessary to protect human health and the environment. The rules shall include establishment of a manifest system.

4. Adopt rules establishing standards and procedures for the certification of supervisory personnel and operators at hazardous waste treatment, storage or disposal facilities required to have a permit under section 455B.415.

5. Notwithstanding section 455B.420, adopt rules regulating the use of recycled oil for the purpose of road oiling, dust control, or weed control necessary to protect public health and the environment. The rules adopted shall be limited to addressing the following:

a. Analysis of oils by those persons supplying the oils prior to their use for road oiling, dust control or weed control. This analysis shall be for polychlorinated biphenyl, flashpoints, and lead.

b. Notification by the person supplying the oils of the results of analysis required to the person to whom the oils are supplied or delivered and the department at the time of delivery or prior to application of oils for road oiling, dust control or weed control.

c. Establishing maximum levels of contaminants allowed in oils used for the purpose of road oiling, dust control or weed control and prohibiting the use of oils containing contaminants in excess of maximum allowable levels for such purposes.

d. Requirements for persons supplying or applying oils for the mitigation and cleanup of contamination posing a threat to public health and the environment resulting from oils applied for road oiling, dust control or weed control.

85 Acts, ch 42, §1 SF 291
Subsection 5, paragraph d amended

455B.422 Acquisition and lease of sites.

The commission shall adopt rules establishing criteria for the identification of land areas or sites which are suitable for the operation of a treatment or disposal facility. Upon request, the department shall assist the executive council in locating suitable sites for the location of a treatment or disposal facility. The commission may recommend to the executive council the purchase or condemnation of land to be leased for the operation of a treatment or disposal facility. The executive council may purchase or may condemn the land subject to chapter 471. Consideration for a contract for purchase of land shall not be in excess of funds appropriated by the general assembly for that purpose. The executive council upon recommendation of the commission may lease land purchased under this section to any person including the state or a state agency. This section authorizes the state to own or operate a hazardous waste treatment or disposal facility for the treatment and disposal of

hazardous wastes. The terms of the lease shall establish responsibility for long-term monitoring and maintenance of the site. The lessee is subject to all applicable requirements of this part including permit requirements. The commission may require the lessee to post bond conditioned upon performance of conditions of the lease relating to long-term monitoring and maintenance. The leasehold interest including improvements made to the property shall be listed, assessed and valued as any other real property as provided by law.

85 Acts, ch 202, §1 SF 463
Section amended.

PART 7

DISPOSAL OF HAZARDOUS WASTE ON LAND
Department to submit by January 1, 1987, a plan for siting and construction of an above-ground facility for long-term storage of hazardous wastes; 85 Acts, ch 202, §10 SF 463

455B.461 Definitions.

As used in this part 7 of division IV, unless the context otherwise requires:

1. "Hazardous waste" means hazardous waste as defined in section 455B.411, subsection 3, and section 455B.464.
2. "Land disposal" means either of the following:
 - a. Disposal of hazardous wastes on or into the land, including, but not limited to, landfill, surface impoundment, waste piles, land spreading, and coburial with municipal garbage.
 - b. Treatment of hazardous wastes on or in the land, such as neutralization and evaporation ponds and land farming, where the treatment residues are hazardous wastes and are not removed for subsequent processing or disposal within one year. "Land disposal" does not include long-term storage as defined in subsection 3.
3. "Long-term storage" means the above-ground containment of stabilized or solidified hazardous waste on a temporary basis or for a period of years in a manner that does not constitute disposal of hazardous waste.
4. "Storage" means the containment of a hazardous waste for a period less than one year in a manner consistent with the requirements of 42 U.S.C. §6921-6934 as amended to January 1, 1981 and the regulations adopted pursuant to those sections.
5. "Facility" means facility as defined in section 455B.442, subsection 1.
6. "Restricted waste" means a hazardous waste or any other waste which is determined by rule of the commission to be a significant environmental burden if disposed of at a land disposal facility.

85 Acts, ch 202, §2 SF 463
NEW section

455B.462 Limitations on land disposal of hazardous waste.

1. A generator, recycler, transporter or other handler of hazardous waste shall not dispose of the wastes by land disposal or store wastes at an above-ground storage facility, unless all of the following conditions exist:
 - a. The commission determines that the best available technology is being used at the land disposal facility.
 - b. The handler proves to the satisfaction of the commission that there is no available alternative including above ground storage for the disposal of hazardous waste.
 - c. The handler utilizes methods of source reduction, recycling and destruction of hazardous waste to the extent feasible, as determined by rule.
 - d. The handler pretreats the hazardous waste as determined by rule.
2. The commission shall adopt rules including, but not limited to, the following:
 - a. To determine the criteria that industry must satisfy to show that alternatives to land disposal of hazardous wastes are not technically or economically feasible.
 - b. To require that all industrial and commercial owners or users of land disposal

and storage sites report to the department annually the amount and content of current hazardous waste production, treatment methods used and technological advances made or pursued to implement alternatives to land disposal and source reduction.

85 Acts, ch 202, §3 SF 463
Effective July 1, 1986; 85 Acts, ch 202, §11
NEW section

455B.463 Dilution of hazardous waste.

Any hazardous waste shall be considered a restricted waste for the purposes of this part even though it is diluted to a concentration less than the listed concentration threshold by the addition of other hazardous waste or any other material during waste handling treatment or storage. Dilution which occurs as a normal part of the manufacturing process shall not be considered dilution for purposes of this section.

85 Acts, ch 202, §4 SF 463
Effective July 1, 1986; 85 Acts, ch 202, §11
NEW section

455B.464 Additional hazardous or restricted waste listed.

Notwithstanding the restriction in section 455B.420, the executive director shall compile, annually, a list of additional hazardous wastes for adoption by the commission pursuant to the rulemaking procedures of chapter 17A. The list shall include wastes which may be a significant environmental burden if disposed of at a land disposal facility.

85 Acts, ch 202, §5 SF 463
NEW section

455B.465 Well injection prohibited.

It is unlawful for a person to inject hazardous or restricted wastes into a well.

85 Acts, ch 202, §6 SF 463
NEW section

455B.466 Civil penalties.

A person who violates a provision of this part is subject to a civil penalty of not more than ten thousand dollars for each violation and for each day of continuing violation. Civil penalties collected pursuant to this section shall be forwarded by the clerk of the district court to the treasurer of state for deposit in the general fund of the state.

85 Acts, ch 202, §7 SF 463
NEW section

455B.467 Emergency variance.

The department may grant a variance to the restrictions or prohibition of land disposal of a hazardous waste in either of the following situations:

1. When the materials sought to be disposed of resulted from the cleanup of a hazardous condition involving a hazardous waste.
2. When the materials sought to be disposed of resulted from remediation or cleanup of abandoned or uncontrolled hazardous waste sites.

85 Acts, ch 202, §8 SF 463
Effective July 1, 1986; 85 Acts, ch 202, §11
NEW section

455B.468 Coordination with existing reporting and permitting requirements.

This part does not require the department to establish a reporting or permitting system if such a system is already established under the federal Resource Conservation and Recovery Act 42 U.S.C. § 6901 et seq. and administered and enforced through the federal environmental protection agency that achieves the objectives set out in this part. Consistent with this part, the department may establish require-

ments in addition to those established under the Resource Conservation Recovery Act for reporting, permitting, and enforcement. However, in such actions, the department shall avoid any redundancy in reporting, compliance, and enforcement with that provided under the Resource Conservation and Recovery Act.

Notwithstanding section 455B.420, the rules and requirements imposed under this part may be more restrictive than required by federal law or regulation.

85 Acts, ch 202, §9 SF 463
NEW section

PART 8

UNDERGROUND STORAGE TANKS

455B.471 Definitions.

As used in this part unless the context otherwise requires:

1. *"Nonoperational storage tank"* means an underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be dispensed after July 1, 1985.

2. *"Operator"* means a person in control of, or having responsibility for, the daily operation of the underground storage tank.

3. *"Owner"* means:

a. In the case of an underground storage tank in use on or after July 1, 1985, a person who owns the underground storage tank used for the storage, use, or dispensing of regulated substances.

b. In the case of an underground storage tank in use before July 1, 1985, but no longer in use on that date, a person who owned the tank immediately before the discontinuation of its use.

4. *"Regulated substance"* means an element, compound, mixture, solution or substance which, when released into the environment, may present substantial danger to the public health or welfare or the environment. Regulated substance includes substances designated in 40 C.F.R., Parts 61 and 116, and section 401.15, and petroleum including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute). However, regulated substance does not include a substance regulated as a hazardous waste under the Resource Conservation and Recovery Act of 1976. Substances may be added or deleted as regulated substances by rule of the commission pursuant to 455B.474.

5. *"Release"* means spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into groundwater, surface water, or subsurface soils.

6. *"Underground storage tank"* means one or a combination of tanks, including underground pipes connected to the tanks which are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes, is ten percent or more beneath the surface of the ground. Underground storage tank does not include:

a. Farm or residential tanks of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes.

b. Tanks used for storing heating oil for consumptive use on the premises where stored.

c. Residential septic tanks.

d. Pipeline facilities regulated under the Natural Gas Pipeline Safety Act of 1968, as amended to January 1, 1985 (49 U.S.C. § 1671 et seq.), the Hazardous Liquid Pipeline Safety Act of 1979, as amended to January 1, 1985 (49 U.S.C. § 2001 et seq.), or an intrastate pipeline facility regulated under chapter 479.

e. A surface impoundment, pit, pond, or lagoon.

f. A storm water or wastewater collection system.

g. A flow-through process tank.

h. A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

i. A storage tank situated in an underground area including, but not limited to, a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

Underground storage tank does not include pipes connected to a tank described in paragraphs "a" to "i".

7. "Tank site" means a tank or grouping of tanks within close proximity of each other located on the facility for the purpose of storing regulated substances.

85 Acts, ch 162, §1 HF 643

Section 455B.471, Code 1985, transferred to §455B.491 in Code Supplement 1985

NEW section

455B.472 Declaration of policy.

The general assembly finds that the release of regulated substances from underground storage tanks constitutes a threat to the public health and safety and to the natural resources of the state, and that existing regulatory programs of the department and other agencies do not adequately or appropriately address this substantial public concern.

85 Acts, ch 162, §2 HF 643

NEW section

455B.473 Report of existing tanks—fee.

1. Except as provided in subsection 2, the owner or operator of an underground storage tank existing on or before July 1, 1985, shall notify the department in writing by May 1, 1986, of the existence of each tank and specify the age, size, type, location and uses of the tank.

2. The owner of an underground storage tank taken out of operation between January 1, 1974 and July 1, 1985, shall notify the department in writing by July 1, 1986, of the existence of the tank unless the owner knows the tank has been removed from the ground. The notice shall specify to the extent known to the owner, the date the tank was taken out of operation, the age of the tank on the date taken out of operation, the size, type and location of the tank, and the type and quantity of substances left stored in the tank on the date that it was taken out of operation.

3. An owner or operator which brings into use an underground storage tank after July 1, 1985, shall notify the department in writing within thirty days of the existence of the tank and specify the age, size, type, location and uses of the tank.

4. The notice of the owner or operator to the department under subsections 1 through 3 shall be accompanied by a fee of five dollars for each tank included in the notice. A separate fund is created in the state treasury, the receipts of which are appropriated to pay the administrative expenses of the department incurred under this part. All fees collected by the department under this subsection shall be credited to the fund. The unobligated or unencumbered balance in the fund as of June 30 of each year shall be transferred to the hazardous waste remedial fund.

5. Subsections 1 to 3 do not apply to an underground storage tank for which notice was given pursuant to section 103, subsection c, of the Comprehensive Environmental Response, Compensation and Liabilities Act of 1980.

6. A person who deposits a regulated substance in an underground storage tank shall notify the owner or operator in writing of their notification requirements pursuant to this section.

7. A person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of the tank in writing of the owner's notification requirements pursuant to this section.

85 Acts, ch 162, §3 HF 643

NEW section

455B.474 Duties of commission—rules.

The commission shall adopt rules pursuant to chapter 17A relating to:

1. Release detection, prevention, and correction as may be necessary to protect human health and the environment, applicable to all owners and operators of underground storage tanks. The rules shall include, but are not limited to, requirements for:

a. Maintaining a leak detection system, an inventory control system with a tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment.

b. Maintaining records of any monitoring or leak detection system, inventory control system, or tank testing or comparable system.

c. Reporting of any releases and corrective action taken in response to a release from an underground storage tank.

d. Taking corrective action in response to a release or threatened release from an underground storage tank including appropriate testing of drinking water which may be contaminated by the release.

e. The closure of tanks to prevent any future release of a regulated substance into the environment.

f. Specifying an adequate monitoring system to detect the presence of a leaking underground storage tank and to provide for protection of the groundwater resources for regulated tanks installed prior to May 1, 1986. The commission shall adopt these rules not later than April 1, 1986; however, the effective date of the rules adopted shall be May 1, 1988. In the event that federal regulations are adopted by the United States environmental protection agency after the commission has adopted state standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted.

In adopting the rules under this subsection, the commission may distinguish between types, classes, and ages of underground storage tanks. In making the distinctions, the commission may take into consideration factors including, but not limited to, location of the tanks, compatibility of a tank material with the soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry recommended practices, national consensus codes, hydrogeology, water table, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tank, the degree of risk presented by the regulated substance, the technical and managerial capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the underground storage tank is fabricated.

2. The maintenance of evidence of financial responsibility as the executive director determines to be feasible and necessary for taking corrective action and for compensating third parties for bodily injury and property damage caused by release of a regulated substance from an underground storage tank.

a. Financial responsibility required by this subsection may be established in accordance with rules adopted by the commission by any one, or any combination, of the following methods: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In adopting requirements under this subsection, the commission may specify policy or other contractual terms; conditions, or defenses which are necessary or are unacceptable in establishing the evidence of financial responsibility.

b. If the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the federal bankruptcy law or if jurisdiction in any state court or federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing the evidence of financial responsibility. In the case of action pursuant to this paragraph, the guarantor is entitled to invoke all rights and defenses

which would have been available to the owner or operator if an action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

c. The total liability of a guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this subsection. This subsection does not limit any other state or federal statutory, contractual, or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or other applicable law.

d. For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

3. Standards of performance for new underground storage tanks which shall include, but are not limited to, design, construction, installation, release detection, and compatibility standards. Until the effective date of the standards adopted by the commission and after January 1, 1986, a person shall not install an underground storage tank for the purpose of storing regulated substances unless the tank (whether of single or double wall construction) meets all the following conditions:

a. The tank will prevent release due to corrosion or structural failure for the operational life of the tank.

b. The tank is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance.

c. The material used in the construction or lining of the tank is compatible with the substance to be stored. If soil tests conducted in accordance with A.S.T.M., standard G 57-78 or another standard approved by the commission show that soil resistivity in an installation location is twelve thousand ohm/cm or more (unless a more stringent soil resistivity standard is adopted by rule of the commission), a storage tank without corrosion protection may be installed in that location until the effective date of the standards adopted by the commission and after January 1, 1986.

d. Rules adopted by the commission shall specify adequate monitoring systems to detect the presence of a leaking underground storage tank and to provide for protection of the groundwater resources from regulated tanks installed after May 1, 1986. The commission shall adopt these rules not later than January 1, 1986, however, the effective date of the rules adopted shall be May 1, 1986. In the event that federal regulations are adopted by the United States environmental protection agency after the commission has adopted state standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted.

4. The form and content of the written notices required by section 455B.473.

5. The duties of owners or operators of underground storage tanks to locate and abate the source of release of regulated substances, when in the judgment of the executive director, the local hydrology, geology and other relevant factors reasonably include a tank as a potential source.

6. Reporting requirements necessary to enable the department to maintain an accurate inventory of underground storage tanks.

7. Designation of regulated substances subject to this part, consistent with section 455B.471, subsection 4. The rules shall be at least as stringent as the regulations of the federal government pursuant to section 311, subsection b, paragraph 2, subparagraph A of the Federal Water Pollution Control Act [33 U.S.C. §1321(b)(2)(A)], pursuant to section 102 of the Comprehensive Environmental

Response, Compensation, and Liability Act [42 U.S.C. §9602], pursuant to section 307, subsection a of the federal Water Pollution Control Act [33 U.S.C. §1317(a)], pursuant to section 112 of the Clean Air Act [42 U.S.C. §7412], or pursuant to section 7 of the Toxic Substances Control Act [15 U.S.C. §2606].

The rules adopted by the commission under this section shall be consistent with and shall not exceed the requirements of federal regulations relating to the regulation of underground storage tanks except as provided in subsection 1, paragraph "f" and subsection 3, paragraph "d". It is the intent of the general assembly that state rules adopted pursuant to subsection 1, paragraph "f" and subsection 3, paragraph "d" be consistent with and not more restrictive than federal regulations adopted by the United States environmental protection agency when those rules are adopted.

85 Acts, ch 162, §4 HF 643
NEW section

455B.475 Duties and powers of the executive director.

The executive director shall:

1. Inspect and investigate the facilities and records of owners and operators of underground storage tanks as may be necessary to determine compliance with this part and the rules adopted pursuant to this part. An inspection or investigation shall be concluded subject to section 455B.103, subsection 8. For purposes of developing a rule, maintaining an accurate inventory or enforcing this part, the department may:

a. Enter at reasonable times any establishment or other place where an underground storage tank is located.

b. Inspect and obtain samples from any person of a regulated substance and conduct monitoring or testing of the tanks, associated equipment, contents or surrounding soils, air, surface water and groundwater. Each inspection shall be commenced and completed with reasonable promptness.

(1) If the executive director obtains a sample, prior to leaving the premises, the executive director shall give the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each sample equal in volume or weight to the portion retained. If the sample is analyzed, a copy of the results of the analysis shall be furnished promptly to the owner, operator, or agent in charge.

(2) Documents or information obtained from a person under this subsection shall be available to the public except as provided in this subparagraph. Upon a showing satisfactory to the executive director by a person that public disclosure of documents or information, or a particular part of the documents or information to which the executive director has access under this subsection would divulge commercial or financial information entitled to protection as a trade secret, the executive director shall consider the documents or information or the particular portion of the documents or information confidential. However, the document or information may be disclosed to officers, employees or authorized representatives of the United States charged with implementing the federal Solid Waste Disposal Act, to employees of the state of Iowa or of other states when the document or information is relevant to the discharge of their official duties, and when relevant in any proceeding under the federal Solid Waste Disposal Act or this part.

2. Maintain an accurate inventory of underground storage tanks.

3. Take any action allowed by law which, in the executive director's judgment, is necessary to enforce or secure compliance with this part or any rule adopted under this part.

85 Acts, ch 162, §5 HF 643
NEW section

455B.476 Violations—orders.

1. If there is substantial evidence that a person has violated or is violating a provision of this part or a rule adopted under this part the executive director may

issue an order directing the person to desist in the practice which constitutes the violation, and to take corrective action as necessary to ensure that the violation will cease, and may impose appropriate administrative penalties pursuant to section 455B.109. The person to whom the order is issued may appeal the order to the commission as provided in chapter 17A. On appeal, the commission may affirm, modify or vacate the order of the executive director.

2. However, if it is determined by the executive director that an emergency exists respecting any matter affecting or likely to affect the public health, the executive director may issue any order necessary to terminate the emergency without notice and without hearing. The order is binding and effective immediately and until the order is modified or vacated at a hearing before the commission or by a district court.

3. The executive director, with the approval of the commission, may request the attorney general to institute legal proceedings pursuant to section 455B.477.

85 Acts, ch 162, §6 HF 643
NEW section

455B.477 Penalties—burden of proof.

1. A person who violates a provision of this part or a rule or order issued under this part is subject to a civil penalty not to exceed five thousand dollars for each day during which the violation continues. The civil penalty is an alternative to a criminal penalty provided under this part.

2. A person who knowingly fails to notify or makes a false statement, representation, or certification in a record, report, plan or other document filed or required to be maintained under this part or who falsifies, tampers with or knowingly renders inaccurate a monitoring device or method required to be maintained under this part or by a rule or order issued under this part, is guilty of an aggravated misdemeanor.

3. The attorney general, at the request of the executive director with approval of the commission, shall institute any legal proceedings, including an action for an injunction, necessary to enforce the penalty provisions of this part or to obtain compliance with the provisions of this part or rules adopted or order issued under this part. In any action, previous findings of fact of the executive director or the commission after notice and hearing are conclusive if supported by substantial evidence in the record when the record is viewed as a whole.

4. In all proceedings with respect to an alleged violation of a provision of this part or a rule adopted or order issued by the commission, the burden of proof is upon the commission or the department.

5. If the attorney general has instituted legal proceedings in accordance with this section, all related issues which could otherwise be raised by the alleged violator in a proceeding for judicial review under section 455B.478 shall be raised in the legal proceedings instituted in accordance with this section.

85 Acts, ch 162, §7 HF 643
NEW section

455B.478 Judicial review.

Except as provided in section 455B.477, subsection 5, judicial review of an order or other action of the commission or the executive director may be sought in accordance with chapter 17A. Notwithstanding chapter 17A, the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the alleged offense was committed or the final order was entered.

85 Acts, ch 162, §8 HF 643
NEW section

455B.491 Restrictions on use of agricultural chemicals.

1. If the commission determines that an agricultural chemical causes an unreasonable, adverse effect on humans or the environment, the commission shall submit to the secretary of agriculture its findings and recommended actions. The secretary of agriculture shall propose rules implementing the recommended actions and shall

hold a public hearing to determine the effects of the proposed rules as provided in chapter 206 after review and consideration of the findings as provided in subsection 2 of this section. A rule of the secretary shall be adopted pursuant to chapter 17A.

2. The commission shall submit to the secretary of agriculture its findings on the unreasonable, adverse effect that the agricultural chemical causes to humans or the environment. The department of agriculture shall prepare an estimate of the economic impact of restricting the use of the agricultural chemical. The economic impact statement, the commission's findings and the report of the advisory committee created under section 206.23 shall be available at the time of publication of the intended rule action by the secretary. The secretary of agriculture and the advisory committee shall review the commission's findings and collect, analyze and interpret any other scientific data relating to the agricultural chemical. The secretary and the committee shall consider any official reports, academic studies, expert opinions or testimony, or other matters deemed to have probative value and shall consider the toxicity, hazard, effectiveness, public need for the agricultural chemical or other means of control other than the chemical in question, and the economic impact on the members of the public and agencies affected by it.

3. As used in this section, "agricultural chemical" means a pesticide as defined in section 206.2 and also means any feed or soil additive, other than a pesticide, which is designed for and used to promote the growth of plants or animals.

Transferred in Code Supplement 1985 from §455B.471 in Code 1985

CHAPTER 455C

BEVERAGE CONTAINERS DEPOSIT

455C.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. "*Beverage*" means wine as defined in section 123.3, subsection 7, alcoholic liquor as defined in section 123.3, subsection 8, beer as defined in section 123.3, subsection 9, mineral water, soda water and similar carbonated soft drinks in liquid form and intended for human consumption.

2. "*Beverage container*" means any sealed glass, plastic, or metal bottle, can, jar or carton containing a beverage.

3. "*Consumer*" means any person who purchases a beverage in a beverage container for use or consumption.

4. "*Dealer*" means any person who engages in the sale of beverages in beverage containers to a consumer.

5. "*Distributor*" means any person who engages in the sale of beverages in beverage containers to a dealer in this state, including any manufacturer who engages in such sales.

6. "*Manufacturer*" means any person who bottles, cans, or otherwise fills beverage containers for sale to distributors or dealers.

7. "*Director*" means the executive director of the department of water, air and waste management.

8. "*Department*" means the department of water, air and waste management.

9. "*Commission*" means the water, air and waste management commission of the department of water, air and waste management.

10. "*Nonrefillable beverage container*" means a beverage container not intended to be refilled for sale by a manufacturer.

455C.4 Refusal to accept containers.

1. Except as provided in section 455C.5, subsection 3, a dealer, a person operating a redemption center, a distributor or a manufacturer may refuse to accept any empty beverage container which does not have stated on it a refund value as provided under section 455C.2.

2. A dealer may refuse to accept and to pay the refund value of any empty beverage container if the place of business of the dealer and the kind and brand of empty beverage containers are included in an order of the department approving a redemption center under section 455C.6.

3. A dealer, other than a state liquor store, or a distributor may refuse to accept and to pay the refund value of an empty wine container which is marked to indicate that it was sold by a state liquor store. A state liquor store may refuse to accept and to pay the refund value of an empty wine container which is not marked to indicate that it was sold by a state liquor store.

85 Acts, ch 32, §112 SF 395
NEW subsection 3

455C.5 Refund value stated on container—exceptions.

1. Each beverage container sold or offered for sale in this state by a dealer shall clearly indicate by embossing or by a stamp, label or other method securely affixed to the container, the refund value of the container. The department shall specify, by rule, the minimum size of the refund value indication on the beverage containers. Each beverage container containing wine which is sold or offered for sale in a state liquor store shall also be marked by embossing or by stamp, label, or other method securely affixed to the container to indicate that it was sold in a state liquor store.

2. A person, except a distributor, shall not import into this state after July 1, 1979 a beverage container which does not have securely affixed to the container the refund value indication. The provisions of this subsection do not apply if:

a. For beverage containers containing alcoholic liquor as defined in section 123.3, subsection 8, the total capacity of the containers is not more than one quart or, in the case of alcoholic liquor personally obtained outside the United States, one gallon.

b. For beverage containers containing beer as defined in section 123.3, subsection 9, the total capacity of the containers is not more than two hundred eighty-eight fluid ounces.

c. For all other beverage containers, the total capacity of the containers is not more than five hundred seventy-six fluid ounces.

3. The provisions of subsections 1 and 2 of this section do not apply to a refillable glass beverage container which has a brand name permanently marked on it and which has a refund value of not less than five cents, to any other refillable beverage container which has a refund value of not less than five cents and which is exempted by the director under rules adopted by the commission, or to a beverage container sold aboard a commercial airliner or passenger train for consumption on the premises.

85 Acts, ch 32, §113 SF 395
Subsection 1 amended

CHAPTER 455D

HAZARDOUS CHEMICALS RISKS—RIGHT TO KNOW

455D.16 Interagency council.

1. A hazardous chemicals information interagency coordinating council is created. The council shall be organized under chapter 28E. The council is composed of three voting members consisting of the designee of the commissioner of public health, the designee of the labor commissioner, and the designee of the executive director of the

department of water, air and waste management. There are six nonvoting advisory members consisting of the designee of the director of the office of disaster services, the designee of the chief officer of the division of fire protection of the department of public safety, the designee of the head of the state hygienic laboratory, a person representing business and industry, a person representing labor, and a person representing the public generally. The business, labor and public representatives shall be appointed by the governor.

2. The interagency council has as its primary purpose to establish and facilitate interagency communication to accomplish the purposes of this chapter. The council shall place special emphasis upon avoiding duplication in regulation and reporting responsibilities of the agencies. The council shall review the implementation of this chapter. At least annually the council shall hold a public hearing regarding the provision of information under this chapter and consider public concerns regarding hazardous chemical reporting and regulation. The council shall report annually to the governor and the general assembly. The report shall contain information regarding the activities of the council, recommendations for modifications of this chapter that would further its purposes, and a summary of the information presented at any public hearing held by the council.

85 Acts, ch 128, §1 HF 709
Subsection 1 amended

CHAPTER 461

DRAINAGE AND LEVEE DISTRICTS WITH PUMPING STATIONS

461.2 Petition—procedure—emergency pumping station.

Such pumping station shall not be established or maintained unless a petition therefor shall be presented to the board signed by not less than one-third of the owners of lands benefited thereby. The lands benefited by such pumping station shall be determined by the board on said petition and report of the engineer, and such other evidence as it may hear. No additional land shall be taken into any such drainage district after the improvements therein have been substantially completed, unless one-third of the owners of the land proposed to be annexed have petitioned therefor or consented in writing thereto.

However, the board of supervisors may install a temporary portable pumping station to remove flood waters in an emergency. The board of supervisors shall levy and collect the cost of the purchase, operation and maintenance of the pumping station from the lands in the district benefited by the pumping station in the same manner as provided for in the construction and maintenance of a drainage or levee district. For the purpose of this paragraph an emergency occurs when ponded or standing water does not freely flow to the outlet ditch and the capacity of the outlet ditch is not fully used.

85 Acts, ch 166, §1 HF 231
NEW unnumbered paragraph 2

CHAPTER 462

MANAGEMENT OF DRAINAGE OR LEVEE DISTRICTS BY TRUSTEES

462.18 Canvass—certificates of election.

The canvass of the returns by the board or boards of supervisors shall be on the next Monday following the election. If the district is in more than one county, the board of supervisors of the county with the greatest acreage in the district shall canvass the vote. The board of supervisors of the other counties in which the district

is located may attend and participate in the canvass of the returns. It or they shall make a return of the results of the canvass to the auditor, who shall issue certificates to the trustees elected, and when the district extends into more than one county, then the auditor with whom the election returns were filed shall issue the certificates and certify an abstract of the canvass to each other county in which the district is located.

85 Acts, ch 163, §11 HF 678
Section amended

462.22 Elections—how conducted.

After the first election of trustees, the trustees shall act as judges of election; however, a trustee standing for election shall not serve as a judge and shall be replaced as judge by a person not standing for election who is eligible to be elected as a trustee. The clerk of the board shall act as one of the clerks and some owner of land in the district shall be appointed by the board to act as another clerk. The trustees shall fill all vacancies in the election board. The result of each election shall be certified to the auditor or the several county auditors if the district is located in more than one county.

85 Acts, ch 163, §12 HF 678
Section amended

CHAPTER 467A

SOIL AND WATER CONSERVATION

467A.4 State soil conservation committee.

1. There is established, to serve as an agency of the state and to perform the functions conferred upon it in this chapter, the department of soil conservation. The department shall be administered in accordance with the policies of the state soil conservation committee, which shall approve administrative rules proposed by the department before the rules are adopted pursuant to chapter 17A. The state soil conservation committee shall consist of a chairperson and twelve members. The following shall serve as ex officio nonvoting members of the committee: The director of the state agricultural extension service, or the director's designee, the secretary of agriculture or the secretary's designee, the director of the state conservation commission or the director's designee, and the executive director of the department of water, air and waste management or the executive director's designee. Eight voting members shall be appointed by the governor subject to confirmation by the senate. Six of the appointive members shall be persons engaged in actual farming operations, one of whom shall be a resident of each of the six conservancy districts established by section 467D.3, and no more than one of whom shall be a resident of any one county. The seventh and eighth appointive members shall be chosen by the governor from the state at large with one appointed to be a representative of cities and one appointed to be a representative of the mining industry. The committee may invite the secretary of agriculture of the United States to appoint one person to serve with the above-mentioned members, and the president of the Iowa county engineers association may designate a member of the association to serve in the same manner, but these persons shall have no vote and shall serve in an advisory capacity only. The committee shall adopt a seal, which seal shall be judicially noticed, and may perform acts, hold public hearings, and adopt rules as provided in chapter 17A as necessary for the execution of its functions under this chapter.

2. The state soil conservation committee may employ an administrative officer and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The committee or department may call upon the attorney general of the state for such legal services

as either may require. The committee shall have authority to delegate to its chairperson, to one or more of its members, or to one or more agents or employees, such powers and duties as it may deem proper. Upon request of the committee, for the purpose of carrying out any of the functions assigned the committee or the department by law, the supervising officer of any state agency, or of any state institution of learning shall, insofar as may be possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail to the department members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys, or studies as the committee may request.

3. The committee shall designate its chairperson, and may change the designation. The members appointed by the governor shall serve for a period of six years. Members shall be appointed in each odd-numbered year to succeed members whose terms expire as provided by section 69.19. Appointments may be made at other times and for other periods as necessary to fill vacancies on the committee. Members shall not be appointed to serve more than two complete six-year terms. Members designated to represent the secretary of agriculture, director of the state conservation commission, or the executive director of the department of water, air and waste management shall serve at the pleasure of the officer making the designation. A majority of the voting members of the committee constitutes a quorum, and the concurrence of a majority of the voting members of the committee in any matter within their duties is required for its determination. The chairperson and members of the committee, not otherwise in the employ of the state, or any political subdivision, shall receive forty dollars per diem as compensation for their services in the discharge of their duties as members of the committee. The committee shall determine the number of days for which any committee member may draw per diem compensation, but the total number of days for which per diem compensation is allowed for the entire committee shall not exceed four hundred days per year. They are also entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties as members of the committee. The per diem and expenses paid to the committee members shall be paid from funds appropriated to the committee. The committee shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property, shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted, and shall provide for an annual audit of the accounts of receipts and disbursements.

4. In addition to the duties and powers hereinafter conferred upon the department of soil conservation, it shall have the following duties and powers:

a. To offer such assistance as may be appropriate to the commissioners of soil conservation districts in carrying out any of their powers and programs.

b. To keep the commissioners of each of the several districts informed of the activities and experience of all other districts and to facilitate an interchange of advice and experience between such districts and co-operation between them.

c. To co-ordinate the programs of the several soil conservation districts so far as this may be done by advice and consultation.

d. To secure the co-operation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts.

e. To disseminate information throughout the state concerning the activities and program of the soil conservation districts.

f. To render financial aid and assistance to soil conservation districts for the purpose of carrying out the policy stated in this chapter.

g. To offer such assistance as may be appropriate to the conservancy districts established by section 467D.3, and in the carrying out of any of their powers and programs.

h. Review, amend, and give final approval to the plan of each of the conservancy

districts, and to any subsequent changes therein, in the manner provided by chapter 467D.

i. Maintain files of such proceedings, rules, and orders, of each of the conservancy districts in the state as the department may request from the conservancy districts pursuant to section 467D.6, subsection 11.

j. To keep the boards of each of the six conservancy districts established by section 467D.3 informed of the activities and experience of the other conservancy districts and to facilitate an interchange of advice and experience between conservancy districts and co-operation between them.

k. To co-ordinate the programs of the conservancy districts so far as this may be done by advice and consultation.

l. To disseminate information throughout the state concerning the activities and programs of the conservancy districts established by section 467D.3.

m. To render financial aid and assistance to the six conservancy districts established by section 467D.3 for the purpose of carrying out the policy stated in chapter 467D.

n. To establish and maintain an interagency co-ordinating committee for the purpose of preparing and disseminating recommendations for co-ordinated efforts to deal with water and soil management problems, including but not necessarily limited to the flow of water into, across and from public roads and roadside ditches, that are the common concern of two or more of the agencies or groups represented on the committee. The committee shall meet at the call of the chairperson or upon the written request of any three members, to execute the functions assigned it by this section. The co-ordinating committee shall consist of:

(1) The director of the department of soil conservation or the director's designee, who shall act as chairperson of the co-ordinating committee.

(2) A representative of the state department of agriculture, designated by the secretary of agriculture.

(3) A representative of the department of water, air and waste management, designated by the executive director of that department.

(4) A representative of the department of transportation, designated by the director of that department.

(5) A representative of county boards of supervisors, designated by the county supervisors association affiliated with the Iowa state association of counties.

(6) A representative of county engineers, designated by the county engineers association affiliated with the Iowa state association of counties.

(7) A representative of soil conservation district commissioners, designated by the Iowa association of soil conservation district commissioners.

(8) A member of the state soil conservation committee.

(9) The state conservationist of the United States soil conservation service, or that officer's designee.

o. To establish a position of state drainage coordinator for drainage districts and drainage and levee districts which will keep the management of those districts informed of the activities and experience of all other such districts and facilitate an interchange of advice, experience and cooperation among the districts, coordinate by advice and consultation the programs of the districts, secure the cooperation and assistance of the United States and its agencies and of the agencies of this state and other states in the work of the districts, disseminate information throughout the state concerning the activities and programs of the districts and provide other appropriate assistance to the districts.

85 Acts, ch 163, §13 HF 678
Subsection 4, NEW paragraph o

467A.54 State agency conservation plans—exemptions.

Each state agency shall enter into an agreement with the soil conservation district in which the state agency has public land under its control in cultivation. The

agreement shall contain a plan of the state agency to prevent soil erosion in excess of soil loss limits by the use of soil and water conservation practices and erosion control practices. This section applies to all public land which is used for horticultural or agricultural purposes. State soil conservation cost-sharing funds shall not be used on these public lands. Conservation plans required by this section shall be completed by July 1, 1986, and implementation shall occur consistent with the schedule contained in the conservation plan. Application for exemption from this section may be submitted to the appropriate soil conservation district. The exemption shall be granted for land upon which soil management research for the purposes of the study, evaluation, understanding and control of erosion, sedimentation and run-off water is conducted by or in conjunction with institutions governed by the board of regents.

85 Acts, ch 133, §1 HF 66
NEW section

467A.71 Conservation practices revolving loan fund.

1. The state soil conservation committee may establish a conservation practices revolving loan fund composed of any money appropriated by the general assembly for that purpose, and of any other moneys available to and obtained or accepted by the committee from the federal government or private sources for placement in that fund. Except as otherwise provided by subsection 3, the assets of the conservation practices revolving loan fund shall be used only to make loans directly to owners of land in this state for the purpose of establishing on that land any new permanent soil and water conservation practice which the commissioners of the soil conservation district in which the land is located have found is necessary or advisable to meet the soil loss limits established for that land. A loan shall not be made for establishing a permanent soil and water conservation practice on land that is subject to the restriction on state cost-sharing funds of section 467A.65. Revolving loan funds and public cost-sharing funds shall not be used in combination for funding a particular soil and water conservation practice. Each loan made under this section shall be for a period not to exceed ten years, shall bear no interest, and shall be repayable to the conservation practices revolving loan fund in equal yearly installments due March 1 of each year the loan is in effect. The interest rate upon loans for which payment is delinquent shall accelerate immediately to the current legal usury limit. Applicants shall be eligible for no more than ten thousand dollars in loans outstanding at any time under this program. "Permanent soil and water conservation practices" has the same meaning as defined in section 467A.42 and those established under this program are subject to the requirements of section 467A.7, subsection 16. Loans made under this program shall come due for payment upon sale of the land on which those practices are established.

2. The general assembly finds and declares the following:

a. The erosion of topsoil on agricultural land by wind and water is a serious problem within the state and one which threatens to destroy the natural resource most responsible for Iowa's prosperity.

b. It is necessary to the preservation of the economy and well-being of the state to encourage soil conservation practices by providing loans for permanent soil and water conservation practices on agricultural land within the state.

c. The use of state funds for the conservation practices revolving loan fund established under subsection 1 is in the public interest, and the purposes of this section are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned, or granted.

3. The state soil conservation committee may:

a. Contract, sue and be sued, and promulgate administrative rules necessary to carry out the provisions of this section, but the committee shall not in any manner directly or indirectly pledge the credit of the state of Iowa.

b. Authorize payment from the conservation practices revolving loan fund, from

fees and from any income received by investments of money in the fund for costs, commissions, attorney fees and other reasonable expenses related to and necessary for making and protecting direct loans under this section, and for the recovery of moneys loaned or the management of property acquired in connection with such loans.

4. This section does not negate the provisions of section 467A.48 that an owner or occupant of land in this state shall not be required to establish any new soil and water conservation practice unless public cost-sharing funds have been approved and are available for the land affected. However, the owner of land with respect to which an administrative order to establish soil and water conservation practices has been issued under section 467A.47 but not complied with for lack of public cost-sharing funds, may waive the right to await availability of such funds and instead apply for a loan under this section to establish any permanent soil and water conservation practices necessary to comply with the order. If a landowner does so, that loan application shall be given reasonable preference by the state soil conservation committee if there are applications for more loans under this section than can be made from the money available in the conservation practices revolving loan fund. If it is found necessary to deny an application for a soil and water conservation practices loan to a landowner who has waived the right to availability of public cost-sharing funds before complying with an administrative order issued under section 467A.47, the landowner's waiver is void.

85 Acts, ch 67, §46 SF 121; 85 Acts, ch 170, §1 SF 264
Subsections 1 and 4 amended

467A.75 Financial incentive for soil conservation on forest lands.

1. As used in this section, unless the context otherwise requires:
 - a. "Department" means the department of soil conservation.
 - b. "Forest" means stands of native or introduced trees containing at least two hundred trees per acre on privately owned land. However, fruit trees are not forest.
 - c. "Professional forester" means a forestry graduate of an institution of higher learning and having a minimum of two years forest management experience.
 - d. "State forester" means the person employed by the state conservation commission as required by section 107.13.

2. The department may reimburse private landowners for a portion of the cost of fencing materials and installation for permanent fence used to protect forest land from domestic livestock grazing from state cost-sharing funds if the grazing has been determined to cause excessive soil loss. Total department expenditure shall not exceed fifty percent of total landowner expenditures. Expenditures for boundary and road fence construction and for repair and replacement of existing fence are not eligible for reimbursement unless the complete fence is replaced.

3. As a condition for receiving reimbursement, landowners shall sign an agreement to maintain the fence for a minimum of ten years and shall follow written professional forester recommendations approved by the state forester or that person's designee on the tract to be protected by fencing.

4. Recipient landowners found to be in noncompliance with the maintenance agreement shall maintain, repair, or reconstruct damaged fence, or shall pay the department an amount equal to that reimbursed.

5. The department shall adopt, by rule, the form and informational requirements for reimbursement, the minimum forest acreage, and any limitation on the maximum reimbursement an individual landowner may receive. For the purposes of this section, forests shall be considered as agricultural land eligible for public cost-sharing funds.

85 Acts, ch 236, §1 HF 266
NEW section

CHAPTER 467D

CONSERVANCY DISTRICTS

467D.20 Bids on work—deposit.

When the estimated total cost of construction, enlargement, alteration or repair of an internal improvement exceeds five thousand dollars, the conservancy district shall advertise for bids on the proposed improvement by two publications in at least one newspaper of general circulation in the conservancy district. The first advertisement shall be not less than fifteen days prior to the date set for receiving bids and the district shall let the work to the lowest responsible bidder submitting a sealed proposal. However, if in the judgment of the board the bids received are not acceptable, all bids may be rejected and new bids requested. All bids shall be accompanied, in a separate envelope, by a deposit of money, credit union certified share draft or certified check, in an amount to be named in the advertisement for bids, as security that the bidder will enter into a contract in accordance with the terms of the bid. The board shall fix the bid security in an amount equal to at least five percent, but not more than ten percent of the estimated total cost of the work. The checks or deposits of money of the unsuccessful bidders shall be returned as soon as the successful bidder is determined, and the share draft, check or deposit of money of the successful bidder shall be returned upon execution of the contract documents.

85 Acts, ch 67, §47 SF 121
Section amended

CHAPTER 476

PUBLIC UTILITY REGULATION

ENERGY CONSERVATION IMPROVEMENTS

476.61 Energy conservation improvements—pilot programs.

1. As used in this section, unless the context otherwise requires:

a. "Energy conservation improvement" means the purchase or installation of a device, method, or material that increases the efficiency in the use of electricity or natural gas, including but not limited to:

- (1) Insulation and ventilation.
- (2) Storm or thermal doors or windows.
- (3) Caulking and weatherstripping.
- (4) Furnace efficiency modifications.
- (5) Thermostat and lighting controls.
- (6) Efficient lighting fixtures.
- (7) Window treatments.

(8) Systems to turn off or vary the delivery of energy including load control devices.

(9) Efficient appliances, water heaters, furnaces, and air conditioners.

b. "Investments of a public utility" means the investments incurred by a public utility in connection with an energy conservation improvement including but not limited to:

(1) The differential in interest cost between the market rate and the rate charged on a no-interest or below-market-interest loan made by a public utility to a customer for the purchase or installation of an energy conservation improvement.

(2) The difference between the utility's cost of purchase or installation of energy conservation improvements and any lower price charged by a public utility to a customer for the improvements.

(3) A credit, rebate or other financial incentive given to a customer for the purchase or installation of an energy conservation improvement.

2. Prior to January 1, 1986, the commission, after consultation with the Iowa energy policy council, shall initiate pilot programs to examine and demonstrate the feasibility of investments of a public utility in energy conservation improvements.

3. As part of the pilot programs, the commission shall require public utilities to make investments in energy conservation improvements. The cost of money, bad debt expense, administrative costs, and other costs of the pilot programs authorized by this section shall be included in general utility rates effective upon approval of the pilot programs by the commission pursuant to section 476.6, subsection 11. The inclusion of costs in utility rates as provided in this subsection shall not continue after the costs arising from the approved energy conservation program have been recovered.

4. Any energy conservation improvement made to or installed in any customer building pursuant to this section is the exclusive property of the owner of the building except to the extent of any security interest taken by the public utility in case of a loan to the building owner.

5. If investments by a public utility in energy conservation improvements are prohibited or restricted in any manner by federal law and there is a provision in that law under which the prohibition or restriction may be waived, the commission or other state officer or agency shall take whatever steps may be necessary to obtain the waiver for public utilities participating in the energy conservation improvement program.

6. For the purposes of determining "excess capacity" as provided in section 476.53, energy conservation improvements made as a result of this program or other programs initiated by utilities specifically to reduce demand, shall not be considered to contribute to the excess capacity of the utility.

7. A loan, credit, rebate or other financial incentive offered or given to a customer for the purchase or installation of an energy conservation improvement pursuant to this section shall not be contingent upon the improvement being performed by the utility.

8. The commission shall provide small businesses with an equal opportunity to compete by adopting rules pursuant to chapter 17A which require, where practical, that customers be provided with alternative pricing proposals for energy conservation improvements from small businesses and other persons in addition to the proposals provided by the investor-owned rate-regulated utilities.

9. If after the conclusion of a pilot program the commission finds that the program is an effective method to improve energy conservation and is expected to result in long-term savings in energy costs, the commission may adopt rules requiring all investor-owned, rate-regulated public gas and electric utilities to make investments in energy conservation improvements in accordance with this section.

85 Acts, ch 200, §1 SF 450

Commission to file report by January 1, 1988; 85 Acts, ch 200, §2

NEW section

CHAPTER 502

IOWA UNIFORM SECURITIES ACT

(Blue Sky Law)

502.102 Definitions.

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

1. "Administrator" means the commissioner of insurance or the deputy appointed pursuant to section 502.601.

2. "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in:

a. Effecting transactions in a security exempted by section 502.202, subsection 1, 2, 3, 4, 6, 10, 11 or 12, or a security issued by an industrial loan company licensed under chapter 536A;

b. Effecting transactions exempted by section 502.203; or

c. Effecting transactions with existing employees, partners or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. "Agent" also does not include other individuals who are not within the intent of this subsection whom the administrator by rule or order designates. A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if such person otherwise comes within this definition.

3. An "affiliate" of, or a person "affiliated" with, a specified person, means a person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified.

4. "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for such person's own account. "Broker-dealer" does not include:

a. An agent;

b. An issuer;

c. An institutional investor, including an insurance company or bank, except where the insurance company or bank is engaged in the business of selling interests (other than through a subsidiary) in a separate account that are securities;

d. A person who has no place of business in this state if such person:

(1) Effects transactions in this state exclusively with or through the issuers of the securities involved in the transaction; other broker-dealers; or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(2) During any period of twelve consecutive months does not effect transactions in this state in any manner with more than three persons other than those specified in subparagraph (1) of this paragraph, whether or not the offeror or any of the offerees is then present in this state;

e. Other persons not within the intent of this subsection whom the administrator by rule or order designates.

5. "Fraud", "deceit" and "defraud" are not limited to common law deceit.

6. "Guaranteed" means guaranteed as to payment of principal, interest or dividends.

7. "Issuer" means any person who issues or proposes to issue any security, except that

a. With respect to certificates of deposit, voting trust certificates, or collateral trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; and

b. With respect to certificates of interest or participation in oil, gas or mining titles or leases, or in payments out of production under such titles or leases, there is not considered to be any "issuer".

8. "Nonissuer" means not directly or indirectly for the benefit of the issuer.

9. "Person" means an individual, a corporation, a partnership, an association, a

joint stock company, a trust, a fiduciary, an unincorporated organization, a government, or a political subdivision of a government.

10. a. "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition or exchange of, a security or interest in a security for value.

b. "Offer" or "offer to sell" includes every attempt or offer to exchange or dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

c. A security given or delivered with, or as a bonus on account of, a purchase of a security or any other thing is offered and sold for value as part of the subject of the purchase.

d. A purported gift of assessable stock is considered to involve an offer and sale.

e. Except to the extent that the administrator provides otherwise by rule or order, an offer or sale of a security that is convertible into or entitles its holder to acquire another security of the same or another issuer is an offer also of the other security, whether the right to convert or acquire is exercisable immediately or in the future.

f. The terms defined in this subsection do not include:

(1) Any bona fide pledge or loan; or

(2) Any stock split, other than a reverse stock split, or security dividend payable with respect to the securities of a corporation in the same or any other class of securities of such corporation, provided nothing of value, including the surrender of a right or an option to receive a cash or property dividend, is given by security holders for the security dividend.

11. "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Company Act of 1940", "Internal Revenue Code of 1954" and "Agricultural Marketing Act" mean the federal statutes of those names, as amended before January 1, 1976.

12. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include a time-share interval as defined in section 557A.2 or an insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period.

13. "State" means any state, territory or possession of the United States, the District of Columbia and Puerto Rico.

14. "Equity security", for the purposes of subsections 15 and 16 of this section and sections 502.211 to 502.215, means any stock, bond or other obligation the holder of which has the right to vote, or any share of stock or similar security representing an equity interest in the target company, or any security convertible into, or any right, option or warrant to purchase, any such stock, bond, obligation or security.

15. a. "Target company" means a person whose securities are or are to be the subject of an offer to acquire, pursuant to a tender offer or request or invitation for tenders, any equity securities of such person provided that such person is either:

(1) A person which is a Williams Act registrant and is either (i) organized under the laws of the state of Iowa or (ii) has its principal place of business within the state of Iowa; or

(2) A person which (i) is not a Williams Act registrant and (ii) has registered any equity security at any time subsequent to December 31, 1959 under either this Act* or under this chapter as it existed prior to January 1, 1979.

b. For purposes of this subsection, a “*Williams Act registrant*” means a person which (i) has any equity security which is registered pursuant to section 12 of the Securities Exchange Act of 1934; or (ii) is an insurance company which would have been required to register any equity security pursuant to section 12 of the Securities Exchange Act of 1934 except for the exemption provided in subparagraph (G) of paragraph 2 of subsection “g” of section 12 of the Securities Exchange Act of 1934; or (iii) is a closed-end investment company registered under the Investment Company Act of 1940.

c. For purposes of this subsection, the term “*principal place of the business*” shall have the same meaning as that term when used in title 28, United States Code, section 1332, subsection “c.”

16. “*Tender offer*” shall not include (i) an offer to purchase equity securities to be effected by a registered broker-dealer on a stock exchange or in the over-the-counter market if the broker performs only the customary broker’s function, and receives no more than the customary broker’s commission, and neither the principal nor the broker solicits or arranges for the solicitation of orders to sell such equity securities; or (ii) any offer if the acquisition of all equity securities for which the offer is made, together with all other acquisitions by the offeror of securities of the same class during the preceding twelve months, would not exceed two percent of that class; or (iii) offers made by a broker-dealer for its own account in the ordinary course of its business of buying and selling such security.

17. “*Interest at the legal rate*” means the interest rate for judgments specified in section 535.3.

85 Acts, ch 155, §23 HF 484
Subsection 12 amended

*See 67 GA, ch 1186

CHAPTER 507B

INSURANCE TRADE PRACTICES

507B.4 Unfair methods of competition and unfair or deceptive acts or practices defined.

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

1. *Misrepresentations and false advertising of insurance policies.* Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which does any of the following:

a. Misrepresents the benefits, advantages, conditions, or terms of any insurance policy.

b. Misrepresents the dividends or share of the surplus to be received on any insurance policy.

c. Makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy.

d. Is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates.

e. Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof.

f. Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy.

g. Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy.

h. Misrepresents any insurance policy as being shares of stock.

i. Misrepresents any insurance policy to consumers by using the terms “burial insurance”, “funeral insurance”, “burial plan”, or “funeral plan” in its names or titles,

unless the policy is made with a funeral provider as beneficiary who specifies and fixes a price under contract with an insurance company. This paragraph does not prevent insurers from stating or advertising that insurance benefits may provide cash for funeral or burial expenses.

2. *False information and advertising generally.* Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive or misleading.

3. *Defamation.* Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any person, and which is calculated to injure such person.

4. *Boycott, coercion and intimidation.* Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

5. *False statements and entries.*

a. Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or knowingly causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person.

b. Knowingly making any false entry of a material fact in any book, report or statement of any person or knowingly omitting to make a true entry of any material fact pertaining to the business of such person in any book, report or statement of such person.

6. *Stock operations and advisory board contracts.* Issuing or delivering or permitting agents, officers or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

7. *Unfair discrimination.*

a. Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

b. Making or permitting any unfair discrimination between insureds of the same class for essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance other than life or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

8. *Rebates.*

a. Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration

or inducement whatever not specified in the contract; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or any thing of value whatsoever not specified in the contract.

b. Nothing in subsection 7 or paragraph "a" of this subsection shall be construed as including within the definition of discrimination or rebates any of the following practices:

(1) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise rebating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or rebatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders.

(2) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses.

(3) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experienced thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

9. *Unfair claim settlement practices.* Committing or performing with such frequency as to indicate a general business practice any of the following:

a. Misrepresenting pertinent facts or insurance policy provisions relating to coverages of issue.

b. Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

c. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

d. Refusing to pay claims without conducting a reasonable investigation based upon all available information.

e. Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed.

f. Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear.

g. Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds.

h. Attempting to settle a claim for less than the amount to which a reasonable person would have believed the person was entitled by reference to written or printed advertising material accompanying or made part of an application.

i. Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured.

j. Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made.

k. Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

l. Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician to either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.

m. Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

n. Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

10. *Misrepresentation in insurance applications.* Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual.

11. Any violation of section 515A.16.

85 Acts, ch 229, §1 SF 521
NEW paragraph i

CHAPTER 507C

INSURERS SUPERVISION, REHABILITATION AND LIQUIDATION ACT

507C.21 Powers of liquidator.

1. The liquidator may:

a. Appoint a special deputy to act for the liquidator under this chapter, and determine the special deputy's reasonable compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

b. Hire employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and other personnel as the commissioner may deem necessary to assist in the liquidation.

c. With the approval of the court fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers and consultants.

d. Pay reasonable compensation to persons appointed and defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of an appropriation for the maintenance of the insurance department. Amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of the insurance department out of the first available moneys of the insurer.

e. Hold hearings, subpoena witnesses, and compel their attendance, administer oaths, examine a person under oath, and compel a person to subscribe to the person's testimony after it has been correctly reduced to writing, and in connection to the proceedings require the production of books, papers, records or other documents which the liquidator deems relevant to the inquiry.

f. Collect debts and moneys due and claims belonging to the insurer, wherever located. Pursuant to this paragraph, the liquidator may:

(1) Institute timely action in other jurisdictions to forestall garnishment and attachment proceedings against debts.

(2) Perform acts as are necessary or expedient to collect, conserve or protect its assets or property, including the power to sell, compound, compromise or assign debts for purposes of collection upon terms and conditions as the liquidator deems best.

(3) Pursue any creditor's remedies available to enforce claims.

g. Conduct public and private sales of the property of the insurer.

h. Use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under section 507C.42.

i. Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with property of the insurer at its market value or upon terms and conditions as are fair and reasonable. The liquidator shall also have power

to execute, acknowledge, and deliver deeds, assignments, releases and other instruments necessary to effectuate a sale of property or other transaction in connection with the liquidation.

j. Borrow money on the security of the insurer's assets or without security and execute and deliver documents necessary to that transaction for the purpose of facilitating the liquidation.

k. Enter into contracts as necessary to carry out the order to liquidate and affirm or disavow contracts to which the insurer is a party.

l. Continue to prosecute and to institute in the name of the insurer or in the liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims the liquidator deems unprofitable to pursue further. If the insurer is dissolved under section 507C.20, the liquidator may apply to any court in this state or elsewhere for leave to substitute the liquidator for the insurer as plaintiff.

m. Prosecute an action on behalf of the creditors, members, policyholders or shareholders of the insurer against an officer of the insurer, or any other person.

n. Remove records and property of the insurer to the offices of the commissioner or to other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. A guaranty association or foreign guaranty association shall have reasonable access to the records of the insurer as necessary to carry out the guaranty's statutory obligations.

o. Deposit in one or more banks in this state sums as are required for meeting current administration expenses and dividend distributions.

p. Unless the court orders otherwise, invest funds not currently needed.

q. File necessary documents for record in the office of a recorder of deeds or record office in this state or elsewhere where property of the insurer is located.

r. Assert defenses available to the insurer as against third persons including statutes of limitation, statutes of fraud, and the defense of usury. A waiver of a defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. If a guaranty association or foreign guaranty association has an obligation to defend a suit, the liquidator shall defer to the obligation and may defend only in the absence of a defense by the guaranty association.

s. Exercise and enforce the rights, remedies, and powers of a creditor, shareholder, policyholder, or member, including the power to avoid a transfer or lien that may be given by the general law and that is not included with sections 507C.26 through 507C.28.

t. Intervene in a proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.

u. Enter into agreements with a receiver or commissioner of insurance of any other state relating to the rehabilitation, liquidation, conservation or dissolution of an insurer doing business in both states.

v. Exercise powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with this chapter.

2. This section does not limit the liquidator or exclude the liquidator from exercising a power not listed in subsection 1 that may be necessary or appropriate to accomplish the purposes of this chapter.

85 Acts, ch 67, §48 SF 121

Subsection 1, paragraphs a, d, j and k and subsection 2 amended

507C.50 Conservation of property of foreign or alien insurers found in this state.

1. If a domiciliary liquidator has not been appointed, the commissioner may apply to the court by verified petition for an order directing the commissioner to act as conservator to conserve the property of an alien insurer not domiciled in this state or a foreign insurer on any of the following grounds:

- a. Any of the grounds in section 507C.12.
 - b. That property has been sequestered by official action in the insurer's domiciliary state, or in any other state.
 - c. That enough of its property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent.
 - d. That both of the following are found:
 - (1) That its certificate of authority to do business in this state has been revoked or that no certificate was ever issued.
 - (2) That there are residents of this state with outstanding claims or outstanding policies.
2. When an order is sought under subsection 1, the court shall cause the insurer to be given notice and time to respond to the petition as is reasonable under the circumstances.
3. The court may issue the order in whatever terms it deems appropriate. The filing or recording of the order with the clerk of court or the recorder of deeds of the county in which the principal business of the company is located or the county in which its principal office or place of business is located is the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds.
4. The conservator may at any time petition for and the court may grant an order under section 507C.51 to liquidate assets of a foreign or alien insurer under conservation, or, for an order under section 507C.53, to be appointed ancillary receiver.
5. The conservator may at any time petition the court for an order terminating conservation of an insurer. If the court finds that the conservation is no longer necessary, it shall order that the insurer be restored to possession of its property and the control of its business. The court may also make such finding and issue such order at any time upon motion of any interested party, but if the motion is denied costs shall be assessed against the party.

85 Acts, ch 67, §49 SF 121

Subsection 1, unnumbered paragraph 1 amended

CHAPTER 508

LIFE INSURANCE COMPANIES

508.6 Deposit of securities—certificate.

Securities in the amount of the capital and surplus required under section 508.5 shall be deposited with the commissioner of insurance or at such places as the commissioner may designate. When the deposit is made and evidence furnished, by affidavit or otherwise, satisfactory to the commissioner, that the capital stock is all fully paid and the company possessed of the surplus required and that the company is the actual and unqualified owner of the securities representing the paid-up capital stock or other funds of the company, and all laws have been complied with, the commissioner shall issue the company the certificate provided for in this chapter.

85 Acts, ch 228, §1 SF 502

Section amended

508.19 Securities.

The securities that are on deposit of a defaulting or insolvent company, or a company against which proceedings are pending under sections 508.17 and 508.18, shall vest in the state for the benefit of all policyholders of the company.

85 Acts, ch 228, §2 SF 502

Section amended

508.29 Authority to write other insurance.

Any life insurance company organized on the stock or mutual plan and authorized by its charter or articles of incorporation so to do, may in addition to such life insurance, insure, either individually or on the group plan, the health of persons and against personal injuries, disablement or death, resulting from traveling or general accidents by land or water, and insure employers against loss in consequence of accidents or casualties of any kind to employees or other persons, or to property resulting from any act of the employee or any accident or casualty to persons or property, or both, occurring in or connected with the transaction of their business, or from the operation of any machinery connected therewith, but nothing herein contained shall be construed to authorize any life insurance company to insure against loss or injury to person, or property, or both, growing out of explosion or rupture of steam boilers. An insurer may contract with health care service providers and offer different levels of benefits to policyholders based upon the provider contracts.

85 Acts, ch 239, §2 HF 570
Section amended

CHAPTER 508B

CONVERSION FROM MUTUAL COMPANY TO STOCK COMPANY

Applies to plans of conversion established after July 1, 1985;
85 Acts, ch 127, §16 HF 703

508B.1 Definitions.

As used in this chapter, unless the context clearly indicates otherwise:

1. "*Mutual life insurance company*" or "*mutual company*" means a level premium and natural premium life insurance company authorized under chapter 508 upon the mutual plan and includes a domestic company which meets the requirements of section 508.12.
2. "*Stock life insurance company*" or "*stock company*" means a life insurance company authorized under chapter 508 upon the stock plan and includes a domestic company which meets the requirements of section 508.12.
3. "*Commissioner*" means the commissioner of insurance.
4. a. "*Plan of conversion*" or "*conversion plan*" means a plan authorized by section 508B.3 and, in the case of plans authorized by section 508B.3, subsections 1 and 3, includes a procedure by which the mutual company's participating policies and contracts in force on the effective date of the conversion plan are operated by the reorganized company as a closed block of participating business for the exclusive benefit of the policies and contracts included, for dividend purposes only, to which are allocated assets of the mutual company in an amount which together with anticipated revenue from the business is reasonably expected to be sufficient to support the business, and which includes, but is not limited to, provisions for payment of claims and reasonable expenses, and provisions for continuation of current payable dividend scales if the experience underlying the scales continues and for appropriate adjustments in the scales if the experience changes. However, at the option of the mutual company, some or all classes of group policies and contracts shall continue to be eligible to receive dividends based on the experience of such class or classes.
 - b. If any amount of the policyholders' consideration as specified in section 508B.3, subsection 3, paragraph "b", for certain classes of policies or contracts is to be paid in the form of increased annual dividends to the policyholders in those classes, that amount is to be added to the assets allocated as provided in paragraph "a" and is to be paid to those classes.
5. "*Policyholder*" means a person determined by the mutual company who is to

be the holder of a policy or annuity contract for the purposes of section 508B.3, subsection 1, 2, or 3.

6. "*Policyholders' membership interest*" means all policyholders' rights as members of the mutual company including, but not limited to, rights to vote and participate in any distribution of surplus whether or not incident to liquidation of the mutual company.

7. "*Reorganized company*" means the domestic stock life insurance company into which a mutual company has been converted.

85 Acts, ch 127, §1 HF 703
NEW section

508B.2 Mutual company becoming stock company—authorization.

A mutual life insurance company may become a stock life insurance company pursuant to a plan of conversion established and approved in the manner provided by this chapter.

A plan of conversion may provide that a mutual company may convert into a domestic stock company, convert and merge, or convert and consolidate with a domestic stock company, as provided in chapter 491 or 496A, whichever is applicable. However, the mutual company is not required to comply with sections 491.102 through 491.105 or sections 496A.68 through 496A.70 relating to approval or merger or consolidation plans by boards of directors and shareholders, if at the time of approval of the plan of conversion the board of directors approves the merger or consolidation and if at the time of approval of the plan by policyholders as provided in section 508B.6, the policyholders approve the merger or consolidation. This chapter supersedes any conflicting provisions of chapters 521 and 521A. A mutual company may convert, merge, or consolidate as part of a plan of conversion in which a majority or all of the common shares of the stock company are acquired by another corporation, which may be a corporation organized for that purpose, or in which the new stock company consolidates with a stock company to form another stock company.

In lieu of selecting a plan of conversion provided for in this chapter, a mutual company may convert to a stock company pursuant to a plan approved by the commissioner. The commissioner may use any provisions or combination of provisions provided for a plan in this chapter and may adopt any other provisions which are not unfair or inequitable to the policyholders of the mutual company. If a mutual company selects this procedure for conversion purposes, the mutual company shall reimburse the state for expenses incurred by the insurance department in connection with the conversion plan except for expenses that are normal operating expenses of the insurance department.

85 Acts, ch 127, §2 HF 703
NEW section

508B.3 Conversion plans not to be unfair or inequitable—plans—alternative procedures and requirements.

A plan of conversion shall not be unfair or inequitable to policyholders. A plan of conversion is not unfair or inequitable if it satisfies the conditions of subsections 1, 2, or 3. The commissioner may determine that any other plan proposed by a mutual company is not unfair or inequitable to its policyholders.

1. Subject to paragraph "b", a plan of conversion under this subsection shall provide all of the following:

a. The policyholders' membership interest shall be exchanged, in a manner which takes into account the estimated proportionate contribution of surplus of each class of participating policies and contracts, for all of the common shares of the reorganized company or its parent company, if any, or for either or a combination of the common shares of the reorganized company or its parent company, if any, and consideration equal to the proceeds of the sale of the common shares by the issuer

or by a trust or other entity existing for the exclusive benefit of policyholders and established solely for the purpose of effecting the conversion, to which trust or other entity the common shares, or the options to acquire or securities convertible into the common shares, shall be issued by the issuer on the effective date of the conversion. The consideration shall be distributed to policyholders during a process of conversion specified in the plan which shall not last more than ten years after the effective date of conversion or until the death of the policyholder, whichever occurs first.

b. Unless the anticipated issuance within a shorter period is disclosed, the issuer of common shares shall not, within two years after the effective date of reorganization, issue either of the following:

(1) Any of its common shares or any securities convertible with or without consideration into the common shares or carrying any warrant to subscribe to or purchase common shares.

(2) Any warrant, right or option to subscribe to or purchase the common shares or other securities described in subparagraph (1), except for the issue of common shares to or for the benefit of policyholders pursuant to the plan of conversion and the issue of stock in anticipation of options for the purchase of common shares being granted to officers or employees of the reorganized company or its parent company, if any, pursuant to this chapter.

c. Unless the common shares have a public market when issued, the issuer shall use its best efforts to encourage and assist in the establishment of a public market for the common shares within two years of the effective date of the conversion or a longer period as disclosed in the plan of conversion. Within one year after the offering of stock other than the initial distribution, but no later than six years after the effective date of the conversion, the reorganized company shall offer to make available to policyholders who received and retained shares of stock with minimal values on conversion, a procedure to dispose of those shares of stock at market value without brokerage commissions or similar fees.

2. A plan of conversion under this subsection shall provide all of the following:

a. The mutual company's participating business, comprised of its participating policies and contracts in force on the effective date of the conversion shall be operated by the reorganized insurer as a closed block of participating business.

b. Assets of the mutual company shall be allocated to the closed block of participating business in an amount equal to the reserves and liabilities for the mutual life insurer's participating policies and contracts in force on the effective date of the conversion.

c. The consideration to be given in exchange for the policyholders' membership interest consists of aggregate consideration in a form or forms selected by the mutual company having a value equal to the amount of the statutory surplus of the mutual life insurer.

d. The consideration is allocated among the policyholders in a manner which is fair and equitable to the policyholders.

e. The reorganized company or its parent corporation shall issue and sell shares of one or more classes having a total price equal to the estimated value in the market on the initial offering of such shares.

f. The estimated value shall take into account all of the following:

(1) The consideration to be given to policyholders pursuant to paragraph "c".

(2) The proceeds of the sale of the shares.

(3) Any additional value attributable to the shares as a result of a purchaser or a group of purchasers who acted in concert to obtain shares in the initial offering, attaining, through such purchase, control of the reorganized company or its parent corporation.

g. If a purchaser or a group of purchasers acting in concert is to attain such control in the initial offering, the mutual company shall not, directly or indirectly, pay for any of the costs or expenses of the proposed company, whether or not the conversion is effected.

h. The reorganized company may share in the profits of the closed block of participating business for the benefit of stockholders.

3. A plan of conversion under this subsection shall satisfy all of paragraphs "a" through "j" and may add or substitute, as applicable, the options provided in paragraphs "k" and "l".

a. The reorganized company or its parent corporation shall issue and sell shares of one or more classes having a total price equal to the estimated market value on the initial offering taking into account the value to be given to participating policyholders pursuant to paragraph "b" and the proceeds of the sale.

b. The participating policyholders' consideration shall be based on the latest annual statement filed prior to the effective date of the adoption by the board of directors of the plan of conversion and shall be equal to the excess of both of the following:

(1) The total amount of the mutual company's assets accumulated from the operations of participating policies and contracts in force on the date of the statement over the sum of the total amount of assets allocated to the participating business.

(2) An amount equal to reserves and other liabilities attributable to any group participating policies and contracts not included in the closed block of participating business.

c. The consideration to be given in exchange for the policyholders' membership interest shall consist of the participating policyholders' consideration and nontransferable preemptive subscription rights to purchase all of the common shares of the issuer and the establishment of a liquidation account for the benefit of the policyholders in the event of a subsequent complete liquidation of the reorganized company having the terms described in paragraph "j".

d. The consideration and the preemptive subscription rights to purchase the common shares shall be allocated among the participating policyholders in a manner determined by the reorganized company which takes into account the estimated contribution of each class of participating policies and contracts to the total amount of the policyholders' consideration.

e. The number of the common shares which any person, together with any affiliates or group of persons acting in concert, may subscribe for or purchase in the reorganization shall be limited to not more than five percent of the common shares. For this purpose, neither the members of the board of directors of the reorganized company nor of its parent corporation, if any, shall be deemed to be affiliates or a group of persons acting in concert solely by reason of their board membership.

f. Unless the common shares have a public market when issued, officers and directors of the issuer and their affiliates shall not, for at least ninety days after the date of conversion, purchase common shares of the issuer, except in negotiated transactions involving more than ten percent of the outstanding common shares.

g. Unless the common shares have a public market when issued, the issuer shall use its best efforts to encourage and assist in the establishment of a public market for the common shares.

h. The issuer shall not, for at least three years following the conversion, repurchase any of its common shares except pursuant to a pro rata tender offer to all shareholders.

i. Until the liquidation account has been reduced to zero, the issuer shall not declare or pay a cash dividend on, or repurchase any of, its common shares in an amount in excess of its cumulative earned surplus generated after the conversion determined in accordance with generally accepted accounting principles, if the effect would be to cause the amount of the statutory surplus of the reorganized company to be reduced below the then amount of the liquidation account.

j. The liquidation account referred to in paragraph "c" must be equal to the excess of the total amount of the assets of the mutual company as of the effective

date of the conversion over the sum of the total amount of assets allocated to the closed block of participating business and the policyholders' consideration and other reserves and liabilities attributed to policies and contracts not included in the amount attributable to policies and contracts in force on that effective date. The determinations shall be based on the latest annual statement of the mutual company filed before the effective date of the conversion plan. The function of the liquidation account shall be solely to establish a priority on liquidation and its existence shall not operate to restrict the use or application of the surplus of the reorganized company except as specified in paragraph "i". The liquidation account shall be allocated equally as of the effective date of conversion among the then participating policyholders. The amount allocated to any policy or contract shall not increase and shall be reduced to zero when the policy or contract terminates. In the event of a complete liquidation of the reorganized company, the policyholders among which the liquidation account is allocated shall be entitled to receive a liquidation distribution in the then amount of the liquidation account before any liquidation distribution is made with respect to shares.

k. At the option of the mutual company, the consideration to be given in exchange for the policyholders' membership interest or into which the membership is to be converted may consist of cash, securities of the reorganized company, securities of another institution, a certificate of contribution, additional life insurance, annuity benefits, increased dividends, or other consideration or any combination of forms of consideration. The consideration, if any, given to any class or category of policyholder may differ from the consideration given to another class or category of policyholders. The certificate of contribution shall be repayable in ten years, equal to one hundred percent of the value of the policyholders' membership interest, and bear interest at the highest rate charged by the reorganized company for policy loans on the effective date of the conversion.

l. At the option of the mutual company, a plan may provide that any shares of the stock of the reorganized company or its parent corporation included in the policyholders' consideration shall be placed on the effective date of the conversion in a trust or other entity existing for the exclusive benefit of the participating policyholders and established solely for the purpose of effecting the reorganization. Under this option, the shares placed in trust shall be sold over a period of not more than ten years and the proceeds of the shares shall be distributed using the distribution priorities prescribed in the plan.

85 Acts, ch 127, §3 HF 703
NEW section

508B.4 Eligible policyholders participation.

The policyholders who are entitled to notice of and to vote upon approval of a plan of conversion and entitled to notice of a public hearing are the policyholders whose policies or contracts are in force on the date of adoption of the plan of conversion. Each policyholder whose policy has been in force for at least one year prior to the date is entitled to the consideration, if any, provided for the policyholder in the plan based on the policyholder's membership interest determined pursuant to this chapter, but only to the extent that the policyholder's membership interest arose from policies or contracts in force on the effective date of the conversion and which were in force for at least one year prior to the date of adoption of the plan. For this purpose, any changes in status of, or premiums in excess of those required on the policies or contracts occurring or made after the date one year prior to the date of adoption of the plan shall be disregarded.

85 Acts, ch 127, §4 HF 703
NEW section

508B.5 Appointment of consultant.

A plan may provide for the appointment by the mutual company of a person as defined in section 4.1, subsection 13, who is qualified to act as a consultant. The appointment of the consultant shall be reviewed by the commissioner and unless the commissioner finds the consultant unqualified, the consultant shall carry out the duties required by the mutual company and this chapter.

The consultant may assist in determining the equity or value of the policyholders and the mutual company. The consultant may consider the value of the consideration to be given to the participating policyholders in exchange for their membership interests or into which the membership interest is to be converted and may consider the valuations necessary to carry out the plans provided for in section 508B.3. Valuations shall be made taking into account the latest filed annual statement of the mutual company and any significant developments occurring subsequent to the date of the statement.

The findings of the consultant may be modified by the mutual company at any time so long as the results are not unfair or inequitable to policyholders.

If it can be shown by the mutual company to the commissioner that an underwriter of the shares is a qualified person, the underwriter may be appointed as the consultant.

85 Acts, ch 127, §5 HF 703
NEW section

508B.6 Approval of plan by policyholders—notice of election—effective date.

After the plan has been approved by the commissioner as provided in section 508B.7, the plan of conversion shall be submitted to and shall not take effect until approved by two thirds of the policyholders of the mutual company voting on the plan. Notice of a meeting for the purpose of voting on the conversion plan shall be provided by mail to each policyholder entitled to vote in accordance with the articles of incorporation or bylaws of the mutual company. Each policyholder entitled to vote may cast one vote unless otherwise provided in the articles of incorporation or bylaws of the mutual company. Voting shall be by ballot, in person or by proxy. A quorum shall consist of a quorum as defined in the articles of incorporation or bylaws of the mutual company. A copy of the plan of conversion, or a summary of the plan of conversion, shall accompany the notice of meeting and election. The notice of meeting may contain the notice of any planned public hearing. An approved plan of conversion shall take effect on the date specified in the plan.

85 Acts, ch 127, §6 HF 703
NEW section

508B.7 Review of plan by commissioner—hearing authorized—approval.

The commissioner of insurance shall review the plan. The commissioner shall approve the plan if the commissioner finds the plan complies with all provisions of law, is not unfair or inequitable to the mutual company and its policyholders, and that the reorganized company will have the amount of capital and surplus deemed by the commissioner to be reasonably necessary for its future solvency. The commissioner may order a hearing on the fairness and equity of the terms of the plan after giving written notice of the hearing to the mutual company, its policyholders and other interested persons, all of whom have the right to appear at the hearing.

85 Acts, ch 127, §7 HF 703
Editorially corrected
NEW section

508B.8 Payment of fees, salaries and costs.

A director, officer, agent or employee of the mutual company shall not receive a fee, commission or other valuable consideration, other than regular salary and

compensation, for aiding, promoting or assisting in the conversion except as set forth in the plan approved by the commissioner. This section does not prohibit the payment of reasonable fees and compensation to a consultant, attorneys at law, accountants, actuaries or other persons specifically employed for services performed in the practice of their professions while completing the plan of conversion, even if these persons are directors of the mutual company.

85 Acts, ch 127, §8 HF 703
NEW section

508B.9 Act of conversion—continuation of company.

When the commissioner approves the conversion plan as provided in this chapter, the commissioner shall issue a new certificate of authority to the reorganized company effective on the date specified in the plan. The reorganized company is a continuation of the mutual life insurance company and the conversion shall not annul or modify any of the mutual company's existing suits, contracts or liabilities except as provided in the approved conversion plan. All rights, franchises and interests of the mutual company in and to property, assets, and other interests shall be transferred to and shall vest in the reorganized company and the reorganized company shall assume all obligations and liabilities of the mutual company.

The reorganized company shall exercise all rights and powers and perform all duties conferred or imposed by law on life insurance companies writing the classes of insurance written by it, and shall retain the rights and contracts existing before conversion, subject to provisions of the plan.

85 Acts, ch 127, §9 HF 703
NEW section

508B.10 Continuation of officers.

The directors and officers of the mutual company shall serve the reorganized company until new directors and officers are elected and qualify pursuant to the articles of incorporation and bylaws of the reorganized company.

85 Acts, ch 127, §10 HF 703
NEW section

508B.11 Rules.

The commissioner shall issue rules pursuant to chapter 17A to carry out the provisions of this chapter.

85 Acts, ch 127, §11 HF 703
NEW section

508B.12 Amendments—withdrawal.

At any time before approval of the plan of conversion and pursuant to rules issued by the commissioner, the board of directors of a mutual company may amend the conversion plan. The board of directors of a mutual company may withdraw the plan of conversion at any time prior to the approval of the plan of conversion.

85 Acts, ch 127, §12 HF 703
NEW section

508B.13 Prohibitions on certain offers to acquire shares.

Prior to and for a period of five years following the effective date of the conversion, and in the case of the plans of conversion specified in subsections 1 and 3 of section 508B.3, five years following the date of distribution of consideration to the policyholders in exchange for their membership interests, an officer or director, including family members and their spouses, of the mutual company or the reorganized company, shall not directly or indirectly offer to acquire or acquire the beneficial ownership of the reorganized company unless the acquisition is made pursuant to a stock option plan approved by the commissioner, made pursuant to the plan of conversion, or made after the initial public offering from a broker or dealer of registered securities with the securities and exchange commission at the quoted price

on the date of purchase. As used in this section, "beneficial ownership" means with respect to any security, the sole or shared power to vote or direct the voting of the security or the sole power to dispose or direct the disposition of the security, and "family member" includes a brother, sister, spouse, parent, grandparent, ancestor, or descendant of the officer or director.

85 Acts, ch 127, §13 HF 703
NEW section

508B.14 Limitation of actions—security for attorney fees.

An action challenging the validity of a conversion plan, or any part of a conversion plan, shall not be commenced more than one hundred eighty days following the date of approval by the commissioner.

The reorganized company or any defendant may require the plaintiff in such an action to give security for the reasonable attorney fees which may be incurred by any party to the action. The amount of the security may be increased or decreased in the discretion of the court having jurisdiction if a showing is made that the security provided is or may become inadequate or excessive.

85 Acts, ch 127, §14 HF 703
NEW section

508B.15 Duties of secretary of state.

After approval of the conversion plan by the commissioner, the secretary of state shall accept for filing a verified copy of the amended articles of incorporation.

85 Acts, ch 127, §15 HF 703
NEW section

CHAPTER 509

GROUP INSURANCE

509.1 Form of policy.

No policy of group life, accident or health insurance shall be delivered in this state unless it conforms to one of the following descriptions:

1. A policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustee shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

a. The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. The policy may also provide that the term "employees" shall include the board of directors if the employer is a corporation.

b. The premium for the group life policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by the employer, or partly from such funds and partly from funds contributed by the insured employees. No policy, except accident and health, may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured

employees may be placed in force only if at least seventy-five percent of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

c. The policy must cover at least ten employees at date of issue.

d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees.

e. Group policies may include dependents of the employee, including the spouse.

f. The policy shall not exclude from coverage an employee or an employee's spouse or dependents on the basis of the eligibility of the employee or the employee's spouse or dependents for medical assistance under chapter 249A.

2. A policy issued to any one of the following to be considered the policyholder:

a. An advisory, supervisory, or governing body or bodies of a regularly organized religious denomination to insure its clergy, priests, or ministers of the gospel.

b. A teachers' association, to insure its members.

c. A lawyers' association, to insure its members.

d. A volunteer fire company, to insure all of its members.

e. A fraternal society or association, or any subordinate lodge or branch thereof, to insure its members.

f. A common principal of any group of persons similarly engaged between whom there exists a contractual relationship, to insure the members of such group.

g. An association, the members of which are students, teachers, administrators or officials of any elementary or secondary school or of any college, to insure the members thereof. For the purpose of this paragraph the students, teachers, administrators or officials of or for any such school or college shall constitute an association.

Provided that the provisions and requirements of subsection 1 of this section shall apply to such policy and the policyholder and insured in like manner as said subsection 1 of this section applies to employers and employees, except that if a policy is issued to a volunteer fire company or an association, the members of which are students, teachers, administrators or officials of any elementary or secondary school or of any college, the requirement for twenty-five members shall not apply, and, if issued to a teachers' association or lawyers' association, not less than sixty-five percent of the members thereof may be insured.

3. A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

a. The debtors eligible for insurance under the policy shall be all of the debtors of the creditor, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise.

b. The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least seventy-five percent of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all

except any as to whom evidence of individual insurability is not satisfactory to the insurer.

c. The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least one hundred persons yearly, or may reasonably be expected to receive at least one hundred new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than seventy-five percent of the new entrants become insured.

d. The amount of insurance on the life of a debtor shall not exceed the amount owed by the debtor to the creditor, or the face amount of a totally or partially executed loan or loan commitment creating personal liability and made in good faith for general agricultural or horticultural purposes to a debtor with seasonal income. However, in no event shall the amount of insurance exceed fifty thousand dollars.

e. The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment. Provided that in the case of a debtor for agricultural or horticultural purposes of the type described in paragraph "d", the insurance in excess of indebtedness to the creditor, if any, shall be payable to a named beneficiary, to the estate of the debtor or under the provision of a facility of payment clause.

4. A policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives, or agents, subject to the following requirements:

a. The members eligible for insurance under the policy shall be all of the members of the union or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.

b. The premium for the group life policy shall be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy, except accident and health, may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least sixty-five percent of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

c. The policy must cover at least ten members at date of issue.

d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union.

e. Policies may include dependents of the insured, including the spouse.

f. The policy shall not exclude from coverage a member or a member's spouse or dependents on the basis of the eligibility of the member or the member's spouse or dependents for medical assistance under chapter 249A.

5. A policy issued to the trustees of a fund established by two or more employers in the same industry or by two or more labor unions or by one or more employers and by one or more labor unions which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

a. The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or both. The policy may provide that the term "employees" shall include the individual

proprietor or partners if an employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship. The policy may provide that the term "employees" shall include retired employees. The policy may also provide that the term "employees" shall include the board of directors if the employer is a corporation.

b. The premium for the policy shall be paid by the trustees wholly from funds established by the employers of the insured persons. The policy must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer, if the funds are contributed wholly by the employer or unions.

c. The policy must cover at least one hundred persons at date of issue.

d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions.

e. Policies may include dependents of the insured, including the spouse.

f. The policy shall not exclude from coverage an employee or member or an employee's or member's spouse or dependents on the basis of the eligibility of the employee or member or employee's or member's spouse or dependents for medical assistance under chapter 249A.

6. A policy issued to any nonprofit industrial association (to be deemed the policyholder) incorporated for a period of at least ten years and organized for purposes other than obtaining insurance, subject to the following requirements:

a. If two or more members of the association, or any class or classes of members thereof determined by conditions pertaining to insurance, elect to insure their employees or any class or classes of employees determined by conditions pertaining to employment; and

b. The total number of insured employees must not be less than one thousand, and of these not less than seventy-five percent must be employees of members with at least twenty insured employees each, and further, not more than ten percent may be employees of members with less than ten insured employees each; and

c. The insurance premiums are paid by such members to the association; each member, insofar as applicable to the member's own employees, may collect part of the premium from insured employees, and the method of apportionment of the premium payment between the member and the member's employees may be varied as among individual members; and

d. Not less than seventy-five percent of the eligible employees of each participating member may be insured where the employees pay a part of the premium. The word "employees" as used in this subsection shall also include the individual members and employees of such association.

e. Policies may include dependents of the employees, including the spouse.

f. The policy shall not exclude from coverage an employee or an employee's spouse or dependents on the basis of the eligibility of the employee or the employee's spouse or dependents for medical assistance under chapter 249A. This paragraph shall also apply to corporations operating within the state who provide insurance coverage for their employees directly, and the commissioner shall have the authority to enforce the provisions of this paragraph.

7. A policy issued to the department of human services, which shall be deemed the policyholder, to insure eligible persons for medical assistance, or for both medical assistance and additional medical assistance, as defined by chapter 249A as hereafter amended.

CHAPTER 509A

GROUP INSURANCE FOR PUBLIC EMPLOYEES

509A.5 Fund under control of governing body—interest earnings of certain funds.

The fund for each plan shall be under the control and shall be expended under the directions of the governing body and shall be used solely for the purpose of administering and carrying out the provisions of the plan adopted by the governing body.

Any interest earnings from investments or time deposits of the funds under the control of the state executive council shall be deposited to the credit of these funds.

85 Acts, ch 266, §2 HF 777

Unnumbered paragraph 2 amended

509A.14 Approval of self-insurance plans.

The commissioner of insurance shall adopt rules for self-insurance plans for life insurance and accident and health insurance for the state, a political subdivision of the state, a school corporation, or any other public body in the state. The rules adopted shall include, but are not limited to, the following:

1. A requirement that the plan shall include all coverages and provisions that are required by law in insurance policies for the type of risk that the self-insurance plan is intended to cover.

2. A requirement that at least once each twelve months, the governing body of the public body shall obtain from an outside consulting actuary a certification that the plan is able to cover all reasonably anticipated expenses.

3. A requirement that if the resources of the plan are inadequate to fully cover a claim under the plan, then the public body is liable for any portion of the claim that is left unpaid.

85 Acts, ch 251, §2 SF 503

Effective January 1, 1986; final rules to be adopted by that date; 85 Acts, ch 251, §3

NEW section

CHAPTER 510

ASSESSMENT LIFE INSURANCE

510.11 Business year—annual report—fees.

The annual business of an association operating under this chapter and organized under the laws of this state shall close on the thirty-first day of December of each year. On or before March 1 of each year the association shall prepare and file in the office of the commissioner of insurance a detailed statement, verified by its president and secretary, giving its assets, liabilities, receipts from each assessment and all other sources, expenditures, salaries of officers, number of contributing members, death losses paid and amount paid on each, death losses reported but not paid, and other information as the commissioner may require, in order that its true financial condition may be shown. The information required in this section shall be provided on forms specified by the national association of insurance commissioners. Upon filing each annual statement, the association shall pay the sum of three dollars, and other fees as required by sections 511.24 to 511.26.

85 Acts, ch 228, §3 SF 502

Section amended

CHAPTER 511

PROVISIONS APPLYING TO LIFE INSURANCE
COMPANIES AND ASSOCIATIONS

511.3 Blanks for reports. Repealed by 85 Acts, ch 228, §9. SF 502

511.8 Investment of funds.

Any company, organized under chapter 508, shall, at all times, have invested in the securities provided in this section, funds equivalent to its legal reserve. Legal reserve shall be the net present value of all outstanding policies, and contracts involving life contingencies. Any association, organized under chapter 510, accumulating any moneys to be held in trust for the purpose of the fulfillment of its policies or certificates, contracts, or otherwise, shall invest such accumulations in the securities provided in this section. Wherever, in this section, reference is made to "legal reserve", it shall mean the total accumulations in the case of an association organized under chapter 510. Nothing herein contained shall prohibit a company or association from holding a portion of its legal reserve in cash.

1. *United States government obligations.* Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality thereof.

2. *State, District of Columbia, territorial and municipal obligations.* Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the District of Columbia, or by any state, insular or territorial possession of the United States of America, or by any county, city, town, school, road, drainage, or other district located within any state, or insular or territorial possession of the United States of America, or by any civil subdivision or governmental authority of any such state, or insular or territorial possession, or by any instrumentality of any such state, or insular or territorial possession, civil subdivision, or governmental authority; provided that the obligations are valid, legally authorized and issued.

3. *Canadian government, provincial and municipal obligations.* Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the Dominion of Canada, or by any province thereof, or by any municipality or district therein, provided that the obligations are valid, legally authorized and issued.

4. *International Bank bonds.* Bonds or other evidence of indebtedness issued, assumed or guaranteed by the International Bank for reconstruction and development, in an amount not to exceed two percent of its total assets as shown by the last annual report, or by the Inter-American Development Bank in an amount not to exceed two percent of its total assets as shown by the last annual report, by the Asian Development Bank in an amount not to exceed two percent of its total assets as shown by the last annual report or by the African Development Bank in an amount not to exceed two percent of its total assets as shown by the last annual report. However, the combined investment in bonds or evidences of indebtedness permitted by this subsection shall not exceed four percent of its total assets as shown by the last annual report.

5. *Corporate obligations.* Subject to the restrictions contained in subsection 8 hereof, bonds or other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of the United States of America, or of any state, district, insular or territorial possession thereof; or of the Dominion of Canada, or any province thereof; and which meet the following qualifications:

a. If fixed interest-bearing obligations, the net earnings of the issuing, assuming or guaranteeing corporation available for its fixed charges for a period of five fiscal years next preceding the date of acquisition of the obligations by such insurance company shall have averaged per year not less than one and one-half times such average annual fixed charges of the issuing, assuming or guaranteeing corporation

applicable to such period, and, during at least one of the last two years of such period, its net earnings shall have been not less than one and one-half times its fixed charges for such year; or if, at the date of acquisition, the obligations are adequately secured and have investment qualities and characteristics wherein the speculative elements are not predominant.

However, with respect to fixed interest-bearing obligations which are issued, assumed or guaranteed by a financial company, the net earnings by the financial company available for its fixed charges for the period of five fiscal years preceding the date of acquisition of the obligations by the insurance company shall have averaged per year not less than one and one-fourth times such average annual fixed charges of the issuing, assuming or guaranteeing financial company applicable to such period, and, during at least one of the last two years of the period, its net earnings shall have been not less than one and one-fourth times its fixed charges for such year; or if, at the date of acquisition, the obligations are adequately secured and speculative elements are not predominant in their investment qualities and characteristics. As used in this paragraph, "financial company" means a corporation which on the average over its last five fiscal years preceding the date of acquisition of its obligations by the insurer, has had at least fifty percent of its net income, including income derived from subsidiaries, derived from the business of wholesale, retail, installment, mortgage, commercial, industrial or consumer financing, or from banking or factoring, or from similar or related lines of business.

b. If adjustment, income or other contingent interest obligations, the net earnings of the issuing, assuming or guaranteeing corporation available for its fixed charges for a period of five fiscal years next preceding the date of acquisition of the obligations by such insurance company shall have averaged per year not less than one and one-half times such average annual fixed charges of the issuing, assuming or guaranteeing corporation and its average annual maximum contingent interest applicable to such period and, during at least one of the last two years of such period, its net earnings shall have been not less than one and one-half times the sum of its fixed charges and maximum contingent interest for such year.

The term "net earnings available for fixed charges" as used herein shall mean the net income after deducting all operating and maintenance expenses, taxes other than any income taxes, depreciation and depletion, but nonrecurring items of income or expense may be excluded.

The term "fixed charges" as used herein shall include interest on unfunded debt and funded debt on a parity with or having a priority to the obligation under consideration.

6. *Preferred and guaranteed stocks.* Subject to the restrictions contained in subsection 8 hereof, preferred stocks of, or stocks guaranteed by, a corporation incorporated under the laws of the United States of America, or of any state, district, insular or territorial possession thereof; or of the Dominion of Canada, or any province thereof; and which meet the following qualifications:

a. Preferred stocks.

(1) All of the obligations and preferred stocks of the issuing corporation, if any, prior to the preferred stock acquired must be eligible as investments under this section as of the date of acquisition; and

(2) The net earnings available for fixed charges and preferred dividends of the issuing corporation shall have been, for each of the five fiscal years immediately preceding the date of acquisition, not less than one and one-half times the sum of the annual fixed charges and contingent interest, if any, and the annual preferred dividend requirements as of the date of acquisition.

The term "preferred dividend requirements" shall mean cumulative or non-cumulative dividends whether paid or not.

The term "fixed charges" shall be construed in accordance with subsection 5 above. The term "net earnings available for fixed charges and preferred dividends" as used

herein shall mean the net income after deducting all operating and maintenance expenses, taxes, including any income taxes, depreciation and depletion, but non-recurring items may be excluded.

b. Guaranteed stocks.

(1) All of the fixed interest-bearing obligations of the guaranteeing corporation, if any, must be eligible under this section as of the date of acquisition; and

(2) The net earnings available for fixed charges of the guaranteeing corporation shall meet the requirements outlined in paragraph "a" of subsection 5 above, except that all guaranteed dividends shall be included in "fixed charges".

Any investments in preferred stocks or guaranteed stocks made under the provisions of this subsection shall be considered as moneys and credits for purposes of taxation and their assessment shall be subject to deductions for indebtedness as provided by law in the case of assessment of moneys and credits in general. This provision shall be effective as to assessments made during the year 1947 and thereafter.

7. *Equipment trust obligations.* Subject to the restrictions contained in subsection 8 hereof, bonds, certificates, or other evidences of indebtedness secured by any transportation equipment used in the United States of America or Canada, that provide a right to receive determined rental, purchase or other fixed obligatory payments adequate to retire the obligations within twenty years from date of issue, and also provide:

a. For vesting of title to such equipment free from encumbrance in a corporate trustee, or

b. For creation of a first lien on such equipment.

8. *Further restrictions.* Securities included under subsections 5, 6 and 7 shall not be eligible:

a. If the corporation is in default on fixed obligations as of the date of acquisition. Securities provided in paragraph "a" of subsection 6 shall not be eligible if the issuing corporation is in arrears with respect to the payment of any preferred dividends as of the date of acquisition.

b. The investments of any company or association in such securities shall not be eligible in excess of the following percentages of the legal reserve of such company or association:

(1) With the exception of public securities, two percent of the legal reserve in the securities of any one corporation. Five percent of the legal reserve in the securities of any one public utility corporation.

(2) Fifty percent of the legal reserve in the securities described in subsection 5 issued by other than public utility corporations. Fifty percent of the legal reserve in the securities described in subsection 5 issued by public utility corporations.

(3) Ten percent of the legal reserve in the securities described in subsection 6.

(4) Ten percent of the legal reserve in securities described in subsection 7.

c. Statements adjusted to show the actual condition at the time of acquisition or the effect of new financing (known commercially as pro forma statements) may be used in determining whether investments under subsections 5 and 6 are in compliance with requirements. Statements so adjusted or consolidated statements may be used in order to include the earnings of all predecessor, merged, consolidated, or purchased companies.

9. *Real estate bonds and mortgages.*

a. Bonds, notes, obligations, or other evidences of indebtedness secured by mortgages or deeds of trust which are a first or second lien upon otherwise unencumbered real property and appurtenances thereto within the United States of America, or any insular or territorial possession of the United States, or the Dominion of Canada, and upon leasehold estates in real property where fifty years or more of the term including renewals is unexpired, provided that at the date of acquisition the total indebtedness secured by the first or second lien shall not exceed ninety percent

of the value of the property upon which it is a lien. However, a company or organization shall not acquire an indebtedness secured by a first or second lien upon a single parcel of real property, or upon a leasehold interest in a single parcel of real property, in excess of two percent of its legal reserve. These limitations do not apply to obligations described in paragraphs "b", "c", "d", "e" and "f" of this subsection.

Improvements and appurtenances to real property shall not be considered in estimating the value of the property unless the owner contracts to keep the property adequately insured during the life of the loan in some reliable fire insurance companies, or associations, the insurance to be made payable in case of loss to the mortgagee, trustee, or assignee as its interest appears at the time of the loss.

For the purpose of this subsection a mortgage or deed of trust is not other than a first or second lien upon property by reason of the existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil, or timber rights, rights of way, joint driveways, sewer rights, rights in walls or by reason of building restrictions or other like restrictive covenants, or when the real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner.

b. Bonds, notes, or other evidences of indebtedness representing loans and advances of credit that have been issued, guaranteed, or insured, in accordance with the terms and provisions of an Act of Congress of the United States of America approved June 27, 1934, entitled the "National Housing Act"*, as heretofore and hereafter amended.

c. Bonds, notes, or other evidences of indebtedness representing loans and advances of credit that have been issued or guaranteed, in whole or in part, in accordance with the terms and provisions of Title III of an Act of Congress of the United States of America approved June 22, 1944, known as Public Law 346—Seventy-eighth Congress, Chapter 268—2nd Session, cited as the "Servicemen's Readjustment Act of 1944"', as heretofore and hereafter amended.

d. Contracts of sale, purchase money mortgages or deeds of trust secured by property obtained through foreclosure, or in settlement or satisfaction of any indebtedness, or in the acquisition or disposition of real property acquired pursuant to subsection 14.

e. Bonds, notes or other evidences of indebtedness representing loans and advances of credit that have been issued or guaranteed, in whole or in part, in accordance with Title I of the Bankhead-Jones Farm Tenant Act, an Act of the Congress of the United States, cited as the "Farmers Home Administration Act of 1946"', as heretofore and hereafter amended.

f. Bonds, notes, obligations or other evidences of indebtedness secured by mortgages or deeds of trust which are a first lien upon unencumbered personal or real property or both personal and real property, including a leasehold of real estate, within the United States of America, or any insular or territorial possession of the United States of America, or the Dominion of Canada, under lease, purchase contract, or lease purchase contract to any governmental body or instrumentality whose obligations qualify under subsection 1, 2 or 3 of this section, or to a corporation whose obligations qualify under paragraph "a" of subsection 5 of this section, if the terms of the bond, note or other evidence of indebtedness provide for the amortization during the initial, fixed period of the lease or contract of one hundred percent of the indebtedness and there is pledged or assigned, as additional security for the loan, sufficient of the rentals payable under the lease, or of contract payments, to provide the required payments on the loan necessary to permit such amortization, including but not limited to payments of principal, interest, ground rents and taxes other than the income taxes of the borrower; provided, however, that where the security consists of a first mortgage or deed of trust lien on a fee interest in real property only, the bond, note or other evidence of indebtedness may provide for the amortization during the initial, fixed period of the lease or contract of less than one hundred percent of the indebtedness if there is to be left unamortized at the end

of such period an amount not greater than the appraised value of the land only, exclusive of all improvements, and if there is pledged or assigned, as additional security for the loan, sufficient of the rentals payable under the lease, or of contract payments, to provide the required payments on the loan necessary to permit such amortization, including but not limited to payments of principal, interest, and taxes other than the income taxes of the borrower. Investments made in accordance with the provisions of this paragraph shall not be eligible in excess of twenty-five percent of the legal reserve, nor shall any one such investment in excess of five percent of the legal reserve be eligible.

g. Bonds, notes or other evidences of indebtedness representing loans and advances of credit that have been issued, guaranteed, or insured, in accordance with the terms and provisions of an Act of the federal Parliament of the Dominion of Canada approved March 18, 1954, cited as the "National Housing Act, 1954", as heretofore and hereafter amended.

10. *Real estate.*

a. Real estate in this state which is necessary for the accommodation of the company or association as a home office or in the transaction of its business. In the erection of buildings for such purposes, there may be added rooms for rent. Before the company or association invests any of its funds in accordance with this paragraph it shall first obtain the consent of the executive council of this state. The maximum amount which a company or association shall be permitted to invest in accordance with these provisions shall not exceed ten percent of the legal reserve. However, a stock company may invest such portion of its paid-up capital, in addition to ten percent of the legal reserve, as is not held to constitute a part of its legal reserve, under section 508.36, and the total legal reserve of the company shall be equal to or exceed the amount of its paid-up capital stock.

b. Any real estate acquired through foreclosure, or in settlement or satisfaction of any indebtedness. Any company or association may improve real estate so acquired or remodel existing improvements and exchange such real estate for other real estate or securities, and real estate acquired by such exchange may be improved or the improvements remodeled. Any farm real estate acquired under this paragraph shall be sold within five years from the date of acquisition unless the commissioner of insurance shall extend the time for such period or periods as seem warranted by the circumstances.

11. *Certificates of sale.* Certificates of sale obtained through foreclosure of liens on real estate.

12. *Policy loans.* Loans upon the security of the policies of the company or association and constituting a lien thereon in an amount not exceeding the legal reserve thereon.

13. *Collateral loans.* Loans secured by collateral consisting of any securities qualified in this section, provided the amount of the loan is not in excess of ninety percent of the value of the securities.

Provided further that subsection 8 of this section shall apply to the collateral securities pledged to the payment of loans authorized in this subsection.

14. *Urban real estate and personal property.* Personal or real property or both located within the United States or the Dominion of Canada, other than real property used or to be used primarily for agricultural, horticultural, ranching or mining purposes, which produces income or which by suitable improvement will produce income. However, personal property acquired under this subsection shall be acquired for the purpose of entering into a contract for the sale or for a use under which the contractual payments may reasonably be expected to result in the recovery of the investment and an investment return within the anticipated useful life of the property. Legal title to the real property may be acquired subject to a contract of sale. "Real property" as used in this subsection includes a leasehold of real estate, an undivided interest in a leasehold of real estate, and an undivided interest in the

fee title of real estate. Investments under this subsection are not eligible in excess of ten percent of the legal reserve.

15. *Railroad obligations.* Bonds or other evidences of indebtedness which carry a fixed rate of interest and are issued, assumed or guaranteed by any railroad company incorporated under the laws of the United States of America, or of any state, district, insular or territorial possessions thereof, not in reorganization or receivership at the time of such investment, provided that the railroad company:

a. Shall have had for the three-year period immediately preceding investment (for which the necessary data for the railroad company shall have been published) a balance of income available for fixed charges which shall have averaged per year not less than one and one-quarter times the fixed charges for the latest year of the period; and

b. Shall have had for the three-year period immediately preceding investment (for which the necessary data for both the railroad company and all class I railroads shall have been published):

(1) A balance of income available for the payment of fixed charges at least as many times greater than the fixed charges for the latest year of the period as the balance of income available for the payment of fixed charges of all class I railroads for the same three-year period is times greater than the amount of all fixed charges for such class I railroads for the latest year of the period; and

(2) An amount of railway operating revenues remaining after deduction of three times the fixed charges for the latest year of the period from the balance of income available for the payment of fixed charges for the three-year period, which amount is as great a proportion of its railway operating revenues for the same three-year period as is the proportion of railway operating revenues remaining for all class I railroads, determined in the same manner and for the same period as for the railroad.

The terms "class I railroads", "balance of income available for the payment of fixed charges", "fixed charges" and "railway operating revenues" when used in this subsection, are to be given the same meaning as in the accounting reports filed by a railroad company in accordance with the regulations for common carriers by rail of the Interstate Commerce Act; [24 Stat. L. 379; 49 U.S.C. § 1 to 40 inc., 1001 to 1100 inc.] provided that the "balance of income available for the payment of fixed charges" and "railway operating revenues remaining", as the terms are used in this subsection, shall be computed before deduction of federal income or excess profits taxes; and that in computing "fixed charges" there shall be excluded interest and amortization charges applicable to debt called for redemption or which will otherwise mature within six months from the time of investment and for the payment of which funds have been or currently are being specifically set aside.

The eligibility of railroad obligations described in the first sentence of this subsection shall be determined exclusively as provided herein, without regard to the provisions for qualification contained in subsections 5 and 8 of this section. Provisions for qualification contained in this section shall not be construed as applying to equipment trust obligations, guaranteed stocks, or contingent interest bonds of railroad companies. Investments made in accordance with the provisions of this subsection shall not be eligible in excess of ten percent of the legal reserve.

16. *Deposit of securities.* Securities in an amount not less than the legal reserve as defined in this section shall be deposited and the deposit maintained with the commissioner of insurance or at such places as the commissioner may designate as will properly safeguard them. There may be included in the deposit an amount of cash on hand not in excess of five percent of the deposit required, that deposit to be evidenced by a certified check, certificate of deposit, or other evidence satisfactory to the commissioner of insurance. Deposits of securities may be made in excess of the amounts required by this section. A stock company organized under the laws of this state shall not be required to make a deposit until the legal reserve, as ascertained by the commissioner, exceeds the amount deposited by it as capital. Real

estate may be made a part of the deposit by furnishing evidence of ownership satisfactory to the commissioner and by conveying the real estate to the commissioner or the commissioner's successors in office by warranty deed. The commissioner and the successors in office shall hold the real estate in trust for the benefit of the policyholders of the company or members of the association. Real estate mortgage loans and policy loans may be made a part of the deposit by filing a verified statement of the loans with the commissioner, which statement is subject to check at the discretion of the commissioner.

The securities comprising the deposit of a company or association against which proceedings are pending under sections 508.17 and 508.18 shall vest in the state for the benefit of all policyholders of the company or association.

Securities or title to real estate on deposit may be withdrawn at any time and other eligible securities may be substituted, provided the amount maintained on deposit is equal to the sum of the legal reserve and twenty-five thousand dollars. In the case of real estate the commissioner shall execute and deliver to the company or association a quitclaim deed to the real estate. Any company or association shall, if requested by the commissioner, at the time of withdrawing any securities on deposit, designate for what purpose the same are being withdrawn.

Companies or associations having securities or title to real estate on deposit with the commissioner of insurance shall have the right to collect all dividends, interest, rent, or other income thereon unless proceedings against such company or association are pending under sections 508.17 and 508.18, in which event the commissioner shall collect such interest, dividends, rent, or other income and add the same to the deposit.

Any company or association receiving payments or partial payments of principal on any securities deposited with the commissioner of insurance shall notify the commissioner of such fact at such times and in such manner as the commissioner may prescribe, giving the amount and date of payment.

The commissioner of insurance may receive on deposit securities or title to real estate of alien companies authorized to do business in the state of Iowa, for the purpose of securing its policyholders in the state of Iowa and the United States. The provisions hereof not inconsistent with the deposit agreement shall apply to the deposits of such alien companies.

17. *Rules of valuation.*

a. All bonds or other evidences of debt having a fixed term and rate of interest, if amply secured and not in default as to principal or interest, may be valued as follows:

(1) If purchased at par, at the par value.

(2) If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made.

In applying the above rule, the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase.

b. (1) Real estate acquired through foreclosure or in settlement or satisfaction of any indebtedness, shall be valued in an amount not greater than the amount of the unpaid principal of the defaulted indebtedness, plus any amounts actually expended for taxes, acquisition costs, (but not including any interest due or subsequently accrued thereon) and the cost of any additions or improvements.

(2) Real estate acquired and held under the provisions of paragraph "a" of subsection 10 hereof, shall be valued in an amount not greater than the original cost plus any subsequent additions or improvements.

c. Certificates of sale obtained by foreclosure of liens on real estate shall be valued in an amount not greater than the unpaid principal of the defaulted indebtedness plus any amounts actually expended for taxes and acquisition costs.

d. All investments, except those for which a specific rule is provided in this

subsection, shall be valued at their market value, or at their appraised value, or at prices determined by the commissioner of insurance as representing their fair market value, or at a value as determined under rules adopted by the National Association of Insurance Commissioners.

The commissioner of insurance shall have full discretion in determining the method of calculating values according to the foregoing rules, but no company or association shall be prevented from valuing any asset at an amount less than that provided by this subsection.

18. *Common stocks or shares.*

a. Common stocks or shares issued by solvent corporations or institutions are eligible if the total investment in stocks or shares in the corporations or institutions does not exceed ten percent of legal reserve provided not more than one-half percent of the legal reserve is invested in stocks or shares of any one corporation. However, the stocks or shares shall be listed or admitted to trading on a securities exchange in the United States or shall be publicly held and traded in the "over-the-counter market" and market quotations shall be readily available, and further, the investment shall not create a conflict of interest for an officer or director of the company between the insurance company and the corporation whose stocks or shares are purchased.

b. Common stocks or shares in a subsidiary corporation, the acquisition or purchase of which is authorized by section 508.33 are eligible if the total investment in these stocks or shares does not exceed five percent of the legal reserve. These stocks or shares are eligible even if the stocks or shares are not listed or admitted to trading on a securities exchange in the United States and are not publicly held and have not been traded in the "over-the-counter market". The stocks or shares shall be valued at their book value.

19. *Other foreign government or corporate obligations.* Bonds or other evidences of indebtedness, not to include currency, issued, assumed or guaranteed by a foreign government other than Canada, or by a corporation incorporated under the laws of a foreign government other than Canada. Any such governmental obligations must be valid, legally authorized and issued. Any such corporate obligations must meet the qualifications established in subsection 5 of this section for bonds and other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of the United States or the Dominion of Canada. Foreign investments authorized by this subsection are not eligible in excess of one percent of the legal reserve of the life insurance company or association.

Eligible investments in foreign obligations under this subsection are limited to the types of obligations specifically referred to in this subsection. This subsection in no way limits or restricts investments in Canadian obligations and securities specifically authorized in other subsections of this section.

This subsection shall not authorize investment in evidences of indebtedness issued, assumed, or guaranteed by a foreign government which engages in a consistent pattern of gross violations of human rights.

20. *Venture capital funds.* Shares or equity interests in venture capital funds which agree to invest an amount equal to at least fifty percent of the funds in small businesses having their principal offices within this state and having either more than one half of their assets within this state or more than one half of their employees employed within this state. A company shall not invest more than five percent of its legal reserve under this subsection. For purposes of this subsection, "venture capital fund" means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, whose principal business is or will be the making of investments in, and the provision of significant managerial assistance to, small businesses which meet the small business administration definition of small business. "Equity interests" means limited partnership interests and other equity interests in which liability

is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability.

21. Use of custodian banks, clearing corporations and the federal reserve book-entry system.

a. As used in this subsection:

(1) "*Clearing corporation*" means a corporation as defined in section 554.8102, subsection 3.

(2) "*Custodian bank*" means a federal or state bank or trust company regulated under the Iowa banking laws or the federal reserve system, which maintains an account in its name in a clearing corporation and acts as custodian of securities owned by a domestic insurer.

(3) "*Federal reserve book-entry system*" means the computerized system sponsored by the United States department of the treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and its agencies and instrumentalities, in the federal reserve banks through national banks, state banks, or trust companies, which either are members of the federal reserve system or otherwise have access to the computerized systems.

b. Securities deposited by a domestic insurance company with a custodian bank, or redeposited by a custodian bank with a clearing corporation, or held in the federal reserve book-entry system may be used to meet the deposit requirements of subsection 16. The commissioner shall adopt rules necessary to implement this section which:

(1) Establish guidelines on which the commissioner determines whether a custodian bank qualifies as a bank in which securities owned by an insurer may be deposited for the purpose of satisfying the requirements of subsection 16.

(2) Designate those clearing corporations in which securities owned by insurers may be deposited.

(3) Set forth provisions that custodian agreements executed between custodian banks and insurers shall contain. These shall include provisions stating that minimum deposit levels shall be maintained and that the parties agree securities in deposits with custodian banks shall vest in the state in accordance with sections 508.17 and 508.18 whenever proceedings under those sections are instituted.

(4) Establish other safeguards applicable to the use of custodian banks and clearing corporations by insurers which the commissioner believes necessary to protect the policyholders of the insurers.

c. A security owned by a domestic insurer and deposited in a custodian bank or clearing corporation does not qualify for purposes of its legal reserve deposit unless the custodian bank and clearing corporation are approved by the commissioner for that purpose.

85 Acts, ch 136, §1 HF 460; 85 Acts, ch 228, §4 SF 502; 85 Acts, ch 252, §31 SF 577

*48 Stat. L. 1246; 12 U.S.C. §1701 et seq.

**58 Stat. L. 291; Repealed by Pub. L. 85-857, §14(87), 72 Stat. L. 1273; see 38 U.S.C. §1801 et seq.

***60 Stat. L. 1062; Repealed by Pub. L. 87-128, §341 (a); see 7 U.S.C. §1921 et seq.

Subsection 4 amended

Subsection 16, unnumbered paragraph 2 amended

NEW subsection 20 and subsequent subsection renumbered

CHAPTER 512

FRATERNAL BENEFICIARY SOCIETIES, ORDERS OR ASSOCIATIONS

512.42 Report.

On or before March 1 of each year, an association operating under this chapter and doing business in this state shall make and file with the commissioner of insurance a report for the year ending on the immediately preceding December 31.

All reports shall be upon annual statement forms stipulated by the national association of insurance commissioners, shall be verified under oath by the authorized officers of the association, and shall contain answers to the following questions:

1. Number of certificates issued during the year, or members admitted.
2. Amount of indemnity effected thereby.
3. Number of losses or benefit liabilities incurred.
4. Number of losses or benefit liabilities paid.
5. The amount received from each assessment for the year.
6. Total amount paid members, beneficiaries, legal representatives, or heirs.
7. Number and kind of claims for which assessments have been made.
8. Number and kind of claims compromised or resisted, and brief statement of reason.
9. Does association charge annual or other periodical dues or admission fees.
10. How much on each one thousand dollars annually, or per capita, as the case may be.
11. Total amount received, from what source, and the disposition thereof.
12. Total amount of salaries, fees, per diem, mileage, expenses paid to officers, showing amount paid to each.
13. Does the association guarantee, in its certificates, fixed amounts to be paid regardless of amount realized from assessments, dues, admission fees, and donations.
14. If so, state amount guaranteed, and the security of such guarantee.
15. Has the association a reserve or emergency fund.
16. If so, how is it created, and for what purpose, the amount thereof, and how invested.
17. Has the association more than one class.
18. If so, how many, and amount of indemnity in each.
19. Number of members in each class.
20. If voluntary, so state, and give date of organization.
21. If organized under the laws of this state, under what law and at what time, giving chapter and year, and date of passage of the Act.
22. If organized under the laws of any other state, territory, or province, state such fact and the date of organization, giving chapter and year, and date of passage of the Act.
23. Number of certificates of beneficiary membership lapsed during the year.
24. Number in force at beginning and end of year; if more than one class, number in each class.
25. Names and addresses of its presidents, secretary, and treasurer, or corresponding officers.

The commissioner is empowered to make any additional inquiries of any such association relative to the business contemplated by this chapter, and such officer of such association as the commissioner may require shall promptly reply in writing, under oath, to all such inquiries.

85 Acts, ch 228, §5 SF 502
Unnumbered paragraph 1 amended

CHAPTER 514

NONPROFIT HEALTH SERVICE CORPORATIONS

Disposition of tax increase, effective July 1, 1985;
see 85 Acts, ch 239, §8 HF 570

514.15 Nonexempt from taxation.

Every corporation organized under the provisions of this chapter is hereby declared to be a charitable and benevolent institution but its property and funds, including subscribers' contracts, shall not be exempt from taxation. For purposes of this

section, the term "subscriber contract" shall mean only those benefit contracts issued or delivered in Iowa by corporations subject to this chapter, including certificates issued under such contracts, and which provide coverage to residents of Iowa on a risk basis.

85 Acts, ch 239, §3 HF 570
Rate of tax; §432.2
Section amended

514.23 Mutualization plan.

A corporation organized and governed by this chapter may become a mutual insurer under a plan which is approved by the commissioner of insurance. The plan shall state whether the insurer will be organized as a for-profit corporation pursuant to chapter 491 or 496A or a nonprofit corporation pursuant to chapter 504A. Upon consummation of the plan, the corporation shall thereafter fully comply with the requirements of the law that apply to a mutual insurance company. If the insurer is to be organized under chapter 504A, then at least seventy-five percent of the initial board of directors of the mutual insurer so formed shall be policyholders who are also nonproviders of health care. All directors comprising this initial board of directors shall be selected by an independent committee appointed by the state commissioner of insurance. This independent committee shall consist of seven to eleven persons who are current policyholders, who are nonproviders of health care, and who are not directors of any corporation subject to this chapter. For purposes of this subsection, a "nonprovider of health care" is an individual who is not any of the following:

- a. A "provider" as defined in section 514B.1, subsection 5.
- b. A person who has material financial or fiduciary interest in the delivery of health care services or a related industry.
- c. An employee of an institution which provides health care services.
- d. A spouse or a member of the immediate family of a person described in paragraphs "a" through "c".

85 Acts, ch 239, §4 HF 570
NEW section

CHAPTER 515

INSURANCE OTHER THAN LIFE

515.1 Applicability.

Corporations formed for the purpose of insurance, other than life insurance, shall be governed by the provisions of chapter 491 or chapter 504A, except as modified by the provisions of this chapter.

85 Acts, ch 239, §5 HF 570
Section amended

515.35 Investments.

1. *General considerations.* The following considerations apply in the interpretation of this section:

- a. This section applies to the investments of insurance companies other than life insurance companies.
- b. The purpose of this section is to protect and further the interests of policyholders, claimants, creditors, and the public by providing standards for the development and administration of programs for the investment of the assets of companies organized under this chapter. These standards, and the investment programs developed by companies, shall take into account the safety of the company's principal, investment yield and growth, stability in the value of the investment, and liquidity necessary to meet the company's expected business needs, and investment diversification.

c. Financial terms relating to insurance companies have the meanings assigned to them under statutory accounting methods. Financial terms relating to companies other than insurance companies have the meanings assigned to them under generally accepted accounting principles.

d. Investments shall be valued in accordance with the valuation procedures established by the national association of insurance commissioners, unless the commissioner requires or finds another method of valuation reasonable under the circumstances.

e. If an investment qualifies under more than one subsection, a company may elect to hold the investment under the subsection of its choice. This section does not prevent a company from electing to hold an investment under a subsection different from the one under which it previously held the investment.

2. *Definitions.* For purposes of this section:

a. "*Admitted assets*", for purposes of computing percentage limitations on particular types of investments, means the assets which are authorized to be shown on the national association of insurance commissioner's annual statement blank as admitted assets as of the December 31 immediately preceding the date the company acquires the investment.

b. "*Clearing corporation*" means as defined in section 554.8102, subsection 3.

c. "*Custodian bank*" means as defined in section 554.8102, subsection 4.

d. "*Issuer*" means as defined in section 554.8201.

e. "*Member bank*" means a national bank, state bank, or trust company which is a member of the United States federal reserve system.

f. "*National securities exchange*" means an exchange registered under section 6 of the Securities Exchange Act of 1934 or an exchange regulated under the laws of the Dominion of Canada.

g. "*Obligations*" includes bonds, notes, debentures, transportation equipment certificates, domestic repurchase agreements, and obligations for the payment of money not in default as to payments of principal and interest on the date of investment, which constitute general obligations of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment of principal and interest on the obligations. A lease is an obligation if the lease is assigned to the insurer and is nonterminable by the lessee upon foreclosure of any lien upon the leased property, and if rental payments are sufficient to amortize the investment over the primary lease term.

3. *Investments in name of company or nominee and prohibitions.*

a. A company's investments shall be held in its own name or the name of its nominee, except as follows:

(1) Investments may be held in the name of a clearing corporation or of a custodian bank or in the name of the nominee of either on the following conditions:

(a) The clearing corporation, custodian bank, or nominee must be legally authorized to hold the particular investment for the account of others.

(b) When the investment is evidenced by a certificate and held in the name of a custodian bank or the nominee of a custodian bank, a written agreement shall provide that certificates so deposited shall at all times be kept separate and apart from other deposits with the depository, so that at all times they may be identified as belonging solely to the company making the deposit.

(c) If a clearing corporation is to act as depository, the investment may be merged or held in bulk in the name of the clearing corporation or its nominee with other investments deposited with the clearing corporation by any other person, if a written agreement between the clearing corporation and the company provides that adequate evidence of the deposit is to be obtained and retained by the company or a custodian bank.

(2) A company may loan stocks or obligations held by it under this chapter to a broker-dealer registered under the Securities Exchange Act of 1934 or a member

bank. The loan must be evidenced by a written agreement which provides all of the following:

(a) That the loan will be fully collateralized by cash or obligations issued or guaranteed by the United States or an agency or an instrumentality of the United States, and that the collateral will be adjusted as necessary each business day during the term of the loan to maintain the required collateralization in the event of market value changes in the loaned securities or collateral.

(b) That the loan may be terminated by the company at any time, and that the borrower will return the loaned stocks or obligations or equivalent stocks or obligations within five business days after termination.

(c) That the company has the right to retain the collateral or use the collateral to purchase investments equivalent to the loaned securities if the borrower defaults under the terms of the agreement, and that the borrower remains liable for any losses and expenses incurred by the company due to default that are not covered by the collateral.

(3) A company may participate through a member bank in the United States federal reserve book-entry system, and the records of the member bank shall at all times show that the investments are held for the company or for specific accounts of the company.

(4) An investment may consist of an individual interest in a pool of obligations or a fractional interest in a single obligation if the certificate of participation or interest or the confirmation of participation or interest in the investment is issued in the name of the company or the name of the custodian bank or the nominee of either and if the interest as evidenced by the certificate or confirmation is, if held by a custodian bank, kept separate and apart from the investments of others so that at all times the participation may be identified as belonging solely to the company making the investment.

(5) Transfers of ownership of investments held as described in paragraph "a", subparagraph (1), subdivision (c), and subparagraphs (3) and (4) may be evidenced by bookkeeping entry on the books of the issuer of the investment, its transfer or recording agent, or the clearing corporation without physical delivery of certificate, if any, evidencing the company's investment.

b. Except as provided in paragraph "a", subparagraph (5), if an investment is not evidenced by a certificate, adequate evidence of the company's investment shall be obtained from the issuer or its transfer or recording agent and retained by the company, a custodian bank, or clearing corporation. Adequate evidence, for purposes of this paragraph, means a written receipt or other verification issued by the depository or issuer or a custodian bank which shows that the investment is held for the company.

4. *Investments.* Except as otherwise permitted by this section, a company organized under this chapter may invest in the following and no other:

a. *United States government obligations.* Obligations issued or guaranteed by the United States or an agency or instrumentality of the United States.

b. *Certain development bank obligations.* Obligations issued or guaranteed by the international bank for reconstruction and development, the Asian development bank, the inter-American development bank, the export-import bank, the world bank, or any United States government-sponsored organization of which the United States is a member, if the principal and interest is payable in United States dollars. A company shall not invest more than five percent of its total admitted assets in the obligations of any one of these banks or organizations, and shall not invest more than a total of ten percent of its total admitted assets in the obligations authorized by this paragraph.

c. *State obligations.* Obligations issued or guaranteed by a state of the United States, or a political subdivision of a state, or an instrumentality of a state or political subdivision of a state.

d. *Canadian government obligations.* Obligations issued or guaranteed by the Dominion of Canada, or by an agency or province of Canada, or by a political subdivision of a province, or by an instrumentality of any of those provinces or political subdivisions.

e. *Corporate and business trust obligations.* Obligations issued, assumed, or guaranteed by a corporation or business trust organized under the laws of the United States or a state of the United States, or the laws of Canada or a province of Canada, provided that a company shall not invest more than five percent of its admitted assets in the obligations of any one corporation or business trust.

f. *Stocks.* A company may invest in common stocks, common stock equivalents, mutual fund shares, securities convertible into common stocks or common stock equivalents, or preferred stocks issued or guaranteed by a corporation incorporated under the laws of the United States or a state of the United States, or the laws of Canada or a province of Canada.

(1) Stocks purchased under this section shall not exceed one hundred percent of capital and surplus. With the approval of the commissioner, a company may invest any amount in common stocks, preferred stocks, or other securities of one or more subsidiaries provided that after such investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) A company shall not invest more than ten percent of its capital and surplus in the stocks of any one corporation.

g. *Real estate mortgages.* Mortgages and other interest-bearing securities that are first liens upon real estate located within this state or any other state of the United States. However, a mortgage or other security does not qualify as an investment under this paragraph if at the date of acquisition the total indebtedness secured by the lien exceeds seventy-five percent of the value of the property that is subject to the lien. Improvements shall not be considered in estimating value unless the owner contracts to keep them insured during the life of the loan in one or more reliable fire insurance companies authorized to transact business in this state and for a sum at least equal to the excess of the loan above seventy-five percent of the value of the ground, exclusive of improvements, and unless this insurance is payable in case of loss to the company investing its funds as its interest may appear at the time of loss. For the purpose of this section, a lien upon real estate shall not be held or construed to be other than a first lien by reason of the fact that drainage or other improvement assessments have been levied against the real estate covered by the lien, whether or not the installment of the assessments have matured, but in determining the value of the real estate for loan purposes the amount of drainage or other assessment tax that is unpaid shall be first deducted.

h. *Real estate.*

(1) Except as provided in subparagraphs (2), (3) and (4) of this paragraph, a company may acquire, hold, and convey real estate only as follows:

(a) Real estate mortgaged to it in good faith as security for loans previously contracted, or for moneys due.

(b) Real estate conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

(c) Real estate purchased at sales on judgments, decrees, or mortgages obtained or made for debts previously contracted in the course of its dealings.

(d) Real estate subject to a contract for deed under which the company holds the vendor's interest to secure the payments the vendee is required to make under the contract.

All real estate specified in subdivisions (a), (b), and (c) of this subparagraph shall be sold and disposed of within three years after the company acquires title to it, or within three years after the real estate ceases to be necessary for the accommodation of the company's business, and the company shall not hold any of those properties

for a longer period unless the company elects to hold the property under another paragraph of this section, or unless the company procures a certificate from the commissioner of insurance that its interest will suffer materially by the forced sale of those properties and that the time for the sale is extended to the time the commissioner directs in the certificate.

(2) A company may acquire, hold, and convey real estate as required for the convenient accommodation and transaction of its business.

(3) A company may acquire real estate or an interest in real estate as an investment for the production of income, and may hold, improve, or otherwise develop, subdivide, lease, sell, and convey real estate so acquired directly or as a joint venture or through a limited or general partnership in which the company is a partner.

(4) A company may also acquire and hold real estate if the purpose of the acquisition is to enhance the sale value of real estate previously acquired and held by the company under this paragraph, and if the company expects the real estate so acquired to qualify under subparagraph (2) or (3) of this paragraph within three years after acquisition.

(5) A company may, after securing the written approval of the commissioner, acquire and hold real estate for the purpose of providing necessary living quarters for its employees. However, the company shall dispose of the real estate within three years after it has ceased to be necessary for that purpose unless the commissioner agrees to extend the holding period upon application by the company.

(6) A company shall not invest more than twenty-five percent of its total admitted assets in real estate. The cost of a parcel of real estate held for both the accommodation of business and for the production of income shall be allocated between the two uses annually. A company shall not invest more than ten percent of its total admitted assets in real estate held under subparagraph (3) of this paragraph.

(7) A company is not required to divest itself of real estate assets owned or contracted for prior to July 1, 1982, in order to comply with the limitations established under this paragraph.

i. Foreign investments. Obligations of and investments in foreign countries, as follows:

(1) A company may acquire and hold other investments in foreign countries that are required to be held as a condition of doing business in those countries.

(2) A company may invest not more than two percent of its admitted assets in the obligations of foreign governments, corporations, or business trusts, or in the stocks or stock equivalents of foreign corporations or business trusts and then only if the obligations, stocks, or stock equivalents are regularly traded on the New York, London, Paris, Zurich, Hong Kong, Toronto, or Tokyo stock exchange, or a similar exchange approved by the commissioner by rule or order.

j. Personal property under lease. Personal property for intended lease or rental by the company in the United States or Canada. A company shall not invest more than five percent of its admitted assets under this paragraph.

k. Collateral loans. Obligations secured by the pledge of an investment authorized by paragraphs "a" through "j", subject to the following conditions:

(1) The pledged investment shall be legally assigned or delivered to the company.

(2) The pledged investment shall at the time of purchase have a market value of at least one hundred ten percent of the amount of the unpaid balance of the obligations.

(3) The company shall reserve the right to declare the obligation immediately due and payable if at any time after purchase the security depreciates to the point where the investment would not qualify under subparagraph (2) of this paragraph. However, additional qualifying security may be pledged to allow the investment to remain qualified.

l. Options transactions.

(1) A domestic fire and casualty company may only engage in the following transactions in options on an exchange and only when in accordance with the rules of the exchange on which the transactions take place:

(a) The sale of exchange-traded covered options.

(b) The purchase of exchange-traded covered options solely in closing purchase transactions.

(2) The commissioner shall adopt rules pursuant to chapter 17A regulating option sales under this subparagraph.

m. Venture capital funds. Shares or equity interests in venture capital funds which agree to invest an amount equal to at least fifty percent of the investments by a company in small businesses having their principal offices within this state and having either more than one half of their assets within this state or more than one half of their employees employed within this state. A company shall not invest more than five percent of its capital and surplus under this paragraph. For purposes of this paragraph, "venture capital fund" means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, whose principal business is or will be the making of investments in, and the provision of significant managerial assistance to, small businesses which meet the small business administration definition of small business. "Equity interests" means limited partnership interests and other equity interests in which liability is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability.

n. Other investments.

(1) A company organized under this chapter may invest up to one percent of its admitted assets in securities or property of any kind, without restrictions or limitations except those imposed on business corporations in general.

(2) A company organized under this chapter may invest its assets in any additional forms not specifically included in paragraphs "a" through "o" when authorized by rules adopted by the commissioner.

o. Rules. The commissioner may adopt rules pursuant to chapter 17A to carry out the purposes and provisions of this section.

85 Acts, ch 136, §2 HF 460

Subsection 4, NEW paragraph m and subsequent paragraphs renumbered

515.48 Kinds of insurance.

Any company organized under this chapter or authorized to do business in this state may:

1. Insure dwelling houses, stores and all kinds of buildings and household furniture, and other property against direct or indirect or consequential loss or damage, including loss of use or occupancy and the depreciation of property lost or damaged by fire, smoke, smudge, lightning and other electrical disturbances, collision, falls, wind, tornado, cyclone, volcanic eruptions, earthquake, hail, frost, snow, sleet, ice, weather or climatic conditions, including excess or deficiency of moisture, flood, rain, or drought, rising of the waters of the ocean or its tributaries, bombardment invasion, insurrection, riot, strikes, labor disturbances, sabotage, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism or malicious mischief, and by explosion whether fire ensues or not, except explosion on risks specified in subsection 6 of this section, provided, however, that there may be insured hereunder the following:

a. Explosion of pressure vessels (not including steam boilers of more than fifteen pounds pressure) in buildings designed and used solely for residential purposes by not more than four families;

b. Explosion of any kind originating outside of the insured building or outside of the building containing the property insured; and

c. Explosion of pressure vessels which do not contain steam or which are not operated with steam coils or steam jackets; and also against loss or damage by insects or disease to farm crops or products, and loss of rental value of land used in producing such crops or products; and against accidental injury to sprinklers, pumps, water pipes, elevator tanks and cylinders, steam pipes and radiators, plumbing and its fixtures, ventilating, refrigerating, heating, lighting or cooking apparatus, or their connections, or conduits or containers of any gas, fluid or other substance; and against loss or damage to property of the insured caused by the breakage or leakage thereof; or by water, hail, rain, sleet or snow seeping or entering through water pipes, leaks or openings in buildings; and against loss of and damage to glass, including lettering and ornamentation thereon, and against loss or damage caused by the breakage of glass; and against loss or damage caused by railroad equipment, motor vehicles, airplanes, seaplanes, dirigibles or other aircraft.

d. Risks under a multiple peril nonassessable policy reasonably related to the ownership, use or occupancy of a private dwelling or dwellings.

Loss by depreciation as herein referred to may include the cost of repair and replacement.

2. Insure the fidelity of persons holding places of private or public trust, or execute any bond or other obligation whenever the performance or refraining from any contract, act, duty or obligation is required or permitted by law to be made, given, or filed, including all bonds in criminal causes, and insure the maker, drawer, drawee, or endorser of checks, drafts, bills of exchange, or other commercial paper against loss by reason of any alteration of such instruments.

3. Insure the safekeeping of books, papers, moneys, stocks, bonds and all kinds of personal property from loss, damage or destruction from any cause, and receive them on deposit.

4. Insure against loss or damage by theft, injury, sickness, or death of animals and to furnish veterinary service.

5. a. Insure any person, the person's family or dependents, against bodily injury or death by accident, or against disability on account of sickness, or accident, including the granting of hospital, medical, surgical and sick care benefits, but such benefits shall not include the furnishing or replacing in kind of whole human blood or blood products of any kind; however, this provision shall not prohibit payments of indemnity for human blood or blood products. An insurer may contract with health care services providers and offer different levels of benefits to policyholders based upon the provider contracts.

b. Insure against legal liability, and against loss, damage, or expense incident to a claim of such liability, arising out of the death or injury of any person, or arising out of injury to the economic interests of any person as the result of error or negligence in rendering expert, fiduciary or professional service.

c. Insure against loss or damage to property caused by the accidental discharge or leakage of water from automatic sprinkler system and against loss or damage by water or other fluid or substance to any property resulting from the breakage or leakage of other apparatus or of water pipes or other conduits or containers or resulting from casual water entering into cracks or openings in buildings or by seepage through building walls, but not including loss or damage resulting from flood; and including insurance against accidental injury of such sprinklers, pumps, apparatus, conduits or containers.

d. Insure against loss in consequence of accidents or casualties of any kind to employees, including workers' compensation, or to persons or property resulting from any act of an employee, or any accident or casualty to person or property, or both, occurring in or connected with the transaction of insured's business, or from the operation of any machinery connected therewith; or to persons or property for which loss the insured is legally liable including an obligation of the insurer to pay medical, hospital, surgical, funeral or other benefits irrespective of legal liability of insured.

e. Insure against liability for loss or expense arising or resulting from accidents occurring by reason of the ownership, maintenance, or use of automobiles or other conveyances including aircraft, resulting in personal injuries or death, or damage to property belonging to others, or both, and for damages to assured's own automobile or aircraft when sustained through collision with another object, and insure the assured's own automobile or aircraft against loss or damage, including the loss of use thereof, by fire, lightning, windstorm, tornado, cyclone, hail, burglary or theft, vandalism, malicious mischief, or the wrongful conversion, disposal, or concealment thereof, or any one or more of such hazards, whether said automobile or aircraft is held under conditional sale, contract, or subject to chattel mortgages.

f. Insure against loss of or damage to any property of the insured resulting from collision of any object with such property.

6. Insure against loss or injury to person or property, or both, and against loss of rents or use of buildings, and other property growing out of explosion or rupture of boilers, pipes, flywheels, engines, pressure containers, machinery, and similar apparatus of any kind including equipment used for creating, transmitting, or applying power, light, heat, steam, air conditioning or refrigeration.

7. Insure against loss or damage resulting from burglary or robbery, or attempt thereat, or larceny.

8. Insure or guarantee and indemnify merchants, traders, and those engaged in business and giving credit from loss and damage by reason of giving and extending credit to their customers and those dealing with them, which business shall be known as credit insurance. Such insurance may cover losses, less a deduction of an agreed percentage, not to exceed ten percent, representing anticipated profits, and a further deduction not to exceed thirty-three and one-third percent, on losses on credits extended to risks who have inferior ratings, and less an agreed deduction for normal loss.

Such coinsurance percentages shall be deducted in advance of the agreed normal loss from the gross covered loss sustained by the insured.

9. Insure vessels, boats, cargoes, goods, merchandise, freights, specie, bullion, jewelry, jewels, profits, commissions, bank notes, bills of exchange, and other evidence of debt, bottomry, and respondentia interest and every insurance appertaining to or connected with any or all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment, or reshipment, incident thereto, including marine builder's risks; and for loss or damage for which the insured is legally liable to persons or property in connection with or appertaining to marine, inland marine, transit, or transportation insurance, including liability for loss of or damage arising out of or in connection with the construction, repair, maintenance, storage or use of the subject matter of such insurance; and insure against loss or damage to silverware, musical instruments, furs, garments, fine arts, precious stones, jewels, jewelry, gold, silver, and other precious metals or valuable items whether used in business, transportation, trade or otherwise; and insure automobiles, airplanes, seaplanes, dirigibles or other aircraft, whether stationary or being operated under their own power, which include all or any of the hazards of fire, explosion, transportation, collision, loss by legal liability for damage to property resulting from the maintenance and use of automobiles, airplanes, seaplanes, dirigibles, or other aircraft, and loss by burglary or theft, vandalism, malicious mischief, or the wrongful conversion, disposal or concealment of automobiles whether held under conditional sale, contract, or subject to chattel mortgage, or any one or more of such hazards, including insurance against loss by reason of bodily injury to the person including medical, hospital and surgical expense irrespective of legal liability of insured.

10. Insure any additional risk not specifically included within any of the forego-

ing classes, which is a proper subject for insurance, is not prohibited by law or contrary to sound public policy, and which, after public notice and hearing, is specifically approved by the commissioner of insurance, except title insurance or insurance against loss or damage by reason of defective title, encumbrances or otherwise. When such additional kind of insurance is approved by the commissioner, the commissioner shall designate within which classification of risks provided for in section 515.49 it shall fall.

85 Acts, ch 239, §6 HF 570
Subsection 5, paragraph a amended

515.65 Certificate refused—administrative penalty.

The commissioner of insurance shall withhold the commissioner's certificate or permission of authority to do business from a company neglecting or failing to comply with this chapter. In addition, a company organized or authorized under this chapter which fails to file the annual statement referred to in section 515.63 in the time required shall pay and forfeit an administrative penalty in an amount of three hundred dollars to be collected in the name of the state for the use of the state general fund. The company's right to transact further new business in this state shall immediately cease until the company has fully complied with this chapter.

85 Acts, ch 228, §6 SF 502
Section amended

515.68 Changes in forms of statements.

The commissioner may from time to time make changes in the forms of statements required by this chapter which seem to the commissioner best adapted to elicit from the companies a true exhibit of their condition in respect to the several points enumerated in this chapter.

85 Acts, ch 228, §7 SF 502
Section amended

CHAPTER 518A

MUTUAL FIRE, TORNADO, HAILSTORM AND OTHER ASSESSMENT INSURANCE ASSOCIATIONS

518A.18 Annual report.

An association doing business under this chapter shall, on or before March 1 of each year, report to the commissioner of insurance the facts required of domestic insurance companies organizing under chapter 515, which are applicable to this chapter. These reports shall be tabulated and published by the commissioner of insurance in the annual report of insurance.

85 Acts, ch 228, §8 SF 502
Section amended

CHAPTER 523A

PREARRANGED FUNERAL PLANS

523A.2 Deposit of funds—records—examinations.

1. a. All funds held in trust under section 523A.1 shall be deposited in an insured bank, savings and loan association, or credit union authorized to conduct business in this state within thirty days after the receipt of the funds and shall be held in a separate account or in one common trust fund under a trust agreement in the name of the depositor in trust for the designated beneficiary until released under either of the conditions provided in section 523A.1.

b. The seller under an agreement referred to in section 523A.1 shall maintain accurate records of all receipts, expenditures, interest or earnings, and disbursements relating to funds held in trust, and shall make these records available to the county attorney of the county in which the principal place of business of the seller is located for examination at any reasonable time upon request.

c. The seller under an agreement referred to in section 523A.1 shall file not later than March 1 of each year with the county recorder of the county in which the seller maintains its principal place of business a copy of each trust agreement created as required by paragraph "a" of this subsection for sales made during the previous calendar year.

d. The seller under an agreement referred to in section 523A.1 shall file notice with the county recorder for the county in which the trust agreement is filed of each receipt of funds held in trust under section 523A.1. This notice shall be filed on forms furnished by the seller, and shall be filed not later than March 1 of each year. Each notice shall contain the required information for all receipts of the seller during the previous calendar year.

e. A financial institution referred to in paragraph "a" of this subsection shall file notice with the county recorder for the county in which the trust agreement is filed of all funds deposited under the trust agreement. This notice shall be on forms furnished by the seller and shall be filed not later than March 1 of each year. Each notice shall contain the required information for all deposits made during the previous calendar year. The seller shall furnish the financial institution with the appropriate forms.

f. Notwithstanding chapter 22, all records maintained by a county recorder under this subsection shall be confidential and shall not be made available for inspection or copying by any person except the county attorney or a representative of the county attorney.

2. In addition to complying with subsection 1, each seller under an agreement referred to in section 523A.1 shall file annually with the county attorney of the county in which the seller maintains its principal place of business a written statement that is signed by the seller and notarized and that contains all of the following information:

a. Identification of each financial institution in which trust funds are held under subsection 1, paragraph "a", and a listing of each trust agreement governing funds held in the respective financial institutions and the date each agreement was filed with the county recorder.

b. Authorization for the county attorney or a designee to investigate, audit, and verify all funds, accounts, safe-deposit boxes and other evidence of trust funds held by or in a financial institution under paragraph "a" of this subsection.

3. The insurance department shall adopt rules under chapter 17A specifying the form, content and cost of the forms for the notices and disclosures required by this section, and shall sell blank forms at that cost to any person on request.

4. If a seller under an agreement referred to in section 523A.1 ceases to do business, whether voluntarily or involuntarily, all funds held in trust under section 523A.1, including accrued interest or earnings, shall be repaid to the purchaser under the agreement.

5. The county attorney of the county in which a sale referred to in section 523A.1 takes place may require the performance of an audit of the seller's business by a certified public accountant if the county attorney receives reasonable evidence that the seller is not complying with this chapter. The audit shall be paid for by the seller, and a copy of the report of audit shall be delivered to the county attorney and to the seller.

6. A seller or financial institution that knowingly fails to comply with any requirement of this section or that knowingly submits false information in a document or notice required by this section commits a serious misdemeanor.

CHAPTER 524

IOWA BANKING LAW

524.103 Definitions.

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

1. "*Account*" means any account with a state bank and includes a demand, time or savings deposit account or any account for the payment of money to a state bank.

2. "*Agreement for the payment of money*" means a monetary obligation, other than an obligation in the form of an evidence of indebtedness or an investment security; including, but not limited to, amounts payable on open book accounts receivable and executory contracts and rentals payable under leases of personal property.

3. "*Articles of incorporation*" means the original or restated articles of incorporation and all amendments thereto and includes articles of merger.

4. "*Assets*" means all the property and rights of every kind of a state bank.

5. "*Bank*" means any person engaged in the business of banking, authorized by law to receive deposits and subject to supervision by banking authorities of the United States or of any state.

6. "*Business of banking*" means the business generally done by banks.

7. "*Capital*" means the sum of the par value of the preferred and common shares of a state bank issued and outstanding.

8. "*Capital structure*" means the capital, surplus, and undivided profits of a state bank and shall include an amount equal to the sum of any capital notes and debentures issued and outstanding pursuant to section 524.404.

9. "*Customer*" means any person having an account with a state bank. For the purpose of this chapter, a government or governmental body or entity may be a customer.

10. "*Evidence of indebtedness*" means a note, draft or similar negotiable or nonnegotiable instrument.

11. "*Fiduciary*" means an executor, administrator, guardian, conservator, receiver, trustee or one acting in a similar capacity.

12. "*Insolvent*" means the inability of a state bank to pay its debts and obligations as they become due in the ordinary course of its business.

13. "*Insured bank*" means a state bank the deposits of which are insured in accordance with the provisions of the federal deposit insurance act.

14. "*Municipal corporation*" means an incorporated city.

15. "*Person*" means an individual, a corporation (domestic or foreign), a partnership, an association, a trust or a fiduciary.

16. "*Private bank*" means an individual, partnership or other unincorporated association engaged in the business of banking to the extent provided for and limited by sections 524.1701 and 524.1702 and which was lawfully engaged in the business of banking in this state prior to April 19, 1919.

17. "*Shareholder*" means one who is a holder of record of shares in a state bank.

18. "*Shares*" means the units into which the proprietary interests in a state bank are divided.

19. "*State bank*" means any bank incorporated pursuant to the provisions of this chapter after January 1, 1970, and any "state bank" or "savings bank" incorporated pursuant to the laws of this state and doing business as such upon January 1, 1970.

20. "*Surplus*" means the aggregate of the amount originally paid in as required by section 524.402, subsection 1, any amounts transferred to surplus pursuant to section 524.402, subsection 2, and any amounts subsequently designated as such by action of the board of directors of the state bank.

21. "*Superintendent*" means the superintendent of banking of this state.

22. "*Undivided profits*" means the accumulated undistributed net profits of a

state bank, including any residue from the fund established pursuant to section 524.403, after:

- a. Payment or provision for payment of taxes and expenses of operations.
 - b. Transfers to reserves allocated to a particular asset or class of assets.
 - c. Losses estimated or sustained on a particular asset or class of assets in excess of the amount of reserves allocated therefor.
 - d. Transfers to surplus and capital.
 - e. Amounts declared as dividends to shareholders.
23. "Unincorporated area" means a village within which a state bank or national bank has its principal place of business.
24. "Administrator" means the person designated in section 537.6103.
25. "Supervised financial organization" as defined and used in the Iowa consumer credit code includes a person organized pursuant to this chapter.
26. "Agricultural credit corporation" means as defined in section 535.12, subsection 4.
27. "Bankers' bank" means a bank which is organized under the laws of any state or under federal law, and whose shares are owned exclusively by other banks or by a bank holding company whose shares are owned exclusively by other banks, except for directors' qualifying shares when required by law, and which engages exclusively in providing services for depository institutions and officers, directors and employees of those depository institutions.

85 Acts, ch 252, §32 SF 577
NEW subsection 27

524.109 Bankers' bank authorized.

A state bank may be organized under this chapter as a bankers' bank. The bankers' bank is subject to all rights, privileges, duties, restrictions, penalties, liabilities, conditions and limitations applicable to state banks generally except as limited in the definition of bankers' bank contained in section 524.103, subsection 27. However, a bankers' bank shall have the same powers as those granted by federal law and regulation to a national bank organized as a bankers' bank under 12 U.S.C. § 27.

85 Acts, ch 252, §33 SF 577
NEW section

524.312 Location of state bank—exceptions.

1. A state bank originally incorporated pursuant to this chapter shall have its principal place of business within the confines of a municipal corporation. The existence of a state bank shall not, however, be affected by the subsequent discontinuance of the municipal corporation. A state bank existing and operating on January 1, 1970, which does not have its principal place of business within the confines of a municipal corporation, may renew its corporate existence pursuant to section 524.106 without regard to this section and may also operate as a bank or convert to and operate as a bank office when acquired by or merged into another state bank and approved by the superintendent.

2. A state bank may, with the prior written approval of the superintendent, change the location of its principal place of business to a new location. A change of location shall be limited to another location in the same municipal corporation, to a location in a municipal corporation in the same county or to a municipal corporation in counties surrounding and contiguous to or touching or cornering on the county in which the state bank is located. If a state bank has its principal place of business in an unincorporated area, the superintendent may authorize a change of location of its principal place of business to a new location within the same unincorporated area as well as to any location referred to in the preceding sentence.

3. A state bank approved under the provisions of section 524.305, subsection 6, shall not commence its business at any location other than within a municipal corporation or unincorporated area in which was located the principal place of

business or an office of the bank the condition of which was the basis for the superintendent authorizing incorporation of the new state bank.

85 Acts, ch 13, §1 SF 286
Subsection 1 amended

524.901 Investments.

1. A state bank may invest without limitation for its own account in the following bonds or securities:

a. Obligations of the United States and bonds and securities with respect to which the payment of principal and interest is fully and unconditionally guaranteed by the United States.

b. Obligations issued by any or all of the federal land banks, any or all of the federal intermediate credit banks, any or all of the banks for co-operatives, and any or all of the federal home loan banks, organized under the laws of the United States.

c. Obligations issued by the federal national mortgage association, under the laws of the United States.

d. Any other bonds or securities which are the obligations of or the payment of principal and interest of which is fully and unconditionally guaranteed by a federal reserve bank or by any department, bureau, board, commission, agency or establishment of the United States, or any corporation owned directly or indirectly by the United States.

e. General obligations of the state of Iowa and of political subdivisions thereof.

2. A state bank may invest for its own account in other readily marketable bonds or securities, with investment characteristics as defined by the superintendent by general regulation applicable to all state banks, subject to the following limitations:

a. The total amount of the bonds or securities of any one issuer or obligor, other than revenue or improvement bonds issued by a municipality, the Iowa finance authority, or the Iowa family farm development authority and subjected to separate investment limits under paragraph "b", "c", "d", "f", or "g" of this subsection, shall not exceed twenty percent of the capital and surplus of the state bank.

b. The total amount of special assessment improvement or refunding bonds which have been issued by a municipality under authority of section 384.68 and which are repayable from the proceeds of any one levy shall not exceed twenty percent of the capital and surplus of the state bank.

c. The total amount of revenue bonds and pledge orders which have been issued by a municipality under authority of chapter 384, division V, and which are repayable from the revenues of any one city utility, combined utility system, city enterprise or combined city enterprise shall not exceed twenty percent of the capital and surplus of the state bank.

d. The total amount of revenue bonds issued by a municipality pursuant to section 419.2 which have been issued on behalf of any one lessee, as defined in section 419.1, or which are guaranteed by any one guarantor, or which are issued on behalf of or guaranteed by a corporation, a ten percent or greater ownership interest in which is held by or in common with a lessee or guarantor, or any combination of the foregoing whereby the municipality could receive revenues for payment of such bonds from any one person or any group of persons under common control, shall not exceed twenty percent of the capital and surplus of the state bank.

e. No bond or security shall be eligible for investment by a state bank within this subsection if the bond or security has been in default either as to principal or interest at any time within five years prior to the date of purchase.

f. The total amount of bonds or notes issued by the Iowa family farm development authority pursuant to chapter 175 which have been issued on behalf of any one beginning farmer, as defined in section 175.2, subsection 5, and the proceeds of which have been loaned to that beginning farmer shall not exceed twenty percent of the capital and surplus of the state bank.

g. The total amount of bonds or notes issued by the Iowa finance authority

pursuant to chapter 220 which have been issued on behalf of any one small business as defined in section 220.1, subsection 28, or any one group home referred to in section 220.1, subsection 11, paragraph "a," and the proceeds of which have been loaned to that small business or group home shall not exceed twenty percent of the capital and surplus of the bank.

h. The total amount of bonds or notes issued by the Iowa family farm development authority pursuant to chapter 175 which have been issued on behalf of any one owner or operator of agricultural land within the state, as provided for in section 175.34, and the proceeds of which have been loaned to that owner or operator, shall not exceed twenty percent of the capital and surplus of the state bank for each borrower.

3. A state bank shall not, directly or indirectly, invest for its own account in the shares of any corporation except:

a. Shares in a federal reserve bank.

b. Shares in the federal national mortgage association.

c. When approved by the superintendent, shares and obligations of a corporation engaged solely in making loans for agricultural purposes eligible to discount or sell loans to a federal intermediate credit bank, commonly known as an agricultural credit corporation, in amounts not to exceed twenty percent of the capital and surplus of the state bank.

d. Shares in a corporation which the state bank is authorized to acquire and hold pursuant to section 524.803, subsection 1, paragraphs "c", "d" and "e".

e. Shares in an economic development corporation organized under chapter 496B to the extent authorized by and subject to the limitations of such chapter.

f. When approved by the superintendent, shares of a small business investment company as defined by the laws of the United States, except that in no event shall any such state bank hold shares in small business investment companies in an amount aggregating more than two percent of its capital and surplus.

g. Shares or equity interests in venture capital funds which agree to invest an amount equal to at least fifty percent of the state bank's investment in small businesses having their principal offices within this state and having either more than one half of their assets within this state or more than one half of their employees employed within this state. A state bank shall not invest more than a total of five percent of its capital and surplus in investments permitted under this paragraph and paragraph "h". For purposes of this paragraph, "venture capital fund" means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, whose principal business is or will be the making of investments in, and the provision of significant managerial assistance to, small businesses which meet the small business administration definition of small business. "Equity interests" means limited partnership interests and other equity interests in which liability is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability.

h. Shares or equity interests in small businesses having their principal offices within this state and having either more than one half of their assets within this state or more than one half of their employees employed within this state. The total amount of a state bank's investments under this paragraph and paragraph "g" shall not exceed five percent of the state bank's capital and surplus. The investment of a state bank in a small business under this paragraph shall be included with the obligations of the small business to the state bank that are incurred as a result of the exercise by the state bank of the powers conferred in section 524.902 for the purpose of determining the total obligations of the small business to the state bank at any one time under section 524.904. A state bank shall not invest in more than twenty percent of the total capital and surplus of any one small business under this paragraph. For purposes of this paragraph, "small business" means a corporation,

partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, which meets the appropriate small business administration definition of small business and which is principally engaged in the development or exploitation of inventions, technological improvements, new processes, or other products not previously generally available in this state or other investments which provide an economic benefit to the state; and "equity interests" means limited partnership interests and other equity interests in which liability is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability.

4. A state bank may invest in participation certificates issued by one or more production credit associations chartered under the laws of the United States in an amount which does not exceed, in the aggregate with respect to all such associations, twenty percent of the capital and surplus of the state bank.

5. A state bank may invest for its own account in the shares of a bankers' bank or in the shares of a bank holding company which owns a bankers' bank. A state bank shall not invest in more than one bankers' bank or in more than one bank holding company which owns a bankers' bank. A state bank shall not invest an amount greater than ten percent of its capital and surplus in the shares of a bankers' bank or in the shares of a bank holding company which owns a bankers' bank. A state bank shall not invest any amount if after the investment the state bank would own or control more than five percent of any class of the voting shares of a bankers' bank or a bank holding company which owns a bankers' bank.

85 Acts, ch 136, § 3 HF 460; 85 Acts, ch 252, § 35 SF 577
 Subsection 2 editorially corrected (Iowa finance authority)
 Subsection 3, NEW paragraphs g and h
 NEW subsection 5

524.910 Property acquired to satisfy debts previously contracted.

A state bank may acquire property of any kind to secure, protect or satisfy a loan or investment previously made in good faith. Property acquired pursuant to this section shall be held and disposed of subject to the following conditions and limitations:

1. Shares in a corporation and other personal property, the acquisition of which is not otherwise authorized by this chapter, shall be sold or otherwise disposed of within six months unless the time is extended by the superintendent.

2. Real property purchased by a state bank at sales upon foreclosure of mortgages or deeds of trust owned by it, or acquired upon judgments or decrees obtained or rendered for debts due it, or real property conveyed to it in satisfaction of debts previously contracted in the course of its business, or real property obtained by it through redemption as a junior mortgagee or judgment creditor, shall be sold or otherwise disposed of by the state bank within five years after title is vested in the state bank, unless the time is extended by the superintendent. Agricultural land held by a state bank pursuant to this subsection shall be valued on the books of the bank at a value determined by obtaining the per acre average of the valuations for the current year and the four previous years for agricultural land in the county in which the agricultural land is located as published by Iowa state university of science and technology. If an appraisal conducted by an independent real estate appraiser is available for the current year, the five-year county average shall be adjusted by either adding or subtracting from the five-year average the percentage by which the particular farm's current appraised value exceeds or is less than the current year's county average value. To the extent permitted by federal law, national banks may value agricultural land on the same basis as state banks. Before the state bank sells or otherwise disposes of agricultural land held pursuant to this subsection, the state bank shall first offer the prior owner the opportunity to repurchase the agricultural land on the terms the state bank proposes to sell or dispose of the agricultural land.

85 Acts, ch 252, § 34 SF 577
 Subsection 2 amended

524.1005 Trust companies operating on January 1, 1970.

A trust company existing and operating on January 1, 1970 and which was authorized to act only as a trust company may continue to act only in a fiduciary capacity according to the terms of its articles of incorporation. The articles of incorporation of the trust company may be renewed in perpetuity. When applicable, this chapter applies to the operations of the trust company. Section 524.107, subsection 2, regarding the use of the word "trust" does not apply to a trust company subject to this section.

85 Acts, ch 25, §1 HF 395
Section struck and rewritten

524.1202 Location of offices.

The location of any new bank office, or any change of location of a previously established bank office, shall be subject to the approval of the superintendent. No state bank shall establish a bank office outside the boundaries of the counties contiguous to or cornering upon the county in which the principal place of business of the state bank is located.

1. Except as otherwise provided in subsection 2 of this section, no state bank shall establish a bank office outside the corporate limits of a municipal corporation or in a municipal corporation in which there is already an established state or national bank or office, however the subsequent chartering and establishment of any state or national bank, through the opening of its principal place of business within the municipal corporation where the bank office is located, shall not affect the right of the bank office to continue in operation in that municipal corporation. The existence and continuing operation of a bank office shall not be affected by the subsequent discontinuance of a municipal corporation pursuant to the provisions of sections 368.11 to 368.22. A bank office existing and operating on July 1, 1976, which is not located within the confines of a municipal corporation, shall be allowed to continue its existence and operation without regard to this subsection.

2. *a.* A state bank may establish bank offices within the municipal corporation or urban complex in which the principal place of business of the bank is located, subject to the following conditions and limitations:

(1) If the municipal corporation or urban complex has a population of one hundred thousand or less according to the most recent federal census, the state bank shall not establish more than three bank offices.

(2) If the municipal corporation or urban complex has a population of more than one hundred thousand but not more than two hundred thousand according to the most recent federal census, the state bank shall not establish more than four bank offices.

(3) If the municipal corporation or urban complex has a population of more than two hundred thousand according to the most recent federal census, the state bank shall not establish more than five bank offices.

b. For purposes of this subsection, "urban complex" means the geographic area bounded by the corporate limits of two or more municipal corporations, each of which being contiguous to or cornering upon at least one of the other municipal corporations within the complex. A state bank located in a municipal corporation or urban complex which is located on a boundary of this state and contiguous to a municipal corporation in another state may have one bank office in addition to the number of bank offices permitted by paragraph "a"; provided that nothing contained in this paragraph authorizes a state bank to establish a bank office outside of the boundaries of this state.

c. One such facility located in the proximity of a state bank's principal place of business may be found by the superintendent to be an integral part of the principal place of business, and not a bank office within the meaning of this section. This paragraph does not authorize more than one facility to be found to be an integral part of a bank's principal place of business.

d. One such facility that is located on the same property, or that is adjacent to or cornering upon the property on which an office of a bank is located, or that is separated from being adjacent to or cornering upon the property only by a street, alley, or other publicly owned right of way, may be found by the superintendent to be an integral part of that office location and not a separate bank office within the meaning of this section. This paragraph does not authorize more than one facility to be found to be an integral part of a bank office.

3. Notwithstanding subsection 1, if the assets of a state or national bank in existence on January 1, 1985 are transferred to a different state or national bank in the state which is located in the same county or a county contiguous to or cornering upon the county in which the principal place of business of the acquired bank is located, the resulting or acquiring bank may convert to and operate as its bank office any one or more of the business locations occupied as the principal place of business or as a bank office of the bank whose assets are so acquired. The limitations on bank office locations contained in unnumbered paragraph 1 of this section, and the limitation on the number of bank offices within the municipality or urban complex of the resulting or acquiring bank contained in subsection 2 shall be applicable to any bank office otherwise authorized by this subsection. A bank office established under the authority of this subsection is subject to the approval of the superintendent, shall be operated in accordance with this chapter relating to the operation of bank offices, and may be augmented by an integral facility when approved under subsection 2, paragraph "d".

85 Acts, ch 252, §36 SF 577
NEW subsection 3

524.1312 Distribution of assets upon insolvency.

In the distribution of the assets of a state bank which is dissolved under this chapter, or by any other method, the order of payment of the liabilities of the state bank, in the event that its assets are insufficient to pay in full all its liabilities for which claims are made, shall be:

1. The payment of costs and expenses of the administration of the dissolution.
2. The payment of claims for public funds deposited pursuant to chapter 453 and the payment of claims which are given priority by applicable statutes. If the assets are insufficient for payment of the claims in full, then priority shall be determined as specified by the statutes or, in the absence of conflicting provisions, on a pro rata basis.
3. Amounts due to depositors.
4. The payment of all other claims pro rata, exclusive of claims on capital notes and debentures.
5. The payment of capital notes and debentures.

85 Acts, ch 194, §9 SF 296
Subsection 2 struck and rewritten

CHAPTER 533

CREDIT UNIONS

533.4 Powers.

A credit union shall have the following powers to:

1. Receive the savings of its members either as payment on shares or as deposits, including the right to conduct Christmas clubs, vacation clubs, and other such thrift organizations within the membership.
2. Make loans to members for provident or productive purposes.
3. Make loans to a co-operative society or other organization having membership in the credit union.

4. Deposit in state and national banks.
5. Make investments in:
 - a. Time deposits in national banks and in state banks, the deposits of which are insured by the federal deposit insurance corporation.
 - b. Obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by the United States government or any agency thereof; or any trust or trusts established for investing directly or collectively in the same.
 - c. General obligations of the state of Iowa and any subdivision thereof.
 - d. Paid-up deposits of savings and loan associations, the deposits of which are insured by the federal savings and loan insurance corporation.
 - e. Purchase of notes of liquidating credit unions with the approval of the administrator.
 - f. Shares and deposits in other credit unions.
 - g. Shares, stocks, loans, and other obligations or a combination thereof of an organization, corporation, or association, provided the membership or ownership, as the case may be, of the organization, corporation, or association is primarily confined or restricted to credit unions or organizations of credit unions and provided that the purpose of the organization, corporation, or association is primarily designed to provide services to credit unions, organizations of credit unions, or credit union members. However, the aggregate amount invested pursuant to this subsection shall not exceed five percent of the assets of the credit union.
 - h. Obligations issued by federal land banks, federal intermediate credit banks, banks for cooperatives, or any or all of the federal farm credit banks.
6. Borrow money as hereinafter indicated.
7. Assess fines as may be provided by the bylaws for failure to make repayments on loans and payments on shares when due, provided no such fine shall exceed one percent per month on amounts in arrears or five cents, whichever is the larger.
8. Sue and be sued.
9. Make contracts.
10. Purchase, hold and dispose of property necessary and incidental to its operation provided, however, that any property acquired through foreclosure shall be disposed of within a period not to exceed ten years.
11. Exercise such incidental powers as may be necessary or requisite to enable it to carry on effectively the business for which it is incorporated.
12. Apply for share account and deposit account insurance which meets the requirements of this chapter and take all actions necessary to maintain an insured status.
13. Upon the approval of the administrator, serve an employee group having an insufficient number of members to form or conduct the affairs of a separate credit union. There shall be no requirement for the existence of a common bond relationship between the said small employee group and the credit union effecting such service.
14. Deposit with a credit union which has been in existence for not more than a year an amount not to exceed twenty-five percent of the assets of the new credit union, but only one credit union may at any time make the deposit.
15. Acquire the conditional sales contracts, promissory notes or other similar instruments executed by its members, but the rate of interest existing on the instrument shall not exceed the highest rate charged by the acquiring credit union on its outstanding loans.
16. Sell, participate in, or discount the obligations of its members without recourse. Purchase the obligations of Iowa credit union members, provided the obligations meet the requirements of this chapter.
17. Subject to the prior approval of the administrator, acquire and hold shares in a corporation engaged in providing and operating facilities through which a credit

union and its members may engage, by means of either the direct transmission of electronic impulses to and from the credit union or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the credit union, in transactions in which such credit union is otherwise permitted to engage pursuant to applicable law.

18. Engage in any transaction otherwise permitted by this chapter and applicable law, by means of either the direct transmission of electronic impulses to or from the credit union or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the credit union. Subject to the provisions of chapter 527, a credit union may utilize, establish or operate, alone or with one or more other credit unions, banks incorporated under the provisions of chapter 524 or federal law, savings and loan associations incorporated under the provisions of chapter 534 or federal law, corporations licensed under chapter 536A, or third parties, the satellite terminals permitted under chapter 527, by means of which the credit union may transmit to or receive from any member electronic impulses constituting transactions pursuant to this subsection. However, such utilization, establishment, or operation shall be lawful only when in compliance with chapter 527. Nothing in this subsection shall be construed as authority for any person to engage in transactions not otherwise permitted by applicable law, nor shall anything in this subsection be deemed to repeal, replace or in any other way affect any applicable law or rule regarding the maintenance of or access to financial information maintained by any credit union.

19. Establish one or more offices other than its main office, subject to the approval and regulation of the administrator, if such offices shall be reasonably necessary to furnish service to its membership. A credit union office may furnish all credit union services ordinarily furnished to the membership at the principal place of business of the credit union which operates the office. All transactions of a credit union office shall be transmitted daily to the principal place of business of the credit union which operates the office, and no current recordkeeping functions shall be maintained at a credit union office except to the extent the credit union which operates the office deems it desirable to keep at the office duplicates of the records kept at the principal place of business of the credit union. The central executive and official business functions of a credit union shall be exercised only at the principal place of business.

A credit union office shall not be opened without the prior written approval of the administrator. Upon application by a credit union in the form prescribed by the administrator, the administrator shall determine, after notice and hearing, if the establishment of the credit union office is reasonably necessary for service to, and is in the best interests of, the members of the credit union.

20. Purchase insurance or make the purchase of insurance available for members.

21. A credit union may take a second mortgage on real property to secure a loan made by the credit union, pursuant to rules adopted by the administrator.

22. Charge fees and penalties and apply them to income.

23. *a.* Act as agent of the federal government when requested by the secretary of the United States department of treasury; perform such services as may be required in connection with the collection of taxes and other obligations due the United States and the lending, borrowing and repayment of money by the United States; and be a depository of public money when designated for that purpose.

b. Act as agent of the state when requested by the treasurer of state; perform such services as may be required in connection with the collection of taxes and other obligations due the state and the lending, borrowing and repayment of money by the state; and be a depository of public money when designated for that purpose.

24. Receive public funds pursuant to chapter 453.

25. Engage in any activity authorized by the administrator which would be

permitted if the credit union were federally chartered and which is consistent with state law.

26. Pledge its assets to secure the deposit of public funds.

85 Acts, ch 242, §1, 2 HF 196
Subsection 23 struck and rewritten
NEW subsection 26

533.12 Capital.

1. The capital of a credit union shall consist of the payments that have been made to it by the several members thereof on shares. The credit union shall have a lien on the shares and deposits of a member for any sum due to the credit union from the member or for any loan endorsed by the member. A credit union may charge an entrance fee as may be provided by the bylaws.

2. A credit union may establish an equity share having a par value not to exceed one hundred dollars which shall be a part of the capital of the credit union and shall not be withdrawn or transferred except upon termination of membership in the credit union. At the option of the credit union, the equity share may earn a dividend and may be insured.

85 Acts, ch 242, §3 HF 196
Section amended

533.14 Interest rates.

1. Interest rates on loans made by a credit union, other than loans secured by a mortgage or deed of trust which is a first lien upon real property, shall not exceed the finance charge permitted in sections 537.2401 and 537.2402 on consumer loans. Interest rates on business loans shall not exceed the finance charge permitted by section 535.2.

2. With respect to a loan secured by a mortgage or deed of trust which is a first lien upon real property, a credit union shall not charge a rate of interest which exceeds the maximum rate permitted by section 535.2.

3. The provisions of this section do not apply to a loan which is subject to section 682.46.

85 Acts, ch 242, §4 HF 196
Subsection 1 amended

533.16 Loans.

1. A credit union may loan to a member for a provident or productive purpose. Loans are subject to the conditions contained in this section and in the bylaws. A loan may be repaid by the borrower, in whole or in part, any day the office of the credit union is open for business. A loan shall be pursuant to an application with supportive credit information. The administrator may adopt rules requiring periodic updating of credit or financial information for all loans or for classes of loans designated in the rules.

2. A credit union shall not lend in the aggregate a member more than one hundred dollars or ten percent of its member savings, whichever is greater.

3. A director of a credit union may borrow from that credit union under the provisions of this chapter, but the loan shall not be made on terms more favorable than those extended to other members. A director of a credit union may borrow from that credit union to the extent and in the amount of such director's holdings in the credit union in shares and deposits. A director desiring to borrow from the credit union an amount in excess of the director's holdings in shares and deposits shall first submit application for approval by the board of directors at a regular or special meeting. The director making application for the loan shall not be in attendance at the time the board of directors considers the application and shall not take part in the consideration. Prior to consideration of such loan, the director must have submitted to the board a detailed current financial statement. The aggregate amount of director loans shall not exceed twenty percent of the assets of the credit union.

4. *a. Rules for loans.* A credit union may make permanent loans, construction loans, or combined construction and permanent loans, secured by liens on real property, as authorized by rules adopted by the administrator under chapter 17A. These rules shall contain provisions as necessary to ensure the safety and soundness of these loans, and to ensure full and fair disclosure to borrowers of the effects of provisions in agreements for these loans, including provisions permitting change or adjustment of any terms of a loan, provisions permitting, requiring, or prohibiting repayment of a loan on a basis other than of equal periodic installments of interest plus principal over a fixed term, provisions imposing penalties for the borrower's noncompliance with requirements of a loan agreement, or provisions allowing or requiring a borrower to choose from alternative courses of action at any time during the effectiveness of a loan agreement.

b. Protective payments—escrow accounts. A credit union may include in the loan documents signed by the borrower a provision requiring the borrower to pay the credit union each month in addition to interest and principal under the note an amount equal to one-twelfth of the estimated annual real estate taxes, special assessments, hazard insurance premium, mortgage insurance premium, or any other payment agreed to by the borrower and the credit union in order to better secure the loan. The credit union shall be deemed to be acting in a fiduciary capacity with respect to these funds. A credit union receiving funds in escrow pursuant to an escrow agreement executed on or after July 1, 1982 in connection with a loan as defined in section 535.8, subsection 1, shall pay interest to the borrower on those funds, calculated on a daily basis, at the rate the credit union pays to its members on ordinary savings deposits. A credit union which maintains an escrow account in connection with any loan authorized by this subsection, whether or not the mortgage has been assigned to a third person, shall each year deliver to the mortgagor a written annual accounting of all transactions made with respect to the loan and escrow account.

c. Marketability reports. Section 524.905, subsection 4, applies to the credit union in the same manner as if the credit union is a bank within the meaning of that provision.

5. *Escrow reports.* A credit union may act as an escrow agent with respect to real property that is mortgaged to the credit union, and may receive funds and make disbursements from escrowed funds in that capacity. The credit union shall be deemed to be acting in a fiduciary capacity with respect to these funds. A credit union which maintains such an escrow account, whether or not the mortgage has been assigned to a third person, shall deliver to the mortgagor a written summary of all transactions made with respect to the loan and escrow accounts during each calendar year. However, the mortgagor and mortgagee may, by mutual agreement, select a fiscal year reporting period other than the calendar year.

The summary shall be delivered or mailed not later than thirty days following the year to which the disclosure relates. The summary shall contain all of the following information:

- a. The name and address of the mortgagee.
- b. The name and address of the mortgagor.
- c. A summary of escrow account activity during the year as follows:
 - (1) The balance of the escrow account at the beginning of the year.
 - (2) The aggregate amount of deposits to the escrow account during the year.
 - (3) The aggregate amount of withdrawals from the escrow account for each of the following categories:
 - (a) Payments against loan principal.
 - (b) Payments against interest.
 - (c) Payments against real estate taxes.
 - (d) Payments for real property insurance premiums.
 - (e) All other withdrawals.

- (4) The balance of the escrow account at the end of the year.
- d. A summary of loan principal for the year as follows:
 - (1) The amount of principal outstanding at the beginning of the year.
 - (2) The aggregate amount of payments against principal during the year.
 - (3) The amount of principal outstanding at the end of the year.
6. Loans which are not secured by real property shall be subject to the following conditions:
 - a. Loans to any one member which in the aggregate exceed the unsecured loan limit established by the board of directors of a credit union shall be secured by one or more cosigners or guarantors, or, by a first lien on collateral having a value which is approximately equal to the amount in excess of such unsecured loan limit. Every cosigner or guarantor shall furnish the credit union with evidence of financial responsibility.
 - b. Nothing contained in this subsection shall be deemed to preclude a credit committee or loan officer from requiring security for any loan.
 - c. A credit union may make loans insured under the provisions of Title XX, United States Code, section 1071 to section 1087 or similar state programs, loans insured by the federal housing administration under Title XII, United States Code, section 1703, and loans to families of low or moderate income as a part of programs authorized in sections 220.1 to 220.36.
 - d. The restrictions and limitations contained in this subsection shall not apply to loans made to a member credit union by a corporate central credit union.
7. Nothing contained in this section shall prevent the renewal or extension of loans.
8. The administrator may impose a penalty on a credit union for each loan made in violation of this section. If a credit union, after notice in writing, and opportunity for hearing, fails to satisfactorily resolve the matter within sixty days from receipt of such notice, the administrator may impose a fine against such credit union in an amount not to exceed one hundred dollars per day per violation for each day the violation remains unresolved.
9. The provisions of the Iowa consumer credit code shall apply to consumer loans made by a credit union, and a provision of that code shall supersede any conflicting provision of this chapter with respect to a consumer loan.
10. If a member elects to repay a loan secured by a mortgage or deed of trust upon real property which is a single-family or a two-family dwelling or agricultural land at a date earlier than is required by the terms of the loan, the credit union shall be governed by section 535.9.
11. Real estate loans on one-family to four-family dwellings may be repaid in part or in full at any time, excepting that a credit union may charge not to exceed six months advance interest on that part of the aggregate amount of all prepayments made on such loan in any twelve-month period which exceeds twenty percent of the original principal amount of the loan; and may charge any negotiated rate on other loans. Nothing contained in this subsection, however, authorizes a credit union to charge any advance interest or prepayment penalty where prohibited by section 535.9.

85 Acts, ch 242, §5 HF 196
Subsection 1 amended

533.17 Reserves.

1. Immediately before the payment of a dividend, the credit union shall determine its gross earnings. A legal reserve for contingencies shall be set aside from the gross earnings in accordance with the following:
 - a. A credit union in operation for more than four years and having assets of five hundred thousand dollars or more shall set aside the following amounts in the following order:
 - (1) Ten percent of the gross income until the legal reserve equals four percent of the total outstanding loans and risk assets.

(2) Five percent of the gross income until the legal reserve equals six percent of the total outstanding loans and risk assets.

b. A credit union in operation for less than four years or having assets of less than five hundred thousand dollars shall set aside the following amounts in the order set forth:

(1) Ten percent of the gross income until the legal reserve equals seven and one-half percent of the total outstanding loans and risk assets.

(2) Five percent of the gross income until the legal reserve equals ten percent of the total outstanding loans and risk assets.

If the legal reserve falls below the percent of the total outstanding loans and risk assets required for a credit union by this subsection, the credit union shall replenish the legal reserve by regular contributions in the amounts needed to reach the required reserve. However, the administrator may waive the reserve requirement when in the administrator's opinion the waiver is necessary or desirable. The legal reserve shall belong to the credit union and shall be used to meet losses. The reserve shall not be distributed to members as interest or dividends except on liquidation of the credit union or in accordance with a plan approved by the administrator.

2. For the purpose of establishing legal reserves, the following shall not be considered risk assets:

a. Cash on hand.

b. Deposits and shares in federal or state banks, savings and loan associations, and credit unions.

c. Assets which are insured by, fully guaranteed as to principal and interest by, or due from the United States government.

d. Loans to other credit unions.

e. Student loans insured under the provisions of Title XX, United States Code, section 1071 to section 1087 or similar state programs.

f. Loans insured by the federal housing administration under Title XII, United States Code, section 1703.

g. Common trust investments which deal in investments authorized in section 533.4.

h. Prepaid expenses.

i. Accrued interest on nonrisk investments.

j. Furniture and equipment.

k. Land and buildings.

3. The administrator may require a credit union to set aside additional amounts as a special reserve if an examination of its assets should disclose that its legal reserve is inadequate.

85 Acts, ch 242, §6 HF 196
Subsection 1 struck and rewritten

533.22 Dissolution generally.

The following shall apply to dissolution of a credit union under this chapter, whether voluntary or involuntary:

1. Distribution of the assets of the credit union shall be made in the following order:

a. The payment of costs and expense of the administrator of dissolution.

b. The payment of claims for public funds deposited pursuant to chapter 453 and the payment of claims which are given priority by applicable statutes. If the assets are insufficient for payment of the claims in full, then priority shall be determined by the statutes or, in the absence of conflicting provisions, on a pro rata basis.

c. The payment of deposits, including accrued interest, up to the date of the special meeting of the members at which voluntary dissolution was authorized or in the case of involuntary dissolution, the date of appointment of a receiver.

d. The pro rata apportionment of the balance among the members of record on the date of the special meeting of the members at which voluntary dissolution was

authorized or in the case of involuntary dissolution, the members of record on the date of appointment of a receiver.

2. All amounts due to members who are unknown, or who are under a disability and there is no person legally competent to receive such amounts, or who cannot be found after the exercise of reasonable diligence shall be transmitted to the treasurer of state who shall hold such amounts in the manner prescribed by chapter 556. All amounts due to creditors as described in section 496A.101 shall be transmitted to the treasurer of state in accordance with the provisions of that section and shall be retained by the treasurer of state and subject to claim as provided for in that section.

3. The administrator shall assume custody of the records of a credit union dissolved pursuant to this chapter and shall retain these records in accordance with the provisions of section 533.26. The administrator may cause film, photographic, photostatic, or other copies of these records to be made and the administrator shall retain these copies in lieu of the original records.

4. The dissolution of a credit union shall not remove or impair any remedy available to or against such credit union, its directors, officers, or members for any right or claim existing or any liability incurred prior to such dissolution if an action or other proceeding to enforce the right or claim is commenced within two years after the date of filing of a certificate or decree of dissolution with the county recorder in the county in which the credit union has its principal place of business. Any such action or proceeding by or against the credit union may be prosecuted or defended by the credit union in its corporate name. The members, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim.

85 Acts, ch 194, §10 SF 296
Subsection 1, paragraph b struck and rewritten

533.30 Merger.

1. With the approval of the administrator, a credit union may merge with another credit union under the existing charter of the other credit union if the merger is pursuant to a plan agreed upon by a majority of the board of directors of each credit union joining in the merger and the merger is approved by the affirmative vote of a majority of the members of the merging credit union present at a meeting of its members called for the purpose of voting on the merger.

The administrator may approve a merger according to the plan agreed upon by the majority of the board of directors of each credit union if the administrator receives a written and verified application filed by the board of directors of each credit union and finds all of the following:

a. Notice of the meeting called to consider the merger was mailed to each member of the merging credit union entitled to vote upon the question.

b. The notice disclosed the purpose of the meeting and properly informed the membership that approval of the merger would be sought pursuant to this subsection.

c. A majority of the votes upon the question were in favor of the merger.

The administrator may waive the membership merger vote if the administrator finds that an emergency exists which justifies the waiver.

2. The administrator may adopt rules establishing merger procedures.

3. The certificate and a copy of the agreed plan of merger shall be forwarded to the administrator, certified by the administrator, and returned to both credit unions within thirty days of the date of receipt by the administrator.

4. Upon return of the certificates from the administrator, all property, property rights, and members' interest of the merged credit union vest in the surviving credit union without the legal need for deeds, endorsements or other instruments of transfer, and all debts, obligations and liabilities of the merged credit union are assumed by the surviving credit union under whose charter the merger was effected. The rights and privileges of the members of the merged credit union remain intact

according to the plan. Credit union membership in the surviving credit union shall be available to persons within the field of membership of the merged credit union.

5. This section shall be construed to permit a credit union organized under any other statute to merge with one organized under this chapter, or to permit one organized under this chapter to merge with one organized under any other statute.

85 Acts, ch 242, §7 HF 196

Subsections 1 and 2 struck and rewritten

533.38 Corporate central credit union.

A corporate central credit union may be established. Credit unions organized under this chapter, the Federal Credit Union Act, or any other credit union act and credit union organizations may be members. In addition, regulated financial institutions and cooperative organizations may be members to the extent and manner provided for in the bylaws of the corporate central credit union. The corporate central credit union shall have all the powers, restrictions, and obligations imposed upon, or granted a credit union under this chapter, except that the corporate central credit union may exercise any of the following additional powers subject to the adoption of rules by the administrator pursuant to chapter 17A and with the prior written approval of the administrator:

1. Make loans and extend lines of credit to its members.
2. Impose fees or penalties upon its members and apply them to income.
3. Make available share draft accounts and permit the owners of the accounts to make withdrawals by negotiable or other transferable instruments or other orders for the purpose of making transfers to third parties.

4. Borrow any amount from any source.

5. Invest in or purchase obligations or securities or other designated investments to the same extent authorized for other supervised financial institutions.

6. Invest in or acquire shares, stocks, or other obligations of an organization providing services which are associated with the operations of credit unions. However, the aggregate amount invested pursuant to this subsection shall not exceed fifty percent of the total of all reserves and undivided earnings of the corporate credit union.

7. Buy or sell investment securities and corporate bonds which are evidences of indebtedness. However, the purchase or sale is limited to marketable obligations of a corporation or state or federal agency issued without recourse.

8. Sell all or part of its assets to another central or corporate credit union and assume the liabilities of a selling central or corporate credit union if the action is approved by the majority vote of the board of directors at a meeting called for that purpose.

9. Invest in the shares or deposits of another similarly organized corporate credit union, central credit union, or central liquidity facility.

10. Make other investments approved by the administrator.

11. The corporate central credit union shall not be required to transfer to its legal reserve more than five percent of its net income for the year.

85 Acts, ch 242, §8 HF 196

Section struck and rewritten

533.47 Investment in certain shares or equity interests.

1. A credit union may invest in either of the following to the extent that the total investments under this section shall not be more than five percent of the credit union's assets:

- a. Shares or equity interests in venture capital funds which agree to invest an amount equal to at least fifty percent of the credit union's investment in small businesses having their principal offices within this state and having either more than one half of their assets within this state or more than one half of their employees employed within this state.

b. Shares or equity interests in small businesses having their principal offices within this state and having either more than one half of their assets within this state or more than one half of their employees employed within this state. A credit union shall not invest in more than twenty percent of the total capital and surplus of any one small business under this paragraph.

2. For purposes of this section:

a. "Venture capital fund" means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, whose principal business is or will be the making of investments in, and the provision of significant managerial assistance to, small businesses which meet the small business administration definition of small business.

b. "Equity interests" means limited partnership interests and other equity interests in which liability is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability.

c. "Small business" means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, which meets the appropriate small business administration definition of small business and which is principally engaged in the development or exploitation of inventions, technological improvements, new processes, or other products not previously generally available in this state or other investments which provide an economic benefit to the state.

85 Acts, ch 136, §4 HF 460
NEW section

533.64 Account insurance.

Except as provided in section 533.12, subsection 2, a credit union organized under this chapter, as a condition of maintaining its privilege of organization after December 31, 1980, shall acquire and maintain insurance to protect each shareholder and each depositor against loss of funds held on account by the credit union. The insurance shall be obtained from the national credit union administrator or from some other share guarantor or insurance plan approved by the Iowa commissioner of insurance and the administrator of the credit union department.

The administrator may furnish to any official of an insurance plan by which the accounts of a credit union are insured, any information relating to examinations and reports of the status of that credit union for the purpose of availability of insurance to that credit union.

85 Acts, ch 242, §9 HF 196
Unnumbered paragraph 1 amended

CHAPTER 533A

DEBT MANAGEMENT

533A.2 Licenses required—exceptions.

1. No individual, partnership, unincorporated association, agency or corporation shall engage in the business of debt management in this state without a license therefor as provided for in this chapter, except that the following persons shall not be required to be licensed when engaged in the regular course of their respective businesses and professions:

a. Attorneys at law.

b. Banks, savings and loan associations, insurance companies and similar fiduciaries, regulated loan companies licensed under chapter 536 and industrial loan companies licensed under chapter 536A, authorized and admitted to transact business in this state and performing credit and financial adjusting in the regular course of their principal business, or while performing an escrow function.

- c. Abstract companies, while performing an escrow function.
- d. Employees of licensees under this chapter.
- e. Judicial officers or others acting under court orders.
- f. Nonprofit religious, fraternal or co-operative organizations, including credit unions, offering to debtors gratuitous debt-management service.
- g. Those persons, associations, or corporations whose principal business is the origination of first mortgage loans on real estate for their own portfolios or for sale to institutional investors.

2. The application for such license shall be in writing, under oath, and in the form prescribed by the superintendent. The application shall contain the name of the applicant; date of incorporation, if incorporated, and the address where the business is to be conducted; and similar information as to any branch office of the applicant; the name and resident address of the owner or partners, or, if a corporation, association or agency, of the directors, trustees, principal officers, and agents, and such other pertinent information as the superintendent may require. If the applicant is a partnership, a copy of the certificate of assumed name or articles of partnership shall be filed with the application. If the applicant is a corporation, a copy of the articles of incorporation shall be filed with the application.

3. Each application shall be accompanied by a bond to be approved by the superintendent to the people of the state of Iowa in the penal sum of ten thousand dollars for each office, providing, however, the superintendent may require such bond to be raised to a maximum sum of twenty-five thousand dollars, and conditioned that the obligor will not violate any law pertaining to such business and upon the faithful accounting of all moneys collected upon accounts entrusted to such person engaged in debt management, and their employees and agents for the purpose of indemnifying debtors for loss resulting from conduct prohibited by this chapter. The aggregate liability of the surety to all debtors doing business with the office for which the bond is filed shall, in no event, exceed the penal sum of such bond. The surety on the bond shall have the right to cancel such bond upon giving thirty days' notice to the superintendent and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of said cancellation. No individual, partnership, unincorporated association, agency or corporation shall engage in the business of debt management until a good and sufficient bond is filed in accordance with the provisions of this chapter.

4. Each applicant shall furnish with the application a copy of the contract the applicant proposes to use between the applicant and the debtor, which shall contain a schedule of fees to be charged the debtor for the applicant's services.

5. At the time of making such application the applicant shall pay to the superintendent the sum of fifty dollars as a license fee for each of the applicant's offices and an investigation fee in the sum of one hundred dollars. A separate application shall be made for each office maintained by the applicant.

85 Acts, ch 158, §1 HF 556
Subsection 1, paragraph b amended

CHAPTER 534

SAVINGS AND LOAN ASSOCIATIONS

534.102 Definitions.

When used in this chapter, the following words and phrases shall have the following meanings, except to the extent that any such word or phrase is specifically qualified by its context:

- 1. "Administrator" means the person designated in section 537.6103.
- 2. "Association" or "state association" means a corporation holding a certificate of authority to operate under this chapter as either a mutual association or a stock association.

3. "*Association holding company*" means a person other than an individual that directly or indirectly owns, controls or votes more than twenty-five percent of any class of voting stock of a stock association or that controls in any manner the election of a majority of the directors of a stock association or mutual association.

4. "*Bank*" means any person who is authorized under chapter 524 to engage in the business of banking in this state.

5. "*Bank holding company*" means a bank holding company as defined in section 524.1801 that is authorized under chapter 524, division XVIII, to do business in this state as a bank holding company.

6. "*Dividend*" shall mean that part of the net earnings of an association which is declared payable on share accounts from time to time by the board of directors and is the cost of savings money to the association.

7. "*Federal association*" means a corporation operating under the federal Home Owners' Loan Act of 1933 as either a mutual association or a stock association.

8. "*Foreign association*" means a building and loan or savings and loan association, incorporated by the laws of another state or country, which as of January 1, 1984 did not have an office, agency, or agent operating in this state.

9. "*Gross income*" shall mean the sum for an accounting period of the following:

a. Operating income.

b. Real estate income.

c. All profits actually received during such accounting period from the sale of securities, real estate or other property.

d. Other nonrecurring income.

10. "*Home loan*" shall mean a real estate loan on a dwelling or dwellings for not more than four families, the principal use of which is for residential purposes. A "home" is the same as "home property" and constitutes the homestead of the owner. A home on a farm is a home.

11. "*Impaired condition*" shall mean a condition in which the assets of an association do not have an aggregate value equal to the aggregate amount of liabilities of the association to its creditors, its members and all other persons.

12. "*Insured*", when used in conjunction with the words "association", "state association", "foreign association", or "federal association", means an institution whose deposits are insured in part by the federal savings and loan insurance corporation or another insurance plan approved by the supervisor.

13. "*Insured mortgage*" is a mortgage covered in part by insurance, which insurance has been formally submitted to and approved by the supervisor or by the federal home loan bank of the area in which the association is located.

14. "*Member*" shall mean a person owning a share account of an association, and a person borrowing from or assuming or obligated upon a loan held by an association, or purchasing property securing a loan held by an association and any contract purchaser from the association. A joint and survivorship relationship, whether of investors or borrowers, constitutes a single membership.

15. "*Mutual association*" means a corporation organized on a mutual ownership basis without shareholders.

16. "*Net earnings*" shall mean gross income for an accounting period less the aggregate of the following:

a. Operating expenses.

b. Real estate expenses.

c. All losses actually sustained during such accounting period from the sale of securities, real estate or other property, or such portion of such losses as shall not have been charged to reserves, pursuant to the provisions of this chapter.

d. All interest paid, or due but unpaid, on borrowed money.

e. Other nonrecurring income.

17. "*Operating expenses*" shall mean all expenses actually paid, or due but unpaid, by an association during an accounting period, excluding the following:

- a. Real estate expenses.
- b. Other nonrecurring charges.

That portion of prepaid expenses which is not apportionable to the period may be excluded from operating expenses, in which event operating expenses for future periods shall exclude that portion of such prepaid expenses apportionable thereto.

18. "*Operating income*" shall mean all income actually received by an association during an accounting period, excluding the following:

- a. Foreclosed real estate income.
- b. Other nonrecurring income.

19. "*Real estate expenses*" shall mean all expenses actually paid, or due but unpaid, in connection with the ownership, maintenance, and sale of real estate (other than office building or buildings and real estate held for investment) by an association during an accounting period, excluding capital expenditures and losses on the sale of real estate.

20. "*Real estate income*" shall mean all income actually received by an association during an accounting period from real estate owned (other than from office building or buildings and real estate held for investment) excluding profit from sales of real estate.

21. "*Real estate loan*" shall mean any loan or other obligation secured by real estate, whether in fee or in a leasehold extending or renewable automatically for a period of at least fifty years or ten years beyond the maturity date of the loan.

22. "*Regular lending area*" shall mean the entire area within this state and an area which is outside this state and which is within one hundred miles from any approved office.

23. "*Residential real estate*" means real estate on which there is located, or will be located following the construction of improvements pursuant to a real estate loan, a structure or structures designed or used primarily to provide living accommodations for people, except structures which are designed to primarily provide accommodations to transients.

24. "*Savings account*" means a deposit account in a stock association or mutual association or a withdrawable share account or time share account in a mutual association.

25. "*Savings liability*" shall mean the aggregate amount of share accounts of members, including dividends credited to such accounts, less redemptions and withdrawals.

26. "*Service corporation*" means a corporation which is organized under chapter 496A and which is owned in any part by one or more state associations or federal associations or a combination of these.

27. "*Share account or shares*" shall mean that part of the savings liability of the association which is credited to the account of the holder thereof.

28. "*Stock association*" means a corporation owned by shareholders.

29. "*Superintendent*" means the superintendent of banking.

30. "*Supervised financial organization*" as defined and used in the Iowa consumer credit code includes a person organized pursuant to this chapter.

31. "*Supervised organization*" means an association, association holding company, service corporation, licensed foreign association, or a subsidiary of an association, holding company, service corporation, or licensed foreign association.

32. "*Supervisor*" shall mean the supervisor of savings and loan associations.

33. "*Withdrawal value*" shall mean the amount credited to a share account of a member, less lawful deductions therefrom, as shown by the records of the association.

534.213 Investment in securities and real estate.

Every association shall have power to invest in securities and real estate as follows:

1. *General investment powers.* An association may invest without limit, except as expressly stated, in any of the following securities:
 - a. Obligations of, or obligations which are guaranteed as to principal and interest by, the United States or this state.
 - b. Stock of a federal home loan bank of which the association is eligible to be a member and any obligation or consolidated obligations of any federal home loan bank or banks.
 - c. Stock or obligations of the federal savings and loan insurance corporation.
 - d. Stock, obligations, or other instruments of the federal national mortgage association, the government national mortgage association, the federal home loan mortgage corporation, or any successor.
 - e. Demand time or savings deposits, or bankers acceptances with any bank or trust company the deposits of which are insured by the federal deposit insurance corporation.
 - f. Stock or obligations of any corporation or agency of the United States or this state or deposits of the corporation or agency to the extent that the corporation or agency assists in furthering or facilitating the association's purposes or powers.
 - g. Savings accounts of any savings and loan association the deposits of which are insured by the federal savings and loan insurance corporation.
 - h. Bonds, notes, or other evidences of indebtedness which are a general obligation of a city, village, county, school district, or other municipal or political subdivision so long as the total investment under this paragraph does not exceed five percent of the assets of the association, except that any investments which are securities or obligations which are evidence of first mortgage liens on real estate are exempt from the five percent limitation.
 - i. Bonds secured by an interest in real estate.
 - j. Capital stock, obligations, or other securities of service corporations, provided that the aggregate investment in service corporations shall not exceed seven percent of assets of the association on or after July 1, 1984, and prior to July 1, 1985, or eight percent of assets on or after July 1, 1985 and prior to July 1, 1986, or nine percent of assets on or after July 1, 1986 and prior to July 1, 1987, or ten percent of assets at any time on or after July 1, 1987.
 - k. An open end management investment company registered under the federal Investment Company Act of 1940, the portfolio of which is restricted to investments in which an association may invest.
 - l. Shares or equity interests in venture capital funds which agree to invest an amount equal to at least fifty percent of the association's investment in small businesses having their principal offices within this state and having either more than one half of their assets within this state or more than one half of their employees employed within this state. An association shall not invest more than a total of five percent of its assets in investments permitted under this paragraph or paragraph "m". For purposes of this paragraph, "venture capital fund" means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, whose principal business is or will be the making of investments in, and the provisions of significant managerial assistance to, small businesses which meet the small business administration definition of small business. "Equity interests" means limited partnership interests and other equity interests in which liability is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability.
 - m. Shares or equity interests in small businesses having their principal offices within this state and having either more than one half of their assets within this state or more than one half of their employees employed within this state. The total

amount of an association's investments under this paragraph shall not exceed five percent of the association's capital and surplus. An association shall not invest in more than twenty percent of the total capital and surplus of any one small business under this paragraph. For purposes of this paragraph, "small business" means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, which meets the appropriate small business administration definition of small business and which is principally engaged in the development or exploitation of inventions, technological improvements, new processes, or other products not previously generally available in this state or other investments which provide an economic benefit to the state; and "equity interests" means limited partnership interests and other equity interests in which liability is limited to the amount of investment, but does not mean general partnership interests or other interests involving general liability.

n. In addition to other investments authorized in this section, an association may invest and may continue previous investments in capital stock, obligations, or other securities of finance subsidiaries and may exercise powers with respect to finance subsidiaries to the same extent as a federal association is permitted under the Home Owners' Loan Act of 1933, 12 U.S.C. §1464, and regulations adopted thereunder by the federal home loan bank board up to and including January 1, 1985. Investments authorized by this paragraph shall not be counted in applying the limitations on investments in service corporations in paragraph "j".

o. In addition to other investments authorized in this section, an association may invest and may continue previous investments in capital stock, obligations, or other securities of corporations which are wholly owned by the association and which exercise only those powers which may be exercised by an association under this chapter. Investments authorized by this paragraph shall not be counted in applying the limitations on investments in service corporations in paragraph "j".

2. *Investment in real estate.* In real estate purchased at sheriff's sale or at any other sale, public or private, judicial or otherwise, upon which the association has a lien or claim, legal or equitable; in real estate accepted by the association in satisfaction of any obligation; in real estate purchased for sale or improvement and sale, upon contracts, at the cost of land and improvements, when such contracts are executed concurrently with or prior to such purchase, such transactions to be subject to all the limitations herein provided with respect to real estate loans; in real estate acquired by the association in exchange for real estate owned by the association; in real estate acquired by the association in connection with salvaging the value of property owned by the association; an amount not exceeding the sum of its reserves and undivided profits in the purchase and development of real estate for the purpose of producing income or for sale or for improvement thereof and the erection of buildings thereon for sale or rental purposes. Title to all real estate shall be taken and held in the name of the association and such title shall immediately be recorded in accordance with law. No association shall invest in any loan at any time when its liquid assets are less than five percent of its savings liability, unless the supervisor of savings and loan associations shall have issued written approval.

3. *Investment in EFT organizations.* Subject to the prior approval of the supervisor, in shares in a corporation engaged in providing and operating facilities through which an association and its members may engage, by means of either the direct transmission of electronic impulses to and from the association or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the association, in transactions in which the association is otherwise permitted to engage pursuant to applicable law.

4. *Deposits of funds by associations.* Funds of such associations may be deposited in any state or national bank insured by the federal deposit insurance corporation on certificate of deposit, or the usual bank pass book credit, subject to check by the proper designated officers of such association or in the federal home loan bank of the district in which Iowa is located.

5. *Investment in home office buildings.* Any such association may invest an amount not to exceed five percent of its paid-in savings liability or such additional amounts as are authorized by the supervisor in unencumbered real estate for use wholly or partly as its business office.

85 Acts, ch 136, §5 HF 460; 85 Acts, ch 252, §37, 38 SF 577
Subsection 1, NEW paragraphs l, m, n and o
Subsection 3 amended

534.308 Savings liability—classes of accounts.

The savings liability of an association is not limited, but consists only of the aggregate amount of share accounts of its members, plus dividends credited to the accounts, less redemption and withdrawal payments. Except as limited by the board of directors, a member may make additions to the member's share account in the amounts and at the times the member elects. Share accounts shall be opened for cash. The members of an association are not responsible for losses which its savings liability is not sufficient to satisfy, and share accounts are not subject to assessment, nor are the holders of share accounts liable for unpaid installments on their accounts. Dividends shall be declared in accordance with this chapter.

An association shall not prefer one of its share accounts over any other share account as to the right to participate in dividends as to time or amount, except that an association may classify its savings accounts according to the location of the offices at which the accounts are opened, the character, amount or duration of the accounts, or the regularity of additions to the accounts, and may agree in advance to pay an additional rate of earnings for particular classes of accounts such as a variable rate or bonus for saving larger amounts, or for maintaining savings over a longer period of time or with regularity, as determined by the board of directors. However, all classes of accounts shall be available to all qualifying members. The board of directors may also determine that earnings shall not be paid on an account which has a withdrawable value in an amount less than fifty dollars. Except as provided in section 534.517, preference between share account members shall not be created with respect to the distribution of assets upon voluntary or involuntary liquidation, dissolution, or winding up of an association. An association shall not contract with respect to the savings liability in a manner inconsistent with this chapter.

85 Acts, ch 194, §11 SF 296
Section amended

534.406 Receivership.

When any building and loan or savings and loan association is conducting its business illegally, or in violation of its articles of incorporation or bylaws, or is practicing deception upon its members or the public, or is pursuing a plan of business that is injurious to the interest of its members, or its affairs are in an unsafe condition, the auditor of state shall notify the directors of the association, and, if they fail to put its affairs upon a safe basis, the auditor shall advise the attorney general, who shall take the necessary steps to wind up its affairs in the manner provided by law. In the proceedings a receiver may be appointed by the court and the proceedings shall be the exclusive liquidation or insolvency proceeding and a receiver shall not be appointed in any other proceedings.

85 Acts, ch 195, §49 SF 329
Section amended

534.516 Liquidation in lieu of insurance.

In lieu of acquiring and maintaining the account insurance required in section 534.506, an association may with the approval of the supervisor enter into voluntary liquidation as provided in section 534.513.

85 Acts, ch 153, §2 SF 157
NEW section

534.517 Priority of public funds upon dissolution.

After payment of the costs and expenses of dissolution, the first claim upon the assets of an association shall be the claims for public funds deposited pursuant to chapter 453 and claims which are given priority by applicable statute. If the assets are insufficient for payment of the claims in full, then priority shall be determined as specified by the statutes or, in the absence of conflicting provisions, on a pro rata basis.

85 Acts, ch 194, §12 SF 296
NEW section

CHAPTER 535

MONEY AND INTEREST

535.8 Loan charges limited.

1. As used in this section, the term "loan" means a loan of money which is wholly or in part to be used for the purpose of purchasing real property which is a single-family or a two-family dwelling occupied or to be occupied by the borrower. "Loan" includes the refinancing of a contract of sale, and the refinancing of a prior loan, whether or not the borrower also was the borrower under the prior loan, and the assumption of a prior loan.

2. *a.* A lender may collect, in connection with a loan made pursuant to a written agreement executed by the borrower on or after July 1, 1983, or in connection with a loan made pursuant to a written commitment by the lender mailed or delivered to the borrower on or after that date, a loan processing fee which does not exceed two percent of an amount which is equal to the loan principal; except that to the extent of an assumption by a new borrower of the obligation to make payments under a prior loan, or to the extent that the loan principal is used to refinance a prior loan between the same borrower and the same lender, the lender may collect a loan processing fee which does not exceed an amount which is a reasonable estimate of the expenses of processing the loan assumption or refinancing but which does not exceed one percent of the unpaid balance of the loan that is assumed or refinanced. In addition, a lender may collect from a borrower, a seller of property, another lender, or any other person, or from any combination of these persons, in contemplation of or in connection with a loan, a commitment fee, closing fee, or both, that is agreed to in writing by the lender and the persons from whom the charges are to be collected. A loan fee collected under this paragraph is compensation to the lender solely for the use of money, notwithstanding any provision of the agreement to the contrary. However, a loan fee collected under this paragraph shall be disregarded for purposes of determining the maximum charge permitted by section 535.2 or 535.9, subsection 2. The collection in connection with a loan of a loan origination fee, closing fee, commitment fee, or similar charge is prohibited other than expressly authorized by this paragraph or a payment reduction fee authorized by subsection 3.

b. A lender may collect in connection with a loan any of the following costs which are incurred by the lender in connection with the loan and which are disclosed to the borrower:

- (1) Credit reports.
- (2) Appraisal fees paid to a third party, or when the appraisal is performed by the lender, a fee which is a reasonable estimate of the expense incurred by the lender in performing the appraisal.
- (3) Attorney's opinions.
- (4) Abstracting fees paid to a third party, or when the abstracting is performed by the lender, a fee which is a reasonable estimate of the expense incurred by the lender in performing the abstracting.
- (5) County recorder's fees.

- (6) Inspection fees.
- (7) Mortgage guarantee insurance charge.
- (8) Surveying of property.
- (9) Termite inspection.

(10) The cost of a title guaranty issued by the Iowa finance authority pursuant to chapter 220. The lender shall not charge the borrower for the cost of revenue stamps or real estate commissions which are paid by the seller. Collection of any cost other than as expressly permitted by this paragraph is prohibited.

c. If the purpose of the loan is to enable the borrower to purchase a single-family or two-family dwelling, for the borrower's residence, any provision of a loan agreement which prohibits the borrower from transferring the borrower's interest in the property to a third party for use by the third party as the third party's residence, or any provision which requires or permits the lender to make a change in the interest rate, the repayment schedule or the term of the loan as a result of a transfer by the borrower of the borrower's interest in the property to a third party for use by the third party as the third party's residence shall not be enforceable except as provided in the following sentence. If the lender on reasonable grounds believes that its security interest or the likelihood of repayment is impaired, based solely on criteria which is not more restrictive than that used to evaluate a new mortgage loan application, the lender may accelerate the loan, or to offset any such impairment, may adjust the interest rate, the repayment schedule or the term of the loan. A provision of a loan agreement which violates this paragraph is void.

d. If a lender collects a fee or charge which is prohibited by paragraph "a" or "b" of this subsection or which exceeds the amount permitted by paragraph "a" or "b" of this subsection, the person from whom the fee was collected has the right to recover the unlawful fee or charge or the unlawful portion of the fee or charge, plus attorney fees and costs incurred in any action necessary to effect recovery.

e. Notwithstanding section 628.3 when a foreclosure of a mortgage on real property results from the enforcement of a due-on-sale clause, the mortgagor may redeem the real property at any time within three years from the day of sale under the levy, and the mortgagor shall, in the meantime, be entitled to the possession thereof; and for the first thirty months thereafter such right of redemption is exclusive. Any real property redeemed by the debtor shall thereafter be free and clear from any liability for any unpaid portion of the judgment under which the real property was sold. The right of redemption established by this paragraph is not subject to waiver by the mortgagor and the period of redemption established by this paragraph shall not be reduced. The times for redemption by creditors provided in sections 628.5, 628.15 and 628.16 shall be extended to thirty-three months in any case in which the mortgagor's period for redemption is extended by this paragraph. This paragraph does not apply to foreclosure of a mortgage if for any reason other than enforcement of a due-on-sale clause. As used in this paragraph, "due-on-sale clause" means any type of covenant which gives the mortgagee the right to demand payment of the outstanding balance or a major part thereof upon a transfer by the mortgagor to a third party of an interest of the mortgagor in property covered by the mortgage. This paragraph applies to any foreclosure occurring on or after May 10, 1980. However, this paragraph does not apply if the lender establishes, based on reasonable criteria which are not more restrictive than those used to evaluate new mortgage-loan applications, that the security interest or the likelihood of repayment is impaired as a result of the transfer of interest.

This lettered paragraph applies only to a mortgage given in connection with a loan as defined in subsection 1 of this section.

3. A lender who offers to make a loan with only those fees authorized by subsection 2 may also offer in exchange for the payment of an interest reduction fee to make a loan on all of the same terms except at a lower interest rate and with the lower payments resulting from the lower interest rate. Prior to accepting an applica-

tion for a loan which includes a payment reduction fee, the lender shall provide the potential borrower with a written disclosure describing in plain language the specific terms which the loan would have both with the payment reduction fee and without it. This disclosure shall include a good faith example showing the amount of the payment reduction fee and the reduction in payments which would result from the payment of this fee in a typical loan transaction. A payment reduction fee which complies with this subsection may be collected in connection with a loan in addition to the fees authorized by subsection 2.

4. A lender shall not, as a condition of making a loan as defined in this section, require the borrower to place money, or to place property other than that which is given as security for the loan, on deposit with or in the possession or control of the lender or some other person if the effect is to increase the yield to the lender with respect to that loan; provided that this subsection shall not prohibit a lender from requiring the borrower to deposit money without interest with the lender in an escrow account for the payment of insurance premiums, property taxes and special assessments payable by the borrower to third persons. Any lender who requires an escrow account shall not violate the provisions of section 507B.5, subsection 1, paragraph "a".

5. If any lender receives interest either in a manner or in an amount which is prohibited by subsection 4 of this section, the borrower shall have the right to recover all amounts collected or earned by the lender, whether or not from the borrower, in violation of this section, plus attorney fees, plus court costs incurred in any action necessary to effect such recovery.

6. The provisions of this section shall not apply to any loan which is subject to the provisions of section 682.46, nor shall it apply to origination fees, administrative fees, commitment fees or similar charges paid by one lender to another lender if these fees are not ultimately paid either directly or indirectly by the borrower who occupies or will occupy the dwelling or by the seller of the dwelling.

A lender shall not use an appraisal for any purpose in connection with making a loan under this section if the appraisal is performed by a person who is employed by or affiliated with any person receiving a commission or fee from the seller of the property. If a lender violates this paragraph the borrower is entitled to recover any actual damages plus the costs paid by the borrower, plus attorney fees incurred in an action necessary to effect recovery.

85 Acts, ch 252, §39 SF 577

Subsection 2, paragraph b, NEW subparagraph 10

CHAPTER 535A

MORTGAGE LOANS—RED-LINING

535A.1 Definitions.

For purposes of this chapter and section 220.6, subsection 4, unless the context otherwise requires:

1. "*Red-lining*" means the practice by which a financial institution may designate certain areas as unsuitable for the making of mortgage loans and reject applications for mortgage loans or vary the terms of a mortgage loan upon property within that area because of the prevailing income, racial or ethnic characteristics of the area, or because of the age of the structures in the area.

2. "*Mortgage loan*" means a loan for the purchase, construction, improvement or rehabilitation of residential property containing or to contain four or fewer family dwelling units in which the property is used as security for the loan.

3. "*Financial institution*" means any bank, credit union, insurance company, mortgage banking company or savings and loan association, industrial loan company, or like institution or any other person who makes mortgage loans and which operates

or has a place of business in this state. "Financial institution" does not include an individual who makes less than five mortgage loans a year.

4. "Reporting financial institution" means a financial institution which is required to file a mortgage loan disclosure statement.

5. "Vary the terms of a mortgage loan" includes, but is not limited to the following:

a. Requiring a greater than average down payment than is usual for the particular type of mortgage loan involved.

b. Requiring a shorter period of amortization than is usual for the particular type of mortgage loan involved.

c. Charging a higher interest rate or higher loan origination fees than is usual for the particular type of mortgage loan involved.

d. An unreasonable underappraisal of real estate or item of property offered as security.

6. "Mortgage loan disclosure statement" means the statement required by the federal Home Mortgage Disclosure Act, 12 U.S.C. secs. 2801 to 2809.

85 Acts, ch 238, §1 HF 531
Subsection 3 amended

535A.6 Action for damages.

Any person who has been aggrieved as a result of a violation of sections 535A.1 to 535A.9 and 220.6, subsection 4, may bring an action in the district court of the county in which the violation occurred or in the county where the financial institution involved is located.

Upon a finding that a financial institution has committed a violation of either section 535A.2, 535A.4, or 535A.9 the court may award actual damages, court costs and attorney fees.

85 Acts, ch 238, §2 HF 531
Section amended

535A.7 Criminal penalty.

Any person who knowingly engages in a practice which violates the provisions of section 535A.2, 535A.4 or 535A.9 is guilty of a serious misdemeanor.

85 Acts, ch 238, §3 HF 531
Section amended

535A.9 Tying arrangements prohibited.

1. A financial institution which makes or offers to make real estate mortgage loans shall not:

a. Grant or offer to grant a loan on the prior condition, that the borrower is required to contract with any specific person or organization for either of the following:

(1) Services of a real estate agent or broker.

(2) Insurance services as an agent, broker, or underwriter.

b. Use confidential credit status information that is used for qualifying a person for the purchase of real property for solicitation purposes either directly or indirectly by an affiliate subsidiary.

c. Attempt or permit a real estate or insurance subsidiary to attempt to create the impression in its advertising or in any communication that the customers of the subsidiary shall have priority access to the funds of the financial institution or are entitled to preferential interest rates or other terms.

2. This section does not apply to the Iowa finance authority or a program operated pursuant to chapter 220.

85 Acts, ch 238, §4 HF 531; 85 Acts, ch 252, §56 SF 577
NEW section

535A.12 Title guaranty program disclosed.

A financial institution shall advise prospective borrowers of the availability of the title guaranty program provided for in chapter 220 and also provide the prospective borrower with information about the title guaranty program as provided to the financial institution by the title guaranty board.

85 Acts, ch 252, §40 SF 577
NEW section

CHAPTER 536**IOWA REGULATED LOAN ACT****536.1 Title—license required.**

1. This chapter may be referred to as the "Iowa Regulated Loan Act".

2. With respect to a loan other than a consumer loan, a person shall not engage in the business of making loans of money, credit, goods, or things in action in the amount or of the value of twenty-five thousand dollars or less and charge, contract for, or receive on the loan a greater rate of interest or consideration for the loan than the lender would be permitted by law to charge if the lender were not a licensee under this chapter except as authorized by this chapter and without first obtaining a license from the superintendent of banking.

3. With respect to a consumer loan, a person required by section 537.2301 to have a license shall not engage in the business of making loans of money, credit, goods or things in action in the amount or value of twenty-five thousand dollars or less and charge, contract for, or receive on the loan a greater rate of interest or consideration for the loan than the lender would be permitted by law to charge if the lender were not a licensee under this chapter, except as authorized by this chapter and without first obtaining a license from the superintendent.

4. A person who enters into less than ten supervised loans per year in this state and who neither has an office physically located in this state nor engages in face-to-face solicitation in this state may contract for and receive the rate of interest permitted in this chapter for licensees under this chapter. A "consumer loan" means the same as defined in section 537.1301.

85 Acts, ch 158, §2 HF 556
Section amended

536.10 Examination of business—fee.

For the purpose of discovering violations of this chapter or securing information lawfully required by the superintendent hereunder, the superintendent may at any time, either personally or by an individual or individuals duly designated by the superintendent, investigate the loans and business and examine the books, accounts, records, and files used therein, of every licensee and of every person engaged in the business described in section 536.1, whether such person shall act or claim to act as principal or agent, or under or without the authority of this chapter. For that purpose the superintendent and the superintendent's duly designated representatives shall have and be given free access to the place of business, books, accounts, papers, records, files, safes, and vaults of all such persons. The superintendent and all individuals duly designated by the superintendent shall have authority to require the attendance of and to examine under oath all individuals whomsoever whose testimony the superintendent may require relative to such loans or such business.

The superintendent shall make an examination of the affairs, place of business, and records of each licensed place of business at least once each year.

A licensee subject to examination, supervision and regulation by the superintendent, shall pay to the superintendent an examination fee, based on the actual cost of the operation of the regulated loan division of the department of banking, and the

proportionate share of administrative expenses in the operation of the department of banking attributable to the regulated loan division as determined by the superintendent of banking. The fee shall apply equally to all licenses and shall not be changed more frequently than annually and when changed, shall be effective on January 1 of the year following the year in which the change is approved.

Upon completion of each examination required or allowed by this chapter, the examiner shall render a bill for such fee, in triplicate, and shall deliver one copy to the licensee and two copies to the superintendent. Failure to pay the fee to the superintendent within ten days after the date of the close of each such examination shall subject the licensee to an additional fee of five percent of the amount of such fee for each day the payment is delinquent.

85 Acts, ch 158, §3 HF 556
Unnumbered paragraph 3 amended

536.13 Banking board—report—classification—rules—penalty—consumer credit code.

1. The state banking board may investigate the conditions and find the facts with reference to the business of making regulated loans, as described in section 536.1 and after making the investigation, report in writing its findings to the next regular session of the general assembly, and upon the basis of the facts:

a. Classify regulated loans by a regulation according to a system of differentiation which will reasonably distinguish the classes of loans for the purposes of this chapter.

b. Determine and fix by a rule the maximum rate of interest or charges upon each class of regulated loans which will induce efficiently managed commercial capital to enter the business in sufficient amounts to make available adequate credit facilities to individuals. The maximum rate of interest or charge shall be stated by the board as an annual percentage rate calculated according to the actuarial method and applied to the unpaid balances of the amount financed.

2. Except as provided in subsection 7, the board may redetermine and refix by rule, in accordance with subsection 1, any maximum rate of interest or charges previously fixed by it, but the changed maximum rates shall not affect pre-existing loan contracts lawfully entered into between a licensee and a borrower. All rules which the board may make respecting rates of interest or charges shall state the effective date of the rules, which shall not be earlier than thirty days after notice to each licensee by mailing the notice to each licensed place of business.

3. Before fixing any classification of regulated loans or any maximum rate of interest or charges, or changing a classification or rate under authority of this section, the board shall give reasonable notice of its intention to consider doing so to all licensees and a reasonable opportunity to be heard and to introduce evidence with respect to the change or classification.

4. Beginning July 4, 1965, and until such time as a different rate is fixed by the board, the maximum rate of interest or charges upon the class or classes of regulated loans is three percent per month on any part of the unpaid principal balance of the loan not exceeding one hundred fifty dollars and two percent per month on any part of the loan in excess of one hundred fifty dollars, but not exceeding three hundred dollars, and one and one-half percent per month on any part of the unpaid principal balance of the loan in excess of three hundred dollars, but not exceeding seven hundred dollars, and one percent per month on any part of the unpaid principal balance of the loan in excess of seven hundred dollars.

5. A licensee under this chapter may lend any sum of money not exceeding twenty-five thousand dollars in amount and may charge, contract for, and receive on the loan interest or charges at a rate not exceeding the maximum rate of interest or charges determined and fixed by the board under authority of this section or pursuant to subsection 7 for those amounts in excess of ten thousand dollars.

6. If any interest or charge on a loan regulated by this chapter in excess of those

permitted by this chapter is charged, contracted for, or received, the contract of loan is void as to interest and charges and the licensee has no right to collect or receive any interest or charges. In addition, the licensee shall forfeit the right to collect the lesser of two thousand dollars of principal of the loan or the total amount of the principal of the loan.

7. The board may establish the maximum rate of interest or charges as permitted under this chapter for those loans whose unpaid principal balance is ten thousand dollars or less. For those loans whose unpaid principal balance is over ten thousand dollars, the maximum rate of interest or charges which a licensee may charge shall be the greater of the rate permitted by chapter 535 or the rate authorized for supervised financial organizations by chapter 537.

The Iowa consumer credit code, chapter 537, applies to a consumer loan in which the licensee participates or engages, and a violation of the Iowa consumer credit code is a violation of this chapter.

Article 2, parts 3, 5 and 6 of chapter 537, and article 3 of chapter 537, sections 537.3203, 537.3206, 537.3209, 537.3304, 537.3305 and 537.3306 apply to any credit transaction, as defined in section 537.1301 in which a licensee participates or engages, and any violation of those parts or sections is a violation of this chapter. For the purpose of applying the Iowa consumer credit code to those credit transactions, "consumer loan" includes a loan for a business purpose.

A provision of the Iowa consumer credit code applicable to loans regulated by this chapter supersedes a conflicting provision of this chapter.

85 Acts, ch 158, §4 HF 556
Section amended

536.15 Limitation on principal amount over twenty-five thousand dollars.

A licensee shall not directly or indirectly charge, contract for, or receive any interest or consideration greater than the lender would be permitted by law to charge if the lender were not a licensee upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit, of the amount or value of more than twenty-five thousand dollars. This section also applies to a licensee who permits a person, as borrower or as endorser, guarantor, or surety for a borrower, or otherwise, to owe directly or contingently or both to the licensee at any time the sum of more than twenty-five thousand dollars for principal.

85 Acts, ch 158, §5 HF 556
Section amended

536.25 Statement of indebtedness of borrower.

A licensee when making a loan under this chapter shall require a statement in writing from each applicant setting forth a description of all installment indebtedness of the applicant by giving the amount of each loan and the name of the lender. The applicant may orally disclose the information and the licensee shall write down the information, and the applicant shall subsequently sign the statement.

85 Acts, ch 158, §6 HF 556
Section amended

536.26 Insured loans.

A licensee shall not, directly or indirectly, sell or offer for sale any life, or accident and health insurance in connection with a loan made under this chapter except as and to the extent authorized by this section. Life, accident and health insurance, or any of them, may be written by a licensed insurance agent upon or in connection with any loan for a term not extending beyond the final maturity date of the loan contract but only upon one obligor on any one loan contract.

The amount of life insurance shall at no time exceed the unpaid balance of principal and interest combined which are scheduled to be outstanding under the terms of the loan contract or the actual amount unpaid on the loan contract, whichever is greater.

Accident and health insurance shall provide benefits not in excess of the unpaid balance of principal and interest combined which are scheduled to be outstanding under the terms of the loan contract and the amount of each periodic benefit payment shall not exceed the total amount payable divided by the number of installments and shall provide that if the insured obligor is disabled, as defined in the policy, for a period of more than fourteen days, benefits shall commence as of the first day of disability.

The premium, which shall be the only charge for such insurance, shall not exceed that approved by the commissioner of insurance of the state of Iowa as filed in the office of such commissioner. Such charge, computed at the time the loan is made for the full term of the loan contract on the total amount required to pay principal and interest.

If a borrower procures insurance by or through a licensee, the licensee shall cause to be delivered to the borrower a copy of the policy within fifteen days from the date such insurance is procured. No licensee shall decline new or existing insurance which meets the standards set out herein nor prevent any obligor from obtaining such insurance coverage from other sources.

If the loan contract is prepaid in full by cash, a new loan, or otherwise (except by the insurance) any life, accident and health insurance procured by or through a licensee shall be canceled and the unearned premium shall be refunded. The amount of such refund shall represent at least as great a proportion of the insurance premium or identifiable charge as the sum of the consecutive monthly balances of principal and interest of the loan contract originally scheduled to be outstanding after the installment date nearest the date of prepayment bears to the sum of all such monthly balances of the loan contract originally scheduled to be outstanding.

85 Acts, ch 158, §7 HF 556
Unnumbered paragraph 1 amended

536.27 Insurance related to property of borrower.

A licensee may sell the borrower insurance against loss of or damage to property owned by the borrower or loss from liability arising out of the ownership or use of property owned by the borrower. When the transaction is a consumer credit transaction as defined in section 537.1301 the sale of property insurance is subject to the requirements of sections 537.2501 and 537.2510 and the rules adopted under those sections by the administrator of the Iowa consumer credit code.

85 Acts, ch 158, §9 HF 556
NEW section

536.28 Definitions.

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

1. *"Administrator"* means the person designated in section 537.6103.
2. *"Licensee"* means a person licensed under this chapter.
3. *"Board"* means the state banking board.
4. *"Consumer loan"* means a loan as defined in section 537.1301.
5. *"Superintendent"* means the state superintendent of banking.

85 Acts, ch 158, §8 HF 556
NEW subsections 3, 4 and 5

CHAPTER 536A

IOWA INDUSTRIAL LOAN LAW

536A.5 Exemptions.

This chapter does not apply to any of the following:

1. Businesses organized or operating as permitted under the authority of a law of this state or the United States relating to banks, trust companies, building and loan associations, savings and loan associations, insurance companies, regulated loan companies organized under chapter 536, or credit unions.
2. Persons that make loans only on notes secured by first mortgages on real estate.
3. Licensed real estate brokers or salespersons.
4. A person engaged exclusively in the business of purchasing commodity financing or commercial paper.
5. A pawnbroker.
6. A person engaged in the mercantile business.
7. Loans made to a domestic or foreign corporation.

85 Acts, ch 158, §10 HF 556
Section struck and rewritten

CHAPTER 537A

CONTRACTS

537A.4 Gaming contracts void—exceptions.

All promises, agreements, notes, bills, bonds, or other contracts, mortgages or other securities, when the whole or any part of the consideration thereof is for money or other valuable thing won or lost, laid, staked, or bet, at or upon any game of any kind or on any wager, are absolutely void and of no effect.

This section does not apply to a contract for the operation of or for the sale or rental of equipment for games of skill or games of chance, if both the contract and the games are in compliance with chapter 99B. This section does not apply to wagering under the pari-mutuel method of wagering authorized by chapter 99D. This section does not apply to the sale, purchase or redemption of a ticket or share in the state lottery in compliance with chapter 99E.

85 Acts, ch 33, §123 HF 225
1985 amendment to unnumbered paragraph 2 shall be stricken when chapter 99E is repealed on July 1, 1990; 85 Acts, ch 33, §129
Unnumbered paragraph 2 amended

CHAPTER 542

GRAIN DEALERS

542.1 Definitions.

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

1. "*Commission*" means the Iowa state commerce commission.
2. "*Grain*" means any grain for which the United States department of agriculture has established standards including, but not limited to, corn, wheat, oats, soybeans, rye, barley, grain sorghum, flaxseeds, sunflower seed, spelt [emmer] and field peas.
3. "*Grain dealer*" means a person who buys during any calendar month five hundred bushels of grain or more from the producers of the grain for purposes of

resale, milling, or processing. However, "grain dealer" does not include a producer of grain who is buying grain for the producer's own use as seed or feed; a person solely engaged in buying grain future contracts on the board of trade; a person who purchases grain only for sale in a registered feed; a person engaged in the business of selling agricultural seeds regulated by chapter 199; a person buying grain only as a farm manager; an executor, administrator, trustee, guardian, or conservator of an estate; a bargaining agent as defined in section 542A.1; or a custom livestock feeder.

4. "Producer" means the owner, tenant, or operator of land in this state who has an interest in and receives all or a part of proceeds from the sale of grain produced on that land.

5. "Credit-sale contract" means a contract for the sale of grain pursuant to which the sale price is to be paid more than thirty days after the delivery of the grain to the buyer, and includes but is not limited to those contracts commonly referred to as deferred payment contracts, deferred pricing contracts, and price-later contracts.

6. "Custom livestock feeder" means a person who buys grain for the sole purpose of feeding it to livestock owned by another person in a feedlot as defined in section 172D.1, subsection 6, or a confinement building owned or operated by the custom livestock feeder and located in this state.

85 Acts, ch 80, § 1.2 HF 741
 Subsection 3 amended
 NEW subsection 6

542.3 License required—financial responsibility.

1. A person shall not engage in the business of a grain dealer in this state without having obtained a license issued by the commission.

2. The type of license required shall be determined as follows:

a. A class 1 license is required if the grain dealer purchases any grain by credit-sale contract, or if the value of grain purchased by the grain dealer from producers during the grain dealer's previous fiscal year exceeds five hundred thousand dollars. Any other grain dealer may elect to be licensed as a class 1 grain dealer.

b. A class 2 license is required for any grain dealer not holding a class 1 license. A class 2 licensee whose purchases from producers during a fiscal year exceed a limit of five hundred thousand dollars in value shall file within thirty days of the date the limit is reached a complete application for a class 1 license. If a class 1 license is denied, the person immediately shall cease doing business as a grain dealer.

3. An application for a license to engage in business as a grain dealer shall be filed with the commission and shall be in a form prescribed by the commission. The application shall include the name of the applicant, its principal officers if the applicant is a corporation or the active members of a partnership if the applicant is a partnership and the location of the principal office or place of business of the applicant. A separate license shall be required for each location at which records are maintained for transactions of the grain dealer. The application shall be accompanied by a complete financial statement of the applicant setting forth the assets, liabilities and the net worth of the applicant. The financial statement must be prepared according to generally accepted accounting principles. Assets shall be shown at original cost less depreciation. Upon a written request filed with the commission, the commission or a designated employee may allow asset valuations in accordance with a competent appraisal. Unpriced contracts shall be shown as a liability and valued at the applicable current market price of grain as of the date the financial statement is prepared.

4. In order to receive and retain a class 1 license the following conditions must be satisfied:

a. The grain dealer shall have and maintain a net worth of at least fifty thousand dollars, or maintain a bond in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net worth deficiency. However, a person shall not be licensed as a class 1 grain dealer if the person has a net worth of less than

twenty-five thousand dollars. A bond submitted for purposes of this paragraph shall be in addition to any bond otherwise required under this chapter.

b. The grain dealer shall submit, as required by the commission, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, the commission may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the commission. The grain dealer may elect, however, to submit a financial statement satisfying the requirements of subsection 5, paragraph "b," in lieu of the audited financial statement specified in this paragraph, and if a grain dealer makes this election the commission shall cause the grain dealer to be inspected not less than twice during each twelve-month period, but not more than five times in a twenty-four month period without good cause, in the manner provided in section 542.9.

c. The grain dealer shall have and maintain current assets equal to at least ninety percent of current liabilities or provide bond under the following conditions:

(1) A grain dealer with current assets equal to at least forty-five percent of current liabilities may provide bond of two thousand dollars for each one thousand dollars or fraction of one thousand dollars of current assets that the grain dealer is lacking to meet the minimum requirement. However, the bond shall not be used for longer than six consecutive months in a twelve-month period.

(2) A grain dealer with current assets equal to less than forty-five percent of current liabilities may provide bond of two thousand dollars for each one thousand dollars or fraction of one thousand dollars of current assets that the grain dealer is lacking to meet the minimum requirement. However, the bond shall not be used for longer than thirty consecutive days in a twelve-month period.

A bond submitted for purposes of this paragraph shall be in addition to any other bond permitted or required under this chapter.

5. In order to receive and retain a class 2 license the following conditions must be satisfied:

a. The grain dealer shall have and maintain a net worth of at least twenty-five thousand dollars, or maintain a bond in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net deficiency. However, a person shall not be licensed as a class 2 grain dealer if the person has a net worth of less than ten thousand dollars. A bond submitted for purposes of this paragraph shall be in addition to any bond otherwise required under this chapter.

b. The grain dealer shall submit, as required by the commission, a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant.

c. The grain dealer shall have and maintain current assets equal to at least ninety percent of current liabilities or provide bond under the following conditions:

(1) A grain dealer with current assets equal to at least forty-five percent of current liabilities may provide bond of two thousand dollars for each one thousand dollars or fraction of one thousand dollars of current assets that the grain dealer is lacking to meet the minimum requirement. However, the bond shall not be used for longer than six consecutive months in a twelve-month period.

(2) A grain dealer with current assets equal to less than forty-five percent of current liabilities may provide bond of two thousand dollars for each one thousand dollars or fraction of one thousand dollars of current assets that the grain dealer is lacking to meet the minimum requirement. However, the bond shall not be used for longer than thirty consecutive days in a twelve-month period.

A bond submitted for purposes of this paragraph shall be in addition to any other bond permitted or required under this chapter.

6. The commission shall adopt rules relating to the form and time of filing of

financial statements. The commission may require additional information or verification with respect to the financial resources of the applicant and the applicant's ability to pay producers for grain purchased from them.

7. *a.* When the net worth or current ratio of a licensee in good standing is less than that required by this section, the grain dealer shall correct the deficiency or file the necessary additional bond within thirty days of written notice by the commission. Unless the deficiency is corrected or the additional bond filed within thirty days, the grain dealer license shall be suspended.

b. If the commission finds that the welfare of grain producers requires emergency action, and incorporates a finding to that effect in its order, immediate suspension of the license may be ordered notwithstanding the thirty-day period otherwise allowed by paragraph "a" of this subsection.

85 Acts, ch 234, §1-2 HF 748
 Subsection 4, paragraph c amended
 Subsection 5, paragraph c amended

542.15 Credit-sale contracts.

1. A grain dealer shall not purchase grain by a credit-sale contract except as provided in this section.

2. A grain dealer shall give written notice to the commission prior to engaging in the purchase of grain by credit-sale contracts. Notice shall be on forms provided by the commission. The notice shall contain information required by the commission.

3. All credit-sale contract forms in the possession of a grain dealer shall have been permanently and consecutively numbered at the time of printing of the forms. A grain dealer shall maintain an accurate record of all credit-sale contract forms and numbers obtained by that dealer. The record shall include the disposition of each numbered form, whether by execution, destruction, or otherwise.

4. A grain dealer who purchases grain by credit-sale contracts shall maintain books, records and other documents as required by the commission to establish compliance with this section.

5. In addition to other information as may be required, a credit-sale contract shall contain or provide for all of the following:

- a.* The seller's name and address.
- b.* The conditions of delivery.
- c.* The amount and kind of grain delivered.
- d.* The price per bushel or basis of value.
- e.* The date payment is to be made.
- f.* The duration of the credit-sale contract, which shall not exceed twelve months from the date the contract is executed.

6. Title to all grain sold by a credit-sale contract is in the purchasing dealer as of the time the contract is executed, unless the contract provides otherwise. The contract must be signed by both parties and executed in duplicate. One copy shall be retained by the grain dealer and one copy shall be delivered to the seller. Upon revocation, termination, or cancellation of a grain dealer license, the payment date for all credit-sale contracts shall be advanced to a date not later than thirty days after the effective date of the revocation, termination, or cancellation, and the purchase price for all unpriced grain shall be determined as of the effective date of revocation, termination, or cancellation in accordance with all other provisions of the contract. However, if the business of the grain dealer is sold to another licensed grain dealer, credit-sale contracts may be assigned to the purchaser of the business.

7. A grain dealer shall not purchase grain on credit during any time period in which the grain dealer's current assets are less than forty-five percent of current liabilities.

542.21 Custom livestock feeder.

A custom livestock feeder shall only purchase grain from a grain producer by making payment by cash, check, or other instrument that is payable on demand. A custom livestock feeder shall not purchase grain from a grain producer using a credit-sale contract as defined in section 542.1, subsection 5.

85 Acts, ch 80, §3 HF 741
NEW section

CHAPTER 547**CONDUCTING BUSINESS UNDER TRADE NAME****547.3 Fee for recording.**

The county recorder shall charge and receive a fee in the amount specified in section 331.604 for each verified statement filed under this chapter.

85 Acts, ch 159, §4 HF 589
Section amended

CHAPTER 554**UNIFORM COMMERCIAL CODE****554.3806 Civil remedy for dishonor of a check, draft or order.**

1. In a civil action against a person who makes a check, draft or order for the payment of money which has been dishonored for lack of funds or credit or because the maker has no account with the drawee, the plaintiff may recover from the defendant damages triple the amount for which the dishonored check, draft or order is drawn. However, damages under this section shall not exceed by more than five hundred dollars the amount of the check, draft or order and may be awarded only if all the following are true:

a. The plaintiff made written demand by restricted certified mail of the defendant for payment of the amount of the check, draft, or order not less than thirty days before commencing the action.

b. The defendant has failed to tender to the plaintiff, prior to commencement of the action, an amount of money not less than the amount demanded.

c. The plaintiff clearly and conspicuously posted a notice at the usual place of payment, or in a billing statement of the plaintiff, stating that civil damages pursuant to this section would be sought upon dishonorment.

2. In an action for damages pursuant to subsection 1, if the court or jury determines that the failure of the defendant to satisfy the dishonored check was due to economic hardship, the court or jury may waive all or part of the allowable civil damages. However, if the court or jury waives all or part of the civil damages, the court or jury shall render judgment against the defendant in the amount of the dishonored check, draft or order and the actual costs incurred by the plaintiff in bringing the action.

3. This section does not apply if the reason for the dishonor of the check, draft or order is that the maker has stopped payment pursuant to section 554.4403 because of a bona fide dispute between the maker and the holder relating to the consideration for which the check, draft, or order was given.

4. In actions brought pursuant to this section, no additional award pursuant to section 625.22 shall be made.

85 Acts, ch 192, §1 SF 309
NEW section

554.9307 Protection of buyers of goods.

1. Except as provided in subsection 4, a buyer in ordinary course of business as defined in section 554.1201, subsection 9, takes free of a security interest created by that person's seller even though the security interest is perfected. For purposes of this section, a buyer or buyer in ordinary course of business includes any commission merchant, selling agent, or other person engaged in the business of receiving live-stock as defined in section 189A.2 on commission for or on behalf of another.

2. In the case of consumer goods, a buyer takes free of a security interest even though perfected if the buyer buys without knowledge of the security interest, for value and for the buyer's own personal, family or household purposes unless prior to the purchase the secured party has filed a financing statement covering such goods.

3. A buyer other than a buyer in ordinary course of business (subsection 1 of this section) takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, or more than forty-five days after the purchase, whichever first occurs, unless made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the forty-five-day period.

4. a. A buyer in ordinary course of business buying farm products from a person engaged in farming operations takes free of a security interest created by that person's seller even though the security interest is perfected, unless the buyer receives prior written notice of the security interest, or unless the buyer purchases the farm products outside of the seller's trade area, or the buyer's principal place of business is located outside of the seller's trade area. The "seller's trade area" consists of the county in which the seller resides or a county that is contiguous to or corners upon the county where the seller resides. "Written notice" means a writing which may contain information regarding more than one debtor and more than one lien and contains all of the following:

(1) The full name, address and social security or tax identification number of the debtor.

(2) The full name and address of the secured party.

(3) A description generally identifying the farm products subject to the security interest.

(4) The date and signature of the secured party.

b. The written notice expires on the earlier of either of the following dates:

(1) Eighteen months after the date the secured party signs the notice.

(2) When the debt that appears on the notice is satisfied.

c. For the notice to be effective, the buyer of the farm products must have received the notice prior to the time the buyer has made full payment to the person engaged in farming operations. The notice is not effective against any payments made prior to receipt of the notice.

d. A debtor engaged in farming operations who has created a security interest in farm products shall provide the secured party with a written list of potential buyers of the farm products at the time the debt is incurred if the secured party requests such a list. The debtor shall not sell the farm products to a buyer who does not appear on the list or is not in the debtor's trade area unless the secured party has given prior written permission or the debtor applies the proceeds the debtor receives from the sale to the debt within fifteen days of the date of sale or delivery, whichever is later. A debtor who knowingly or intentionally sells the farm products in violation of this paragraph is guilty of an aggravated misdemeanor.

e. A buyer of farm products buying from a person engaged in farming operations shall issue a check for payment jointly to the debtor and those secured parties from whom the buyer has received prior written notice of a security interest. A buyer who issues a check jointly payable as specified in this subsection takes the farm products free of a security interest created by that person's seller. A buyer who does not issue

a check jointly payable as specified in this subsection does not take farm products free of a security interest created by that person's seller. A buyer shall not withhold all or part of the payment to satisfy a prior debt. However, the buyer may withhold the costs incurred by the purchaser to market or transport the farm products if such costs are part of the agreement to purchase the farm products.

85 Acts, ch 188, §1, 2 HF 554
Subsection 1 amended
NEW subsection 4

554.9402 Formal requisites of financing statement—amendments—mortgage as financing statement.

1. A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to section 554.9103, subsection 5, or when the financing statement is filed as a fixture filing (section 554.9313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection 5. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A carbon, photographic or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this state.

2. A financing statement which otherwise complies with subsection 1 is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in

a. collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances; or

b. proceeds under section 554.9306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or

c. collateral as to which the filing has lapsed; or

d. collateral acquired after a change of name, identity or corporate structure of the debtor (subsection 7).

3. A form substantially as follows is sufficient to comply with subsection 1:

Name of debtor (or assignor)

Address

Name of secured party (or assignee)

Address

(1) This financing statement covers the following types (or items) of property: (Describe)

(2) (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe Real Estate).....

(3) (If applicable) The above goods are to become fixtures on

Where appropriate either add or substitute "The above timber is standing on " or "The above minerals or the like (including oil and gas) are located on " or "The above accounts will be financed at the wellhead or minehead of the well or mine located on " or any or all of these

(Describe Real Estate) and this financing statement is to be filed for

record in the real estate records. (If the debtor does not have an interest of record) The name of a record owner is

(4) (If products of collateral are claimed) Products of the collateral are also covered.

(use whichever is applicable).....

Signature of Debtor (or Assignor)

Signature of Secured Party (or Assignee)

4. Except as provided in this subsection, a financing statement may be amended by filing a writing signed by both the debtor and the secured party. However, an amendment is sufficient when it is signed only by the secured party if it is filed to show a change of the name of the secured party. An amendment showing only a change of the name of the secured party shall be filed without fee. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this Article, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

5. A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to section 554.9103, subsection 5, or a financing statement filed as a fixture filing (section 554.9313) where the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed for record in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

6. A mortgage is effective as a financing statement filed as a fixture filing or a filing covering timber to be cut, or minerals or the like (including oil and gas), or accounts subject to section 554.9103, subsection 5, or any or all of these, from the date of its recording if (a) the goods are described in the mortgage by item or type, (b) the goods are or are to become fixtures or timber to be cut, or minerals or the like (including oil and gas), or accounts subject to section 554.9103, subsection 5, or any or all of these, which are related to the real estate described in the mortgage, (c) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records, and (d) the mortgage is duly recorded. No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

7. A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or the names of partners. Where the debtor so changes the debtor's name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of the transfer.

8. A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

85 Acts, ch 252, §41 SF 577
Subsection 4 amended

554.9404 Termination statement.

1. If a financing statement covering consumer goods is filed on or after January 1, 1975, then within one month or within ten days following written demand by the

debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed, a termination statement to the effect that the secured party no longer claims a security interest under the financing statement, which shall be identified by file number. If a financing statement covering farm products is filed, then within sixty days, or within ten days following written demand by the debtor, after there is no outstanding secured objection* and no commitment to make advances, incur obligations, or otherwise give value, the secured party shall file with each filing officer with whom the financing statement was filed, a termination statement to the effect that the secured party no longer claims a security interest under the financing statement which shall be identified by file number. In other cases whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that the secured party no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with section 554.9405, subsection 2, including payment of the required fee. If the affected secured party fails to file such a termination statement as required by this subsection, or to send such a termination statement within ten days after proper demand therefor the affected secured party shall be liable to the debtor for one hundred dollars, and in addition for any loss caused to the debtor by such failure.

2. On presentation to the filing officer of such a termination statement the filing officer must note it in the index. If the filing officer has received the termination statement in duplicate, the filing officer shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof.

3. There shall be no fee for filing a termination statement.

85 Acts, ch 188, §3 HF 554

*"Obligation" probably intended
Subsection 1 amended

554.9405 Assignment of security interest—duties of filing officer—fees.

1. A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in section 554.9403, subsection 4. The uniform fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment on a form conforming to standards prescribed by the secretary of state shall be four dollars, or if such statement otherwise conforms to the requirements of this section, five dollars.

2. A secured party may assign of record all or a part of the rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. The filing officer shall note the assignment on the index of the financing statement, or in the case of a fixture filing, or a filing covering timber to be cut, or

covering minerals or the like (including oil and gas) or accounts subject to section 554.9103, subsection 5, the filing officer shall index the assignment under the name of the assignor as grantor and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, the filing officer shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment on a form conforming to standards prescribed by the secretary of state shall be four dollars, or if such statement otherwise conforms to the requirements of this section, five dollars. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (section 554.9402, subsection 6), may be made only by an assignment of the mortgage in the manner provided by the law of this state other than this chapter.

For financing statements covering fixture filings, changes in the filings, and termination of the filings, an additional fee shall be charged for recording in an amount specified in section 331.604.

3. After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

85 Acts, ch 159, §5 HF 589

Subsection 2, unnumbered paragraph 2 struck and rewritten

CHAPTER 556

DISPOSITION OF UNCLAIMED PROPERTY

556.2 Property held by banking or financial organizations or by business associations.

The following property held or owing by a banking or financial organization or by a business association is presumed abandoned:

1. Any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend, excluding any charges that may lawfully be withheld, unless the owner has, within five years:

a. Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest.

b. Corresponded in writing with the banking organization concerning the deposit.

c. Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization. Such memorandum shall be dated and may have been prepared by the banking organization, in which case it shall be signed by an official of the bank, or it may have been prepared by the owner.

d. Had another relationship with the bank in which the owner has:

(1) Communicated in writing with the bank.

(2) Otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the bank and if the bank communicates in writing with the owner with regard to the property that would otherwise be abandoned under this subsection at the address to which communications regarding the other relationship are regularly sent.

e. Been sent any written correspondence, notice or information by first class mail regarding the deposit by the banking organization on or after July 1, 1985, if the correspondence, notice or information is not returned to the bank organization for nondelivery and if the bank organization maintains a record of all returned mail.

2. Any funds paid in this state toward the purchase of shares or other interest in a financial organization or any deposit made in this state, and any interest or dividends, excluding any charges that may lawfully be withheld, unless the owner has within five years:

a. Increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends.

b. Corresponded in writing with the financial organization concerning the funds or deposit.

c. Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization. Such memorandum shall be dated and may have been prepared by the financial organization, in which case it shall be signed by an officer of the financial organization, or it may have been prepared by the owner.

d. Had another relationship with the financial organization in which the owner has:

(1) Communicated in writing with the financial organization.

(2) Otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the financial organization and if the financial organization communicates in writing with the owner with regard to the property that would otherwise be abandoned under this subsection at the address to which communications regarding the other relationship are regularly sent.

e. Been sent any written correspondence, notice or information by first class mail regarding the funds or deposits by the financial organization on or after July 1, 1985, if the correspondence, notice or information is not returned to the financial organization for nondelivery and if the financial organization maintains a record of all returned mail.

3. Any property described in subsections 1 and 2 which is automatically renewable is matured for purposes of subsections 1 and 2 upon the expiration of its initial time period, but in the case of any renewal to which the owner consents at or about the time of renewal by communicating in writing with the banking or financial organization or otherwise indicating consent as evidenced by a memorandum or other record on file prepared by an employee of the organization, the property is matured upon the expiration of the last time provided for which consent was given. If at the time period for delivery in section 556.13, a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time period for delivery is extended until the time when no penalty or forfeiture would result.

4. Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, money orders, and traveler's checks, that, with the exception of traveler's checks, has been outstanding for more than five years from the date it was payable, or from the date of its issuance if payable on demand, or, in the case of traveler's checks, that has been outstanding for more than fifteen years from the date of its issuance, unless the owner has within five years, or within fifteen years in the case of traveler's checks, corresponded in writing with the banking or financial organization or business association concerned, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization or business association. The memorandum shall be dated and may have been prepared by the banking or financial organization or business association, in which case it shall be signed by an officer of the banking or financial organization, or a member of the business association, or it may have been prepared by the owner.

5. Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than five years from the date on which the lease or rental period expired.

6. A banking organization or financial organization shall send to the owner of each account, to which none of the actions specified in paragraphs "a" through "d"

of subsection 1 or "a" through "d" of subsection 2 have occurred during the preceding five calendar years, a notice by certified mail stating in substance the following:

"According to our records, we have had no contact with you regarding (describe account) for more than five years. Under Iowa law, if there is a period of five years without contact, we may be required to transfer this account to the custody of the treasurer of state of Iowa as unclaimed property. You may prevent this by taking some action, such as a deposit or withdrawal, which indicates your interest in this account or by signing this form and returning it to us.

I desire to keep the above account open and active.

.....
YOUR SIGNATURE"

The notice required under this section shall be mailed within thirty days of the lapse of the five-year period in which there is no activity. The cost of the certified mail of the notice required in this section may be deducted from the account by the banking or financial organization.

85 Acts, ch 233, §1-3 HF 740
Subsection 1, NEW paragraph e
Subsection 2, NEW paragraph e
NEW subsection 6

556.5 Stocks and other intangible interests in business associations.

1. Except as provided in subsections 2 and 5, stock or other intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is presumed abandoned and, with respect to the interest, the association is the holder, if a dividend, distribution, or other sum payable as a result of the interest has remained unclaimed by the owner for seven years and the owner within seven years has not:

a. Communicated in writing with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest.

b. Otherwise communicated with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association prepared by an employee of the association.

2. At the expiration of a seven-year period following the failure of the owner to claim a dividend, distribution, or other sum payable to the owner as a result of the interest, the interest is not presumed abandoned unless there have been at least seven dividends, distributions, or other sums paid during the period, none of which has been claimed by the owner. If seven dividends, distributions, or other sums are paid during the seven-year period, the period leading to a presumption of abandonment commences on the date payment of the first unclaimed dividend, distribution, or other sum became due and payable. If seven dividends, distributions, or other sums are not paid during the presumptive period, the period continues to run until there have been seven dividends, distributions, or other sums that have not been claimed by the owner.

3. The running of the seven-year period of abandonment ceases immediately upon the occurrence of a communication referred to in subsection 1. If any future dividend, distribution, or other sum payable to the owner as a result of the interest is subsequently not claimed by the owner, a new period of abandonment commences and relates back to the time a subsequent dividend, distribution, or other sum became due and payable.

4. At the time an interest is presumed abandoned under this section, any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, and not previously abandoned, is presumed abandoned.

5. This section does not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest unless the records available to the treasurer of state show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within seven years communicated in any manner described in subsection 1.

6. Any stock or other certificate of ownership, or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association concerning it, within five years after the date prescribed for payment or delivery, is presumed abandoned.

85 Acts, ch 195, §50 SF 329
Subsection 1, paragraph b amended

556.25 Interest and penalties.

1. A person who fails to pay or deliver property within the time prescribed by this chapter shall pay the treasurer of state interest at the annual rate of eighteen percent on the property or value of the property from the date the property should have been paid or delivered but in no event prior to July 1, 1984.

2. A person who willfully fails to pay or deliver property to the treasurer of state as required under this chapter shall pay a civil penalty equal to twenty-five percent of the value of the property that should have been paid or delivered.

85 Acts, ch 195, §51 SF 329
Subsection 1 amended

CHAPTER 557

REAL PROPERTY IN GENERAL

557.24 Fee.

A person having the name of the person's farm recorded as provided in section 557.22 shall first pay to the county recorder a fee in the amount specified in section 331.604, which fee shall be paid to the county treasurer as other fees are paid to the county treasurer by the recorder.

85 Acts, ch 159, §6 HF 589
Section amended

557.26 Cancellation—fee.

If the owner of a registered farm desires to cancel the registered name of the farm, the owner shall acknowledge cancellation of the name by execution of an instrument in writing referring to the farm name, and shall record the instrument. For the latter service the county recorder shall charge a fee in the amount specified in section 331.604, which shall be paid to the county treasurer as other fees are paid to the county treasurer by the recorder.

85 Acts, ch 159, §7 HF 589
Section amended

CHAPTER 557A

IOWA TIME-SHARE ACT

For cooperatives and condominiums, see chapters 499A and 499B

557A.1 Time-share act.

This chapter shall be known as the "Iowa Time-share Act."

85 Acts, ch 155, §1 HF 484
NEW section

557A.2 Definitions.

In this chapter, unless the context requires otherwise:

1. "Association" means all of the time-share interval owners of a time-share

project acting as a group, either through a nonstock nonprofit corporation or an unincorporated association, in accordance with its bylaws governing administration of the project.

2. "*Commission*" means the Iowa real estate commission.

3. "*Common expense*" means all sums lawfully assessed against an owner of a time-share interval by an association for the expenses of operating and maintaining the time-share project and for other expenses designated by the project instruments.

4. "*Developer*" means a person who is in the business of creating or selling time-share intervals in a time-share program. This definition does not include a person acting solely as a sales agent.

5. "*Exchange agent*" means a person who negotiates and arranges the exchange of time-share intervals for their owners in an exchange program involving other time-share intervals.

6. "*Managing agent*" means a person who undertakes the duties and responsibilities of the management of a time-share project.

7. "*Project instrument*" means a recordable document applicable to an entire time-share project, containing restrictions or covenants regulating the use, occupancy, or disposition of the entire project and including amendments to the document.

8. "*Property report*" means a written statement provided to the initial purchaser of a time-share interval containing the information required in sections 557A.11 and 557A.12.

9. "*Purchaser*" means a person other than a developer or lender who acquires an interest in a time-share interval.

10. "*Time-share estate*" means an ownership or leasehold estate in property devoted to a time-share fee or a time-share lease.

11. "*Time-share instrument*" means a document by whatever name denominated creating or regulating time-share programs, but excluding any law, ordinance, or government regulation.

12. "*Time-share interval*" means a time-share estate or a time-share use.

13. "*Time-share program*" means an arrangement for time-share intervals in a time-share project in which the use, occupancy or possession of real property circulates among purchasers of the time-share intervals according to a fixed or floating time schedule on a periodic basis occurring over a period of time.

14. "*Time-share project*" means the entire real property that is subject to a time-share program.

15. "*Time-share use*" means a contractual right of exclusive occupancy which does not fall within the definition of a time-share estate including, but is not limited to, a vacation license, prepaid hotel reservation, club membership, limited partnership or vacation bond.

16. "*Unit*" means the real property or the real property improvement in a time-share project which is divided into time-share intervals.

85 Acts, ch 155, §2 HF 484
NEW section

557A.3 Applicability to time-share programs located out-of-state.

1. Sections 557A.4 to 557A.10 apply only to time-share programs located in Iowa.

2. Sections 557A.1, 557A.2, and 557A.11 to 557A.20 apply to any time-share program, wherever located, which is marketed in Iowa.

85 Acts, ch 155, §3 HF 484
NEW section

557A.4 Action for partition.

An action for partition of a unit shall not be maintained except as permitted by the time-share instrument.

85 Acts, ch 155, §4 HF 484
NEW section

557A.5 Status of time-share estates.

1. A time-share estate is an estate in real property and has the character and incidents of an estate in fee simple at common law or an estate for years if a leasehold, except as expressly modified by this chapter.

2. A document transferring or encumbering a time-share estate shall not be rejected for recordation because of the nature or duration of the estate.

3. For purposes of title, each time-share estate constitutes a separate estate or interest in property except for real property tax purposes.

85 Acts, ch 155, §5 HF 484
NEW section

557A.6 Creation of time-share estates.

Project instruments and time-share instruments creating time-share estates shall contain the following:

1. The name of the county in which the property is situated.
2. The legal description, street address, or other description sufficient to identify the property.
3. Identification of units and time periods by letter, name, number, or a combination.
4. Identification of time-share estates and, when applicable, the method by which additional time-share estates may be created.
5. The formula, fraction, or percentage of the common expenses and any voting rights assigned to each time-share estate and, when applicable, to each unit that is not subject to the time-share program.
6. Any restrictions on the use, occupancy, alteration, or alienation of time-share intervals.
7. The dates and conditions under which a partition may occur.
8. The ownership interest, if any, of personal property and provisions for care and replacement of the personal property.
9. Any other matters the developer deems appropriate.

85 Acts, ch 155, §6 HF 484
NEW section

557A.7 Arrangements for management and operation of a time-share estate program.

The time-share instruments for a time-share estate program shall prescribe reasonable arrangements for management and operation of the program and for the maintenance, repair, and furnishing of units, which shall include, but not be limited to, provisions for the following:

1. Creation of an association of time-share estate owners.
2. Adoption of bylaws for organizing and operating the association.
3. Payment of costs and expenses of operating the time-share program and owning and maintaining the units.
4. Employment and termination of employment of the managing agent.
5. Preparation and dissemination to time-share estate owners of an annual budget and of operating statements and other financial information concerning the time-share program.
6. Adoption of standards and rules of conduct for the use and occupancy of units by time-share estate owners.
7. Procedures for imposing and collecting assessments from time-share estate owners to defray the expenses of management of the time-share program and maintenance of the units.
8. Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use of units by time-share estate owners, their guests, and other users.
9. Methods for providing compensating use periods or monetary compensation

to a time-share estate owner if a unit cannot be made available for the period to which the time-share estate owner is entitled by schedule or by confirmed reservation.

10. Procedures for imposing a monetary penalty or suspension of a time-share estate owner's rights and privileges in the time-share program for failure of the owner to comply with the time-share instruments or the rules of the association with respect to the use of the units. The time-share estate owner shall be given notice and the opportunity to refute or explain the charges in person or in writing to the governing body or the association before a decision to impose discipline is rendered.

11. Employment of attorneys, accountants, and other professional persons as necessary to assist in the management of the time-share program and the units.

85 Acts, ch 155, §7 HF 484
NEW section

557A.8 Developer control period.

1. The time-share instruments for a time-share estate program may provide for a period of time, known as the developer control period, during which the developer or a managing agent selected by the developer shall manage the time-share program and the units in the time-share program.

2. If the time-share instruments for a time-share estate program provide for the establishment of a developer control period, they shall include, but not be limited to, provisions for the following:

- a. Termination of the developer control period by action of the association.
- b. Termination of contracts for goods and services for the time-share program entered into during the developer control periods.
- c. Termination of contract for managing agent entered into during developer control period.
- d. A regular accounting by the developer to the association as to all matters that significantly affect the interests of owners in the time-share program.

85 Acts, ch 155, §8 HF 484
NEW section

557A.9 Creation of time-share uses.

Project instruments and time-share instruments creating time-share uses shall contain the following:

1. Identification by name of the time-share project and street address or other description sufficient to identify the property where the time-share project is situated. The address shall be the street address if available.

2. Identification of the time periods, type of units, and the units that are in the time-share program and the length of time that the units are committed to the time-share program.

3. In case of a time-share project, identification of which units are in the time-share program and the method by which any units may be added, deleted, or substituted.

4. Any other matters that the developer deems appropriate.

85 Acts, ch 155, §9 HF 484
NEW section

557A.10 Arrangement for management and operation of a time-share use program.

The time-share instruments for a time-share use program shall prescribe reasonable arrangements for management and operation of the program and for the maintenance, repair, and furnishing of units which shall include, but not be limited to, provisions for the following:

1. Standards and procedures for upkeep, repair, and interior furnishing of units and for providing of janitorial, cleaning, linen, and similar services to the units during use periods.

2. Adoption of standards and rules of conduct governing the use and occupancy of units by time-share use owners.

3. Payment of the costs and expenses of operating the time-share program.
4. Selection of a managing agent to act on behalf of the developer.
5. Preparation and dissemination to time-share use owners of an annual budget and operating statements and other financial information concerning the time-share program.
6. Procedures for establishing the rights of time-share use owners to the use of units by prearrangement or under a first-reserved, first-served priority system.
7. Organization of a management advisory board consisting of time-share use owners including an enumeration of rights and responsibilities of the board.
8. Procedures for imposing and collecting assessment or use fees from time-share use owners as necessary to defray costs of management of the time-share program and in providing materials and services to the units.
9. Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use of units by time-share use owners, their guests, and other users.
10. Methods for providing compensating use periods or monetary compensation to a time-share use owner if a unit cannot be made available for the period to which the owner is entitled by schedule or by a confirmed reservation.
11. Procedures for imposing a monetary penalty or suspension of a time-share use owner's rights and privileges in the time-share program for failure of the owner to comply with the time-share instruments or the rules established by the developer with respect to the use of the units. The time-share use owner shall be given notice and the opportunity to refute or explain the charges in person or in writing to the management advisory board before a decision to impose discipline is rendered.
12. Procedures for disclosure at cost to requesting time-share users of a list of the names and mailing addresses of all current time-share owners in the time-share program.

85 Acts, ch 155, §10 HF 484
NEW section

557A.11 Disclosure requirements.

1. A developer or an agent of a developer of a time-share program shall provide a current property report to a purchaser not later than ten days after the purchaser signs a purchase agreement. Prior to any sale or solicitation for sale of a time-share interval, a copy of all disclosure materials required to be given to a purchaser by this section and section 557A.12 shall be filed with the commission. The property report shall contain the following:

a. A cover sheet of the same approximate size and shape as the majority of the disclosure materials required in this section, bearing the title "Property Report" and containing the name and location of the time-share project, the name and business address of the developer and the name and business address of the developer's agent. Following this information, on the front of the cover sheet, but set apart from it, there shall appear three statements in boldface type, or capital letters no smaller than the largest type on the page, in the following wording:

"(1) These are the legal documents covering your rights and responsibilities as a time-share interval owner. If you do not understand any provisions contained in them, you should obtain professional advice.

(2) These disclosure materials given to you as required by law may be relied upon as correct and binding. Oral statements may not be legally binding.

(3) You may at any time within (developer or developer's agent shall insert a number, not less than five, designating the rescission period) business days following receipt of a current property report, cancel in writing the purchase agreement and receive a full refund of any deposits made.

(4) The filing of this document with the commission does not constitute approval of the sale or lease, or offer for sale or lease, by the state, commission, or any officer thereof, or that the state, commission, or any officer thereof has in any way passed upon the merits of the offering."

b. A general description of the units including, but not limited to, the developer's schedule of approximate commencement and completion of all buildings, units, and amenities; or if completed, a statement that they have been completed.

c. As to all units offered by the developer in the same time-share project:

(1) The types and number of units.

(2) Identification of units that are subject to time-share intervals.

(3) The estimated number of units that may become subject to time-share intervals.

d. A brief description of the time-share project.

e. If applicable, any current budget and a projected budget to be used for the time-share intervals for one year after the date of the first transfer to a purchaser. The budget shall include, but is not limited to:

(1) A statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement.

(2) The projected liability for common expense, if any, by category of expenditures for the time-share intervals.

(3) A statement of any services not reflected in the budget that the developer provides, or expenses that the developer pays and which, upon completion of the project or the commencement of association control, would be payable by purchasers as part of their annual share of common expenses.

f. Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee.

g. A description of any liens, defects, or encumbrances on or affecting the title to the time-share intervals.

h. A description in general terms of any financing offered by the developer and a statement that documents showing specific terms and conditions of financing will be furnished upon request.

i. A statement of any pending lawsuits material to the time-share intervals of which a developer has actual knowledge.

j. Any restraints on alienation of any number or portion of any time-share intervals of which a developer has actual knowledge.

k. A description of the insurance coverage, or a statement that there is no insurance coverage, provided for the benefit of time-share interval owners.

l. Any current or expected fees or charges to be paid by time-share interval owners for the use of any amenities or facilities related to the property.

m. The extent to which financial arrangements have been provided for completion of all promised improvements.

n. The extent to which a unit may become subject to a tax or other lien arising out of claims against other owners of the same unit.

2. If the time-share program has been registered under a law or rule of another state of the United States, which registration has a similar goal in the protection of prospective purchasers of time-share programs, the developer may substitute for the property report required by subsection 1 an abbreviated property report which consists of a first page to which have been attached the disclosure materials required by the other registering jurisdiction.

a. In addition to the information required to be included on the cover page under subsection 1, paragraph "a", the cover page of the abbreviated report shall contain the following conspicuously noted language:

**"PROPERTY REPORT OF (Name of time-share program)
IMPORTANT NOTE TO PROSPECTIVE PURCHASERS:**

The attached information has been provided by (name of time-share program) under the laws of Iowa and (other registering jurisdiction). Read it carefully before you spend any money."

b. If the commission finds that some states do not have disclosure requirements adequate to protect prospective purchasers in this state, the commission may adopt

rules identifying those states and requiring the amending of the language of the first page of the abbreviated property report or the abbreviated property report from those states to insure adequate disclosure.

3. The developer shall pay a filing fee in an amount set by rule by the commission when filing the property report required in subsection 1 or 2.

4. At the same time as the developer files the property report or abbreviated property report, the developer shall provide the commission with a list of the names, addresses and phone numbers of all persons authorized to sell time-share intervals on the developer's behalf in Iowa. This list shall be periodically updated as the commission may by rule require.

85 Acts, ch 155, §11 HF 484
NEW section

557A.12 Additional disclosure requirements relating to exchange programs.

1. When the owners of time-share intervals are to be permitted or required to become members of or participate in any program for the exchange of occupancy rights among themselves or with the owners of time-share intervals of other time-share projects or both, the developer or an agent of a developer of a time-share program, in addition to the property report required by section 557A.11 and within the same time limitation, shall provide the following disclosure materials to a purchaser:

a. The name, address and telephone number of the exchange agent and a statement as to whether that person is an affiliate of the developer.

b. Whether membership or participation, or both, in the exchange program are voluntary or mandatory.

c. The expenses, or ranges of expenses, charged to the time-share interval owners for membership in the exchange program including the expenses, if any, of exchanging as of a date not more than one year before the property report is delivered to the purchaser, and the name of the person to whom those expenses are payable.

d. Whether and how any of the expenses specified in paragraph "c" may be altered and, if any of them are to be fixed on a case-by-case basis, the manner in which they are to be fixed in each case.

2. Subsection 1 shall not apply if information on all exchange programs has been included pursuant to law or rule of the other registering jurisdiction in an abbreviated property report prepared pursuant to section 557A.11, subsection 2.

85 Acts, ch 155, §12 HF 484
NEW section

557A.13 Exemptions from disclosure requirements.

A person shall not be required to provide disclosure documents, as required in sections 557A.11 and 557A.12, in the following cases:

1. A transfer of a time-share interval by a time-share interval owner other than a developer or a developer's agent.

2. A disposition of units in a time-share project pursuant to a court order.

3. A disposition of units in a time-share project by a government or governmental agency.

4. A disposition of units in a time-share project by a foreclosure or deed in lieu of foreclosure.

5. A disposition to a person acquiring the time-share interval for other than personal use.

6. A disposition of a time-share interval in a time-share project situated wholly outside this state if all solicitations, negotiations, and contracts took place wholly outside this state and the contract was executed wholly outside this state.

7. A gratuitous transfer of a time-share interval.

85 Acts, ch 155, §13 HF 484
NEW section

557A.14 Purchaser's and developer's rights relating to property report.

1. A purchaser may at any time within five business days following the receipt of all information required in sections 557A.11 and 557A.12 rescind in writing a contract of sale without stating any reason and without any liability on the purchaser's part. All payments made by the purchaser before rescission shall be refunded within thirty days after receipt of the notice of rescission as provided in subsection 3.

2. The developer may cancel the contract of purchase without penalty to either person at any time within five business days after the receipt by the purchaser of the disclosure materials required in sections 557A.11 and 557A.12. The developer shall return all payments made and the purchaser shall return all materials received in good condition, reasonable wear and tear excepted. If the materials are not returned, the developer may deduct their cost and return the balance to the purchaser.

3. If either person elects to cancel a contract pursuant to subsection 1 or 2, the person may do so by hand delivery or personal service, or electronic or prepaid United States mail to the other person or to the person's agent for service of process.

4. Material furnished under sections 557A.11 and 557A.12 may not be changed or amended following delivery to a purchaser without the prior approval of the purchaser, if the change or amendment would materially affect the rights of the purchaser. A copy of amendments shall be delivered promptly to the purchaser.

5. A developer who makes a false or misleading statement of fact that reasonably could affect the purchaser's decision to enter into the contract of sale, or omits to include a fact, in the information required to be disclosed under sections 557A.11 and 557A.12 shall be liable to the purchaser for damages, and, at the election of the purchaser, the misrepresentation shall be sufficient to void the contract for sale.

6. Rights of purchasers under this section shall not be waived in the contract of sale and an attempt to waive is void.

85 Acts, ch 155, §14 HF 484
NEW section

557A.15 Release from liens.

1. Unless the purchaser expressly agrees, prior to the transfer other than by deed in lieu of foreclosure of a time-share interval, to take subject to or assume a lien, the developer shall record or furnish to the purchaser releases of all liens affecting that time-share interval, or shall provide a surety bond or insurance against the lien.

2. If a lien, other than an underlying mortgage or deed of trust, becomes effective against more than one time-share interval in a time-share project, a time-share interval owner is entitled to a release of the owner's time-share interval from the lien upon payment of the amount of the lien attributable to the owner's time-share interval. The amount of the payment shall be proportionate to the ratio that the time-share interval owner's liability bears to the liabilities of all time-share interval owners whose interests are subject to the lien. Upon receipt of payment, the lienholder shall promptly deliver to the time-share interval owner a release of the lien covering the time-share interval. After payment, the managing entity shall not assess or have a lien against that time-share interval for any portion of the expenses incurred in connection with that lien. The time-share interval owner and the lienholder may enter into an alternative arrangement.

85 Acts, ch 155, §15 HF 484
NEW section

557A.16 Enforcement and cause of action.

1. Violations of this chapter, unfair methods of competition, and deceptive or unfair acts or practices, in the offer or sale of a time-share are unlawful. Enforcement shall be as provided in section 714.16. The terms "unfair methods of competition"

and “deceptive or unfair acts or practices” include, but are not limited to, the following acts:

- a. Misrepresenting or failing to disclose any material fact concerning a time-share.
- b. Failing to honor and comply with all provisions of a time-share instrument entered into with a purchaser.
- c. Including any time-share instrument provisions purporting to waive any right or benefit provided for purchasers under this chapter.
- d. Receiving from a prospective purchaser any money or other valuable consideration before the purchaser signs a time-share instrument.
- e. Misrepresenting the amount of time or period of time the time-share unit will be available to a purchaser.
- f. Misrepresenting the location of the offered time-share unit.
- g. Misrepresenting the size, nature, extent, qualities, or characteristics of the offered time-share unit.
- h. Misrepresenting the nature or extent of any services incident to the time-share unit.
- i. Misrepresenting the conditions under which a purchaser may exchange occupancy rights to a time-share unit in one location for occupancy rights to a time-share unit in another location.

2. If a developer or any other person subject to this chapter violates any provision of this chapter or any provision of the project or time-share instruments, any person or class of persons damaged or otherwise adversely affected by the violation shall have a claim for appropriate relief, which shall be brought in the county in which the time-share project is located or was offered or sold, in which the time-share offeror or time-share salesperson resides or is doing business upon tender of the time-share interest sold, or in which the contract was made. The court may order the developer or other person subject to this chapter to refund the purchaser the full amount paid by the purchaser, with prejudgment interest, less a portion of the amount paid representing the portion of any benefit the purchaser actually received or had the right to receive during the time preceding the tender. In all cases, the court may provide equitable relief it considers necessary or proper. The court may also award the person or class of persons reasonable attorney’s fees. This action does not limit any other remedy of the purchaser.

85 Acts, ch 155, §16 HF 484
NEW section

557A.17 Blanket mortgage or other liens affecting a time-share interval at time of first conveyance.

The developer whose project is subject to an underlying blanket lien or encumbrance shall protect nondefaulting purchasers from foreclosure by the lienholder by obtaining from the lienholder written assurances that the lienholder will not foreclose on nondefaulting purchasers. These written assurances may be in the form of a non-disturbance clause, subordination agreement, or partial release of the lien as the time-share intervals are sold, or the developer may obtain the agreement of the lienholder to take the project, in the event of default by the developer, subject to the rights of the nondefaulting purchasers by entering into a financing plan or escrow agreement sufficient to protect the lienholder’s interest.

85 Acts, ch 155, §17 HF 484
NEW section

557A.18 Financing of time-share programs.

In the financing of a time-share program, the developer shall retain financial records of the schedule of payments required to be made and the payments made to any person or entity which is the holder of an underlying blanket mortgage, deed of trust, contract of sale, or other lien or encumbrance. Any transfer of the develop-

er's interest in the time-share program to a person other than purchaser of a unit shall be subject to the obligations of the developer.

85 Acts, ch 155, §18 HF 484
NEW section

557A.19 Lienholder's rights.

Any purchaser who fails to object and specify the invalidity or defect contained in the time-share instrument within sixty days after receipt of written notice that the developer has assigned the receivables to the lienholder may not claim that the time-share instrument is invalid, void, or voidable in any subsequent action for enforcement of the collection of the receivables by the lienholder. The notice shall be by certified mail or personal delivery and state that the developer has assigned the receivables to the lienholder and that the purchaser has sixty days within which to object and specify the invalidity or defect contained within such instrument. Any objection shall be written and delivered by certified mail or personal delivery to the lienholder.

85 Acts, ch 155, §19 HF 484
NEW section

557A.20 Selling time-share estates—license required.

A person engaged in the business or occupation of selling time-share estates for a fee or a commission shall obtain a real estate license pursuant to chapter 117.

85 Acts, ch 155, §20 HF 484
NEW section

CHAPTER 558

CONVEYANCES

558.39 Forms of acknowledgment.

The following forms of acknowledgment shall be sufficient in the cases to which they are respectively applicable. In each case where one of these forms is used, the name of the state and county where the acknowledgment is taken shall precede the body of the certificate, and the signature and official title of the officer shall follow it as indicated in the first form and shall constitute a part of the certificate, and the seal of the officer shall be attached when necessary under the provision of this chapter. No certificate of acknowledgment shall be held to be defective on account of the failure to show the official title of the officer making the certificate if such title appears either in the body of such certificate or in connection therewith, or with the signature thereto.

1. In the case of natural persons acting in their own right:

State of }
County of } ss.

On this day of, A.D. 19....., before me,, (Insert title of acknowledging officer) personally appeared, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that executed the same as voluntary act and deed.

.....
Notary Public in the state of Iowa.

2. In the case of natural persons acting by attorney:

On this day of, A.D. 19....., before me,, (Insert title of acknowledging officer) personally appeared, to me known to be the person who executed the foregoing instrument in behalf of
....., and acknowledged that that person executed the same as the voluntary act and deed of said

3. In the case of corporations or joint-stock associations:

On this day of, A.D. 19....., before me, a (Insert title of acknowledging officer) in and for said county, personally appeared to me personally known, who being by me duly (sworn or affirmed) did say that that person is (Insert title of executing officer) of said (corporation or association), that (the seal affixed to said instrument is the seal of said or no seal has been procured by the said) (corporation or association) and that said instrument was signed and sealed on behalf of the said (corporation or association) by authority of its board of (directors or trustees) and the said acknowledged the execution of said instrument to be the voluntary act and deed of said (corporation or association) by it voluntarily executed.

4. In the case of partnerships:

On this day of, 19....., before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared to me personally known, who being by me duly sworn, did say that the person is one of the partners of, a partnership, and that the instrument was signed on behalf of the partnership by authority of the partners and the partner acknowledged the execution of the instrument to be the voluntary act and deed of the partnership by it and by the partner voluntarily executed.

5. In the case of an individual fiduciary:

On this day of, 19....., before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that the person, as the fiduciary, executed the instrument as the voluntary act and deed of the person and of the fiduciary.

6. In the case of a corporate fiduciary:

On this day of, 19....., before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared and to me personally known, who, being by me duly sworn, did say that they are the and, respectively, of the corporation executing the foregoing instrument; that (no seal has been procured by) (the seal affixed thereto is the seal of) the corporation; that the instrument was signed (and sealed) on behalf of the corporation by authority of its Board of Directors; that and acknowledged the execution of the instrument to be the voluntary act and deed of the corporation and of the fiduciary, by it, by them and as the fiduciary voluntarily executed.

7. In the case of a limited partnership with corporate general partner:

On this day of, 19....., before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared to me personally known, who being by me duly sworn did say that the person is the of, the General Partner of, a limited partnership, executing the foregoing instrument, that no seal has been procured by the corporation; that the instrument was signed on behalf of the corporation as General Partner of, a limited partnership, by authority of the corporation's Board of Directors; and that as that officer acknowledged execution of the instrument to be the voluntary act and deed of the corporation and limited partnership by it and by the officer voluntarily executed.

8. In the case of a limited partnership with an individual general partner:

On this day of, 19....., before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared to me personally known, who, being by me duly sworn, did say that the person is (a) (the) General Partner of, an Iowa limited partnership, executing the foregoing instrument, that the instrument was signed on behalf of the limited partnership by authority of the limited partnership; and the general partner acknowledged the

execution of the instrument to be the voluntary act and deed of the limited partnership, by it and by the general partner voluntarily executed.

9. In the case of joint ventures:

On this day of, 19....., before me, the undersigned, a Notary Public in and for the State of Iowa, personally appearedand to me personally known, who, being by me duly sworn, did say that they are the and, respectively, of, an Iowa corporation, a joint venturer of, a joint venture, executing the foregoing instrument, that (no seal has been procured by) (the seal affixed thereto is the seal of) the corporation; that the instrument was signed (and sealed) on behalf of the corporation as a joint venturer of, a joint venture, by authority of its Board of Directors; and that and, as such officers, acknowledged the execution of the instrument to be the voluntary act and deed of the corporation and joint venture, by the corporation and joint venture and by them voluntarily executed.

10. In the case of municipalities:

On this day of, 19....., before me,, a Notary Public in and for the State of Iowa, personally appeared and to me personally known, and, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Ordinance No. passed (the Resolution adopted) by the City Council, under Roll Call No. of the City Council on the day of, 19....., and that and acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

11. In the case of counties:

On this day of, 19....., before me,, a Notary Public in and for the State of Iowa, personally appeared and to me personally known, and who, being by me duly sworn, did say that they are the Chairperson of the Board of Supervisors and County Auditor, respectively, of the County of, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its Board of Supervisors, as contained in Ordinance No. passed (the Resolution adopted) by the Board of Supervisors, under Roll Call No. of the Board of Supervisors on the day of, 19....., and acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

(In all cases add signature and title of the officer taking the acknowledgment, and strike from between the parentheses the word or clause not used, as the case may be.)

Any instrument affecting real estate situated in this state which has been or may be acknowledged or proved in a foreign state or country and in conformity with the laws of that foreign state or country, shall be deemed as good and valid in law as though acknowledged or proved in conformity with the existing laws of this state.

85 Acts, ch 43, §1 SF 375
NEW subsections 4 through 11

558.44 Mandatory recordation of conveyances and leases of agricultural land.

Every conveyance or lease of agricultural land, except leases not to exceed five years in duration with renewals, conveyances or leases made by operation of law, and distributions made from estates to heirs or devisees shall be recorded by the grantee or lessee with the county recorder not later than one hundred eighty days after the date of conveyance or lease.

For an instrument of conveyance of agricultural land deposited with an escrow agent, the fact of deposit of that instrument of conveyance with the escrow agent as well as the name and address of the grantor and grantee shall be recorded, by a document executed by the escrow agent, with the county recorder not later than one hundred eighty days from the date of the deposit with the escrow agent. For an instrument of conveyance of agricultural land delivered by an escrow agent, that instrument shall be recorded with the county recorder not later than one hundred eighty days from the date of delivery of the instrument of conveyance by the escrow agent.

At the time of recordation of the conveyance or lease of agricultural land, except a lease not exceeding five years in duration with renewals, conveyances or leases made by operation of law and distributions made from estates of decedents to heirs or devisees, to a nonresident alien as grantee or lessee, such conveyance or lease shall disclose, in an affidavit to be recorded therewith as a precondition to recordation, the name, address, and citizenship of the nonresident alien. In addition, if the nonresident alien is a partnership, limited partnership, corporation or trust, the affidavit shall also disclose the names, addresses, and citizenship of the nonresident alien individuals who are the beneficial owners of such entities. However, any partnership, limited partnership, corporation, or trust which has a class of equity securities registered with the United States securities and exchange commission under section 12 of the Securities Exchange Act of 1934 as amended to January 1, 1978, need only state that fact on the affidavit.

Failure to record a conveyance or lease of agricultural land required to be recorded by this section by the grantee or lessee within the specified time limit is punishable by a fine not to exceed one hundred dollars per day for each day of violation. The county recorder shall record a conveyance or lease of agricultural land presented for recording even though not presented within one hundred eighty days after the date of conveyance or lease. The county recorder shall forward to the county attorney a copy of each such conveyance or lease of agricultural land recorded more than one hundred eighty days from the date of conveyance. The county attorney shall initiate action in the district court to enforce the provisions of this section. Failure to timely record shall not invalidate an otherwise valid conveyance or lease.

If a real estate contract or lease is required to be recorded under this section, the requirement is satisfied by recording either the entire real estate contract or lease or a memorandum of the contract or lease containing at least the names and addresses of all parties named in the contract or lease, a description of all real property and interests therein subject to the contract or lease, the length of the contract or initial term of the lease, and in the case of a lease a statement as to whether any of the named parties have or are subject to renewal rights, and if so, the event or condition upon which renewal occurs, the number of renewal terms and the length of each, and in the case of a real estate contract a statement as to whether the seller is entitled to the remedy of forfeiture and as to the dates upon which payments are due. This unnumbered paragraph is effective July 1, 1980 for all contracts and leases of agricultural land made on or after July 1, 1980.

The provisions of this section except as otherwise provided, are effective July 1, 1979, for all conveyances and leases of agricultural land made on or after July 1, 1979.

Section reprinted
See Code editor's note

558.57 Entry on auditor's transfer books.

The recorder shall not record any deed or other instrument unconditionally conveying real estate until the proper entries have been made upon the transfer books in the auditor's office, and endorsement made upon the deed or other instrument properly dated and officially signed, in substantially the following form:

Entered upon transfer books and for taxation this day of, 19..... My fee \$..... paid by recorder.

.....
Auditor.

558.66 Title decree—entry on transfer books.

Upon receipt of a certificate from the clerk of the district court or an appellate court that the title to real estate has been finally established in any named person by judgment or decree or by will, the auditor shall enter the information in the certificate upon the transfer books, upon payment of a fee in the amount specified in section 331.507, subsection 2, paragraph "a", which fee shall be taxed as court costs, collected by the clerk, and paid to the auditor by the recorder as provided in section 558.58, subsection 1.

85 Acts, ch 159, §9 HF 589
Section amended

CHAPTER 562A**UNIFORM RESIDENTIAL LANDLORD AND TENANT LAW****562A.28 Failure to maintain.**

If there is noncompliance by the tenant with section 562A.17, materially affecting health and safety, that can be remedied by repair or replacement of a damaged item or cleaning, and the tenant fails to comply as promptly as conditions require in case of emergency or within fourteen days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a competent manner and submit an itemized bill for the actual and reasonable cost or the fair and reasonable value of it as rent on the next date when periodic rent is due, or if the rental agreement has terminated, for immediate payment.

85 Acts, ch 67, §50 SF 121
Section amended

CHAPTER 562B**MOBILE HOME PARKS RESIDENTIAL LANDLORD AND TENANT LAW****562B.18 Tenant to maintain mobile home space—notice of vacating.**

A tenant shall maintain the mobile home space in as good a condition as when the tenant took possession and shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of city, county and state codes materially affecting health and safety.
2. Keep that part of the mobile home park that the tenant occupies and uses reasonably clean and safe.
3. Dispose from the tenant's mobile home space all rubbish, garbage and other waste in a clean and safe manner.
4. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the mobile home park or knowingly permit any person to do so.
5. Act and require other persons in the mobile home park with the tenant's consent to act in a manner that will not disturb the tenant's neighbors' peaceful enjoyment of the mobile home park.

85 Acts, ch 67, §51 SF 121
Subsection 5 amended

CHAPTER 570A

AGRICULTURAL SUPPLY DEALER'S LIEN

570A.1 Definitions.

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

1. "*Agricultural chemical*" means a fertilizer or agricultural chemical which is applied to crops or land which is used for the raising of crops, including but not limited to fertilizer as defined in section 200.3, and pesticide as defined in section 206.2.
2. "*Agricultural purpose*" means a purpose related to the production, harvest, marketing, or transportation of agricultural products by a person who cultivates, plants, propagates or nurtures the agricultural products including agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any other products raised or produced on farms.
3. "*Agricultural supply dealer*" means a person engaged in the retail sale of agricultural chemicals, seed, feed, or petroleum products used for an agricultural purpose.
4. "*Certified request*" means a request delivered by registered or certified mail, or a request delivered in person in writing signed and dated by the respective parties.
5. "*Farmer*" means a person engaged in a business which has an agricultural purpose.
6. "*Feed*" means a commercial feed, feed ingredient, mineral feed, drug, animal health product, or customer-formula feed which is used for the feeding of livestock, including but not limited to feed as defined in section 198.3.
7. "*Financial history*" means the record of a person's current loans, the date of a person's loans, the amount of the loans, the person's payment record on the loans, current liens against the person's property, and the person's most recent financial statement.
8. "*Financial institution*" means a bank, credit union, insurance company, mortgage banking company or savings and loan association, industrial loan company, production credit association, farmer's home administration, or like institution which operates or has a place of business in this state.
9. "*Labor*" means labor performed in the application, delivery, or preparation of a product defined in subsections 1, 6, 12, and 14.
10. "*Letter of credit*" means an engagement by a financial institution to honor drafts or other demands for payment.
11. "*Livestock*" means cattle, sheep, swine, poultry, or other animals or fowl.
12. "*Petroleum product*" means a motor fuel or special fuel which is used in the production of crops and livestock, including but not limited to motor fuel as defined in section 324.2.
13. "*Sale on a credit basis*" means a transaction in which the purchase price is due on a date after the date of the sale.
14. "*Seed*" means agricultural seeds which are used in the production of crops, including but not limited to agricultural seed as defined in section 199.1.

85 Acts, ch 204, §1 SF 538

NEW subsection 11 and subsequent subsections renumbered

570A.2 Financial institution memorandum to agricultural supply dealers.

1. Upon the receipt of a certified request of an agricultural supply dealer, prior to or upon a sale on a credit basis of agricultural chemicals, seed, feed, or petroleum products to a farmer, a financial institution which has either a security interest in collateral owned by the farmer or an outstanding loan to the farmer for an agricultur-

al purpose shall issue within four business days a memorandum which states whether or not the farmer has a sufficient net worth or line of credit to assure payment of the purchase price on the terms of the sale. The certified request submitted by the agricultural supply dealer shall state the amount of the purchase and the terms of sale and shall be accompanied by a waiver of confidentiality signed by the farmer, and a fifteen dollar fee. The waiver of confidentiality and the certified request may be combined and submitted as one document. If the financial institution states in its memorandum that the farmer has a sufficient net worth or line of credit to assure payment of the purchase price, the memorandum is an irrevocable and unconditional letter of credit to the benefit of the agricultural supply dealer for a period of thirty days following the date on which the final payment is due for the amount of the purchase price which remains unpaid. If the financial institution does not state in its memorandum that the farmer has a sufficient net worth or line of credit to assure payment of the purchase price, the financial institution shall transmit the relevant financial history which it holds on the person. This financial history shall remain confidential between the financial institution, the agricultural supply dealer, and the farmer.

2. If within two business days of receipt of a certified request a financial institution fails to issue a memorandum upon the request of an agricultural supply dealer and the request from the agricultural supply dealer was proper under subsection 1, or if the memorandum from the financial institution is incomplete, or if the memorandum from the financial institution states that the farmer does not have a sufficient net worth or line of credit to assure payment of the purchase price, the agricultural supply dealer may decide to make the sale and secure the lien provided in section 570A.3.

3. Upon an action to enforce a lien secured under section 570A.3 against the interest of a financial institution secured to the same collateral as that of the lien, it shall be an affirmative defense to a financial institution and complete proof of the superior priority of the financial institution's lien that the financial institution either did not receive a certified request and a waiver signed by the farmer, or received the request and a waiver signed by the farmer and provided the full and complete relevant financial history which it held on the farmer making the purchase from the agricultural supply dealer on which the lien is based and that financial history reasonably indicated that the farmer did not have a sufficient net worth or line of credit to assure payment of the purchase price.

85 Acts, ch 204, §2 SF 538
Subsection 1 amended

570A.3 Lien created.

1. An agricultural supply dealer furnishing an agricultural chemical, seed, or a petroleum product to a farmer has a lien for the retail cost of the agricultural chemical, seed, or petroleum product, including labor furnished. The lien attaches to all crops which are produced upon the land to which the agricultural chemical was applied, or produced from seed furnished, or produced using the petroleum product furnished, for a period of sixteen months following the date of perfection of the lien pursuant to section 570A.4. However, the lien does not attach to that portion of the crops of a farmer who has paid all amounts due from the farmer for the retail cost, including labor, of the agricultural chemical, seed, or petroleum product provided.

2. An agricultural supply dealer furnishing feed to a farmer has a lien for the unpaid amount of the retail cost of the feed, including labor. The lien attaches to all livestock consuming the feed. However, the lien does not attach to that portion of the livestock of a farmer who has paid all amounts due from the farmer for the retail cost, including labor, of the feed.

85 Acts, ch 204, §3 SF 538
Subsection 1 amended

570A.4 Perfection of lien.

1. In order to perfect the lien created by section 570A.3, the agricultural supply dealer entitled to the lien shall file a verified lien statement with the office of the secretary of state. The lien statement may be filed at the time the agricultural chemical, seed, feed, or petroleum product is purchased or delivered but not later than thirty-one days after the first date on which payment is due under the terms of payment agreed to by the farmer and the agricultural supply dealer. The lien statement shall disclose all of the following:

- a. The name and address of the agricultural supply dealer claiming the lien.
- b. An itemized declaration of the nature and retail cost of the agricultural chemical, seed, feed, or petroleum product which has been or may be furnished pursuant to the certified request or the combined certified request and waiver of confidentiality.
- c. The last date through which the agricultural supply dealer claiming the lien has agreed to furnish agricultural chemicals, seed, feed, or petroleum products as stated in the certified request or the combined certified request and waiver of confidentiality.
- d. The first date on which payment was due, according to the terms of payment, from the farmer for whom the agricultural chemical, seed, feed, or petroleum product was furnished or may be furnished pursuant to the certified request or the combined certified request and waiver of confidentiality.
- e. The name and address of the farmer for whom the agricultural chemical, seed, feed, or petroleum product was furnished or may be furnished pursuant to the certified request or the combined certified request and waiver of confidentiality.
- f. A description of the real property on which the crops to which the lien attaches are growing or are to be grown or the description of the livestock to which the lien attaches.

2. The secretary of state shall enter on the lien statement the time of day and date of filing.

3. If an agricultural supply dealer fails to file the lien statement within the time required by subsection 1, the lien and all benefits under this chapter are forfeited.

4. The secretary of state shall note the filing of a lien statement under this section in the manner provided by chapter 554, the uniform commercial code, and shall charge a four dollar filing fee if the statement is the standard form prescribed by the secretary of state, and otherwise a fee of five dollars.

5. An agricultural supply dealer filing a verified lien statement shall request from the secretary of state a certificate showing any effective financing statement or verified lien statements naming the debtor and the crops or livestock to which the lien attaches. The agricultural supply dealer shall notify by registered or certified mail, return receipt requested, any other creditor who holds a lien or security interest which is subordinate or equal to the agricultural supply dealer's lien.

85 Acts, ch 204, §4 SF 538
Subsections 1 and 5 amended

CHAPTER 573

LABOR AND MATERIAL ON PUBLIC IMPROVEMENTS

573.1 Terms defined.

For the purpose of this chapter:

1. "Public corporation" shall embrace the state, and all counties, cities, public school corporations, and all officers, boards, or commissions empowered by law to enter into contracts for the construction of public improvements.

2. "Public improvement" is one, the cost of which is payable from taxes or other funds under the control of the public corporation, except in cases of public improve-

ment for drainage or levee purposes the provisions of the drainage law in cases of conflict shall govern.

3. "Construction", in addition to its ordinary meaning, includes repair, alteration and demolition.

4. "Material" shall, in addition to its ordinary meaning, embrace feed, gasoline, kerosene, lubricating oils and greases, provisions and fuel, and the use of forms, accessories, and equipment, but shall not include personal expenses or personal purchases of employees for their individual use.

5. "Service" shall, in addition to its ordinary meaning, include the furnishing to the contractor of workers' compensation insurance, and premiums and charges for such insurance shall be considered a claim for service.

85 Acts, ch 22, §1 HF 311
Subsection 3 amended

CHAPTER 587

JUDGMENTS AND DECREES LEGALIZED

587.1 Decrees against unknown claimants.

All decrees of court obtained in actions against unknown defendants in which the notice was entitled in the initial or initials of the plaintiff instead of the plaintiff's full given name are legalized, and the decrees have the same force and effect as if the notice had been entitled in the full name of the plaintiff as was provided for in section 3538, Code of 1897, and in section 3538 of the supplement to the Code of 1913.

85 Acts, ch 67, §52 SF 121
Section amended

CHAPTER 595

MARRIAGE

595.2 Age.

A marriage between a male and a female each eighteen years of age or older is valid. A marriage between a male and a female either or both of whom have not attained that age may be valid under the circumstances prescribed in this section.

1. If either party to a marriage falsely represents himself or herself to be eighteen years of age or older at or before the time the marriage is solemnized, the marriage is valid unless the person who falsely represented his or her age chooses to void the marriage by making his or her true age known and verified by a birth certificate or other legal evidence of age in an annulment proceeding initiated at any time before he or she reaches his or her eighteenth birthday. A child born of a marriage voided under this subsection is legitimate.

2. A marriage license may be issued to a male and a female either or both of whom are sixteen or seventeen years of age if:

a. The parents of the underaged party or parties certify in writing that they consent to the marriage. If one of the parents of any underaged party to a proposed marriage is dead or incompetent the certificate may be executed by the other parent, if both parents are dead or incompetent the guardian of the underaged party may execute the certificate, and if the parents are divorced the parent having legal custody may execute the certificate and

b. The certificate of consent of the parents, parent or guardian is approved by a judge of the district court or, if both parents of any underaged party to a proposed marriage are dead, incompetent or cannot be located and the party has no guardian, the proposed marriage is approved by a judge of the district court. A judge shall grant

approval under this subsection only if the judge finds the underaged party or parties capable of assuming the responsibilities of marriage and that the marriage will serve the best interest of the underaged party or parties. Pregnancy alone does not establish that the proposed marriage is in the best interest of the underaged party or parties, however if pregnancy is involved the court records which pertain to the fact that the female is pregnant shall be sealed and available only to the parties to the marriage or proposed marriage or to any interested party securing an order of the court.

c. If a parent or guardian withholds consent, the judge upon application of a party to a proposed marriage shall determine if the consent has been unreasonably withheld. If the judge so finds, the judge shall proceed to review the application under paragraph "b" of this subsection.

85 Acts, ch 67, §53 SF 121
Subsection 2, paragraph b amended

595.4 Age and qualification—verified application—waiting period—exception.

Previous to the issuance of any license to marry, the parties desiring such license shall sign and file a verified application with the clerk of the court which application either may be mailed to the parties at their request or may be signed by them at the office of the clerk of the district court in the county in which the license is to be issued. Such application shall set forth at least one affidavit of some competent and disinterested person stating such facts as to age and qualification of the parties as the clerk may deem necessary to determine the competency of the parties to contract a marriage. Upon the filing of the application for a license to marry, the clerk of the district court shall file the application in a record kept for that purpose.

After expiration of three days from the date of filing the application by the parties, the clerk shall issue the license if the clerk is satisfied as to the competency of the parties to contract a marriage. If the license has not been issued within one year from the date of the application, the application is void.

A license to marry may be issued prior to the expiration of three days from the date of filing the application for the license in cases of emergency or extraordinary circumstances. An order authorizing the issuance of a license may be granted by a judge of the district court under conditions of emergency or extraordinary circumstances upon application of the parties filed with the clerk of court. No such order may be granted unless the parties have filed an application for a marriage license in a county within the judicial district. An application for such an order shall be made on forms furnished by the clerk at the same time the application for the license to marry is made. If after examining the application for the marriage license the clerk is satisfied as to the competency of the parties to contract a marriage, the clerk shall refer the parties to a judge of the district court for action on the application for an order authorizing the issuance of a marriage license prior to expiration of three days from the date of filing the application for the license. The judge shall, if satisfied as to the existence of an emergency or extraordinary circumstances, grant an order authorizing the issuance of a license to marry prior to the expiration of three days from the date of filing the application for the license to marry. The clerk shall issue a license to marry upon presentation by the parties of the order authorizing a license to be issued. A fee of five dollars shall be paid to the clerk at the time the application for the order is made, which fee is in addition to the fee prescribed by law for the issuance of a marriage license.

85 Acts, ch 67, §54 SF 121
Unnumbered paragraphs 2 and 3 amended

595.6 Filing and record required.

The affidavit or certificate, in each case, shall be filed by the clerk and constitute a part of the records of the clerk's office. A memorandum of the affidavit or certificate shall also be entered in the license book.

85 Acts, ch 67, §55 SF 121
Section amended

595.19 Void marriages.

Marriages between the following persons who are related by blood are void:

1. Between a man and his father's sister, mother's sister, daughter, sister, son's daughter, daughter's daughter, brother's daughter or sister's daughter.
2. Between a woman and her father's brother, mother's brother, son, brother, son's son, daughter's son, brother's son, or sister's son.
3. Between first cousins.
4. Between persons either of whom has a husband or wife living, but, if the parties live and cohabit together after the death or divorce of the former husband or wife, such marriage shall be valid.

85 Acts, ch 99, §8 SF 224

Unnumbered paragraph 1 and subsections 1 and 2 amended

CHAPTER 597**HUSBAND AND WIFE****597.15 Custody of children.**

If one spouse abandons the other spouse, the abandoned spouse is entitled to the custody of the minor children, unless the district court, upon application for that purpose, otherwise directs, or unless a custody decree is entered in accordance with chapter 598A. In this section "abandon" does not include:

1. The departure of a spouse due to physical or emotional abuse.
2. The departure of a spouse accompanied by the minor children.

85 Acts, ch 18, §1 HF 421

Section amended

CHAPTER 598**DISSOLUTION OF MARRIAGE****598.5 Contents of petition.**

The petition for dissolution of marriage shall:

1. State the name, birth date, address and county of residence of the petitioner and the name and address of the petitioner's attorney.
2. State the place and date of marriage of the parties.
3. State the name, birth date, address and county of residence, if known, of the respondent.
4. State the name and age of each minor child by date of birth whose welfare may be affected by the controversy.
5. State whether or not a separate action for dissolution of marriage has been commenced by the respondent and whether such action is pending in any court in this state or elsewhere.
6. Allege that the petition has been filed in good faith and for the purposes set forth therein.
7. Allege that there has been a breakdown of the marriage relationship to the extent that the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.
8. Set forth any application for temporary support of the petitioner and any children without enumerating the amounts thereof.
9. Set forth any application for permanent alimony or support, child custody, or disposition of property, as well as attorneys' fees and suit money, without enumerating the amounts thereof.
10. State whether the appointment of a conciliator pursuant to section 598.16 may preserve the marriage.

85 Acts, ch 178, §4 HF 495

Subsections 1 and 3 amended

598.11 Temporary orders.

The court may order either party to pay the clerk a sum of money for the separate support and maintenance of the other party and the children and to enable such party to prosecute or defend the action. The court may on its own motion and shall upon application of either party or an attorney appointed under section 598.12 determine the temporary custody of any minor child whose welfare may be affected by the filing of the petition for dissolution.

The court may make such an order when a claim for temporary support is made by the petitioner in the petition, or upon application of either party, after service of the original notice and when no application is made in the petition; however, no such order shall be entered until at least five days' notice of hearing, and opportunity to be heard, is given the other party. Appearance by an attorney or the respondent for such hearing shall be deemed a special appearance for the purpose of such hearing only and not a general appearance. An order entered pursuant to this section shall contain the names, birth dates, addresses, and counties of residence of the petitioner and respondent.

85 Acts, ch 178, §5 HF 495
Unnumbered paragraph 2 amended

598.14 How temporary order made—changes.

In making temporary orders, the court shall take into consideration the age of the applicant, the physical and pecuniary condition of the parties, and other matters as are pertinent, which may be shown by affidavits, as the court may direct. The hearing on the application shall be limited to matters set forth in the application, the affidavits of the parties, and the required statements of income. The court shall not hear any other matter relating to the petition, respondent's answer, or any pleadings connected with the petition or answer.

After notice and hearing subsequent changes in temporary orders may be made by the court on application of either party demonstrating a substantial change in the circumstances occurring subsequent to the issuance of such order. If the order is not so modified it shall continue in force and effect until the action is dismissed or a decree is entered dissolving the marriage.

85 Acts, ch 99, §9 SF 224; 85 Acts, ch 195, §52 SF 329
See Code editor's note
Unnumbered paragraph 1 amended

598.21 Orders for disposition and support.

1. Upon every judgment of annulment, dissolution or separate maintenance the court shall divide the property of the parties and transfer the title of the property accordingly. The court may protect and promote the best interests of children of the parties by setting aside a portion of the property of the parties in a separate fund or conservatorship for the support, maintenance, education and general welfare of the minor children. The court shall divide all property, except inherited property or gifts received by one party, equitably between the parties after considering all of the following:

- a. The length of the marriage.
- b. The property brought to the marriage by each party.
- c. The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.
- d. The age and physical and emotional health of the parties.
- e. The contribution by one party to the education, training or increased earning power of the other.
- f. The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.

g. The desirability of awarding the family home or the right to live in the family home for a reasonable period to the party having custody of the children, or if the parties have joint legal custody, to the party having physical care of the children.

h. The amount and duration of an order granting support payments to either party pursuant to subsection 3 and whether the property division should be in lieu of such payments.

i. Other economic circumstances of each party, including pension benefits, vested or unvested, and future interests.

j. The tax consequences to each party.

k. Any written agreement made by the parties concerning property distribution.

l. The provisions of an antenuptial agreement.

m. Other factors the court may determine to be relevant in an individual case.

2. Property inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.

3. Upon every judgment of annulment, dissolution or separate maintenance, the court may grant an order requiring support payments to either party for a limited or indefinite length of time after considering all of the following:

a. The length of the marriage.

b. The age and physical and emotional health of the parties.

c. The distribution of property made pursuant to subsection 1.

d. The educational level of each party at the time of marriage and at the time the action is commenced.

e. The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, responsibilities for children under either an award of custody or physical care, and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.

f. The feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal.

g. The tax consequences to each party.

h. Any mutual agreement made by the parties concerning financial or service contributions by one party with the expectation of future reciprocation or compensation by the other party.

i. The provisions of an antenuptial agreement.

j. Other factors the court may determine to be relevant in an individual case.

4. Upon every judgment of annulment, dissolution or separate maintenance, the court may order either parent or both parents to pay an amount reasonable and necessary for support of a child. Consideration shall be given to the child's need for close contact with both parents and recognition of joint parental responsibility for the welfare of a minor child. In any order requiring payments for support of a minor child the court shall consider the following:

a. The financial resources of the child.

b. The financial resources of both parents.

c. The standard of living the child would have enjoyed had there not been an annulment, dissolution or separate maintenance.

d. The desirability that the party awarded either sole custody or, in the case of joint custody, physical care remain in the home as a full-time parent.

e. The cost of day care if the party awarded either sole custody or, in the case of joint custody, physical care works outside the home, or the value of the child care services performed by the party if the party remains in the home.

f. The physical and emotional health needs of the child.

g. The child's educational needs.

h. The tax consequences to each party.

i. Other factors the court may determine to be relevant in an individual case.

5. The court may protect and promote the best interests of a minor child by setting aside a portion of the child support which either party is ordered to pay in a separate fund or conservatorship for the support, education and welfare of the child.

6. The court may provide for joint custody of the children by the parties pursuant to section 598.41. All orders relating to custody of a child are subject to chapter 598A.

7. Orders made pursuant to this section need mention only those factors relevant to the particular case for which the orders are made but shall contain the names, birth dates, addresses, and counties of residence of the petitioner and respondent.

8. The court may subsequently modify orders made under this section when there is a substantial change in circumstances. In determining whether there is a substantial change in circumstances, the court shall consider the following:

a. Changes in the employment, earning capacity, income or resources of a party.

b. Receipt by a party of an inheritance, pension or other gift.

c. Changes in the medical expenses of a party.

d. Changes in the number or needs of dependents of a party.

e. Changes in the physical or emotional health of a party.

f. Changes in the residence of a party.

g. Remarriage of a party.

h. Possible support of a party by another person.

i. Changes in the physical, emotional or educational needs of a child whose support is governed by the order.

j. Contempt by a party of existing orders of court.

k. Other factors the court determines to be relevant in an individual case.

A modification of a support order entered under chapter 252A, chapter 675, or this chapter between parties to the order is void unless the modification is approved by the court, after proper notice and opportunity to be heard is given to all parties to the order, and entered as an order of the court. If support payments have been assigned to the department of human services pursuant to section 239.3, the department shall be considered a party to the support order. Modifications of orders pertaining to child custody shall be made pursuant to chapter 598A. If the petition for a modification of an order pertaining to child custody asks either for joint custody or that joint custody be modified to an award of sole custody, the modification, if any, shall be made pursuant to section 598.41.

If the court orders a transfer of title to real property, the clerk of court shall issue a certificate under chapter 558 relative to each parcel of real estate affected by the order and immediately deliver the certificate for recording to the county recorder of the county in which the real estate is located. Any fees assessed shall be included as part of the court costs, however, the certificates shall be recorded whether the costs are paid or not. The county recorder shall deliver the certificates and appropriate fees to the county auditor as provided in section 558.58, subsection 1.

85 Acts, ch 159, §10 HF 589; 85 Acts, ch 178, §6, 7 HF 495

Enactment of § 598.41, subsection 1, constitutes a substantial change in circumstances authorizing a court order to modify child custody order; 84 Acts, ch 1088, § 6

Subsection 7 amended

Subsection 8, unnumbered paragraphs 1 and 2 amended

598.22 Support payments—clerk of court—defaults—security.

All orders or judgments entered under chapter 252A, chapter 675, or this chapter which provide for temporary or permanent support payments shall direct the payment of such sums to the clerk of the district court for the use of the person for whom the payments have been awarded. Payments to persons other than the clerk of the district court do not satisfy the support obligations created by such orders or judgments, except as provided for trusts in section 252D.1, 598.23 or this section or for tax refunds or rebates in section 602.8102, subsection 47.

Upon a finding of previous failure to pay child support, the court may order the person obligated for permanent child support to make an assignment of periodic earnings or trust income to the clerk of court for the use of the person for whom the assignment is ordered. The assignment of earnings ordered by the court shall not exceed the amounts set forth in 15 U.S.C. §1673(b)(1982). The assignment is binding on the employer, trustee, or other payor of the funds two weeks after service upon that person of notice that the assignment has been made. The payor shall withhold from the earnings or trust income payable to the person obligated the amount specified in the assignment and shall transmit the payments to the clerk. However, for trusts governed by the federal Retirement Equity Act of 1984, Pub. L. No. 98-397, the payor shall transmit the payments to the alternate payee in accordance with the federal Act. The payor may deduct from each payment a sum not exceeding two dollars as a reimbursement for costs. An employer who dismisses an employee due to the entry of an assignment order commits a simple misdemeanor.

An order or judgment entered by the court for temporary or permanent support or for an assignment shall be filed with the clerk. The orders have the same force and effect as judgments when entered in the judgment docket and lien index and are records open to the public. The clerk shall disburse the payments received pursuant to the orders or judgments within ten working days of the receipt of the payments. All moneys received or disbursed under this section shall be entered in a record book kept by the clerk, which shall be open to the public. The clerk shall not enter any moneys paid in the record book if not paid directly to the clerk, except as provided for trusts in section 252D.1, 598.23 or this section or for tax refunds or rebates in section 602.8102, subsection 47.

If the sums ordered to be paid in a support payment order are not paid to the clerk at the time provided in the order or judgment, the clerk shall certify a default to the court which may, on its own motion, proceed as provided in section 598.23.

Prompt payment of sums required to be paid under sections 598.11 and 598.21 shall be the essence of such orders or judgments and the court may act pursuant to section 598.23 regardless of whether the amounts in default are paid prior to the contempt hearing.

Upon entry of an order for support or upon the failure of a person to make payments pursuant to an order for support, the court may require the person to provide security, a bond, or other guarantee which the court determines is satisfactory to secure the payment of the support. Upon the person's failure to pay the support under the order, the court may declare the security, bond, or other guarantee forfeited.

85 Acts, ch 100, §7 SF 244; 85 Acts, ch 178, §8 HF 495
Unnumbered paragraphs 1, 2 and 3 amended
NEW unnumbered paragraph 6

598.23 Contempt proceedings—alternatives to jail sentence.

1. If a person against whom a temporary order or final decree has been entered willfully disobeys the order or decree, the person may be cited and punished by the court for contempt and be committed to the county jail for a period of time not to exceed thirty days for each offense.

2. The court may, as an alternative to punishment for contempt, make an order which, according to the subject matter of the order or decree involved, does the following:

a. Directs the defaulting party to assign trust income, or a sufficient amount in salary or wages due or to become due in the future from an employer or successor employers, to the clerk of the court where the order or judgment was granted for the purpose of paying the sums in default as well as the payments to be made in the future. However, for trusts governed by the federal Retirement Equity Act of 1984, Pub. L. No. 98-397, payments shall be made to the alternate payee in accordance with the federal Act. If the assignment is of salary or wages due, the amount assigned

shall not exceed the amount set forth in 15 U.S.C. §1673(b)(1982) and the assignment order is binding upon the employer only for those amounts that represent child support and only upon receipt by the employer of a copy of the order, signed by the employee. For each payment deducted in compliance with the direction, the payor may deduct a sum not exceeding two dollars as a reimbursement for costs. Compliance by a payor with the court's order shall operate as a discharge of the payor's liability to the payee as to the affected portion of the payee's wages or trust income. An employer who dismisses an employee due to the entry of an assignment order commits a simple misdemeanor.

b. Modifies visitation to compensate for lost visitation time or establishes joint custody for the child or transfers custody.

85 Acts, ch 67, §56 SF 121; 85 Acts, ch 178, §9 HF 495
See Code editor's note
Subsection 2 amended

598.41 Custody of children.

1. The court, insofar as is reasonable and in the best interest of the child, shall order the custody award, including liberal visitation rights where appropriate, which will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents after the parents have separated or dissolved the marriage, unless direct physical harm or significant emotional harm to the child is likely to result from such contact with one parent, and which will encourage parents to share the rights and responsibilities of raising the child. The court shall consider the denial by one parent of the child's opportunity for maximum continuing contact with the other parent, without just cause, a significant factor in determining the proper custody arrangement. Unless otherwise ordered by the court in the custody decree, both parents shall have legal access to information concerning the child, including but not limited to medical, educational and law enforcement records.

2. On the application of either parent, the court shall consider granting joint custody in cases where the parents do not agree to joint custody. If the court does not grant joint custody under this subsection, the court shall cite clear and convincing evidence, pursuant to the factors in subsection 3, that joint custody is unreasonable and not in the best interest of the child to the extent that the legal custodial relationship between the child and a parent should be severed. Before ruling upon the joint custody petition in these cases, the court may require the parties to participate in custody mediation counseling to determine whether joint custody is in the best interest of the child. The court may require the child's participation in the mediation counseling insofar as the court determines the child's participation is advisable.

The costs of custody mediation counseling shall be paid in full or in part by the parties and taxed as court costs.

3. In considering what custody arrangement under subsection 2 is in the best interest of the minor child, the court shall consider the following factors:

- a. Whether each parent would be a suitable custodian for the child.
- b. Whether the psychological and emotional needs and development of the child will suffer due to lack of active contact with and attention from both parents.
- c. Whether the parents can communicate with each other regarding the child's needs.
- d. Whether both parents have actively cared for the child before and since the separation.
- e. Whether each parent can support the other parent's relationship with the child.
- f. Whether the custody arrangement is in accord with the child's wishes or whether the child has strong opposition, taking into consideration the child's age and maturity.
- g. Whether one or both the parents agree or are opposed to joint custody.

h. The geographic proximity of the parents.

4. Subsection 3 shall not apply when parents agree to joint custody.

5. Joint legal custody does not require joint physical care. When the court determines such action would be in the best interest of the child, physical care may be given to one joint custodial parent and not to the other. If one joint custodial parent is awarded physical care, the court shall hold that parent responsible for providing for the best interest of the child. However, physical care given to one parent does not affect the other parent's rights and responsibilities as a legal custodian of the child. Rights and responsibilities as legal custodian of the child include, but are not limited to, equal participation in decisions affecting the child's legal status, medical care, education, extracurricular activities, and religious instruction.

6. When the parent awarded custody or physical care of the child cannot act as custodian or caretaker because the parent has died or has been judicially adjudged incompetent, the court shall award custody including physical care of the child to the surviving parent unless the court finds that such an award is not in the child's best interest.

85 Acts, ch 67, §57, 58 SF 121

Enactment of subsection 1 of this section constitutes a substantial change in the circumstances authorizing a court to modify a child custody order pursuant to § 598.21 and ch 598A; 84 Acts, ch 1088, § 6

Subsection 1 and subsection 3, unnumbered paragraph 1 amended

Subsections 5 and 6 amended

CHAPTER 601A

CIVIL RIGHTS COMMISSION

601A.9 Unfair or discriminatory practices—education.

It shall be an unfair or discriminatory practice for any educational institution to discriminate on the basis of sex in any program or activity. Such discriminatory practices shall include but not be limited to the following practices:

1. On the basis of sex, exclusion of a person or persons from participation in, denial of the benefits of, or subjection to discrimination in any academic, extracurricular, research, occupational training, or other program or activity except athletic programs;

2. On the basis of sex, denial of comparable opportunity in intramural and interscholastic athletic programs;

3. On the basis of sex discrimination among persons in employment and the conditions thereof;

4. On the basis of sex, the application of any rule concerning the actual or potential parental, family or marital status of a person, or the exclusion of any person from any program or activity or employment because of pregnancy or related conditions dependent upon the physician's diagnosis and certification.

For the purpose of this section "educational institution" includes any preschool, elementary, secondary, or merged area school, area education agency, or postsecondary college or university and their governing boards. This section does not prohibit an educational institution from maintaining separate toilet facilities, locker rooms or living facilities for the different sexes so long as comparable facilities are provided. Nothing in this section shall be construed as prohibiting any bona fide religious institution from imposing qualifications based on religion when such qualifications are related to a bona fide religious purpose or any institution from admitting students of only one sex.

85 Acts, ch 214, §1 HF 648

Unnumbered paragraph 2 amended

601A.16 One hundred twenty-day administrative release.

1. A person claiming to be aggrieved by an unfair or discriminatory practice must initially seek an administrative relief by filing a complaint with the commission in accordance with section 601A.15. A complainant after the proper filing of a complaint with the commission, may subsequently commence an action for relief in the district court if all of the following conditions have been satisfied:

a. The complainant has timely filed the complaint with the commission as provided in section 601A.15, subsection 12; and

b. The complaint has been on file with the commission for at least one hundred twenty days and the commission has issued a release to the complainant pursuant to subsection 2 of this section.

2. Upon a request by the complainant, and after the expiration of one hundred twenty days from the timely filing of a complaint with the commission, the commission shall issue to the complainant a release stating that the complainant has a right to commence an action in the district court. A release under this subsection shall not be issued if a finding of no probable cause has been made on the complaint by the hearing officer charged with that duty under section 601A.15, subsection 3, or a conciliation agreement has been executed under section 601A.15, or the commission has served notice of hearing upon the respondent pursuant to section 601A.15, subsection 5.

3. An action authorized under this section is barred unless commenced within ninety days after issuance by the commission of a release under subsection 2 of this section. If a complainant obtains a release from the commission under subsection 2 of this section, the commission is barred from further action on that complaint.

4. Venue for an action under this section shall be in the county in which the respondent resides or has its principal place of business, or in the county in which the alleged unfair or discriminatory practice occurred.

5. The district court may grant any relief in an action under this section which is authorized by section 601A.15, subsection 8 to be issued by the commission. The district court may also award the respondent reasonable attorney's fees and court costs when the court finds that the complainant's action was frivolous.

6. It is the legislative intent of this chapter that every complaint be at least preliminarily screened during the first one hundred twenty days.

This section does not authorize administrative closures if an investigation is warranted.

85 Acts, ch 197, §10 SF 570
NEW unnumbered paragraph 2

CHAPTER 601B

COMMISSION FOR THE BLIND

601B.8 Interest.

Notwithstanding sections 8.33 and 453.7, the interest accrued from gifts, grants, devises, or bequests pursuant to section 601B.6, subsection 11, shall not revert to the general fund of the state.

85 Acts, ch 165, §1 HF 319
NEW section

CHAPTER 601F

GOVERNOR'S COMMITTEE ON EMPLOYMENT OF HANDICAPPED

601F.2 Membership.

The committee shall be composed of a minimum of twenty-four members appointed by the governor and additional members as the governor may appoint. Insofar as practicable, the committee shall consist of representatives of industry, labor, business, agriculture, federal, state, and local government, and representatives of religious, charitable, fraternal, civic, educational, medical, legal, veteran, welfare, and other professional groups and organizations. Members shall be appointed representing every geographic center and employment area of the state and shall include members of both sexes.

85 Acts, ch 99, §10 SF 224
Section amended

601F.3 Ex officio members.

The following shall serve as ex officio members of the committee:

1. The commissioner of public health.
2. The commissioner of the department of human services and any directors of that department so assigned by the commissioner.
3. The commissioner of public instruction.
4. The director of vocational rehabilitation.
5. The director of the commission for the blind.
6. The commissioner of labor.
7. The industrial commissioner.
8. The director of the Iowa department of job service.
9. A member of the state board of vocational education designated by the governor.

85 Acts, ch 212, §21 HF 686
Subsection 3 amended

CHAPTER 602

THE COURTS

602.1211 Duties of chief judges.

1. In addition to judicial duties, a chief judge of a judicial district shall supervise all judicial officers and court employees serving within the district. The chief judge shall by order fix the times and places of holding court, and shall designate the respective presiding judges, supervise the performance of all administrative and judicial business of the district, allocate the workloads of district associate judges and magistrates, and conduct judicial conferences to consider, study, and plan for improvement of the administration of justice.

2. A chief judge shall not attempt to direct or influence a judicial officer in a judicial ruling or decision.

3. A chief judge may appoint from among the other district judges of the district one or more assistants to serve throughout the judicial district. A chief judge may remove a person from the position of assistant. An assistant shall have administrative duties as specified in court rules or in the order of appointment. An appointment or removal shall be made by judicial order and shall be filed with the clerk of the district court in each county in the judicial district.

4. A chief judge may designate other public officers to accept bond money or security under section 811.2 at times when the office of the clerk of court is not open.

85 Acts, ch 17, §1 HF 415
NEW subsection 4

602.1214 District court administrator.

1. The chief judge of a judicial district shall appoint a district court administrator and may remove the administrator for cause.
2. The district court administrator shall assist the chief judge in the supervision and administration of the judicial district.
3. The district court administrator shall assist the state court administrator in the implementation of policies of the department and in the performance of the duties of the state court administrator.
4. The district court administrator shall employ and supervise all employees of the district court except court reporters, clerks of the district court, employees of the clerks of the district court, juvenile court officers, and employees of juvenile court officers.
5. The district court administrator shall comply with policies of the department and the judicial district.
6. The supreme court shall establish the qualifications for appointment as a district court administrator.

85 Acts, ch 67, §59 SF 121
Subsection 4 amended

602.1301 Fiscal procedures.

1. The supreme court shall prepare an annual operating budget for the department, and shall submit a budget request to the general assembly for the fiscal period for which the general assembly is appropriating funds.
 2. *a.* As early as possible, but not later than December 1, the supreme court shall submit to the legislative fiscal bureau the annual budget request and detailed supporting information for the judicial department. The submission shall be designed to assist the legislative fiscal bureau in its preparation for legislative consideration of the budget request. The information submitted shall contain and be arranged in a format substantially similar to part II of the governor's budget message as specified in section 8.22.
 3. *b.* Before December 1, the supreme court shall submit to the state comptroller an estimate of the total expenditure requirements of the judicial department.
3. The state court administrator shall prescribe the procedures to be used by the operating components of the department with respect to the following:
 - a.* The preparation, submission, review, and revision of budget requests.
 - b.* The allocation and disbursement of funds appropriated to the department.
 - c.* The purchase of forms, supplies, equipment, and other property.
 - d.* Other matters relating to fiscal administration.
4. The state court administrator shall prescribe practices and procedures for the accounting and internal auditing of funds of the department, including uniform practices and procedures to be used by judicial officers and court employees with respect to all funds, regardless of source.

85 Acts, ch 262, §7 SF 552
Subsection 2 struck and rewritten

602.1302 State funding.

1. Except as otherwise provided by section 602.1303 or other applicable law, the expenses of operating and maintaining the department shall be paid out of the general fund of the state from funds appropriated by the general assembly for the department. State funding shall be phased in as provided in section 602.11101.
2. The state shall provide suitable office space for a public defender if established for a county.
3. The supreme court may accept federal funds to be used in the operation of the department, but shall not expend any of these funds except pursuant to appropriation of the funds by the general assembly.
4. A revolving fund is created in the state treasury for the payment of jury and

witness fees and mileage by the department. The department shall deposit any reimbursements to the state for the payment of jury and witness fees and mileage in the revolving fund. Notwithstanding section 8.33, unencumbered and unobligated receipts in the revolving fund at the end of a fiscal year do not revert to the general fund of the state. The department shall on or before February 1 file a financial accounting of the moneys in the revolving fund with the legislative fiscal bureau. The accounting shall include an estimate of disbursements from the revolving fund for the remainder of the fiscal year and for the next fiscal year.

85 Acts, ch 197, §11 SF 570
NEW subsection 4

602.1303 Local funding.

1. A county or city shall provide the district court for the county with physical facilities, including heat, water, electricity, maintenance, and custodial services, as follows:

a. A county shall provide courtrooms, offices, and other physical facilities which in the judgment of the board of supervisors are suitable for the district court, and for judicial officers of the district court, the clerk of the district court, juvenile court officers, and other court employees.

b. If court is held in a city other than the county seat, the city shall provide courtrooms and other physical facilities which in the judgment of the city council are suitable.

2. A county shall pay the expenses of the members of the county magistrate appointing commission as provided in section 602.6501.

3. A county shall pay the compensation and expenses of the jury commission and assistants under chapter 608.

4. A county shall provide the district court with bailiff and other law enforcement services upon the request of a judicial officer of the district court.

5. A county shall pay the costs incurred in connection with the administration of juvenile justice under section 232.141.

6. A county shall pay the costs and expenses incurred in connection with grand juries.

7. A county or city shall pay the costs of its depositions and transcripts in criminal actions prosecuted by that county or city and shall pay the court fees and costs provided by law in criminal actions prosecuted by that county or city under county or city ordinance. A county or city shall pay witness fees and mileage in trials of criminal actions prosecuted by the county or city under county or city ordinance.

8. A county shall pay the fees and expenses allowed under sections 815.2 and 815.3.

85 Acts, ch 197, §12 SF 570
Subsections 7 and 8 amended

602.1401 Personnel system.

1. The supreme court shall establish, and may amend, a personnel system and a pay plan for court employees. The personnel system shall include a designation by position title, classification, and function of each position or class of positions within the department. Reasonable efforts shall be made to accommodate the individual staffing and management practices of the respective clerks of the district court. The personnel system, in the employment of court employees, shall not discriminate on the basis of race, creed, color, sex, national origin, religion, physical disability, or political party preference. The supreme court, in establishing the personnel system, shall implement the comparable worth directives issued by the state court administrator under section 602.1204, subsection 2.

2. The supreme court shall compile and publish all documents that establish the personnel system, and shall distribute a copy of the compilation and all amendments to each operating component of the department.

3. The state court administrator is the public employer of judicial department employees for purposes of chapter 20, relating to public employment relations.

For purposes of chapter 20, the certified representative, which on July 1, 1983 represents employees who become judicial department employees as a result of 1983 Iowa Acts, chapter 186, shall remain the certified representative when the employees become judicial department employees and thereafter, unless the public employee organization is decertified in an election held under section 20.15 or amended or absorbed into another certified organization pursuant to chapter 20. Collective bargaining negotiations shall be conducted on a statewide basis and the certified employee organizations which engage in bargaining shall negotiate on a statewide basis, although bargaining units shall be organized by judicial district. The public employment relations board shall adopt rules pursuant to chapter 17A to implement this subsection.

4. The supreme court may establish reasonable classes of employees and a pay plan for the classes of employees as necessary to accomplish the purposes of the personnel system.

85 Acts, ch 117, §1 SF 547
Implementation of comparable worth salary adjustments; 85 Acts, ch 152, §2 HF 753
Subsection 3 amended

602.4104 Divisions—full court.

1. The supreme court may be divided into divisions of three or more justices in the manner it prescribes by rule. The divisions may hold open court separately and cases may be submitted to each division separately, in accordance with these rules.

2. The supreme court shall prescribe rules for the submission of a case or petition for rehearing whenever differences arise between members of divisions or whenever the chief justice orders or directs the submission of the question or petition for rehearing by the whole court.

3. The supreme court shall prescribe rules to provide for the submission of cases to the entire bench or to the separate divisions.

85 Acts, ch 197, §13 SF 570
Subsection 3 amended

602.4202 Rulemaking procedure.

1. The supreme court shall submit a rule or form prescribed by the supreme court under section 602.4201 or pursuant to any other rulemaking authority specifically made subject to this section to the legislative council and shall at the same time report the rule or form to the chairpersons and ranking members of the senate and house committees on judiciary. The legislative service bureau shall make recommendations to the supreme court on the proper style and format of rules and forms required to be submitted to the legislative council under this subsection.

2. A rule or form submitted as required under subsection 1 takes effect sixty days after submission to the legislative council, or at a later date specified by the supreme court, unless the legislative council, within sixty days after submission and by a majority vote of its members, delays the effective date of the rule or form to a date as provided in subsection 3.

3. The effective date of a rule or form submitted during the period of time beginning February 15 and ending February 14 of the next calendar year may be delayed by the legislative council until May 1 of that next calendar year.

4. A rule or form submitted as required under subsection 1 and effective on or before July 1 shall be bound with the Acts of the general assembly meeting in regular session in the calendar year in which the July 1 falls.

5. If the general assembly enacts a bill changing a rule or form, the general assembly's enactment supersedes a conflicting provision in the rule or form as submitted by the supreme court.

85 Acts, ch 197, §14 SF 570
Section struck and rewritten

602.6603 Court reporters.

1. Each district judge shall appoint a court reporter who shall, upon the request of a party in a civil or criminal case, report the evidence and proceedings in the case, and perform all duties as provided by law.

2. Each district associate judge may appoint a court reporter, subject to the approval of the chief judge of the judicial district.

3. If a district judge determines that it is necessary to employ an additional court reporter because of an extraordinary volume of work, or because of the temporary illness or incapacity of a regular court reporter, the district judge may appoint a temporary court reporter who shall serve as required by the district judge.

4. If a regularly appointed court reporter becomes disabled, or if a vacancy occurs in a regularly appointed court reporter position, the judge may appoint a competent uncertified shorthand reporter for a period of time of up to six months, upon verification by the chief judge that a diligent but unsuccessful search has been conducted to appoint a certified shorthand reporter to the position and, in a disability case, that the regularly appointed court reporter is disabled. An uncertified shorthand reporter shall not be reappointed to the position unless the reporter becomes a certified shorthand reporter within the period of appointment under this subsection.

5. Except as provided in subsection 4, a person shall not be appointed to the position of court reporter of the district court unless the person has been certified as a shorthand reporter by the board of examiners under article 3.

6. Each court reporter shall take an oath faithfully to perform the duties of office, which shall be filed in the office of the clerk of district court.

7. A court reporter may be removed for cause with due process by the judicial officer making the appointment.

8. If a judge dies, resigns, retires, is removed from office, becomes disabled, or fails to be retained in office and the judicial vacancy is eligible to be filled, a court reporter appointed by the judge is entitled to serve as a court reporter, as directed by the chief judge or the chief judge's designee, until the successor judge appoints a successor court reporter. The court reporter shall be paid the reporter's regular salary during the period of time until a successor court reporter is appointed or until the currently appointed court reporter is reappointed.

85 Acts, ch 197, §15,16 SF 570
 Subsection 4 struck and rewritten
 NEW subsection 8

602.8102 General duties.

The clerk shall:

1. Keep the office of the clerk at the county seat.
 2. Attend sessions of the district court.
 3. Keep the records, papers, and seal, and record the proceedings of the district court as provided by law under the direction of the chief judge of the judicial district.

4. Upon the death of a judge of the district court, give written notice to the state comptroller of the date of death. The clerk shall also give written notice of the death of a justice of the supreme court or a judge of the court of appeals or the district court who resides in the clerk's county to the state commissioner of elections, as provided in section 46.12.

5. When money in the amount of five hundred dollars or more is paid to the clerk to be paid to another person and the money is not disbursed within thirty days, notify the person who is entitled to the money or for whose account the money is paid or the attorney of record of the person. The notice shall be given by certified mail within forty days of the receipt of the money to the last known address of the person or the person's attorney and a memorandum of the notice shall be made in the proper record. If the notice is not given, the clerk and the clerk's sureties are liable for interest at the rate specified in section 535.2, subsection 1 on the money from the

date of receipt to the date that the money is paid to the person entitled to it or the person's attorney.

6. On each process issued, indicate the date that it is issued, the clerk's name who issued it, and the seal of the court.

7. Upon return of an original notice to the clerk's office, enter in the appearance or combination docket information to show which parties have been served the notice and the manner and time of service.

8. When entering a lien or indexing an action affecting real estate in the clerk's office, enter the year, month, day, hour, and minute when the entry is made. The clerk shall mail a copy of a mechanic's lien to the owner of the building, land, or improvement which is charged with the lien as provided in section 572.8.

9. Enter in the appearance docket a memorandum of the date of filing of all petitions, demurrers, answers, motions, or papers of any other description in the cause. A pleading of any description is not considered filed in the cause or taken from the clerk's office until the memorandum is made. The memorandum shall be made before the end of the next working day. Thereafter, when a demurrer or motion is sustained or overruled, a pleading is made or amended, or the trial of the cause, rendition of the verdict, entry of judgment, issuance of execution, or any other act is done in the progress of the cause, a similar memorandum shall be made of the action, including the date of action and the number of the book and page of the record where the entry is made. The appearance docket is an index of each suit from its commencement to its conclusion.

10. When title to real estate is finally established in a person by a judgment or decree of the district court or by decision of an appellate court or when the title to real estate is changed by judgment, decree, will, proceeding, or order in probate, certify the final decree, judgment, or decision under seal of the court to the auditor of the county in which the real estate is located.

11. Keep for public inspection a certified copy of each act of the general assembly and furnish a copy of the act upon payment of a fee as provided in section 3.15.

12. At the order of a justice of the supreme court, docket without fee any civil or criminal case transferred from a military district under martial law as provided in section 29A.45.

13. Carry out duties as a member of a nominations appeal commission as provided in section 44.7.

14. Maintain a bar admission list as provided in section 46.8.

15. Notify the county commissioner of registration of persons who become ineligible to register to vote because of criminal convictions, mental retardation, or legal declarations of incompetency and of persons whose citizenship rights have been restored as provided in section 48.30.

16. When the auditor is a party to an election contest, carry out duties on behalf of the auditor and issue subpoenas as provided in sections 62.7 and 62.11.

17. Approve the bonds of the members of the board of supervisors as provided in section 64.19.

18. File the bonds and oaths of the members of the board of supervisors as provided in section 64.23.

19. Keep a book of the record of official bonds and record the official bonds of magistrates as provided in section 64.24.

20. Carry out duties relating to proceedings for the removal of a public officer as provided in sections 66.4 and 66.17.

21. Approve the surety bonds of persons accepting appointment as notaries public in the county as provided in section 77.4, subsection 2.

22. Carry out duties as a trustee for incompetent dependents entitled to benefits under chapters 85 and 85A and report annually to the district court concerning money and property received or expended as a trustee as provided under sections 85.49 and 85.50.

23. Carry out duties relating to enforcing orders of the occupational safety and health review commission as provided in section 88.9, subsection 2.

24. Certify the imposition of a mulct tax against property creating a public nuisance to the auditor as provided in section 99.28.

25. Carry out duties relating to the judicial review of orders of the occupational safety and health review commission as provided in section 104.10, subsection 2.

26. With sufficient surety, approve an appeal bond for judicial review of an order or action of the state conservation commission relating to dams and spillways as provided in section 112.8.

27. Docket an appeal from the fence viewer's decision or order as provided in section 113.23.

28. Certify to the recorder the fact that a judgment has been rendered upon an appeal of a fence viewer's order as provided in section 113.24.

29. Reserved.

30. Approve bond sureties and enter in the lien index the undertakings of bonds for abatement relating to the illegal manufacture, sale, or consumption of alcoholic liquors as provided in sections 123.76, 123.79, and 123.80.

31. Carry out duties relating to a judgment of forfeiture ordering the sale or other disposition of a conveyance used in the illegal transportation of liquor or distribution of a controlled substance as provided in chapter 127.

32. Carry out duties as county registrar of vital statistics as provided in chapter 144.

33. Furnish to the state department of health a certified copy of a judgment suspending or revoking a professional license as provided in section 147.66.

34. Receive and file a bond given by the owner of a distrained animal to secure its release pending resolution of a suit for damages as provided in sections 188.22 and 188.23.

35. Send notice of the conviction, judgment, and sentence of a person violating the uniform controlled substances laws to the state board or officer who issued a license or registered the person to practice a profession or to conduct business as provided in section 204.412.

36. Carry out duties relating to the commitment of a mentally retarded person as provided in sections 222.37 through 222.40.

37. Keep a separate docket of proceedings of cases relating to the mentally retarded as provided in section 222.57.

38. Order the commitment of a voluntary public patient to the state psychiatric hospital under the circumstances provided in section 225.16.

39. Refer persons applying for voluntary admission to a community mental health center for a preliminary diagnostic evaluation as provided in section 225C.16, subsection 2.

40. Reserved.

41. Carry out duties relating to the involuntary commitment of mentally impaired persons as provided in chapter 229.

42. Serve as clerk of the juvenile court and carry out duties as provided in chapter 232 and article 7.

43. Submit to the director of the division of child and family services of the department of human services a duplicate of the findings of the district court related to adoptions as provided in section 235.3, subsection 7.

44. Certify to the superintendent of each correctional institution the number of days that have been credited toward completion of an inmate's sentence as provided in section 903A.5.

45. Report monthly to the office for planning and programming the following information related to each district court conviction for, acquittal of, or dismissal of a felony, an aggravated misdemeanor, or a serious misdemeanor:

a. The name of the convicted offender or defendant.

b. The statutory citation and character of the offense of which the offender was convicted or the defendant charged.

c. The sentence imposed on the convicted offender.

46. Carry out duties relating to the pardons, commutations, remission of fines and forfeitures, and restoration of citizenship as provided in sections 248.9 and 248.17.

47. Record support payments made pursuant to an order entered under chapter 252A, 598, or 675, or under a comparable statute of a foreign jurisdiction and through setoff of a state or federal income tax refund or rebate, as if the payments were received and disbursed by the clerk; forward support payments received under section 252A.6 to the department of human services and furnish copies of orders and decrees awarding support to parties receiving welfare assistance as provided in section 252A.13.

47A. Accept a check, share draft, draft, or written order on a bank, savings and loan association, credit union, corporation, or person as payment of a support obligation which is payable to the clerk, in accordance with procedures established by the clerk to assure that such negotiable instruments will not be dishonored. The friend of court may perform the clerk's responsibilities under this subsection.

48. Carry out duties relating to the provision of medical care and treatment for indigent persons as provided in chapter 255.

49. Enter a judgment based on the transcript of an appeal to the state board of public instruction against the party liable for payment of costs as provided in section 290.4.

50. Certify the final order of the district court upon appeal of an assessment within a secondary road assessment district to the auditor as provided in section 311.24.

50A. Assist the department of transportation in suspending, pursuant to section 321.210A, the motor vehicle licenses of persons who fail to timely pay criminal fines or penalties, surcharges, or court costs related to the violation of a law regulating the operation of a motor vehicle.

51. Forward to the department of transportation a copy of the record of each conviction or forfeiture of bail of a person charged with the violation of the laws regulating the operation of vehicles on public roads as provided in sections 321.281 and 321.491.

52. Send to the department of transportation licenses and permits surrendered by a person convicted of being a habitual offender of traffic and motor vehicle laws as provided in section 321.559.

53. If a person fails to satisfy a judgment relating to motor vehicle financial responsibility within sixty days, forward to the director of the department of transportation a certified copy of the judgment as provided in section 321A.12.

54. Approve a bond of a surety company or a bond with at least two individual sureties owning real estate in this state as proof of financial responsibility as provided in section 321A.24.

55. Carry out duties under the Iowa motor vehicle dealers licensing Act as provided in sections 322.10 and 322.24.

56. Carry out duties relating to the enforcement of motor fuel tax laws as provided in sections 324.66 and 324.67.

57. Carry out duties relating to the platting of land as provided in sections 409.9, 409.11, and 409.22.

58. Upon order of the director of revenue, issue a commission for the taking of depositions as provided in section 421.17, subsection 8.

58A. Assist the department of revenue in setting off against debtors' income tax refunds or rebates under section 421.17, subsection 25, debts which are due, owing, and payable to the clerk of the district court as criminal fines, civil penalties, surcharges, or court costs.

59. Mail to the director of revenue a copy of a court order relieving an executor or administrator from making an income tax report on an estate as provided in section 422.23.
60. With acceptable sureties, approve the bond of a petitioner for a tax appeal as provided in section 422.29, subsection 2.
61. Certify the final decision of the district court in an appeal of the tax assessments as provided in section 441.39. Costs of the appeal to be assessed against the board of review or a taxing body shall be certified to the treasurer as provided in section 441.40.
62. Certify a final order of the district court relating to the apportionment of tax receipts to the auditor as provided in section 449.7.
63. Carry out duties relating to the inheritance tax as provided in chapter 450.
64. Deposit funds held by the clerk in an approved depository as provided in section 453.1.
65. Carry out duties relating to appeals and certification of costs relating to levee and drainage districts as provided in sections 455.96 through 455.105.
66. Carry out duties relating to the condemnation of land as provided in chapter 472.
67. Forward civil penalties collected for violations relating to the siting of electric power generators to the treasurer of state as provided in section 476A.14, subsection 1.
68. Certify a copy of a decree of dissolution of a business corporation to the secretary of state and the recorder of the county in which the corporation is located as provided in section 496A.100.
69. With acceptable sureties, approve the bond of a petitioner filing an appeal for review of an order of the commissioner of insurance as provided in section 502.606 or 507A.7.
70. Certify a copy of a decree of dissolution of a nonprofit corporation to the secretary of state and the recorder in the county in which the corporation is located as provided in section 504A.62.
71. Carry out duties relating to the enforcement of decrees and orders of reciprocal states under the Iowa unauthorized insurers Act as provided in section 507A.11.
72. Certify copies of a decree of involuntary dissolution of a state bank to the secretary of state and the recorder of the county in which the bank is located as provided in section 524.1311, subsection 4.
73. Certify copies of a decree dissolving a credit union as provided in section 533.21, subsection 4.
74. Refuse to accept the filing of papers to institute legal action under the Iowa consumer credit code if proper venue is not adhered to as provided in section 537.5113.
75. Receive payment of money due to a person who is absent from the state if the address or location of the person is unknown as provided in section 538.5.
76. Carry out duties relating to the appointment of the Iowa state commerce commission as receiver for agricultural commodities on behalf of a warehouse operator whose license is suspended or revoked as provided in section 543.3.
77. Certify the signature of the recorder on the transcript of any instrument affecting real estate as provided in section 558.12.
78. Certify an acknowledgment of a written instrument relating to real estate as provided in section 558.20.
79. Collect on behalf of, and pay to the auditor the fee for the transfer of real estate as provided in section 558.66.
80. With acceptable sureties, endorse a bond sufficient to settle a dispute between adjoining owners of a common wall as provided in section 563.11.
81. Carry out duties relating to cemeteries as provided in sections 566.4, 566.7, and 566.8.

82. Carry out duties relating to liens as provided in chapters 570, 571, 572, 574, 580, 581, 582, and 584.

83. Accept applications for and issue marriage licenses as provided in chapter 595.

84. Carry out duties relating to the dissolution of a marriage as provided in chapter 598.

85. Carry out duties relating to the custody of children as provided in chapter 598A.

86. Carry out duties relating to adoptions as provided in chapter 600.

87. Enter upon the clerk's records actions taken by the court at a location which is not the county seat as provided in section 602.6106.

88. Maintain a record of the name, address, and term of office of each member of the county magistrate appointing commission as provided in section 602.6501.

89. Certify to the state court administrator the names and addresses of the magistrates appointed by the county magistrate appointing commission as provided in section 602.6403.

90. Furnish an individual or centralized docket for the magistrates of the county as provided in section 602.6604.

91. Serve as an ex officio jury commissioner and notify appointive commissioners of their appointment as provided in sections 608.1 and 608.5.

92. Carry out duties relating to the selection of jurors as provided in chapter 609.

93. Carry out duties relating to the revocation or suspension of an attorney's authority to practice law as provided in article 10 of this chapter.

94. File and index petitions affecting real estate as provided in sections 617.10 through 617.15.

95. Designate the newspapers in which the notices pertaining to the clerk's office shall be published as provided in section 618.7.

96. With acceptable surety, approve a bond of the plaintiff in an action for the payment of costs which may be adjudged against the plaintiff as provided in section 621.1.

97. Issue subpoenas for witnesses as provided in section 622.63.

98. Carry out duties relating to trials and judgments as provided in sections 624.8 through 624.21 and 624.37.

99. Collect jury fees and court reporter fees as required by chapter 625.

100. When the judgment is for recovery of money, compute the interest from the date of verdict to the date of payment of the judgment as provided in section 625.21.

101. Carry out duties relating to executions as provided in chapter 626.

102. Carry out duties relating to the redemption of property as provided in sections 628.13, 628.18, and 628.20.

103. Record statements of expenditures made by the holder of a sheriff's sale certificate in the encumbrance book and lien index as provided in section 629.3.

104. Carry out duties relating to small claim actions as provided in chapter 631.

105. Carry out duties of the clerk of the probate court as provided in chapter 633.

106. Carry out duties relating to the administration of small estates as provided in sections 635.1, 635.7, 635.9, and 635.11.

107. Carry out duties relating to the attachment of property as provided in chapter 639.

108. Carry out duties relating to garnishment as provided in chapter 642.

109. With acceptable surety, approve bonds of the plaintiff desiring immediate delivery of the property in an action of replevin as provided in sections 643.7 and 643.12.

110. Carry out duties relating to the disposition of lost property as provided in chapter 644.

111. Carry out duties relating to the recovery of real property as provided in section 646.23.

112. Endorse the court's approval of a restored record as provided in section 647.3.
113. When a judgment of foreclosure is entered, file with the recorder an instrument acknowledging the foreclosure and the date of decree and upon payment of the judgment, file an instrument with the recorder acknowledging the satisfaction as provided in sections 655.4 and 655.5.
114. Carry out duties relating to the issuance of a writ of habeas corpus as provided in sections 663.9, 663.43, and 663.44.
115. Accept and docket an application for postconviction review of a conviction as provided in section 663A.3.
116. Report all fines, forfeited recognizances, penalties, and forfeitures as provided in section 602.8106, subsection 4 and section 666.6.
117. Issue a warrant for the seizure of a boat or raft as provided in section 667.2.
118. Carry out duties relating to the changing of a person's name as provided in chapter 674.
119. Notify the state registrar of vital statistics of a judgment determining the paternity of an illegitimate child as provided in section 675.36.
120. Enter a judgment made by confession and issue an execution of the judgment as provided in section 676.4.
121. With acceptable surety, approve the bond of a receiver as provided in section 680.3.
122. Carry out duties relating to the assignment of property for the benefit of creditors as provided in chapter 681.
123. Carry out duties relating to the certification of surety companies and the investment of trust funds as provided in chapter 682.
124. Maintain a separate docket for petitions requesting that the record and evidence in a judicial review proceeding be closed as provided in section 692.5.
125. Furnish a disposition of each criminal complaint or information filed in the district court to the department of public safety as provided in section 692.15.
126. Carry out duties relating to the issuance of warrants to persons who fail to appear to answer citations as provided in section 805.5.
127. Provide for a traffic and scheduled violations office for the district court and service the locked collection boxes at weigh stations as provided in section 805.7.
128. Issue a summons to corporations to answer an indictment as provided in section 807.5.
129. Carry out duties relating to the disposition of seized property as provided in chapter 809A.
130. Docket undertakings of bail as liens on real estate and enter them upon the lien index as provided in section 811.4.
131. Hold the amount of forfeiture and judgment of bail in the clerk's office for sixty days as provided in section 811.6.
132. Carry out duties relating to appeals from the district court as provided in chapter 814.
133. Certify costs and fees payable by the state as provided in section 815.1.
134. Notify the director of the Iowa department of corrections of the commitment of a convicted person as provided in section 901.7.
135. Carry out duties relating to deferred judgments, probations, and restitution as provided in sections 907.4 and 907.8, and chapter 910.
136. Carry out duties relating to the impaneling and proceedings of the grand jury as provided in R.Cr.P. 3, Ia. Ct. Rules, 2nd ed.
137. Issue subpoenas upon application of the prosecuting attorney and approval of the court as provided in R.Cr.P. 5, Ia. Ct. Rules, 2nd ed.
138. Issue summons or warrants to defendants as provided in R.Cr.P. 7, Ia. Ct. Rules, 2nd ed.
139. Carry out duties relating to the change of venue as provided in R.Cr.P. 10, Ia. Ct. Rules, 2nd ed.

140. Issue blank subpoenas for witnesses at the request of the defendant as provided in R.Cr.P. 14, Ia. Ct. Rules, 2nd ed.
141. Carry out duties relating to the entry of judgment as provided in R.Cr.P. 22, Ia. Ct. Rules, 2nd ed.
142. Carry out duties relating to the execution of a judgment as provided in R.Cr.P. 24, Ia. Ct. Rules, 2nd ed.
143. Carry out duties relating to the trial of simple misdemeanors as provided in R.Cr.P. 32 through 56, Ia. Ct. Rules, 2nd ed.
144. Serve notice of an order of judgment entered as provided in R.C.P. 82, Ia. Ct. Rules, 2nd ed.
145. If a party is ordered or permitted to plead further by the court, serve notice to attorneys of record as provided in R.C.P. 86, Ia. Ct. Rules, 2nd ed.
146. Maintain a motion calendar as provided in R.C.P. 117, Ia. Ct. Rules, 2nd ed.
147. Provide notice of a judgment, order, or decree as provided in R.C.P. 120, Ia. Ct. Rules, 2nd ed.
148. Issue subpoenas as provided in R.C.P. 155, Ia. Ct. Rules, 2nd ed.
149. Tax the costs of taking a deposition as provided in R.C.P. 157, Ia. Ct. Rules, 2nd ed.
150. With acceptable sureties, approve a bond filed for change of venue under R.C.P. 167, Ia. Ct. Rules, 2nd ed.
151. Transfer the papers relating to a case transferred to another court as provided in R.C.P. 173, Ia. Ct. Rules, 2nd ed.
152. Maintain a ready calendar list as provided in R.C.P. 181.1, Ia. Ct. Rules, 2nd ed.
153. Assess costs related to a continuance motion as provided in R.C.P. 182, Ia. Ct. Rules, 2nd ed.
154. Carry out duties relating to the impaneling of jurors as provided in R.C.P. 187 through 190, Ia. Ct. Rules, 2nd ed.
155. Furnish a referee, auditor, or examiner with a copy of the order of appointment as provided in R.C.P. 207, Ia. Ct. Rules, 2nd ed.
156. Mail a copy of the referee's, auditor's, or examiner's report to the attorneys of record as provided in R.C.P. 214, Ia. Ct. Rules, 2nd ed.
157. Carry out duties relating to the entry of judgments as provided in R.C.P. 223, 226, 227.1, 228, and 229, Ia. Ct. Rules, 2nd ed.
158. Carry out duties relating to defaults and judgments on defaults as provided in R.C.P. 231, 232, and 233, Ia. Ct. Rules, 2nd ed.
159. Notify the attorney of record if exhibits used in a case are to be destroyed as provided in R.C.P. 253.1, Ia. Ct. Rules, 2nd ed.
160. Docket the request for a hearing on a sale of property as provided in R.C.P. 290, Ia. Ct. Rules, 2nd ed.
161. With acceptable surety, approve the bond of a citizen commencing an action of quo warranto as provided in R.C.P. 300, Ia. Ct. Rules, 2nd ed.
162. Carry out duties relating to the issuance of a writ of certiorari as provided in R.C.P. 306 through 319, Ia. Ct. Rules, 2nd ed.
163. Carry out duties relating to the issuance of an injunction as provided in R.C.P. 320 through 330, Ia. Ct. Rules, 2nd ed.
164. Carry out other duties as provided by law.

85 Acts, ch 21, §45, 46 HF 186; 85 Acts, ch 82, §2 SF 407; 85 Acts, ch 178, §10, 11 HF 495; 85 Acts, ch 195, §53 SF 329; 85 Acts, ch 197, §17-19 SF 570; 85 Acts, ch 201, §3 SF 455

See Code editor's note

Amendment striking subsection 29 effective July 1, 1986; 85 Acts, ch 82, §3

Subsection 58A effective July 1, 1986; state court administrator to prescribe rules for offset procedures; 85 Acts, ch 197, §49

Subsections 29 and 40 struck

Subsection 45 struck and rewritten

Subsections 44, 47, and 129 amended

NEW subsections 47A, 50A, and 58A

602.8104 Records and books.

1. The records of the court consist of the original papers filed in all proceedings.
2. The following books shall be kept by the clerk:
 - a. A record book which contains the entries of the proceedings of the court and which has an index referring to each proceeding in each cause under the names of the parties, both plaintiff and defendant, and under the name of each person named in either party.
 - b. A judgment docket which contains an abstract of the judgments having separate columns for the names of the parties, the date of the judgment, the damages recovered, costs, the date of the issuance and return of executions, the entry of satisfaction, and other memoranda. The docket shall have an index containing the information specified in paragraph "a".
 - c. A fee book in which is listed in detail the costs and fees in each action or proceeding under the title of the action or proceeding. The fee book shall also have an index containing the information specified in paragraph "a".
 - d. A sale book in which the following matters relating to a judgment under which real property is sold, are entered after the return of execution:
 - (1) The title of the action.
 - (2) The date of judgment.
 - (3) The amount of damages recovered.
 - (4) The total amount of costs.
 - (5) The officer's return in full.

The sale book shall have an index containing the information specified in paragraph "a".

- e. An encumbrance book in which the sheriff shall enter a statement of the levy of each attachment on real estate.
- f. An appearance docket in which the titles of all actions or special proceedings shall be entered. The actions or proceedings shall be numbered consecutively in the order in which they commence and shall include the full names of the parties, plaintiffs and defendants, as contained in the petition or as subsequently made parties by a pleading, proceeding, or order. The entries provided for in this paragraph and paragraphs "b" and "c" may be combined in one book, the combination docket, which shall also have an index containing the information specified in paragraph "a".
- g. A lien book in which an index of all liens in the court are kept.
- h. A record of official bonds as provided in section 64.24.
- i. A cemetery record as provided in section 566.4.
- j. A hospital lien docket as provided in section 582.4.
- k. A marriage license book as provided in section 595.6.
- l. A book of surety company certificates and revocations as provided in section 682.13.
- m. A book in which the deposits of funds, money, and securities kept by the clerk are recorded as provided in section 682.37.

85 Acts, ch 67, §60 SF 121

Subsection 2, paragraph i struck and subsequent subsections relettered

602.8105 Fees—collection and disposition.

1. The clerk shall collect the following fees:
 - a. For filing and docketing a petition other than for modification of a dissolution decree filed within one hundred eighty days of the date of the entering of the dissolution decree, or an appeal or writ of error, thirty-five dollars. Four dollars of the fee shall be deposited in the court revenue distribution account established under section 602.8108, and thirty-one dollars of the fee shall be paid into the state treasury. Of the amount paid to the state treasury, one dollar shall be deposited in the judicial retirement fund established in section 602.9104 to be used to pay retirement benefits of the judicial retirement system, and the remainder shall be deposited in the general fund of the state. In counties having a population of one

hundred thousand or over, an additional five dollars shall be charged and collected, to be known as the journal publication fee and used for the purposes provided for in section 618.13.

b. For payment in advance of various services and docketing procedures, excluding those for small claims actions and small claims actions on appeal and simple misdemeanor actions and simple misdemeanor actions on appeal, twenty-five dollars.

c. In small claims actions, in addition to the filing fee specified in section 631.6, the following fees shall be charged for the following services:

- (1) For a cause tried by the court, two dollars and fifty cents.
- (2) For an equity case, three dollars.
- (3) For an injunction or other extraordinary process or order, five dollars.
- (4) For a cause continued on application of a party by affidavit, two dollars.
- (5) For a continuance, one dollar.
- (6) For entering a final judgment or decree, one dollar and fifty cents.
- (7) For taxing costs, one dollar.
- (8) For issuing an execution or other process after judgment or decree, two dollars.

(9) For filing and docketing a transcript of judgment from another county, one dollar.

(10) For entering a rule or order, one dollar.

(11) For issuing a writ or order, not including subpoenas, two dollars.

(12) For entering a judgment by confession, two dollars.

(13) For entering a satisfaction of a judgment, one dollar.

(14) For a copy of records or papers filed in the clerk's office, transcripts, and making a complete record, fifty cents for each one hundred words.

(15) For taking and approving a bond and sureties on the bond, two dollars.

d. For filing, entering, and endorsing a mechanic's lien, three dollars, and if a suit is brought, the fee is taxable as other costs in the action.

e. For a certificate and seal, two dollars.

f. For receiving and filing a declaration of intention and issuing a duplicate, two dollars. For making, filing, and docketing the petition of an alien for admission as a citizen of the United States and for the final hearing, four dollars; and for entering the final order and the issuance of the certificate of citizenship, if granted, four dollars.

g. In addition to the fees required in paragraph "f", the petitioner shall, upon the filing of a petition to become a citizen of the United States, deposit with the clerk money sufficient to cover the expense of subpoenaing and paying the legal fees of witnesses for whom the petitioner may request a subpoena, and upon the final discharge of the witnesses they shall receive, if they demand it from the clerk, the customary and usual witness fees from the moneys collected, and the residue, if any, except the amount necessary to pay the cost of serving the subpoenas, shall be returned by the clerk to the petitioner.

h. For a certificate and seal to an application to procure a pension, bounty, or back pay for a soldier or other person, no charge.

i. For making out a transcript in a criminal case appealed to the supreme court, for each one hundred words, fifty cents.

j. In criminal cases, the same fees for the same services as in civil cases, to be paid by the county or city, which has the duty to prosecute the criminal action, payable as provided in section 602.8109. When judgment is rendered against the defendant, costs collected from the defendant shall be paid to the county or city which has the duty to prosecute the criminal action to the extent necessary for reimbursement for fees paid. However, the fees which are payable by the county to the clerk of the district court for services rendered in criminal actions prosecuted under state law and the court costs taxed in connection with the trial of those criminal actions or appeals from the judgments in those criminal actions are waived.

k. For issuing a marriage license, fifteen dollars. The clerk of the district court shall remit to the treasurer of state five dollars for each marriage license issued. The treasurer of state shall deposit the funds received in the general fund of the state. For issuing an application for an order of the district court authorizing the issuance of a license to marry prior to the expiration of three days from the date of filing the application for the license, five dollars.

l. For entering a final decree of dissolution of marriage, fifteen dollars. The fees shall be deposited in the general fund of the state. It is the intent of the general assembly that the funds generated from the dissolution fees be appropriated and used for sexual assault and domestic violence centers.

m. For certifying a change in title of real estate, two dollars.

n. In addition to all other fees, for making a complete record in cases where a complete record is required by law or directed by an order of the court, for every one hundred words, twenty cents.

o. For providing transcripts, certificates, other documents, and services in probate matters, the fees specified in section 633.31.

p. The jury fee and court reporter fee specified in chapter 625.

q. For filing and docketing a transcript of judgment from another county, two dollars.

r. For entering a judgment by confession, two dollars.

s. For the administrative costs of collecting and distributing support payments payable to the clerk of the district court under section 598.22, to be paid annually by the person obligated to pay the support and to be billed and collected by the clerk separately from, in addition to, and after both current and accrued support payments have been collected by the clerk, twenty-five dollars.

t. Other fees provided by law.

2. The fees collected by the clerk as provided in subsection 1 shall be deposited in the court revenue distribution account established under section 602.8108, except as otherwise provided by that section or by applicable law.

3. The clerk shall keep an accurate record of the fees collected in a fee book, and make a quarterly report of the fees collected to the supreme court.

4. The clerk shall pay to the treasurer of state on the first Monday which is not a holiday in January and July of each year all fees which have come into the clerk's possession since the date of the preceding payment, which do not belong to the clerk's office, and which are unclaimed. The clerk shall give the treasurer the title of the cause and style of the court in which the suit is pending, the names of the witnesses, jurors, officers, or other persons involved in the action, and the amount of money to which each of the persons is entitled. The treasurer of state shall deposit the funds in the general fund of the state as state revenue, provided that fees so deposited shall be paid to the persons entitled to them upon proper and timely demand. If payment of a fee is demanded, with proper proof, by the person entitled to it within five years from the date that the money is paid to the treasurer, the comptroller shall issue a warrant to pay the claim. If a person entitled to unclaimed fees does not demand payment within the five years, all rights to the fees or interest in the fees are waived and payment shall not be made.

85 Acts, ch 175, §11 HF 549; 85 Acts, ch 195, §54 SF 329; 85 Acts, ch 197, §20-23 SF 570

See Code editor's note

Subsection 1, paragraphs a, b, and j amended, NEW paragraphs l, q, r, and s, and subsequent paragraphs relettered m, n, o, p, and t

602.8106 Certain fees—collection and disposition.

1. Notwithstanding section 602.8105, the fee for the filing and docketing of a complaint or information for a simple misdemeanor is twenty dollars except that the filing and docketing of a complaint or information for a nonscheduled simple misdemeanor under chapter 321 is fifteen dollars. However, a fee for filing and docketing a complaint or information shall not be collected in cases of overtime parking.

2. The clerk shall remit ninety percent of all fines and forfeited bail received from a magistrate or district associate judge to the city that was the plaintiff in any action, and shall provide that city with a statement showing the total number of cases, the total of all fines and forfeited bail collected, and the total of all cases dismissed. The clerk shall deposit the remaining ten percent in the court revenue distribution account established under section 602.8108.

3. The clerk shall remit all fines and forfeited bail received from a magistrate or district associate judge for violation of a county ordinance, except an ordinance relating to vehicle speed or weight restrictions, to the county treasurer of the county that was the plaintiff in the action, and shall provide that county with a statement showing the total number of cases, the total of all fines and forfeited bail collected, and the total of all cases dismissed. However, if a county ordinance provides a penalty for a violation which is also penalized under state law, the fines and forfeited bail collected for the violation of that ordinance shall be deposited in the court revenue distribution account established under section 602.8108.

4. The clerk shall remit all other fines and forfeited bail received from a magistrate to the treasurer of state to be credited to the general fund of the state.

5. All fees and costs for the filing of a complaint or information or upon forfeiture of bail received from a magistrate shall be distributed by the clerk as follows:

a. Two fifths shall be remitted monthly by the clerk to the treasurer of state to be credited to the general fund of the state.

b. Three tenths shall be deposited in the court revenue distribution account established under section 602.8108.

c. Three tenths shall be remitted monthly by the clerk to the treasurer of state to be credited to the judicial retirement fund established under section 602.9104.

85 Acts, ch 195, §55, 56 SF 329; 85 Acts, ch 197, §24, 25 SF 570
 Subsection 1 amended
 NEW subsection 3 and subsequent subsections renumbered
 Subsections 4 and 5 amended

602.9103 Application.

Except as provided in section 602.11115, this article applies to any judge of the district court, including a district associate judge, or a judge of the court of appeals or of the supreme court.

85 Acts, ch 67, §61 SF 121; 85 Acts, ch 197, §26 SF 570
 See Code editor's note
 Section amended

602.9109 Payment of annuities—tax exemption.

Annuities granted under the terms of this article shall be due and payable in monthly installments on the last business day of each month following the month or other period for which the annuity shall have accrued and shall continue during the life of the annuitant and payment of all annuities, refunds, and allowances granted hereunder shall be made by checks or warrants drawn and issued by the state comptroller. Applications for annuities shall be in such form as the state comptroller may prescribe.

Annuities granted under this article are exempt from taxation either as income or as personal property.

85 Acts, ch 197, §28 SF 570
 NEW unnumbered paragraph 2

602.9203 Senior judgeship requirements.

1. A supreme court judge, court of appeals judge, district judge or district associate judge, who qualifies under subsection 2 may become a senior judge by filing with the clerk of the supreme court a written election in the form specified by the court administrator. The election shall be filed within six months of the date of retirement.

2. A judicial officer referred to in subsection 1 qualifies for a senior judgeship if the judicial officer meets all of the following requirements:

a. Retires from office on or after July 1, 1977, whether or not the judicial officer is of mandatory retirement age.

b. Meets the minimum requirements for entitlement to an annuity as specified in section 602.9106.

c. Agrees in writing on a form prescribed by the court administrator to be available as long as the judicial officer is a senior judge to perform judicial duties as assigned by the supreme court for an aggregate period of thirteen weeks out of each successive twelve-month period.

d. Submits evidence to the satisfaction of the supreme court that as of the date of retirement the judicial officer does not suffer from a permanent physical or mental disability which would substantially interfere with the performance of duties agreed to under paragraph "c" of this subsection.

e. Submits evidence to the satisfaction of the supreme court that since the date of retirement the judicial officer has not engaged in the practice of law.

3. The clerk of the supreme court shall maintain a book entitled "Roster of Senior Judges", and shall enter in the book the name of each judicial officer who files a timely election under subsection 1 and qualifies under subsection 2. A person shall be a senior judge upon entry of the person's name in the roster of senior judges and until the person becomes a retired senior judge as provided in section 602.9207, or until the person's name is stricken from the roster of senior judges as provided in section 602.9208, or until the person dies.

4. The supreme court shall cause each senior judge on the roster to actually perform judicial duties during each successive twelve-month period.

5. A judicial officer referred to in subsection 1 who retired from office on or after the date specified in subsection 2 and before July 1, 1979, may become a senior judge by filing with the clerk of court not later than thirty days after July 1, 1979, a written election in the form specified by the court administrator. If prior to July 1, 1979, the judicial officer filed an election to practice law under section 602.1612, the filing of an election under this subsection revokes the election to practice law, and the judicial officer shall divest the judicial officer of any interest in the practice of law within ninety days after July 1, 1979. For purposes of subsection 2, paragraph "d", of this section only, the date of retirement of a judicial officer who files an election under the authority of this subsection shall be deemed to be July 1, 1979.

85 Acts, ch 94, §1, 2 SF 515
 Subsection 1 amended
 Subsection 2, NEW paragraph e

602.11101 Implementation by court component.

The state shall assume responsibility for components of the court system according to the following schedule:

1. On October 1, 1983 the state shall assume the responsibility for and the costs of jury fees and mileage as provided in section 607.5 and on July 1, 1984 the state shall assume the responsibility for and the costs of prosecution witness fees and mileage and other witness fees and mileage assessed against the prosecution in criminal actions prosecuted under state law as provided in sections 622.69 and 622.72.

2. Court reporters shall become court employees on July 1, 1984. The state shall assume the responsibility for and the costs of court reporters on July 1, 1984.

3. Bailiffs who perform services for the court, other than law enforcement services, shall become court employees on January 1, 1985, and shall be called court attendants. The state shall assume the responsibility for and the costs of court attendants on January 1, 1985. Section 602.6601 takes effect on January 1, 1985.

4. Juvenile probation officers shall become court employees on July 1, 1985. The state shall assume the responsibility for and the costs of juvenile probation officers on July 1, 1985.

Until July 1, 1985 the county shall remain responsible for the compensation of

juvenile court referees. Effective July 1, 1985 the state shall assume the responsibility for the compensation of juvenile court referees.

5. Clerks of the district court shall become court employees on July 1, 1986. The state shall assume the responsibility for and the costs of the offices of the clerks of the district court on July 1, 1986. Persons who are holding office as clerks of the district court on July 1, 1986 are entitled to continue to serve in that capacity until the expiration of their respective terms of office. The district judges of a judicial election district shall give first and primary consideration for appointment of a clerk of the district court to serve the court beginning in 1989 to a clerk serving on and after July 1, 1986 until the expiration of the clerk's elected term of office. A vacancy in the office of clerk of the district court occurring on or after July 1, 1986 shall be filled as provided in section 602.1215.

Until July 1, 1986 the county shall remain responsible for the compensation of and operating costs for court employees not presently designated for state financing and for miscellaneous costs of the judicial department related to furnishings, supplies, and equipment purchased, leased, or maintained for the use of judicial officers, referees, and their staff. Effective July 1, 1986 the state shall assume the responsibility for the compensation of and operating costs for court employees presently designated for state financing and for miscellaneous costs of the judicial department related to furnishings, supplies, and equipment purchased, leased, or maintained for the use of judicial officers, referees, and their staff. However, the county shall at all times remain responsible for the provision of suitable courtrooms, offices, and other physical facilities pursuant to section 602.1303, subsection 1, including paint, wall covering, and fixtures in the facilities.

Until July 1, 1986 the county shall remain responsible for the compensation of and operating costs for probate referees and judicial hospitalization referees and their staffs. Effective July 1, 1986 the state shall assume the responsibility for the compensation of and operating costs for probate referees and judicial hospitalization referees and their staffs.

Until July 1, 1986 the county shall remain responsible for necessary fees and costs related to certain court reporters. Effective July 1, 1986 the state shall assume the responsibility for necessary fees and costs related to certain court reporters.

6. The state shall assume the responsibility for and the costs of indigent defense on July 1, 1987.

7. The county shall remain responsible for the court-ordered costs of conciliation procedures under section 598.16.

For the period beginning July 1, 1983, and ending June 30, 1987, the provisions of division I (articles 1 through 10) take effect only to the extent that the provisions do not conflict with the scheduled state assumption of responsibility for the components of the court system, and the amendments and repeals of divisions II and III take effect only to the extent necessary to implement that scheduled state assumption of responsibility. If an amendment or repeal to a Code section in division II or III is not effective during the period beginning July 1, 1983, and ending June 30, 1987, the Code section remains in effect for that period. On July 1, 1987, this Act* takes effect in its entirety.

However, if the state does not fully assume the costs for a fiscal year of a component of the court system in accordance with the scheduled assumption of responsibility, the state shall not assume responsibility for that component, and the schedule of state assumption of responsibility shall be delayed. The delayed schedule of state assumption of responsibility shall again be followed for the fiscal year in which the state fully assumes the costs of that component. For the fiscal year for which the state's assumption of the responsibility for a court component is delayed, the clerk of the district court shall not reduce the percentage remittance to the counties from the court revenue distribution account under section 602.8108. The clerk shall resume the delayed schedule of reductions in county remittances for the

fiscal year in which the state fully assumes the costs of that court component. If the schedules of state assumption of responsibility and reductions in county remittances are delayed, the transition period beginning July 1, 1983, and ending June 30, 1987 is correspondingly lengthened, and this Act* takes effect in its entirety only at the end of the lengthened transition period.

The supreme court shall prescribe temporary rules, prior to the dates on which the state assumes responsibility for the components of the court system, as necessary to implement the administrative and supervisory provisions of this Act*, and as necessary to determine the applicability of specific provisions of this Act* in accordance with the scheduled state assumption of responsibility for the components of the court system.

85 Acts, ch 197, §29-31 SF 570

*83 Acts, ch 186

Subsection 5, new unnumbered paragraph 4, applies retroactively to July 1, 1983; 85 Acts, ch 197, §48

Counties and supreme court to be notified by February 15, 1986, of possible delay in state assumption of responsibility for the fiscal year beginning July 1, 1986; 85 Acts, ch 262, §6 SF 552

Subsection 4, NEW unnumbered paragraph 2

Subsection 5, NEW unnumbered paragraphs 2, 3, and 4

NEW subsection 7

602.11102 Accrued employee rights.

1. Persons who were paid salaries by the counties or judicial districts immediately prior to becoming state employees as a result of this chapter shall not forfeit accrued vacation, accrued sick leave, or longevity, except as provided in this section.

2. As a part of its rulemaking authority under section 602.11101, the supreme court, after consulting with the state comptroller, shall prescribe rules to provide for the following:

a. Each person referred to in subsection 1 shall have to the person's credit as a state employee commencing on the date of becoming a state employee the number of accrued vacation days that was credited to the person as a county employee as of the end of the day prior to becoming a state employee.

b. Each person referred to in subsection 1 shall have to the person's credit as a state employee commencing on the date of becoming a state employee the number of accrued days of sick leave that was credited to the person as a county employee as of the end of the day prior to becoming a state employee. However, the number of days of sick leave credited to a person under this subsection and eligible to be taken when sick or eligible to be received upon retirement shall not respectively exceed the maximum number of days, if any, or the maximum dollar amount as provided in section 79.23 that state employees generally are entitled to accrue or receive according to rules in effect as of the date the person becomes a state employee.

c. Commencing on the date of becoming a state employee, each person referred to in subsection 1 is entitled to claim the person's most recent continuous period of service in full-time county employment as full-time state employment for purposes of determining the number of days of vacation which the person is entitled to earn each year. The actual vacation benefit, including the limitation on the maximum accumulated vacation leave, shall be determined as provided in section 79.1 according to rules in effect for state employees of comparable longevity, irrespective of any greater or lesser benefit as a county employee.

d. Notwithstanding paragraphs "b" and "c", for the period beginning July 1, 1984, and ending June 30, 1986, court reporters who become state employees as a result of this chapter are not subject to the sick leave and vacation accrual limitations generally applied to state employees. However, court reporters are subject to the maximum dollar limitation upon retirement as provided in section 79.23.

85 Acts, ch 195, §57 SF 329; 85 Acts, ch 197, §32 SF 570

See Code editor's note

Section amended

602.11103 Life, health, and disability insurance.

Persons who were covered by county employee life insurance and accident and health insurance plans prior to becoming state employees as a result of this chapter shall be permitted to apply prior to becoming state employees for life insurance and health and accident insurance plans that are available to state employees so that those persons do not suffer a lapse of insurance coverage as a result of this chapter. The supreme court, after consulting with the state comptroller, shall prescribe rules and distribute application forms and take other actions as necessary to enable those persons to elect to have insurance coverage that is in effect on the date of becoming state employees. The actual insurance coverage available to a person shall be determined by the plans that are available to state employees, irrespective of any greater or lesser benefits as a county or judicial district employee.

Commencing on the date of becoming a state employee, each person referred to in this section is entitled to claim the person's most recent continuous period of service in full-time county or judicial district employment as full-time state employment for purposes of determining disability benefits as provided in section 79.20 according to rules in effect for state employees of comparable longevity, irrespective of any greater or lesser benefit as a county or judicial district employee.

85 Acts, ch 197, §33 SF 570
Section amended

602.11108 Collective bargaining.

A person who becomes a state employee as a result of this chapter is a public employee, as defined in section 20.3, subsection 3, for purposes of chapter 20. The person may bargain collectively on and after July 1, 1983 as provided by law for a court employee. However, if the person is subject to a collective bargaining agreement negotiated prior to July 1, 1983, the person is entitled to the rights and benefits obtained by the person pursuant to that contract after July 1, 1983, until that contract expires. If the person is subject to a collective bargaining agreement negotiated by a public employer other than the state court administrator on or after July 1, 1983, the person is not entitled to any rights or benefits obtained by the person pursuant to that contract after becoming a state employee.

Commencing one year prior to each category of employees becoming state employees as a result of this chapter, the state court administrator shall assume the position of public employer of those employees of that category for the sole purpose of negotiating a collective bargaining agreement with those employees to be effective upon the date those employees became state employees as a result of this chapter.

85 Acts, ch 197, §34 SF 570
Section amended

602.11109 Additional judgeships. Repealed by 85 Acts, ch 195, §67. SF 329

602.11110 Judgeships for election districts 5A and 5C.

As soon as practicable after January 1, 1985, the supreme court administrator shall recompute the number of judgeships to which judicial election districts 5A and 5C are entitled. Notwithstanding section 602.6201, subsection 2, the seventeen incumbent district judges in judicial election district 5A on December 31, 1984 may reside in either judicial election district 5A or 5C beginning January 1, 1985. The supreme court administrator shall apportion to judicial election district 5C those incumbent district judges who were appointed to replace district judges residing in Polk county or who were appointed to fill newly created judgeships while residing in Polk county. The incumbent district judges residing in Polk county on January 1, 1985 who are not so apportioned to judicial election district 5C shall be apportioned to judicial election district 5A but shall be reapportioned to judicial election district 5C, in the order of their seniority as district judges, as soon as the first vacancies occur in judicial election district 5C due to death, resignation, retirement, removal, or failure of retention. Such a reapportionment constitutes a vacancy in judicial election

district 5A for purposes of section 602.6201. Notwithstanding section 602.6201, subsection 2, the seventeen incumbent district judges in judicial election district 5A on December 31, 1984 shall stand for retention in the judicial election district to which the district judges are apportioned or reapportioned under this section. Commencing on January 1, 1985, vacancies within judicial election districts 5A and 5C shall be determined and filled under section 602.6201, subsections 4 through 8. For purposes of the recomputations, the supreme court administrator shall determine the average case filings for the latest available three-year period by reallocating the actual case filings during the three-year period to judicial election districts 5A and 5C as if they existed throughout the three-year period.

85 Acts, ch 197, §35 SF 570
Section amended

CHAPTER 611

FORMS OF ACTIONS

611.21 Civil remedy not merged in crime.

The right of civil remedy is not merged in a public offense and is not restricted for other violation of law, but may in all cases be enforced independently of and in addition to the punishment of the former.

85 Acts, ch 197, §36 SF 570
Section amended

CHAPTER 615

SPECIAL LIMITATIONS ON JUDGMENTS

615.4 Chapter inapplicable in certain situations.

This chapter shall not be applied to actions which are subject to an agreement entered into pursuant to either section 628.26A or section 654.19.

85 Acts, ch 252, §42 SF 577
See Code editor's note
NEW section

CHAPTER 622B

HEARING IMPAIRED PERSONS—INTERPRETERS

Procedures upon arrest of hearing impaired persons; see §804.31

622B.1 Definitions—rules.

1. As used in this chapter, unless the context otherwise requires:
 - a. "*Hearing impaired person*" means a person whose hearing is so impaired that the person cannot understand oral communication when spoken in a normal conversational tone and must rely primarily on sign language to communicate, and also includes a person who is unable to orally communicate with other persons and relies primarily on sign language to communicate.
 - b. "*Interpreter*" means an interpreter who is fluent in sign language pursuant to rules on qualifications of interpreters applying to the proceeding.
 - c. "*Administrative agency*" means any department, board, commission or agency of the state or any political subdivision of the state.
2. The supreme court, after consultation with the department of health, shall adopt rules governing the qualifications and compensation of interpreters appearing

in a proceeding before a court, grand jury or administrative agency under this chapter. However, an administrative agency which is subject to chapter 17A may adopt rules differing from those of the supreme court governing the qualifications and compensation of interpreters appearing in proceedings before that agency.

85 Acts, ch 131, §1 HF 526
Subsection 1, paragraph a amended

CHAPTER 624

TRIAL AND JUDGMENT

624.23 Liens of judgments—homesteads—enforceability.

1. Judgments in the appellate or district courts of this state, or in the circuit or district court of the United States within the state, are liens upon the real estate owned by the defendant at the time of such rendition, and also upon all the defendant may subsequently acquire, for the period of ten years from the date of the judgment.

Judgments for child or spousal support in the appellate or district courts of this state or in the circuit or district court of the United States within this state and administrative orders for child or spousal support entered under chapter 252C, are liens upon the real property owned by the defendant at the time of the entering of the judgment or order and upon the real property subsequently acquired by the defendant. Upon full satisfaction of a judgment or order for child or spousal support, the party entitled to the support shall acknowledge the satisfaction upon request pursuant to section 624.37. Notwithstanding subsection 3, a lien established under this subsection on a judgment or order for support is not dischargeable in bankruptcy.

2. Judgment liens described in subsection 1 shall not remain a lien upon real estate of the defendant, platted as a homestead pursuant to section 561.4, unless execution is levied within thirty days of the time the defendant or the defendant's agent has served written demand on the owner of the judgment. The demand shall state that the lien and all benefits derived therefrom as to the real estate platted as a homestead shall be forfeited unless the owner of the judgment levies execution against that real estate within thirty days from the date of service of the demand. Written demand shall be served in any manner authorized for service of original notice under the Iowa rules of civil procedure. A copy of the written demand and proof of service thereof shall be filed in the office of the county recorder of the county where the real estate platted as a homestead is located.

3. Judgment liens described in subsection 1 shall not attach to subsequently acquired real estate owned by the defendant if the personal liability of the defendant on the judgment has been discharged under the bankruptcy laws of the United States.

85 Acts, ch 100, §8 SF 244
Subsection 1, NEW unnumbered paragraph 2

624.24 When judgment lien attaches—index of support liens.

If the real estate lies in the county in which the judgment of the district court of this state or of the circuit or district courts of the United States was entered in the judgment docket and lien index kept by the clerk of the district court having jurisdiction, the lien attaches from the date of the entry of judgment. Except in cases of support, if the judgment and real estate are in different counties, the lien does not attach until an attested copy of the judgment is filed in the office of the clerk of the district court of the county in which the real estate lies. In cases of support, the lien attaches from the entry of the judgment. An index of support liens shall be maintained by the clerk of the district court and the child support recovery unit shall maintain an index of those support liens held by the child support recovery unit.

85 Acts, ch 100, §9 SF 244
Section amended

CHAPTER 625

COSTS

625.24 Affidavit required.

The attorney's fee allowed in sections 625.22 and 625.23 shall not be taxed in any case unless it appears by affidavit of the attorney that there is not and has not been an agreement between the attorney and the attorney's client or any other person, express or implied, for any division or sharing of the fee to be taxed. This limitation does not apply to a practicing attorney engaged with the attorney as an attorney in the cause. The affidavit shall be filed prior to any attorney's fees being taxed. When fees are taxed, they shall be only in favor of a regular attorney and as compensation for services actually rendered in the action.

85 Acts, ch 72, §1 SF 289
Section amended

CHAPTER 627

EXEMPTIONS

627.11 Exception under decree for spousal support.

If the party in whose favor the order, judgment, or decree for the support of a spouse was rendered has not remarried, the personal earnings of the debtor are not exempt from an order, judgment, or decree for temporary or permanent support, as defined in section 252D.1, of a spouse, nor from an installment of an order, judgment, or decree for the support of a spouse.

85 Acts, ch 178, §12 HF 495
Section amended

627.12 Exception under decree for child support.

The personal earnings of the debtor are not exempt from an order, judgment, or decree for the support, as defined in section 252D.1, of a child, nor from an installment of an order, judgment, or decree for the support of a child.

85 Acts, ch 178, §13 HF 495
Section amended

CHAPTER 628

REDEMPTION

628.26A Agreement to extend period of redemption—agricultural land.

Notwithstanding section 628.3, the debtor and the mortgagee of agricultural land after the filing of the foreclosure petition, may enter into a written agreement to extend the debtor's period of redemption up to five years, and may set forth other terms and conditions of the extended redemption as agreed upon by the parties, including allowing the debtor to lease the property. However, the rights of the debtor and other parties who have a secured interest in the agricultural land shall not be reduced beyond those set forth in this chapter. The agreement entered into by the debtor and the mortgagee pursuant to this section must be approved by the court and shall be filed in the foreclosure proceedings. An agreement pursuant to this section does not constitute an equitable mortgage.

85 Acts, ch 252, §43 SF 577
NEW section

628.28 Redemption of property not used for agricultural or certain residential purposes.

If real property is not used for agricultural purposes, as defined in section 535.13, and is not the residence of the debtor, or if it is the residence of the debtor but not a single-family or two-family dwelling, then the period of redemption after foreclosure is one hundred eighty days. For the first ninety days after the sale the right of redemption is exclusive to the debtor and the time periods provided in sections 628.5, 628.15 and 628.16 are reduced to one hundred thirty-five days. If a deficiency judgment has been waived the period of redemption is reduced to ninety days. For the first thirty days after the sale the redemption is exclusively the right of the debtor and the time periods provided in sections 628.5, 628.15 and 628.16 are reduced to sixty days.

If real property is not used for agricultural purposes, as defined in section 535.13, and is a single-family or two-family dwelling which is the residence of the debtor at the time of foreclosure but the court finds that after foreclosure the dwelling has ceased to be the residence of the debtor and if there are no junior creditors, the court shall order the period of redemption reduced to thirty days from the date of the court order. If there is a junior creditor, the court shall order the redemption period reduced to sixty days. For the first thirty days redemption is the exclusive right of the debtor and the time periods provided in sections 628.5, 628.15 and 628.16 are reduced to forty-five days.

85 Acts, ch 495, §58 SF 329
Section amended

628.29 Redemption by creditor pursuant to alternative foreclosure.

A lienholder of record may redeem real property which has been foreclosed by a mortgagee pursuant to the alternative voluntary foreclosure procedure provided in section 654.18. The junior lienholders' redemption period shall be thirty days commencing the day the notice required by section 654.18, subsection 1, paragraph "e" is sent. The redemption shall be made by payment to the mortgagee of the amount of the debt secured by the mortgage including any protective advances made pursuant to chapter 629. Upon payment, the mortgagee shall convey the property by special warranty deed to the redeeming junior lienholder.

85 Acts, ch 252, §44 SF 577
See Code editor's note
NEW section

CHAPTER 631

SMALL CLAIMS

631.6 Fees and costs.

All fees and costs required to be paid in small claims actions shall be paid in advance, and shall be assessed as costs in the action.

1. The docket fee for a small claims action is eleven dollars. Five dollars of the docket fee shall be deposited in the court revenue distribution account established under section 602.8108 and six dollars of the fee shall be paid into the state treasury. Of the amount paid into the state treasury, one dollar shall be deposited in the judicial retirement fund established in section 602.9104 to be used to pay retirement benefits of the judicial retirement system, and the remainder shall be deposited in the general fund of the state.

2. Postage charged for the mailing of original notices shall be the actual cost of the postage.

3. Fees for personal service by peace officers or other officials of the state are the amounts specified by law.

4. Fees for service of notice on nonresidents are as provided in section 617.3.

All fees and costs collected in small claims actions, other than the six dollars of the docket fee to be paid into the state treasury, shall be deposited in the court revenue distribution account established under section 602.8108, except that the fee specified in subsection 4 shall be remitted to the secretary of state.

85 Acts, ch 195, §59 SF 329; 85 Acts, ch 197, §37, 38, SF 570
See Code editor's note
Section amended

631.16 Discretionary review.

1. A civil action originally tried as a small claim shall not be appealed to the supreme court except by discretionary review as provided herein.

2. "Discretionary review" is the process by which the supreme court may exercise its discretion, in like manner as under the rules pertaining to interlocutory appeals and certiorari in civil cases, to review specified matters not subject to appeal as a matter of right. The supreme court may adopt additional rules to control access to discretionary review.

3. The party seeking review shall be known as the appellant and the adverse party as the appellee, but the title of the action shall not be changed from that in the court below.

4. The record and case shall be presented to the appellate court as provided by the rules of appellate procedure; and the provisions of law in civil procedure relating to the filing of decisions and opinions of the appellate court shall apply in such cases.

5. The appellate court, after an examination of the entire record, may dispose of the case by affirmation, reversal or modification of the lower court judgment, and may order a new trial.

6. The decision of the appellate court with any opinion filed or judgment rendered must be recorded by the supreme court clerk. Procedendo shall be issued as provided in the rules of appellate procedure.

7. The jurisdiction of the appellate court shall cease when procedendo is issued. All proceedings for executing the judgment shall be had in the trial court or by its clerk.

85 Acts, ch 157, §1, 2 HF 550
Subsections 4 and 5 struck and subsequent subsections renumbered
Subsections 4, 5, 6 and 7 amended

CHAPTER 633

PROBATE CODE

633.10 Jurisdiction.

The district court sitting in probate shall have jurisdiction of:

1. Estates of decedents and absentees.

The probate and contest of wills; the appointment of personal representatives; the granting of letters testamentary and of administration; the administration, settlement and distribution of estates of decedents and absentees, whether such estates consist of real or personal property or both.

2. Construction of wills and trust instruments.

The construction of wills and trust instruments during the administration of the estate or trust, whether said construction be incident to such administration, or as a separate proceeding.

3. Conservatorships and guardianships.

The appointment of conservators and guardians; the granting of letters of conservatorship and guardianship; the administration, settlement and closing of conservatorships and guardianships.

4. Trusts and trustees.

Except as otherwise provided in this subsection, the appointment of trustees; the granting of letters of trusteeship; the administration of testamentary trusts; the administration of express trusts where jurisdiction is specifically conferred on the court by the trust instrument; the administration of express trusts where the administration of the court is invoked by the trustee, beneficiary or any interested party; the administration of trusts which are established by a decree of court and result in the administration thereof by the court; and the settlement and closing of all such trusts.

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

85 Acts, ch 154, §1 SF 377
Subsection 4 amended

633.63 Qualification of fiduciary—resident.

1. Any natural person of full age, who is a resident of this state, is qualified to serve as a fiduciary, except the following:

a. One who is a mental retardate, mentally ill, a chronic alcoholic, or a spendthrift.

b. Any other person whom the court determines to be unsuitable.

2. Banks and trust companies organized under the laws of the United States or state banks, when approved by the superintendent of banking under section 524.1001, are authorized to act in a fiduciary capacity in Iowa.

3. A private nonprofit corporation organized under chapter 504 or 504A is qualified to act as a guardian, as defined in section 633.3, subsection 19, if the department of human services, under rules established by the department, finds the corporation a suitable agency to perform such duties and determines that the corporation does not possess a proprietary or legal interest in an organization which provides direct services to the individual.

85 Acts, ch 31, §1 HF 29
NEW subsection 3

633.123 Model prudent person investment Act.

1. *Investments by fiduciaries.* In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of another, a fiduciary shall exercise the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for the purpose of speculation, but with regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety, of their capital. Within the limitations of the foregoing standards, a fiduciary is authorized to acquire and retain every kind of property and every kind of investment which persons of prudence, discretion and intelligence acquire or retain for their own account.

2. *Limitations.* Nothing contained in this Code shall be construed as authorizing any departure by a fiduciary from, or the fiduciary's variation of, the express terms or limitations set forth in any will, agreement, court order, or other instrument creating or defining the fiduciary's duties and powers, but the terms "legal investment" or "authorized investment", or words of similar import, as used in any such instrument, shall be taken to mean any investment that is permitted by the provisions of subsection 1 hereof.

3. *Powers of court to authorize investment.* Nothing contained in this section

shall be construed as restricting the power of the court, after such notice as the court may prescribe, to permit a fiduciary to deviate from the terms of any will, agreement, or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale or management of fiduciary property.

4. *Scope of application.* The provisions of this section shall govern all fiduciaries acting under the jurisdiction of the court whether the wills, agreements or other instruments under which they are acting now exist, or are hereafter made.

85 Acts, ch 190, §5 SF 27
Subsection 1 amended

633.211 Share of surviving spouse if decedent left no issue or left issue all of whom are issue of surviving spouse.

If the decedent dies intestate leaving a surviving spouse and leaving no issue or leaving issue all of whom are the issue of the surviving spouse, the surviving spouse shall receive the following share:

1. All the value of all the legal or equitable estates in real property possessed by the decedent at any time during the marriage, which have not been sold on execution or by other judicial sale, and to which the surviving spouse has made no relinquishment of right.

2. All personal property that, at the time of death, was, in the hands of the decedent as the head of a family, exempt from execution.

3. All other personal property of the decedent which is not necessary for the payment of debts and charges.

85 Acts, ch 19, §1 SF 378
1985 amendment applies to estates of decedents dying on or after July 1, 1985; 85 Acts, ch 19, §4
Section amended

633.212 Share of surviving spouse if decedent left issue some of whom are not issue of surviving spouse.

If the decedent dies intestate leaving a surviving spouse and leaving issue some of whom are not the issue of the surviving spouse, the surviving spouse shall receive the following share:

1. One-half in value of all the legal or equitable estates in real property possessed by the decedent at any time during the marriage, which have not been sold on execution or by other judicial sale, and to which the surviving spouse has made no relinquishment of right.

2. All personal property that, at the time of death, was in the hands of the decedent as the head of a family, exempt from execution.

3. One-half of all other personal property of the decedent which is not necessary for the payment of debts and charges.

4. If the property received by the surviving spouse under subsections 1, 2 and 3 of this section is not equal in value to the sum of fifty thousand dollars, then so much additional of any remaining homestead interest and of the remaining real and personal property of the decedent that is subject to payment of debts and charges against the decedent's estate, after payment of the debts and charges, even to the extent of the whole of the net estate, as necessary to make the amount of fifty thousand dollars.

85 Acts, ch 19, §2 SF 378
1985 amendment applies to estates of decedents dying on or after July 1, 1985; 85 Acts, ch 19, §4
Section amended

633.410 Limitation on filing claims against decedent's estate.

All claims against a decedent's estate, other than charges, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or otherwise, are forever barred against the estate, the personal representative, and the distributees of the estate, unless filed with the clerk within four months after the date of the second publication of the notice to creditors. However, the personal

representative may waive this limitation on filing. This section does not bar claims for which there is insurance coverage, to the extent of the coverage, or claimants entitled to equitable relief due to peculiar circumstances.

85 Acts, ch 92, §1 SF 423
Section amended

633.436 General order for abatement.

Except as provided in section 633.211 and 633.212, shares of the distributees shall abate, for the payment of debts and charges, federal and state estate taxes, legacies, the shares of children born or adopted after the making of a will, or the share of the surviving spouse who elects to take against the will, without any preference or priority as between real and personal property, in the following order:

1. Property not disposed of by the will;
2. Property devised to the residuary devisee, except property devised to a surviving spouse who takes under the will;
3. Property disposed of by the will, but not specifically devised and not devised to the residuary devisee, except property devised to a surviving spouse who takes under the will;
4. Property specifically devised, except property devised to a surviving spouse who takes under the will;
5. Property devised to a surviving spouse who takes under the will.

A general devise charged on any specific property or fund shall, for purposes of abatement, be deemed property specifically devised to the extent of the value of the property on which it is charged. Upon the failure or insufficiency of the property on which it is charged, it shall be deemed property not specifically devised to the extent of such failure or insufficiency.

85 Acts, ch 19, §3 SF 378
Unnumbered paragraph 1 amended

633.552 Petition for appointment of guardian.

Any person may file with the clerk a verified petition for the appointment of a guardian. The petition shall state the following information so far as known to the petitioner.

1. The name, age and post-office address of the proposed ward.
2. That the proposed ward is in either of the following categories:
 - a. By reason of mental, physical or other incapacity is unable to make or carry out important decisions concerning the proposed ward's person or affairs, other than financial affairs.
 - b. Is a minor.
3. The name and post-office address of the proposed guardian, and that such person is qualified to serve in that capacity.
4. That the proposed ward is a resident of the state of Iowa or is present in the state, and that the ward's best interests require the appointment of a guardian in this state.
5. The name and address of the person or institution, if any, having the care, custody or control of the proposed ward.

85 Acts, ch 29, §1 SF 531
Subsection 2, paragraph a amended

633.554 Notice to proposed ward.

If the proposed ward is an adult, notice of the filing of the petition shall be served upon the proposed ward in the manner of an original notice and the content of the notice is governed by the rules of civil procedure governing original notice. If the proposed ward is a minor or if the proposed ward is an adult under a standby petition and the court determines, pursuant to section 633.561, subsection 1, that the proposed ward is entitled to representation, notice in the manner of original notice, or another form of notice ordered by the court, given to the attorney appointed to represent the ward is notice to the proposed ward.

85 Acts, ch 29, §2 SF 531; 85 Acts, ch 148, §6 HF 761
Section struck and rewritten, and amended

633.561 Representation.

1. In a proceeding for the appointment of a guardian, if the proposed ward is an adult and is not the petitioner, the proposed ward is entitled to representation. In a proceeding for the appointment of a guardian, if the proposed ward is a minor or if the proposed ward is an adult under a standby petition, the court shall determine whether, under the circumstances of the case, the proposed ward is entitled to representation. The determination regarding representation shall be made only after notice to the proposed ward is made as the court deems necessary.

2. The court shall ensure that all proposed wards entitled to representation have been provided with notice of the right to representation and shall make findings of fact in any order of disposition setting out the manner in which notification was provided.

3. If the proposed ward is entitled to representation and is indigent or incapable of requesting counsel, the court shall appoint an attorney to represent the proposed ward. The cost of court appointed counsel for indigents shall be assessed against the county in which the proceedings are pending. For the purposes of this subsection, the court shall find a person is indigent if the person's income and resources do not exceed one hundred fifty percent of the federal poverty level or the person would be unable to pay such costs without prejudicing the person's financial ability to provide economic necessities for the person or the person's dependents.

4. An attorney appointed pursuant to this section shall:

a. Ensure that the proposed ward has been properly advised of the nature and purpose of the proceeding.

b. Ensure that the proposed ward has been properly advised of the ward's rights in a guardianship proceeding.

c. Personally interview the proposed ward.

d. File a written report stating whether there is a return on file showing that proper service on the proposed ward has been made and also stating that specific compliance with paragraphs "a" through "c" has been made or stating the inability to comply by reason of the proposed ward's condition.

e. Represent the proposed ward.

f. Ensure that the guardianship procedures conform to the statutory and due process requirements of Iowa law.

5. In the event that an order of appointment is entered, the attorney appointed pursuant to this section, to the extent possible, shall:

a. Inform the proposed ward of the effects of the order entered for appointment of guardian.

b. Advise the ward of the ward's rights to petition for modification or termination of the guardianship.

c. Advise the ward of the rights retained by the ward.

6. If the court determines that it would be in the ward's best interest to have legal representation with respect to any proceedings in a guardianship, the court may appoint an attorney to represent the ward at the expense of the ward or the ward's estate, or if the ward is indigent the cost of the court appointed attorney shall be assessed against the county in which the proceedings are pending.

85 Acts, ch 29, §3 SF 531; 85 Acts, ch 148, §7 HF 761

Section struck and rewritten

Subsection 1 amended

633.566 Petition for appointment of conservator.

Any person may file with the clerk a verified petition for the appointment of a conservator. The petition shall state the following information, so far as known to the petitioner:

1. The name, age and post-office address of the proposed ward.

2. That the proposed ward is in either of the following categories:

a. By reason of mental, physical or other incapacity is unable to make or carry out important decisions concerning the proposed ward's financial affairs.

- b. Is a minor.
3. The name and post-office address of the proposed conservator, and that such person is qualified to serve in that capacity.
4. The estimated present value of the real estate, the estimated value of the personal property, and the estimated gross annual income of the estate. If any money is payable, or to become payable, to the proposed ward by the United States through the veterans administration, the petition shall so state.
5. The name and address of the person or institution, if any, having the care, custody or control of the proposed ward.
6. That the proposed ward resides in the state of Iowa, is a nonresident, or that the proposed ward's residence is unknown, and that the proposed ward's best interests require the appointment of a conservator in the state of Iowa.

85 Acts, ch 29, §4 SF 531
Subsection 2, paragraph a amended

633.568 Notice to proposed ward.

If the proposed ward is an adult, notice of the filing of the petition shall be served upon the proposed ward in the manner of an original notice and the content of the notice is governed by the rules of civil procedure governing original notice. If the proposed ward is a minor and the court determines, pursuant to section 633.575, subsection 1, that the proposed ward is entitled to representation, notice in the manner of original notice, or another form of notice ordered by the court, given to the attorney appointed to represent the ward is notice to the proposed ward.

85 Acts, ch 29, §5 SF 531; 85 Acts, ch 148, §8 HF 761
Section struck and rewritten, and amended

633.575 Representation.

1. In a proceeding for the appointment of a conservator, if the proposed ward is an adult and is not the petitioner, the proposed ward is entitled to representation. In a proceeding for the appointment of a conservator, if the proposed ward is a minor or where the proposed ward is an adult under a standby petition, the court shall determine whether, under the circumstances of the case, the proposed ward is entitled to representation. The determination regarding representation shall be made only after notice to the proposed ward is made as the court deems necessary.
2. The court shall ensure that all proposed wards entitled to representation have been provided with notice of the right to representation and shall make findings of fact in any order of disposition setting out the manner in which notification was provided.
3. If the proposed ward is entitled to representation and is indigent or incapable of requesting counsel, the court shall appoint an attorney to represent the proposed ward. The cost of court appointed counsel for indigents shall be assessed against the county in which the proceedings are pending. For the purposes of this subsection, the court may find a person is indigent if the person's income and resources do not exceed one hundred fifty percent of the federal poverty level or the person would be unable to pay such costs without prejudicing the person's financial ability to provide economic necessities for the person or the person's dependents.
4. An attorney appointed pursuant to this section, to the extent possible, shall:
- Ensure that the proposed ward has been properly advised of the nature of the proceeding and its purpose.
 - Ensure that the proposed ward has been properly advised of the ward's rights in a conservatorship proceeding.
 - Personally interview the proposed ward.
 - File a written report stating whether there is a return on file showing that proper service on the proposed ward has been made and also stating that specific compliance with paragraphs "a" through "c" has been made or stating the inability to comply by reason of the proposed ward's condition.

- e. Represent the proposed ward.
 - f. Ensure that the conservatorship procedures conform to the statutory and due process requirements of Iowa law.
5. In the event that an order of appointment is entered, the attorney appointed pursuant to this section, to the extent possible, shall:
- a. Inform the proposed ward of the effects of the order entered for appointment of conservator.
 - b. Advise the ward of the ward's rights to petition for modification or termination of conservatorship.
 - c. Advise the ward of the rights retained by the ward.
6. If the court determines that it would be in the ward's best interest to have legal representation with respect to any proceedings in a conservatorship, the court may appoint an attorney to represent the ward at the expense of the ward or the ward's estate, or if the ward is indigent the cost of the court appointed attorney shall be assessed against the county in which the proceedings are pending.

85 Acts, ch 29, §6 SF 531; 85 Acts, ch 148, §9 HF 761
 Section struck and rewritten
 Subsections 3, 4 and 5 amended

633.635 Responsibilities of guardian.

1. A guardian may be granted the following powers and duties which may be exercised without prior court approval:
- a. Providing for the care, comfort and maintenance of the ward, including the appropriate training and education to maximize the ward's potential.
 - b. Taking reasonable care of the ward's clothing, furniture, vehicle and other personal effects.
 - c. Assisting the ward in developing maximum self-reliance and independence.
 - d. Ensuring the ward receives necessary emergency medical services.
 - e. Ensuring the ward receives professional care, counseling, treatment or services as needed.
 - f. Any other powers or duties the court may specify.
2. A guardian may be granted the following powers which may only be exercised upon court approval:
- a. Changing, at the guardian's request, the ward's permanent residence if the proposed new residence is more restrictive of the ward's liberties than the current residence.
 - b. Arranging the provision of major elective surgery or any other nonemergency major medical procedure.
3. The court may take into account all available information concerning the capabilities of the ward and any additional evaluation deemed necessary, and may direct that the guardian have only a specially limited responsibility for the ward. In that event, the court shall state those areas of responsibility which shall be supervised by the guardian and all others shall be retained by the ward.
4. From time to time, upon a proper showing, the court may alter the respective responsibilities of the guardian and the ward, after notice to the ward and an opportunity to be heard.

85 Acts, ch 29, §7 SF 531
 Subsection 2, unnumbered paragraph 2 struck

633.642 Inventory of ward's property. Repealed by 85 Acts, ch 29, §11. SF 531 See §633.670.

633.668 Conservator may make gifts.

For good cause shown and under order of court, a conservator may make gifts on behalf of the ward out of the assets under a conservatorship to persons or religious, educational, scientific, charitable, or other nonprofit organizations to whom or to which such gifts were regularly made prior to the commencement of the conservator-

ship, or on a showing to the court that such gifts would benefit the ward or the ward's estate from the standpoint of income, gift, estate or inheritance taxes. The making of gifts out of the assets must not foreseeably impair the ability to provide adequately for the best interests of the ward.

85 Acts, ch 29, §8 SF 531
Section amended

633.669 Reporting requirements—assistance by clerk.

1. A guardian appointed under this chapter shall file with the court the following written verified reports:

- a. An initial report within sixty days of the guardian's appointment.
 - b. An annual report unless the court otherwise orders on good cause shown.
 - c. A final report within thirty days of the termination of the guardianship under section 633.675 unless that time is extended by the court.
2. Reports required by this section must include:
- a. The current mental and physical condition of the ward.
 - b. The present living arrangement of the ward, including a description of each residence where the ward has resided during the reporting period.
 - c. A summary of the medical, educational, vocational and other professional services provided for the ward.
 - d. A description of the guardian's visits with and activities on behalf of the ward.
 - e. A recommendation as to the need for continued guardianship.
 - f. Other information requested by the court or useful in the opinion of the guardian.

3. The court shall develop a simplified uniform reporting form for use in filing the required reports.

4. The clerk of the court shall notify the guardian in writing of the reporting requirements and shall provide information and assistance to the guardian in filing the reports.

5. Reports of guardians shall be reviewed and approved by a district court judge or referee.

6. Reports required by this section shall, if requested, be served on the attorney appointed to represent the ward in the guardianship proceeding and all other parties appearing in the proceeding.

85 Acts, ch 29, §9 SF 531
Section amended

633.670 Inventory—reporting requirements.

1. A conservator appointed under this chapter shall file with the court:

a. An inventory within sixty days of the conservator's appointment. This inventory shall include all property of the ward that has come into the conservator's possession or of which the conservator has knowledge. When additional property comes into the possession of the conservator or to the knowledge of the conservator, a supplemental inventory shall be filed within thirty days.

b. Written verified reports and accountings as follows:

- (1) Annually unless the court otherwise orders on good cause shown.
- (2) Within thirty days following the date of removal.
- (3) Upon filing resignation and before the resignation is accepted by the court.
- (4) Within sixty days following the date of termination.
- (5) At other times as the court may order.

2. The clerk of court shall notify the conservator in writing of the reporting requirements.

3. Reports of conservators shall be reviewed and approved by a district court judge or referee.

85 Acts, ch 29, §10 SF 531
Section struck and rewritten

CHAPTER 642

GARNISHMENT

642.21 Exemption from net earnings.

1. The disposable earnings of an individual are exempt from garnishment to the extent provided by the federal Consumer Credit Protection Act, Title III, 15 U.S.C. secs. 1671-1677 (1982). The maximum amount of an employee's earnings which may be garnished during any one calendar year is two hundred fifty dollars for each judgment creditor, except as provided in chapter 252D and sections 598.22, 598.23, and 627.12, or when those earnings are reasonably expected to be in excess of twelve thousand dollars for that calendar year as determined from the answers taken by the sheriff or by the court pursuant to section 642.5, subsection 4. When the employee's earnings are reasonably expected to be more than twelve thousand dollars the maximum amount of those earnings which may be garnished during a calendar year for each creditor is as follows:

a. Employees with expected earnings of twelve thousand dollars or more, but less than sixteen thousand dollars, not more than four hundred dollars may be garnished.

b. Employees with expected earnings of sixteen thousand dollars or more, but less than twenty-four thousand dollars, not more than eight hundred dollars may be garnished.

c. Employees with expected earnings of twenty-four thousand dollars or more, but less than thirty-five thousand dollars, not more than one thousand five hundred dollars may be garnished.

d. Employees with expected earnings of thirty-five thousand dollars or more, but less than fifty thousand dollars, not more than two thousand dollars may be garnished.

e. Employees with expected earnings of fifty thousand dollars or more, not more than ten percent of an employee's expected earnings.

2. No employer shall:

a. Withhold from the earnings of an individual an amount greater than that provided by law.

b. Dispose of garnished wages in any manner other than ordered by a court of law.

c. Discharge an individual by reason of the individual's earnings having been subject to garnishment for indebtedness.

d. Be held liable for an amount not earned at the time of the service of notice of garnishment or for the costs of a garnishment action.

3. For the purpose of this section:

a. The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

b. The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

85 Acts, ch 178, §14 HF 495

Subsection 1, unnumbered paragraph 1 amended

642.22 Validity of garnishment notice—duty to monitor account.

1. A notice of garnishment served upon a garnishee is effective without serving another notice until the earliest of the following:

a. The annual maximum permitted to be garnished under section 642.21 has been withheld.

b. The writ of execution expires.

c. The judgment is satisfied.

d. The garnishee is served with a notice that the garnishment shall cease.

2. A supervised financial organization, as defined in section 537.1301, subsection 41, which is garnished for an account of a defendant, after paying the sheriff any amounts then in the account, shall monitor the account for any additional amounts at least monthly while the garnishment notice is effective.

85 Acts, ch 93, §1 SF 514
Section amended

642.23 Support disbursements by the clerk.

Notwithstanding the seventy-day period in section 626.16 for the return of an execution in garnishment for the payment of a support obligation, the sheriff shall promptly deposit any amounts collected with the clerk of the district court, and the clerk shall disburse the amounts, after subtracting applicable fees, within ten working days of deposit to the person entitled to the support payments.

85 Acts, ch 178, §15 HF 495
NEW section

CHAPTER 654

FORECLOSURE OF REAL ESTATE MORTGAGES

654.1 Equitable proceedings.

Except as provided in section 654.18, a deed of trust or mortgage of real estate shall not be foreclosed in any other manner than by action in court by equitable proceedings.

85 Acts, ch 252, §45 SF 577
See Code editor's note
Section amended

654.15 Continuance—moratorium.

1. In all actions for the foreclosure of real estate mortgages, deeds of trust of real property, and contracts for the purchase of real estate, when the owner enters an appearance and files an answer admitting some indebtedness and breach of the terms of the designated instrument, which admissions cannot be withdrawn or denied after a continuance is granted, the owner may apply for a continuance of the foreclosure action if the default or inability of the owner to pay or perform is mainly due or brought about by reason of drought, flood, heat, hail, storm, or other climatic conditions or by reason of the infestation of pests which affect the land in controversy. The application must be in writing and filed at or before final decree. Upon the filing of the application the court shall set a day for hearing on the application and provide by order for notice to be given to the plaintiff of the time fixed for the hearing. If the court finds that the application is made in good faith and is supported by competent evidence showing that default in payment or inability to pay is due to drought, flood, heat, hail, storm, or other climatic conditions or due to infestation of pests, the court may continue the foreclosure proceeding as follows:

a. If the default or breach of terms of the written instrument on which the action is based occurs on or before the first day of March of any year by reason of any of the causes specified in this subsection, causing the loss and failure of crops on the land involved in the previous year, the continuance shall end on the first day of March of the succeeding year.

b. If the default or breach of terms of the written instrument occurs after the first day of March, but during that crop year and that year's crop fails by reason of any of the causes set out in this subsection, the continuance shall end on the first day of March of the second succeeding year.

c. Only one continuance shall be granted, except upon a showing of extraordinary circumstances in which event the court may grant a second continuance for a further period as the court deems just and equitable, not to exceed one year.

d. The order shall provide for the appointment of a receiver to take charge of the property and to rent the property. The owner or person in possession shall be given preference in the occupancy of the property. The receiver, who may be the owner or person in possession, shall collect the rents and income and distribute the proceeds as follows:

- (1) For the payment of the costs of receivership.
- (2) For the payment of taxes due or becoming due during the period of receivership.
- (3) For the payment of insurance on the buildings on the premises.
- (4) The remaining balance shall be paid to the owner of the written instrument upon which the foreclosure is based, to be credited on the instrument.

2. In all actions for the foreclosure of real estate mortgages, deeds of trust of real property, and contracts for the purchase of real estate, an owner of real estate may apply for a moratorium as provided in this subsection if the governor declares a state of economic emergency. The declaration by the governor of a state of economic emergency shall be valid for no more than one year for the purposes of this subsection. The governor shall state in the declaration whether a moratorium is applicable to real estate used for farming, real estate not used for farming, or all real estate. Only property of the type specified in the declaration which is subject to a mortgage, deed of trust, or contract for purchase entered into before the date of the declaration is eligible for a moratorium. In an action for the foreclosure of a mortgage, deed of trust, or contract for purchase of real property eligible for a moratorium, the owner may apply for a continuance of the foreclosure if the owner has entered an appearance and filed an answer admitting some indebtedness and breach of the terms of the designated instrument. The admissions cannot be withdrawn or denied after a continuance is granted. Upon the filing of an application as provided in this subsection, the court shall set a date for hearing and provide by order for notice to the parties of the time for the hearing. If the court finds that the application is made in good faith and the owner is unable to pay or perform, the court may continue the foreclosure proceeding as follows:

a. If the application is made in regard to real estate used for farming, and if the default or breach of terms of the written instrument occurs on or before the first day of March of the year in which the governor declares a state of economic emergency, then the continuance shall terminate on the first day of March of the succeeding year.

b. Only one continuance shall be granted the applicant or petitioner for each written instrument or contract under each declaration. Except as provided in paragraph "a", the continuance shall not exceed one year.

c. The court shall appoint a receiver to take charge of the property and to rent the property. The owner or person in possession of the property shall be given preference in the occupancy of the property. The receiver, who may be the owner or person in possession, shall collect the rents and income and distribute the proceeds as follows:

- (1) For the payment of the costs of receivership.
- (2) For the payment of taxes due or becoming due during the period of receivership.
- (3) For the payment of insurance on the buildings on the premises.
- (4) The remaining balance shall be paid to the owner of the written instrument upon which the foreclosure was based, to be credited against the written instrument.

d. A continuance granted under this subsection may be terminated if the court finds, after notice and hearing, all of the following:

- (1) The party seeking foreclosure has made reasonable efforts in good faith to work with the applicant to restructure the debt obligations of the applicant.
- (2) The party seeking foreclosure has made reasonable efforts in good faith to work with the applicant to utilize state and federal programs designed and implemented to provide debtor relief options. For the purposes of subparagraph (1) and

this subparagraph, the determination of reasonableness shall take into account the financial condition of the party seeking foreclosure, and the financial strength and the long-term financial survivorship potential of the applicant.

(3) The applicant has failed to pay interest due on the written instrument.

85 Acts, ch 250, §1, 2 SF 459
Legislative council to study phase-in of interest; see 85 Acts, ch 250, §3
Section amended
NEW subsection 2

ALTERNATIVE PROCEDURE

654.18 Alternative nonjudicial voluntary foreclosure procedure.

1. Upon the mutual written agreement of the mortgagor and mortgagee, a real estate mortgage may be foreclosed pursuant to this section by doing all of the following:

- a. The mortgagor shall convey to the mortgagee all interest in the real property subject to the mortgage.
- b. The mortgagee shall accept the mortgagor's conveyance and waive any rights to a deficiency or other claim against the mortgagor arising from the mortgage.
- c. The mortgagee shall have immediate access to the real property for the purposes of maintaining and protecting the property.
- d. The mortgagor and mortgagee shall file a jointly executed document with the county recorder in the county where the real property is located stating that the mortgagor and mortgagee have elected to follow the alternative voluntary foreclosure procedures pursuant to this section.
- e. The mortgagee shall send by certified mail a notice of the election to all junior lienholders as of the date of the conveyance under paragraph "a", stating that the junior lienholders have thirty days from the date of mailing to exercise any rights of redemption. The notice may also be given in the manner prescribed in section 656.3 in which case the junior lienholders have thirty days from the completion of publication to exercise the rights of redemption.

f. At the time the mortgagor signs the written agreement pursuant to this subsection, the mortgagee shall furnish the mortgagor a completed form in duplicate, captioned "Disclosure and Notice of Cancellation". The form shall be attached to the written agreement, shall be in ten point boldface type and shall be in the following form:

"DISCLOSURE AND NOTICE OF CANCELLATION

.....
(enter date of transaction)

Under a forced foreclosure Iowa law requires that you have the right to reclaim your property within one year of the date of the foreclosure and that you may continue to occupy your property during that time. If you agree to a voluntary foreclosure under this procedure you will be giving up your right to reclaim or occupy your property.

Under a forced foreclosure, if your mortgage lender does not receive enough money to cover what you owe when the property is sold, you will still be required to pay the difference. If your mortgage lender receives more money than you owe, the difference must be paid to you. If you agree to a voluntary foreclosure under this procedure you will not have to pay the amount of your debt not covered by the sale of your property but you also will not be paid any extra money, if any, over the amount you owe.

NOTE: There may be other advantages and disadvantages, including an effect on your income tax liability, to you depending on whether you agree or do not agree to a voluntary foreclosure. If you have any questions or doubts, you are advised to discuss them with your mortgage lender or an attorney.

You may cancel this transaction, without penalty or obligation, within five business days from the above date.

This transaction is entirely voluntary. You cannot be required to sign the attached foreclosure agreement.

This voluntary foreclosure agreement will become final unless you sign and deliver or mail this notice of cancellation to(name of mortgagee) before midnight of(enter proper date).
I HEREBY CANCEL THIS TRANSACTION.

.....
DATE

.....
SIGNATURE"

2. A junior lienholder may redeem the real property pursuant to section 628.29. If a junior lienholder fails to redeem its lien as provided in subsection 1, its lien shall be removed from the property.

3. Until the completion of foreclosure pursuant to this section, the mortgagee shall hold the real property subject to liens of record at the time of the conveyance by the mortgagor. However, the lien of the mortgagee shall remain prior to liens which were junior to the mortgage at the time of conveyance by the mortgagor to the mortgagee and may be foreclosed as provided otherwise by law.

4. A mortgagee who agrees to a foreclosure pursuant to this section shall not report to a credit bureau that the mortgagor is delinquent on the mortgage. However, the mortgagee may report that this foreclosure procedure was used.

85 Acts, ch 252, §46 SF 577
NEW section

654.19 Deed in lieu of foreclosure—agricultural land.

In lieu of a foreclosure action in court due to default on a recorded mortgage or deed of trust of real property, if the subject property is agricultural land used for farming, as defined in section 172C.1, the mortgagee and mortgagor may enter into an agreement in which the mortgagor agrees to transfer the agricultural land to the mortgagee in satisfaction of all or part of the mortgage obligation as agreed upon by the parties. The agreement may grant the mortgagor a right to purchase the agricultural land for a period not to exceed five years, and may entitle the mortgagor to lease the agricultural land. The agreement shall be recorded with the deed transferring title to the mortgagee. A transfer of title and agreement pursuant to this section does not constitute an equitable mortgage.

85 Acts, ch 252, §47 SF 577
NEW section

CHAPTER 655

SATISFACTION OF MORTGAGES

655.5 Instrument of satisfaction.

When the judgment is fully paid and satisfied upon the judgment docket of the court, the clerk shall file with the recorder an instrument in writing, referring to the mortgage and duly acknowledging a satisfaction of the mortgage. The instrument shall be filed without fee.

85 Acts, ch 159, §11 HF 589
Section amended

CHAPTER 657A

ABANDONED BUILDINGS—ABATEMENT BY REHABILITATION

657A.1 Definitions.

As used in this chapter, unless context requires otherwise:

1. "Abandoned" or "abandonment" means that a building has remained vacant and has been in violation of the housing code of the city in which the property is located for a period of six consecutive months.

2. "*Abate*" or "*abatement*" in connection with property means the removal or correction of hazardous conditions deemed to constitute a public nuisance or the making of improvements needed to effect a rehabilitation of the property consistent with maintaining safe and habitable conditions over the remaining useful life of the property. However, the closing or boarding up of a building or structure that is found to be a public nuisance is not an abatement of the nuisance.

3. "*Building*" means a building or structure located in a city with a population of thirty-five thousand or more, as determined by the last preceding certified federal census, which is used or intended to be used for residential purposes and includes a building or structure in which some floors may be used for retail stores, shops, salesrooms, markets, or similar commercial uses, or for offices, banks, civic administration activities, professional services, or similar business or civic uses, and other floors are used, designed, or intended to be used for residential purposes.

4. "*Interested person*" means an owner, mortgagee, lienholder, or other person that possesses an interest of record or an interest otherwise provable in property that becomes subject to the jurisdiction of the court pursuant to this chapter, the city in which the property is located, and an applicant for the appointment as receiver pursuant to this chapter.

5. "*Neighboring landowner*" means an owner of property which is located within five hundred feet of property that becomes subject to the jurisdiction of the court pursuant to this chapter.

6. "*Owner*" includes a person who is purchasing property by land installment contract or under a duly executed purchase contract.

7. "*Public nuisance*" means a building that is a menace to the public health, welfare, or safety, or that is structurally unsafe, unsanitary, or not provided with adequate safe egress, or that constitutes a fire hazard, or is otherwise dangerous to human life, or that in relation to the existing use constitutes a hazard to the public health, welfare, or safety by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment.

85 Acts, ch 222, §1 HF 696
NEW section

657A.2 Petition.

1. A petition for abatement under this chapter may be filed in the district court of the county in which the property is located, by the city in which the property is located, a neighboring landowner, or a duly organized nonprofit corporation which has as one of its goals the improvement of housing conditions in the county or city in which the property in question is located. Service on the owner shall be by personal service or by certified mail, or if service cannot be made by either method, by posting the notice in a conspicuous place on the building and by publication.

2. If a petition pursuant to this chapter alleges that a building is abandoned and is in a dangerous or unsafe condition, the city, neighboring landowner, or nonprofit corporation may apply for an injunction requiring the owner of the building to correct the condition or to eliminate the condition or violation. The court shall conduct a hearing at least twenty days after written notice of the application for an injunction and of the date and time of the hearing is served upon the owner of the building. Notice of the hearing shall be served in the manner provided in subsection 1.

3. If the court finds at the hearing that the building is abandoned and is in a dangerous or unsafe condition, the court shall issue an injunction requiring the owner to correct the condition or to eliminate the violation, or another order that the court considers necessary or appropriate to correct the condition or to eliminate the violation.

4. In a proceeding under this chapter, if the court makes the finding described in subsection 3 and additionally finds that the building in question is a public nuisance and that the owner of the building has been afforded reasonable opportuni-

ty to correct the dangerous or unsafe condition found or to eliminate the violation found but has refused or failed to do so, the judge shall cause notice of the findings to be served upon the owner, each mortgagee or other lienholder of record, and other known interested persons, and shall order the persons served to show cause why a receiver should not be appointed to perform work and to furnish material that reasonably may be required to abate the public nuisance. The notice shall be served in the manner provided in subsection 1.

5. In a proceeding under this chapter, if the court determines the building is not abandoned or is not in a dangerous or unsafe condition, the court shall dismiss the petition and may require the petitioner to pay the owner's reasonable attorney fees actually incurred.

85 Acts, ch 222, §2 HF 696
NEW section

657A.3 Interested persons—opportunity to abate public nuisance.

1. Before appointing a receiver to perform work or to furnish material to abate a public nuisance under this chapter, the court shall conduct a hearing at which the court shall offer mortgagees of record, lienholders of record, or other known interested persons in the order of priority of interest in title, the opportunity to undertake the work and to furnish the materials necessary to abate the public nuisance. The court shall require the person selected to demonstrate the ability to undertake promptly the work required and to post security for the performance of the work. All amounts expended by the person toward abating the public nuisance are a lien on the property if the expenditures were approved in advance by the judge and if the person desires the lien. The lien shall bear interest at the rate provided for judgments pursuant to section 535.3, and shall be payable upon terms approved by the judge. If a certified copy of the court order that approved the expenses and the terms of payment for the lien, and a description of the property in question are filed for record within thirty days of the date of issuance of the order in the office of the county recorder of the county in which the property is located, the lien has the same priority as the mortgage of a receiver as provided in section 657A.7.

2. If the court determines at the hearing conducted pursuant to subsection 1, that no interested person can undertake the work and furnish the materials required to abate the public nuisance, or if the court determines at any time after the hearing that an interested person who is undertaking corrective work pursuant to this section cannot or will not proceed, or has not proceeded with due diligence, the court may appoint a receiver to take possession and control of the property. The receiver shall be appointed in the manner provided in section 657A.4.

85 Acts, ch 222, §3 HF 696
NEW section

657A.4 Appointment of receiver.

1. After conducting a hearing pursuant to section 657A.3, the court may appoint a receiver to take possession and control of the property in question. A person shall not be appointed as a receiver unless the person has first provided the court with a viable financial and construction plan for the rehabilitation of the property in question and has demonstrated the capacity and expertise to perform the required work in a satisfactory manner. The appointed receiver may be a financial institution that possesses an interest of record in the property, a nonprofit corporation that is duly organized and exists for the primary purpose of improving housing conditions in the county or city in which the property in question is located, or any person deemed qualified by the court. No part of the net earnings of a nonprofit corporation serving as a receiver under this section shall benefit a private shareholder or individual. Membership on the board of trustees of a nonprofit corporation does not constitute the holding of a public office or employment and is not an interest, either direct or indirect, in a contract or expenditure of money by a city. No member of

a board of trustees of a nonprofit corporation appointed as receiver is disqualified from holding public office or employment, nor is a member required to forfeit public office or employment by reason of the membership on the board of trustees.

85 Acts, ch 222, §4 HF 696
NEW section

657A.5 Determination of costs of abatement.

1. Prior to ordering work or the furnishing of materials to abate a public nuisance under this chapter, the court shall make all of the following findings:

a. The estimated cost of the labor, materials, and financing required to abate the public nuisance.

b. The estimated income and expenses of the property after the furnishing of the materials and the completion of the repairs and improvements.

c. The need for and terms of financing for the performance of the work and the furnishing of the materials.

d. If repair and rehabilitation of the property are not found to be feasible, the cost of demolition of the property or the portions of the property that constitute the public nuisance.

2. Upon the written request of all the known interested persons to have the property or portions of the property demolished, the court may order the demolition. However, demolition shall not be ordered unless the requesting persons have paid the costs of demolition, the costs of the receivership, and all notes and mortgages of the receivership.

85 Acts, ch 222, §5 HF 696
NEW section

657A.6 Powers and duties of receiver.

Before proceeding with the receiver's duties, a receiver appointed by the court shall post a bond in an amount designated by the court. The court may empower the receiver to do the following:

1. Take possession and control of the property, operate and manage the property, establish and collect rents and income, lease and rent the property, and evict tenants. An existing housing or building ordinance violation does not restrict the receiver's authority pursuant to this subsection.

2. Pay all expenses of operating and conserving the property, including but not limited to the cost of electricity, gas, water, sewerage, heating fuel, repairs and supplies, custodian services, taxes, assessments, and insurance premiums, and hire and pay reasonable compensation to a managing agent.

3. Pay prereceivership mortgages and other liens and installments of prereceivership mortgages and other liens.

4. Perform or enter into contracts for the performance of work and the furnishing of materials necessary to abate the public nuisance, and obtain financing for the abatement of the public nuisance.

5. Pursuant to court order, remove and dispose of personal property which is abandoned, stored, or otherwise located on the property, that creates a dangerous or unsafe condition or that constitutes a violation of housing or building regulations or ordinances.

6. Obtain mortgage insurance for a receiver's mortgage from an agency of the federal government.

7. Enter into agreements and take actions necessary to maintain and preserve the property and to comply with housing and building regulations and ordinances.

8. Give the custody of the property and the opportunity to abate the nuisance and operate the property to the owner or to a mortgagee or a lienholder of record.

9. Issue notes and secure the notes by mortgages bearing interest at the rate provided for judgments pursuant to section 535.3, and terms and conditions as approved by the court. When transferred by the receiver in return for valuable

consideration in money, material, labor, or services, the notes issued by the receiver are freely transferable.

85 Acts, ch 222, §6 HF 696
NEW section

657A.7 Priority of receiver's mortgage.

1. If the receiver's mortgage is filed for record in the office of the county recorder of the county in which the property is located within sixty days of the issuance of a secured note, the receiver's mortgage is a first lien upon the property and is superior to claims of the receiver and to all prior or subsequent liens and encumbrances except taxes and assessments. Priority among the receiver's mortgages is determined by the order in which the mortgages are recorded.

2. The creation of a mortgage lien under this chapter prior to or superior to a mortgage of record at the time the receiver's mortgage lien was created does not disqualify a prior recorded mortgage as a legal investment.

85 Acts, ch 222, §7 HF 696
NEW section

657A.8 Assessment of costs.

The court may assess the costs and expenses set out in section 657A.6, subsection 2, and may approve receiver's fees to the extent that the fees are not covered by the income from the property.

85 Acts, ch 222, §8 HF 696
NEW section

657A.9 Discharge of receiver.

The receiver may be discharged at any time in the discretion of the court. The receiver shall be discharged when all of the following have occurred:

1. The public nuisance has been abated.
2. The costs of the receivership have been paid.
3. Either all the receiver's notes and mortgages issued pursuant to this chapter have been paid, or all the holders of the notes and mortgages request in writing that the receiver be discharged.

85 Acts, ch 222, §9 HF 696
NEW section

657A.10 Compensation and liability of receiver.

1. A receiver appointed under this chapter is entitled to receive fees and commissions in the same manner and to the same extent as receivers appointed in actions to foreclose mortgages.

2. The receiver appointed under this section is not civilly or criminally liable for actions pursuant to this section taken in good faith.

85 Acts, ch 222, §10 HF 696
NEW section

657A.11 Jurisdiction—remedies.

1. An action pursuant to this chapter is exclusively within the jurisdiction of district judges as provided in section 602.6202.

2. This chapter does not prevent a person from using other remedies or procedures to enforce building or housing ordinances or to correct or remove public nuisances.

85 Acts, ch 222, §11 HF 696
NEW section

CHAPTER 659

LIBEL AND SLANDER

659.4 Candidate—retraction—time—imputing sexual misconduct.

If the plaintiff was a candidate for office at the time of the libelous publication, no retraction shall be available unless published in a conspicuous place on the editorial page, nor if the libel was published within two weeks next before the election. This section and sections 659.2 and 659.3 do not apply to libel imputing sexual misconduct to any persons.

85 Acts, ch 99, §11 SF 224
Section amended

CHAPTER 663A

POSTCONVICTION PROCEDURE

663A.9 Appeal.

An appeal from a final judgment entered under this chapter may be taken, perfected and prosecuted either by the applicant or by the state in the manner and within the time after judgment as provided in the rules of appellate procedure for appeals from final judgments in criminal cases.

85 Acts, ch 157, §3 HF 550
Section amended

CHAPTER 665

CONTEMPTS

665.4 Punishment.

The punishment for contempt, where not otherwise specifically provided, shall be:

1. In the supreme court or the court of appeals, by a fine not exceeding one thousand dollars or by imprisonment in a county jail not exceeding six months, or by both such fine and imprisonment.
2. Before district judges and district associate judges, by a fine not exceeding five hundred dollars or imprisonment in a county jail not exceeding six months or by both such fine and imprisonment.
3. Before judicial magistrates and juvenile court referees, by a fine not exceeding one hundred dollars or imprisonment in a county jail not exceeding thirty days.

85 Acts, ch 27, §1 HF 587
Subsection 3 amended

CHAPTER 666

OFFICIAL BONDS, FINES AND FORFEITURES

666.6 Annual report of outstanding fines, penalties, forfeitures, and recognizances.

The clerk of the district court shall make an annual report in writing to the treasurer of state and the state court administrator no later than January 15 of the fines, penalties, forfeitures, and recognizances which have not been paid, remitted, canceled, or otherwise satisfied during the previous calendar year.

85 Acts, ch 197, §39 SF 570
Until July 1, 1987, clerks shall submit report to both the supreme court and the county boards of supervisors; see chapter 602, article 11, and Temporary Court Transition Rule 6.29
Section amended

CHAPTER 674

CHANGING NAMES

674.6 Notice—consent.

If the petitioner is married, the petitioner must give legal notice to the spouse, in the manner of an original notice, of the filing of the petition.

If the petition includes or is filed on behalf of a minor child fourteen years of age or older, the child's written consent to the change of name of that child is required.

If the petition includes or is filed on behalf of a minor child under fourteen, both parents as stated on the birth certificate of the minor child shall file their written consent to the name change. If one of the parents does not consent to the name change, a hearing shall be set on the petition on twenty days' notice to the nonconsenting parent pursuant to the rules of civil procedure. At the hearing the court may waive the requirement of consent as to one of the parents if it finds:

1. That the parent has abandoned the child;
2. That the parent has been ordered to contribute to the support of the child or to financially aid in the child's birth and has failed to do so without good cause; or
3. That the parent does not object to the name change after having been given due and proper notice.

85 Acts, ch 99, §12 SF 224

Unnumbered paragraph 1 amended

674.14 Indexing in real property record.

The county recorder and county auditor of each county in which the petitioner owns real property shall charge fees in the amounts specified in sections 331.604 and 331.507, subsection 2, paragraph "b", for indexing a change of name for each parcel of real estate.

85 Acts, ch 159, §12 HF 589

Section amended

CHAPTER 675

PATERNITY OF CHILDREN AND OBLIGATION FOR SUPPORT

675.3 Limitation on recovery. Repealed by 85 Acts, ch 100, §12. SF 244

675.25 Form of judgment—contents of support order—costs.

The judgment shall be for periodic amounts, equal or varying, having regard to the obligation of the father under section 675.1, as the court directs, until the child reaches majority or until the child finishes high school, if after majority. The court may order the father to pay amounts the court deems appropriate for past and future support and maintenance of the child and for the reasonable and necessary expenses incurred by or for the mother in connection with prenatal care, the birth of the child, and postnatal care of the child and the mother. The court may award the prevailing party the reasonable costs of suit, including but not limited to reasonable attorney fees.

85 Acts, ch 100, §10 SF 244

Section amended

675.26 Expenses of confinement. Repealed by 85 Acts, ch 100, §12. SF 244

675.33 Limitation of actions. Repealed by 85 Acts, ch 100, §12. SF 244

675.42 Security for payment of support—forfeiture.

Upon entry of an order for support or upon the failure of a father to make payments pursuant to an order for support, the court may require the father to provide security, a bond, or other guarantee which the court determines is satisfactory to secure the payment of the support. Upon the father's failure to pay the support under the order, the court may declare the security, bond, or other guarantee forfeited.

85 Acts, ch 100, §11 SF 244
NEW section

CHAPTER 679

INFORMAL DISPUTE RESOLUTION

Desirability of informal dispute resolution procedures; general assembly's findings; see 85 Acts, ch 134, §1 HF 128

679.1 Definitions.

As used in this chapter:

1. "*Approved center*" or "*approved dispute resolution center*" means a center that has applied for and received approval from the executive director under section 679.3.
2. "*Center*" or "*dispute resolution center*" means a program which is organized by one or more governmental subdivisions or nonprofit organizations and which makes informal dispute resolution procedures available.
3. "*Council*" means the prosecuting attorneys training coordinator council in the department of justice, established by chapter 13A.
4. "*Dispute resolution process*" or "*informal dispute resolution process*" means a process by which the parties involved in a minor dispute voluntarily agree to enter into informal discussion and negotiation with the assistance of a mediator or member of the center's staff in order to resolve their dispute.
5. "*Executive director*" means the executive director of the prosecuting attorneys training coordinator council.
6. "*Mediator*" means a person who assists parties involved in a minor dispute to reach a mutually acceptable resolution of their dispute.

85 Acts, ch 134, §2 HF 128
NEW section

679.2 Dispute resolution program—administration.

1. There is established in the office of prosecuting attorneys training coordinator of the department of justice a program for the establishment and support of locally organized dispute resolution centers which make informal dispute resolution procedures available. The executive director of the prosecuting attorneys training coordinator council shall administer the program under the direction of the council.
2. The executive director, subject to approval by the council, may appoint an advisory committee to advise the executive director and the council on the administration of the dispute resolution program. If an advisory committee is appointed it shall consist of not more than seven members and shall include at least three representatives of existing dispute resolution centers. The committee shall meet at the call of the executive director. Members shall serve without compensation but are entitled to actual expenses incurred in the performance of their duties. Payment shall be made from funds appropriated to the council for the administration of the dispute resolution program.

85 Acts, ch 134, §3 HF 128
NEW section

679.3 Establishment and approval of dispute resolution centers.

A center, or entity proposing a center, may apply to the executive director for approval to participate in the dispute resolution program. The application shall set forth a plan for operation of the center, including such information as the center's objectives, areas or populations to be served, administrative organization, budget, recordkeeping, criteria for accepting cases, availability of mediators, and procedures for receiving and screening requests, scheduling and conducting sessions with the mediator, and terminating the dispute resolution process through agreement or otherwise. The executive director shall prescribe the form of application and specify the information to be included and shall set the deadline for filing. A center must submit an application for each year in which it desires to participate in the program.

The executive director shall review the applications and shall approve for participation in the program all applicants which meet the requirements of this chapter and rules adopted pursuant to this chapter.

85 Acts, ch 134, §4 HF 128
NEW section

679.4 Funding of dispute resolution centers.

1. The executive director, subject to approval by the council, shall distribute state grants to approved dispute resolution centers from funds appropriated for that purpose. The amount distributed may vary among the centers based on need. The state grant shall not exceed fifty percent of the estimated annual cost of a center.

2. The administrator of each center may accept and disburse the state grants and grants and gifts from federal and other public and private sources for the operation of the center. Centers are encouraged to make use of local resources whenever possible, including the use of volunteers and available space in public facilities.

3. The executive director may accept and disburse grants and gifts from federal and other public and private sources for the dispute resolution program.

85 Acts, ch 134, §5 HF 128
NEW section

679.5 Referrals to dispute resolution centers.

1. The following types of cases may be accepted for dispute resolution at an approved dispute resolution center, subject to such limitations as the council prescribes by rule:

- a. Civil claims and disputes, including but not limited to neighborhood disputes, landlord-tenant disputes, debtor-creditor disputes and consumer complaints.
- b. Disputes concerning child custody and visitation rights.
- c. Juvenile offenses.
- d. Criminal complaints.

2. A center may accept cases referred by a court, prosecuting attorney, law enforcement officer, social service agency or any other interested person or agency, or at the request of the parties involved in the dispute. A case may be referred prior to the commencement of formal judicial proceedings or at any stage of such proceedings. The center shall provide follow-up information on the disposition of a case if the case was referred by a court and the court requests the information.

85 Acts, ch 134, §6 HF 128
NEW section

679.6 Preliminary information.

Before the dispute resolution process begins, the approved dispute resolution center shall provide the parties with a written statement setting forth the procedures to be followed. The statement shall be in the form prescribed in the rules adopted by the council under this chapter.

85 Acts, ch 134, §7 HF 128
NEW section

679.7 Fees.

Except as otherwise provided in this section, an approved dispute resolution center shall require each party to pay a fee to help defray the administrative costs of the dispute resolution process. The council shall establish a sliding scale of fees to be charged, based upon ability to pay. A person shall not be denied the services of a dispute resolution center solely because of inability to pay the fee.

85 Acts, ch 134, §8 HF 128
NEW section

679.8 Mediators.

An impartial mediator shall be assigned to each case scheduled for a mediation session. A person is not eligible to serve as a mediator in an approved center until the person has completed at least twenty-five hours of training in conflict resolution techniques approved by the executive director. The council may by rule establish classifications of disputes and provide that a person is not eligible to serve as a mediator in a particular class of dispute unless the person possesses additional credentials or completes additional specialized training, or both.

A center may provide for the compensation of mediators or utilize the services of volunteer mediators, or both.

The mediator shall assist the parties to reach a mutually acceptable resolution of their dispute through discussion and negotiation. The mediator shall officially terminate the dispute resolution process if the parties are unable to agree. The termination shall be without prejudice to either party in any other proceeding. The mediator and the center have no authority to make or impose any adjudication, sanction or penalty upon the parties.

85 Acts, ch 134, §9 HF 128
NEW section

679.9 Agreement.

If the parties involved in the dispute reach agreement, the agreement may be reduced to writing and signed by the parties. The agreement shall set forth the settlement of the issues and the future responsibilities of each party.

85 Acts, ch 134, §10 HF 128
NEW section

679.10 Rules.

The council shall adopt rules to carry out the purposes of this chapter. In addition to matters expressly required elsewhere in this chapter, the rules may include the following:

1. Requirements relating to the administration of a dispute resolution center, including budgeting, recordkeeping, reporting, evaluation and administrative organization.
2. Requirements for advisory committees to assist dispute resolution centers.
3. Procedures to be followed in the dispute resolution process.
4. Forms to assist dispute resolution centers in carrying out their duties.

85 Acts, ch 134, §11 HF 128
NEW section

679.11 Report.

The executive director shall report annually to the general assembly and the governor concerning the operation of the dispute resolution program.

85 Acts, ch 134, §12 HF 128
NEW section

679.12 Confidentiality.

All verbal or written information relating to the subject matter of an agreement and transmitted between any party to a dispute and a mediator or the staff of an approved center or any other person present during any stage of a dispute resolution

process conducted by an approved center, whether reflected in notes, memoranda, or other work products in the case files, are confidential communications except as otherwise expressly provided in this chapter. Mediators and center staff members shall not be examined in any judicial or administrative proceeding regarding confidential communications and are not subject to judicial or administrative process requiring the disclosure of confidential communications.

However, when a governmental subdivision is a party to a dispute which has been scheduled for a mediation session, the facts and circumstances surrounding the dispute and any other information provided by the governmental subdivision are not confidential.

This section does not prohibit the release of information to the referring agency or authority regarding the disposition of a case which arose from a criminal complaint and was referred by a court or prosecuting attorney. Nor does this section apply where a mediator or center staff member has reason to believe that a party to a dispute has given perjured evidence.

85 Acts, ch 134, §13 HF 128
NEW section

679.13 Limitation on liability.

No mediator, employee or agent of a center, or member of a center's board may be held liable for civil damages for any statement or decision made in the process of dispute resolution unless the mediator, employee, agent or member acted in bad faith, with malicious purpose or in a manner exhibiting willful and wanton disregard of human rights, safety or property.

85 Acts, ch 134, §14 HF 128
NEW section

679.14 Tolling of statute of limitations.

During the period of the dispute resolution process, any applicable statute of limitations is tolled as to the participants. The tolling shall commence on the date the center accepts the case and shall end on the date the parties are notified in writing that the case has been closed by the center. Notices of the closing of cases shall be provided in accordance with appropriate rules adopted under this chapter.

85 Acts, ch 134, §15 HF 128
NEW section

CHAPTER 682

SURETIES—FIDUCIARY FUNDS—FEDERALLY INSURED LOANS— TRUSTS

682.4 Qualifications of sureties.

Each personal surety shall execute and file with the clerk an affidavit that the surety owns real estate subject to execution, other than real estate held in joint tenancy between persons other than cosureties, equal to double the amount of the bond, and shall include in the affidavit the total amount of the surety's obligations as surety on other official or statutory bonds. If there are two or more sureties on the same bond, they must in the aggregate have the qualification prescribed in this section.

85 Acts, ch 71, §1 SF 230
Section amended

682.60 Powers and duties of trustees not subject to court administration.

Trustees of trusts not being administered in the probate court, shall have all the powers and shall be subject to all the duties and liabilities as provided in the probate code, except the duty of reporting to or obtaining approval of the court.

85 Acts, ch 154, §2 SF 377
Section amended

CHAPTER 691

STATE CRIMINALISTICS LABORATORY AND MEDICAL EXAMINER

691.9 Deposit and disposition of ammunition and firearms. Repealed by 85 Acts, ch 201, §21. SF 455 See ch 809A.

CHAPTER 692

CRIMINAL HISTORY AND INTELLIGENCE DATA

692.2 Dissemination of criminal history data—fees.

1. Except in cases in which members of the department are participating in an investigation or arrest, the department and bureau may provide copies or communicate information from criminal history data only to the following:

- a. Criminal justice agencies.
- b. Other public agencies as authorized by the confidential records council.
- c. The department of human services for the purposes of section 237.8, subsection 2 and section 237A.5.

In cases in which members of the department are participating in the investigation or arrest, or where officers of other criminal justice agencies participating in the investigation or arrest consent, the department may disseminate criminal history data and intelligence data when the dissemination complies with section 692.3.

- d. The state racing commission for the purposes of section 99D.8A.
 - e. The state lottery agency for purposes of section 99E.9, subsection 2.
2. The bureau shall maintain a list showing the individual or agency to whom the data is disseminated and the date of dissemination.
3. Persons authorized to receive information under subsection 1 shall request and may receive criminal history data only when both of the following apply:
- a. The data is for official purposes in connection with prescribed duties or required pursuant to section 237.8, subsection 2 or section 237A.5.
 - b. The request for data is based upon name, fingerprints, or other individual identifying characteristics.

4. The provisions of this section and section 692.3 which relate to the requiring of an individually identified request prior to the dissemination or redissemination of criminal history data do not apply to the furnishing of criminal history data to the federal bureau of investigation or to the dissemination or redissemination of information that an arrest warrant has been or will be issued, and other relevant information including but not limited to, the offense and the date and place of alleged commission, individually identifying characteristics of the person to be arrested, and the court or jurisdiction issuing the warrant.

5. Notwithstanding other provisions of this section, the department and bureau may provide copies or communicate information from criminal history data to any youth service agency approved by the confidential records council. The department shall adopt rules to provide for the qualification and approval of youth service agencies to receive criminal history data.

The criminal history data to be provided by the department and bureau to authorized youth service agencies shall be limited to information on applicants for paid or voluntary positions, where those positions would place the applicant in direct contact with children.

6. The department may charge a fee to any nonlaw-enforcement agency to conduct criminal history record checks and otherwise administer this section and other sections of the Code providing access to criminal history records. The fee shall

be set by the commissioner of public safety equal to the cost incurred not to exceed twenty dollars for each individual check requested.

85 Acts, ch 33, §124 HF 225
Subsection 1, NEW paragraph e

CHAPTER 694

MISSING PERSONS

694.10 Missing person information clearinghouse.

1. As used in this section:

a. "Missing person" means a missing person as defined in 694.1 whose temporary or permanent residence is in Iowa, or is believed to be in Iowa, whose location has not been determined, and who has been reported as missing to a law enforcement agency.

b. "Missing person report" is a report prepared on a form designed by the department of public safety for use by private citizens and law enforcement agencies to report missing person information to the missing person information clearinghouse.

2. The department of public safety shall establish a statewide missing person information clearinghouse. In connection with the clearinghouse, the department shall:

a. Collect, process, maintain, and disseminate information concerning missing persons in Iowa.

b. Develop training programs for local law enforcement personnel concerning appropriate procedures to report missing persons to the clearinghouse and to comply with legal procedures relating to missing person cases.

c. Provide specialized training to law enforcement officers, in conjunction with the law enforcement academy, to enable the officers to more efficiently handle the tracking of missing persons and unidentified bodies on the local level.

d. Develop training programs to assist parents in avoiding child kidnapping.

e. Cooperate with other states and the national crime information center in efforts to locate missing persons.

f. Maintain a toll-free telephone line, available twenty-four hours a day, seven days a week, to receive and disseminate information related to missing persons.

g. Distribute monthly bulletins to all local law enforcement agencies and to media outlets which request missing person information, containing the names, photos, and descriptions of missing persons, information related to the events surrounding the disappearance of the missing persons, the law enforcement agency or person to contact if missing persons are located or if other relevant information is discovered relating to missing persons, and the names of persons reported missing whose locations have been determined and confirmed.

h. Produce, update at least weekly, and distribute public service announcements to media outlets which request missing person information, containing the same or similar information as contained in the monthly bulletins.

i. Encourage and seek both financial and in-kind support from private individuals and organizations in the production and distribution of clearinghouse bulletins and public service announcements under paragraphs "g" and "h".

j. Maintain a registry of approved prevention and education materials and programs regarding missing and runaway children.

k. Coordinate public and private programs for missing and runaway children.

3. A law enforcement agency shall submit all missing person reports compiled pursuant to section 694.3 and updated information relating to the reports to the clearinghouse.

4. Subsequent to the filing of a complaint of a missing person with a law

enforcement agency pursuant to section 694.2, the person filing the complaint may submit information regarding the missing person to the clearinghouse. If the person reported missing is an unemancipated minor, any person may submit information regarding the missing unemancipated minor to the clearinghouse.

5. A person who has filed a missing person complaint with a law enforcement agency shall immediately notify that law enforcement agency when the location of the missing person has been determined.

6. After the location of a person reported missing to the clearinghouse has been determined and confirmed, the clearinghouse shall only release information described in subsection 2, paragraphs "g" and "h" concerning the located person. After the location of a missing person has been determined and confirmed, other information concerning the history of the missing person case shall be disclosed only to law enforcement officers of this state and other jurisdictions when necessary for the discharge of their official duties and to the juvenile court in the county of a formerly missing child's residence. All information relating to a missing person in the clearinghouse shall be purged when the person's location has been determined and confirmed, except that information relating to a missing child shall be purged when the child reaches eighteen years of age and the child's location has been determined and confirmed.

85 Acts, ch 173, §29 HF 451
NEW section

CHAPTER 702

DEFINITIONS

702.11 Forcible felony.

A "*forcible felony*" is any felonious child endangerment, assault, murder, sexual abuse, kidnapping, robbery, arson in the first degree, or burglary in the first degree.

85 Acts, ch 180, §2 HF 700
Section amended

702.22 Library materials and equipment.

1. "*Library materials*" include books, plates, pictures, photographs, engravings, paintings, drawings, maps, newspapers, magazines, pamphlets, broadsides, manuscripts, documents, letters, public records, microforms, sound recordings, audiovisual materials in any format, magnetic or other tapes, electronic data processing records, artifacts, and written or printed materials regardless of physical form or characteristics, belonging to, on loan to, or otherwise in the custody of any of the following:

- a. A public library.
- b. A library of an educational, historical, or eleemosynary institution, organization, or society.
- c. A museum.
- d. A repository of public records.

2. "*Library equipment*" includes audio, visual, or audiovisual machines, machinery or equipment belonging to, on loan to or otherwise in the custody of one of the institutions or agencies listed in subsection 1.

85 Acts, ch 187, §1 HF 438
Section amended

CHAPTER 709

SEXUAL ABUSE

Victim-counselor privilege; see ch 236A

709.8 Lascivious acts with a child.

It is unlawful for any person eighteen years of age or older to perform any of the following acts with a child with or without the child's consent unless married to each other, for the purpose of arousing or satisfying the sexual desires of either of them:

1. Fondle or touch the pubes or genitals of a child.
2. Permit or cause a child to fondle or touch the person's genitals or pubes.
3. Solicit a child to engage in a sex act.
4. Inflict pain or discomfort upon a child or permit a child to inflict pain or discomfort on the person.

Any person who violates a provision of this section shall, upon conviction, be guilty of a class "D" felony.

85 Acts, ch 181, §1 HF 139
Subsection 2 amended

709.12 Indecent contact with a child.

A person eighteen years of age or older is upon conviction guilty of an aggravated misdemeanor if the person commits any of the following acts with a child, not the person's spouse, with or without the child's consent, for the purpose of arousing or satisfying the sexual desires of either of them:

1. Fondle or touch the inner thigh, groin, buttock, anus, or breast of the child.
2. Touch the clothing covering the immediate area of the inner thigh, groin, buttock, anus, or breast of the child.
3. Solicit or permit a child to fondle or touch the inner thigh, groin, buttock, anus, or breast of the person.
4. Solicit a child to engage in any act prohibited under section 709.8, subsection 1, 2, or 4.

85 Acts, ch 181, §2 HF 139
NEW subsection 4

CHAPTER 710

KIDNAPPING AND RELATED OFFENSES

710.6 Violating custodial order.

A relative of a child who, acting in violation of an order of any court which fixes, permanently or temporarily, the custody of the child in another, takes and conceals the child, within or outside the state, from the person having lawful custody, commits a class "D" felony.

A parent of a child living apart from the other parent who conceals that child in violation of a court order granting visitation rights and without the other parent's consent, commits a serious misdemeanor.

85 Acts, ch 132, §1 HF 641
Section amended

710.8 Harboring a runaway child prohibited—penalty.

1. As used in this section and section 710.9 unless the context otherwise requires:
 - a. "Criminal act" means the violation of any federal or state law.
 - b. "Harbor" means to provide aid, support, or shelter.
 - c. "Runaway child" means a person under eighteen years of age who is voluntari-

ly absent from the person's home without the consent of the person's parent, guardian, or custodian.

2. A person shall not harbor a runaway child with the intent of committing a criminal act involving the child or with the intent of enticing or forcing the runaway child to commit a criminal act.

3. A person convicted of a violation of this section is guilty of an aggravated misdemeanor.

85 Acts, ch 183, §1 SF 401
See Code editor's note
NEW section

710.9 Civil liability for harboring a runaway child.

A parent, guardian, or custodian of a runaway child has a right of action against a person who harbored the runaway child in violation of section 710.8 for expenses sustained in the search for the child, for damages sustained due to physical or emotional distress due to the absence of the child, and for punitive damages.

85 Acts, ch 183, §2 SF 401
NEW section

710.10 Enticing away a child.

1. A person commits a class "D" felony when, without authority and with the intent to commit an illegal act upon the child, the person entices away a minor*.

2. A person commits an aggravated misdemeanor when, without authority and with the intent to commit an illegal act upon the child, the person attempts to entice away a child.

85 Acts, ch 183, §3 SF 401
**"Child" probably intended
NEW section

CHAPTER 714

THEFT, FRAUD, AND RELATED OFFENSES

714.1 Theft defined.

A person commits theft when the person does any of the following:

1. Takes possession or control of the property of another, or property in the possession of another, with the intent to deprive the other thereof.

2. Misappropriates property which the person has in trust, or property of another which the person has in the person's possession or control, whether such possession or control is lawful or unlawful, by using or disposing of it in a manner which is inconsistent with or a denial of the trust or of the owner's rights in such property, or conceals found property, or appropriates such property to the person's own use, when the owner of such property is known to the person. Failure by a bailee or lessee of personal property to return the property within seventy-two hours after a time specified in a written agreement of lease or bailment shall be evidence of misappropriation.

3. Obtains the labor or services of another, or a transfer of possession, control, or ownership of the property of another, or the beneficial use of property of another, by deception. Where compensation for goods and services is ordinarily paid immediately upon the obtaining of such goods or the rendering of such services, the refusal to pay or leaving the premises without payment or offer to pay or without having obtained from the owner or operator the right to pay subsequent to leaving the premises gives rise to an inference that the goods or services were obtained by deception.

4. Exercises control over stolen property, knowing such property to have been stolen, or having reasonable cause to believe that such property has been stolen,

unless the person's purpose is to promptly restore it to the owner or to deliver it to an appropriate public officer. The fact that the person is found in possession of property which has been stolen from two or more persons on separate occasions, or that the person is a dealer or other person familiar with the value of such property and has acquired it for a consideration which is far below its reasonable value, shall be evidence from which the court or jury may infer that the person knew or believed that the property had been stolen.

5. Takes, destroys, conceals or disposes of property in which someone else has a security interest, with intent to defraud the secured party.

6. Makes, utters, draws, delivers, or gives any check, share draft, draft, or written order on any bank, credit union, person or corporation, and obtains property or service in exchange therefor, if the person knows that such check, share draft, draft or written order will not be paid when presented.

Whenever the drawee of such instrument has refused payment because of insufficient funds, and the maker has not paid the holder of the instrument the amount due thereon within ten days of the maker's receipt of notice from the holder that payment has been refused by the drawee, the court or jury may infer from such facts that the maker knew that the instrument would not be paid on presentation. Notice of refusal of payment shall be by certified mail, or by personal service in the manner prescribed for serving original notices.

Whenever the drawee of such instrument has refused payment because the maker has no account with the drawee, the court or jury may infer from such fact that the maker knew that the instrument would not be paid on presentation.

7. Obtains gas, electricity or water from a public utility or obtains cable television service from an unauthorized connection to the supply or service line or by intentionally altering, adjusting, removing or tampering with the metering or service device so as to cause inaccurate readings.

8. Any act that is declared to be theft by any provision of the Code.

85 Acts, ch 164, §1 HF 702
NEW subsection 7 and subsequent subsection renumbered

714.3 Value.

The value of property is its highest value by any reasonable standard at the time that it is stolen. Reasonable standard includes but is not limited to market value within the community, actual value, or replacement value.

If money or property is stolen from the same person or location by two or more acts, or from different persons by two or more acts which occur in approximately the same location or time period so that the thefts are attributable to a single scheme, plan or conspiracy, these acts may be considered a single theft and the value may be the total value of all the property stolen.

85 Acts, ch 195, §60 SF 329
Unnumbered paragraph 2 amended

714.5 Library materials and equipment—deposits—unpurchased merchandise—evidence of intention.

The fact that a person has concealed library materials or equipment as defined in section 702.22 or unpurchased property of a store or other mercantile establishment, either on the premises or outside the premises, is material evidence of intent to deprive the owner, and the finding of library materials or equipment or unpurchased property concealed upon the person or among the belongings of the person, is material evidence of intent to deprive and, if the person conceals or causes to be concealed library materials or equipment or unpurchased property, upon the person or among the belongings of another, the finding of the concealed materials, equipment or property is also material evidence of intent to deprive on the part of the person concealing the library materials, equipment or goods.

The fact that a person fails to return library materials for two months or more after

the date the person agreed to return the library materials, or fails to return library equipment for one month or more after the date the person agreed to return the library equipment, is evidence of intent to deprive the owner, provided a reasonable attempt, including the mailing by restricted certified mail of notice that such material or equipment is overdue and criminal actions will be taken, has been made to reclaim the materials or equipment. Notices stating the provisions of this section and of section 808.12 with regard to library materials or equipment shall be posted in clear public view in all public libraries, in all libraries of educational, historical or charitable institutions, organizations or societies, in all museums and in all repositories of public records.

After the expiration of three days following the due date, the owner of borrowed library equipment may request the assistance of a dispute resolution center, mediation center or appropriate law enforcement agency in recovering the equipment from the borrower.

The owner of library equipment may require deposits by borrowers and in the case of late returns the owner may impose graduated penalties of up to twenty-five percent of the value of the equipment, based upon the lateness of the return.

In the case of lost library materials or equipment, arrangements may be made to make a monetary settlement.

If library materials or equipment to be loaned to a person have a value of \$500 or more, the owner shall require a deposit and shall require the borrower to enter into a written agreement setting forth the amount of the deposit, the due date and the penalties for failure to return the materials or equipment as agreed. The deposit shall be returned in full if the materials or equipment are returned without damage on or before the due date.

85 Acts, ch 187, §2 HF 438
Section amended

714.8 Fraudulent practices defined.

A person who does any of the following acts is guilty of a fraudulent practice.

1. Makes, tenders or keeps for sale any warehouse receipt, bill of lading, or any other instrument purporting to represent any right to goods, with knowledge that the goods represented by such instrument do not exist.

2. Knowingly attaches or alters any label to any goods offered or kept for sale so as to materially misrepresent the quality or quantity of such goods, or the maker or source of such goods.

3. Knowingly executes or tenders a false certification under penalty of perjury, false affidavit, or false certificate, if the certification, affidavit, or certificate is required by law or given in support of a claim for compensation, indemnification, restitution, or other payment.

4. Makes any entry in or alteration of any public records, or any records of any corporation, partnership, or other business enterprise or nonprofit enterprise, knowing the same to be false.

5. Removes, alters or defaces any serial or other identification number, or any owners' identification mark, from any property not the person's own.

6. For the purpose of soliciting assistance, contributions, or other thing of value, falsely represents oneself to be a veteran of the armed forces of the United States, or a member of any fraternal, religious, charitable, or veterans organization, or any pretended organization of a similar nature, or to be acting on behalf of such person or organization.

7. Manufactures, sells, or keeps for sale any token or device suitable for the operation of a coin-operated device or vending machine, with the intent that such token or device may be so used, or with the representation that they can be so used; provided, that the owner or operator of any coin-operated device or vending machine may sell slugs or tokens for use in the person's own devices.

8. Manufactures or possesses any false or counterfeit label, with the intent that

it be placed on merchandise to falsely identify its origin or quality, or who sells any such false or counterfeit label with the representation that it may be so used.

9. Alters or renders inoperative or inaccurate any meter or measuring device used in determining the value of or compensation for the purchase, use or enjoyment of property, with the intent to defraud any person.

10. Does any act expressly declared to be a fraudulent practice by any other section of the Code.

11. Removes, defaces, covers, alters, or destroys any component part number as defined in section 321.1, subsection 73, or vehicle identification number as defined in section 321.1, subsection 74, for the purpose of concealing or misrepresenting the identity of the component part or vehicle.

12. Knowingly transfers or assigns a legal or equitable interest in property, as defined in section 702.14, for less than fair consideration, with the intent to obtain public assistance under title XI, The Code, or accepts a transfer of or an assignment of a legal or equitable interest in property, as defined in section 702.14, for less than fair consideration, with the intent of enabling the party transferring the property to obtain public assistance under title XI, The Code. A transfer or assignment of property for less than fair consideration within one year prior to an application for public assistance benefits shall be evidence of intent to transfer or assign the property in order to obtain public assistance for which a person is not eligible by reason of the amount of the person's assets. If a person is found guilty of a fraudulent practice in the transfer or assignment of property under this subsection the maximum sentence shall be the penalty established for a serious misdemeanor and sections 714.9, 714.10 and 714.11 shall not apply.

85 Acts, ch 195, §61 SF 329
Subsection 3 amended

714.16 Consumer frauds.

1. Definitions:

a. The term "*advertisement*" includes the attempt by publication, dissemination, solicitation or circulation to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise;

b. The term "*merchandise*" includes any objects, wares, goods, commodities, intangibles, securities, bonds, debentures, stocks, real estate or services;

c. The term "*person*" includes any natural person or the person's legal representative, partnership, corporation (domestic and foreign), company, trust, business entity or association, and any agent, employee, salesperson, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof;

d. The term "*sale*" includes any sale, offer for sale, or attempt to sell any merchandise for cash or on credit;

e. The term "*subdivided lands*" refers to improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into five or more lots or parcels; provided, however, it does not apply to the leasing of apartments, offices, stores or similar space within an apartment building, industrial building or commercial building unless an undivided interest in the land is granted as a condition precedent to occupying space in said structure.

2. a. The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.

"Material fact" as used in this subsection does not include repairs of damage to or adjustments on or replacements of parts with new parts of otherwise new merchandise if the repairs, adjustments or replacements are made to achieve compliance with factory specifications and are made before sale of the merchandise at retail

and the actual cost of any labor and parts charged to or performed by a retailer for any such repairs, adjustments and parts does not exceed three hundred dollars or ten percent of the actual cost to a retailer including freight of the merchandise, whichever is less, providing that the seller posts in a conspicuous place notice that repairs, adjustments or replacements will be disclosed upon request. The exemption provided in this paragraph does not apply to the concealment, suppression or omission of a material fact if the purchaser requests disclosure of any repair, adjustment or replacement.

b. The advertisement for sale, lease or rent, or the actual sale, lease, or rental of any merchandise at a price or with a rebate or payment or other consideration to the purchaser which is contingent upon the procurement of prospective customers provided by the purchaser, or the procurement of sales, leases, or rentals to persons suggested by the purchaser, is declared to be an unlawful practice rendering any obligation incurred by the buyer in connection therewith, completely void and a nullity. The rights and obligations of any contract relating to such contingent price, rebate, or payment shall be interdependent and inseverable from the rights and obligations relating to the sale, lease, or rental.

c. It is an unlawful practice for any person to advertise the sale of merchandise at reduced rates due to the cessation of business operations and after the date of the first such advertisement remain in business under the same or substantially the same ownership, or under the same or substantially the same trade name, or to continue to offer for sale the same type of merchandise at the same location for more than one hundred twenty days. As used in this paragraph "person" includes a person who acquires an ownership interest in the business either within sixty days before the initial advertisement of the sale or at any time after the initial advertisement of the sale. In addition, a person acquiring an ownership interest shall comply with paragraph "g" if the person adds additional merchandise to the sale.

d. (1) No person shall offer or advertise within this state for sale or lease, any subdivided lands without first filing with the real estate commission, true and accurate copies of all road plans, plats, field notes and diagrams of water, sewage and electric power lines as they exist at the time of such filing, provided such filing shall not be required for a subdivision subject to section 306.21 or chapter 409. Each such filing shall be accompanied by a fee of fifty dollars for each subdivision included, payable to the real estate commission.

(2) False or misleading statements filed pursuant to subparagraph 1 of paragraph "d" of this subsection or section 306.21 or chapter 409, and advertising, offers to sell, or contracts not in substantial conformity with the filings made pursuant to section 306.21 or chapter 409 are unlawful.

e. Any violations of chapter 123 or any other provisions of law by a manufacturer, distiller, vintner, importer, or any other person participating in the distribution of alcoholic liquor or beer as defined in chapter 123.

f. A violation of a provision of sections 535C.1 through 535C.10 is an unlawful practice.

g. It is an unlawful practice for a person to acquire directly or indirectly an interest in a business which has either gone out of business or is going out of business and conduct or continue a going-out-of-business sale where additional merchandise has been added to the merchandise of the liquidating business for the purposes of the sale, unless the person provides a clear and conspicuous notice in all advertisements that merchandise has been added. The advertisement shall also state the customary retail price of the merchandise that has been added or brought in for the sale. The person acquiring the interest shall obtain a permit to hold the sale before commencing the sale. If the sale is to be held in a city which has an ordinance regulating going-out-of-business sales, then the permit shall be obtained from the city. If the sale is to be located outside of a city or in a city which does not have an ordinance regulating going-out-of-business sales, then the permit shall be obtained

from the county in which the proposed sale is to be held. The county board of supervisors shall prescribe the procedures necessary to obtain the permit. The permit shall state the percentage of merchandise for sale that was obtained from the liquidating business and the percentage of merchandise for sale that was added from other sources. The permit or an accurate reproduction of the permit shall be clearly and conspicuously posted at all entrances to the site of the sale and at all locations where sales are consummated. A person who violates this paragraph, including any misrepresentation of the presence and the percentage of additional merchandise that had been added to that of the liquidating company, is liable for a civil penalty of not to exceed one thousand dollars for each day of each violation. The civil penalties collected shall be deposited in the general fund of the political entity which prosecutes the violation. The civil penalty is in addition to and not in lieu of any criminal penalty. A political entity enforcing this paragraph may obtain a preliminary injunction without posting a bond to enjoin a violation of paragraph "c" and this paragraph pending a hearing.

This paragraph does not prohibit a city or county from adopting an ordinance prohibiting the conducting of a going-out-of-business sale in which additional merchandise is added to the merchandise of the liquidating business for the purposes of the sale.

3. When it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in any practice declared to be unlawful by this section or when the attorney general believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in or is about to engage in, any such practice, the attorney general may:

a. Require such person to file on such forms as the attorney general may prescribe a statement or report in writing under oath or otherwise, as to all the facts and circumstances concerning the sale or advertisement of merchandise by such person, and such other data and information as the attorney general may deem necessary;

b. Examine under oath any person in connection with the sale or advertisement of any merchandise;

c. Examine any merchandise or sample thereof, record, book, document, account or paper as the attorney general may deem necessary; and

d. Pursuant to an order of a district court impound any record, book, document, account, paper, or sample of merchandise that is produced in accordance with this section, and retain the same in the attorney general's possession until the completion of all proceedings in connection with which the same are produced.

4. a. To accomplish the objectives and to carry out the duties prescribed by this section, the attorney general, in addition to other powers conferred upon the attorney general by this section, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe such forms and promulgate such rules as may be necessary, which rules shall have the force of law.

b. No information or evidence provided the attorney general by a person pursuant to subsections 3 and 4 of this section shall be admitted in evidence, or used in any manner whatsoever, in any criminal prosecution. If a criminal prosecution under the provisions of this section is initiated in a state court against a person who has provided information pursuant to subsections 3 and 4 of this section, the state shall have the burden of proof that the information so provided was not used in any manner to further the criminal investigation or prosecution.

c. In any civil action brought pursuant to this chapter, the attorney general shall have the right to require any defendant to give testimony, and no criminal prosecution based upon transactions or acts about which the defendant is questioned and required to give testimony shall thereafter be brought against such defendant.

5. Service by the attorney general of any notice requiring a person to file a

statement or report, or of a subpoena upon any person, shall be made personally within this state, but if such cannot be obtained, substituted service therefor may be made in the following manner:

a. Personal service thereof without this state; or

b. The mailing thereof by registered mail to the last known place of business, residence or abode within or without this state of such person for whom the same is intended; or

c. As to any person other than a natural person, in the manner provided in the Rules of Civil Procedure as if a petition had been filed; or

d. Such service as a district court may direct in lieu of personal service within this state.

6. If any person fails or refuses to file any statement or report, or obey any subpoena issued by the attorney general, the attorney general may, after notice, apply to a district court and, after hearing thereof, request an order:

a. Granting injunctive relief, restraining the sale or advertisement of any merchandise by such persons;

b. Dissolving a corporation created by or under the laws of this state or revoking or suspending the certificate of authority to do business in this state of a foreign corporation or revoking or suspending any other licenses, permits or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; and

c. Granting such other relief as may be required; until the person files the statement or report, or obeys the subpoena.

7. Whenever it appears to the attorney general that a person has engaged in, is engaging in or is about to engage in any practice declared to be unlawful by this section the attorney general may seek and obtain in an action in a district court an injunction prohibiting such person from continuing such practices or engaging therein or doing any acts in furtherance thereof. The court may make such orders or judgments as may be necessary to prevent the use or employment by a person of any prohibited practices, or which may be necessary to restore to any person in interest any moneys or property, real or personal which may have been acquired by means of any practice in this section declared to be unlawful including the appointment of a receiver in cases of substantial and willful violation of the provisions of this section.

8. When a receiver is appointed by the court pursuant to this section, the receiver shall have the power to sue for, collect, receive and take into possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description, derived by means of any practice declared to be illegal and prohibited by this section, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court. Any person who has suffered damages as a result of the use or employment of any unlawful practices and submits proof to the satisfaction of the court that the person has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent the person has sustained out-of-pocket losses. In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court. The court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as may be required.

9. Subject to an order of the court terminating the business affairs of any person after receivership proceedings held pursuant to this section, the provisions of this section shall not bar any claim against any person who has acquired any moneys or property, real or personal, by means of any practice herein declared to be unlawful.

10. In any action brought under the provisions of this section, the attorney general is entitled to recover costs for the use of this state.

11. If any provision of this section or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions of applications of the section which can be given effect without the invalid provision or application and to this end the provisions of this section are severable.

12. Nothing contained in this section shall apply to the owner or publisher of newspapers, magazines, publications or printed matter wherein such advertisement appears, or to the owner or operator of a radio or television station which disseminates such advertisement when the owner, publisher or operator has no knowledge of the intent, design or purpose of the advertiser; and provided, further, that nothing herein contained shall apply to any advertisement which complies with the rules and regulations of, and the statutes administered by the federal trade commission.

85 Acts, ch 16, §1, 2 hf 70
 Subsection 2 paragraph c amended
 Subsection 2 NEW paragraph g

714.18 Bond filed.

Every person, firm, association, or corporation maintaining or conducting in Iowa any such course of instruction, by classroom instruction or by correspondence, or soliciting in Iowa the sale of such course, shall file with the commissioner of public instruction:

1. A continuous corporate surety bond to the state of Iowa in the sum of fifty thousand dollars conditioned for the faithful performance of all contracts and agreements with students made by such person, firm, association, or corporation, or their salespersons; provided, however, that the aggregate liability of the surety for all breaches of the conditions of the bond shall, in no event, exceed the sum of said bond. The surety on the bond shall have the right to cancel said bond upon giving thirty days' written notice to the commissioner of public instruction and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of said cancellation.

2. A statement designating a resident agent for the purpose of receiving service in civil actions. In the absence of such designation, service may be had upon the commissioner of public instruction if service cannot otherwise be made in this state.

3. A copy of any catalog, prospectus, brochure, or other advertising material intended for distribution in Iowa. Such material shall state the cost of the course offered, the schedule of refunds for portions of the course not completed, and if no refunds are to be paid, the material shall so state. Any contract induced by advertising materials not previously filed as provided in this chapter shall be voidable on the part of the pupil or any person liable for the tuition provided for in the contract.

85 Acts, ch 212, §21 HF 686
 Section amended

714.22 Trade and vocational schools—exemption—conditions.

The provisions of sections 714.17 to 714.22 shall not apply to trade or vocational schools if they meet either of the following conditions:

1. File a bond or a bond is filed on their behalf by a parent corporation with the commissioner of public instruction as required by section 714.18, subsection 2.

2. File an annual sworn statement, or such statement is filed on their behalf by a parent corporation, certified by a certified public accountant, showing all assets and liabilities of the trade or vocational school and the assets of a parent corporation. The statement shall show the trade or vocational school's net worth, or the net worth of the parent corporation, to be not less than five times the amount of the bond required by section 714.18, subsection 2. In the event that a parent corporation files such statement or its net worth is included therein to comply with this subsection, such parent corporation shall appoint a registered agent and otherwise be subject to section 714.18, subsection 2 and shall be liable for the breach of any contract or agreement with students as well as liable for any fraud in connection therewith or for any violation of section 714.16 by such trade or vocational school or any of its agents or salespersons.

85 Acts, ch 212, §21 HF 686
 Subsection 1 amended

714.23 Refund policies.

A person offering a course of instruction at the postsecondary level, for profit, that is more than four months in length and leads to a degree, diploma, or license, shall make a pro rata refund of eighty-five percent of the tuition for a terminating student to the appropriate agency based upon the ratio of completed number of school days to the total school days of the school term or course. However, if the financial obligations of a student are for three or fewer months duration, this section does not apply.

Refunds shall be paid to the appropriate agency within thirty days following the student's termination.

If the student terminates later than three weeks after the course of instruction has commenced, the person offering the course of instruction cannot admit a student to replace the student for which a refund was received for the remaining portion of the school term or course.

A violation of this section is a simple misdemeanor.

85 Acts, ch 220, §1 SF 271
NEW section

CHAPTER 721**OFFICIAL MISCONDUCT****721.8 Labeling publicly owned motor vehicles.**

All publicly owned motor vehicles shall bear at least two labels in a conspicuous place, one on each side of the vehicle. This label shall be designed to cover not less than one square foot of surface. This section does not apply to a motor vehicle which is specifically assigned by the head of the department or office owning or controlling it, to enforcement of police regulations or to motor vehicles issued ordinary registration plates pursuant to section 321.19, subsection 1.

85 Acts, ch 115, §3 SF 525
Section amended

CHAPTER 725**VICE****725.9 Possession of gambling devices prohibited.**

1. "*Antique slot machine*" means a slot machine which is twenty-five years old or older.

2. "*Antique pinball machine*" means a pinball machine which is twenty-five years old or older.

3. "*Gambling device*" means a device used or adapted or designed to be used for gambling and includes, but is not limited to, roulette wheels, klondike tables, punchboards, faro layouts, keno layouts, numbers tickets, slot machines, pinball machines, push cards, jar tickets and pull-tabs. However, "gambling device" does not include an antique slot machine, antique pinball machine, or any device regularly manufactured and offered for sale and sold as a toy, except that any use of such a toy, antique slot machine or antique pinball machine for gambling purposes constitutes unlawful gambling.

4. A person who, in any manner or for any purpose, except under a proceeding to destroy the device, has in possession or control a gambling device is guilty of a serious misdemeanor.

5. This chapter does not prohibit the manufacture of electronic or computerized gambling devices.

85 Acts, ch 32, §118 SF 395
NEW subsection 5

725.12 Lotteries and lottery tickets—definition.

If any person make or aid in making or establishing, or advertise or make public a scheme for a lottery; or advertise, offer for sale, sell, negotiate, dispose of, purchase, or receive a ticket or part of a ticket in a lottery or number of a ticket in a lottery; or have in the person's possession a ticket, part of a ticket, or paper purporting to be the number of a ticket of a lottery, with intent to sell or dispose of the ticket, part of a ticket, or paper on the person's own account or as the agent of another, the person commits a serious misdemeanor. However, this section does not prohibit the possession by a person of a lottery ticket, part of a ticket, or number of a lottery ticket from a lottery legally operated or permitted under the laws of another jurisdiction.

When used in this section, lottery shall mean any scheme, arrangement, or plan whereby a prize is awarded by chance or any process involving a substantial element of chance to a participant who has paid or furnished a consideration for such chance.

For the purpose of determining the existence of a lottery under this section, a consideration shall be deemed to have been paid or furnished only in such cases where as a direct or indirect requirement or condition of obtaining a chance to win a prize, the participants are required to make an expenditure of money or something of monetary value through a purchase, payment of an entry or admission fee, or other payment or the participants are required to make a substantial expenditure of effort; provided, however, that no substantial expenditure of effort shall be deemed to have been expended by any participant solely by reason of the registration of the participant's name, address, and related information, the obtaining of an entry blank or participation sheet, by permitting or taking part in a demonstration of any article or commodity, by making a personal examination of posted lists of prize winners, or by acts of a comparable nature, whether performed or accomplished in person at any store, place of business, or other designated location, through the mails, or by telephone; and further provided, that no participant shall be required to be present in person or by representative at any designated location at the time of the determination of the winner of the prize, and that the winner shall be notified either by the same method used to communicate the offering of the prize or by regular mail.

85 Acts, ch 33, §125 HF 225
Unnumbered paragraph 1 amended

725.15 Exceptions for legal gambling.

Sections 725.5 to 725.10 and 725.12 do not apply to a game, activity, ticket or device when lawfully possessed, used, conducted or participated in pursuant to chapter 99B or chapter 99E.

85 Acts, ch 33, §126 HF 225
Intent that 1985 amendment be stricken when chapter 99E is repealed on July 1, 1990; 85 Acts, ch 33, §129
Section amended

CHAPTER 726

PROTECTION OF THE FAMILY

Victim-counselor privilege; see ch 236A

726.6 Child endangerment.

1. A person who is the parent, guardian, or person having custody or control over a child or a mentally or physically handicapped minor under the age of eighteen, commits child endangerment when the person does any of the following:

a. Knowingly acts in a manner that creates a substantial risk to a child or minor's physical, mental or emotional health or safety.

b. By an intentional act or series of intentional acts, uses unreasonable force, torture or cruelty that results in physical injury, or that is intended to cause serious injury.

c. By an intentional act or series of intentional acts, evidences unreasonable force, torture or cruelty which causes substantial mental or emotional harm to a child or minor.

d. Willfully deprives a child or minor of necessary food, clothing, shelter, health care or supervision appropriate to the child or minor's age, when the person is reasonably able to make the necessary provisions and which deprivation substantially harms the child or minor's physical, mental or emotional health. For purposes of this paragraph, the failure to provide specific medical treatment shall not for that reason alone be considered willful deprivation of health care if the person can show that such treatment would conflict with the tenets and practice of a recognized religious denomination of which the person is an adherent or member. This exception does not in any manner restrict the right of an interested party to petition the court on behalf of the best interest of the child or minor.

e. Knowingly permits the continuing physical or sexual abuse of a child or minor. However, it is an affirmative defense to this subsection if the person had a reasonable apprehension that any action to stop the continuing abuse would result in substantial bodily harm to the person or the child or minor.

f. Abandons the child or minor to fend for the child or minor's self, knowing that the child or minor is unable to do so.

2. A person who commits child endangerment resulting in serious injury to a child or minor is guilty of a class "C" felony.

3. A person who commits child endangerment not resulting in serious injury to a child or minor is guilty of an aggravated misdemeanor.

85 Acts, ch 180, §3 HF 700

Section struck and rewritten

CHAPTER 728

OBSCENITY

Victim-counselor privilege; see ch 236A

728.13 Forfeiture. Repealed by 85 Acts, ch 201, §21. SF 455 See ch 809A.

CHAPTER 802

LIMITATION OF CRIMINAL ACTIONS

802.2 Sexual abuse of child.

An information or indictment for sexual abuse in the first, second or third degree committed on or with a child under the age of ten years shall be found within four years after its commission.

85 Acts, ch 174, §2 HF 462

NEW section

802.3 Felony—aggravated or serious misdemeanor.

In all cases, except those enumerated in sections 802.1 and 802.2, an indictment or information for a felony or aggravated or serious misdemeanor shall be found within three years after its commission.

85 Acts, ch 174, §3 HF 462

Section amended

CHAPTER 804

COMMENCEMENT OF ACTIONS—ARREST— DISPOSITIONS OF PRISONERS

804.7 Arrests by peace officers.

A peace officer may make an arrest in obedience to a warrant delivered to the peace officer; and without a warrant:

1. For a public offense committed or attempted in the peace officer's presence.
2. Where a public offense has in fact been committed, and the peace officer has reasonable ground for believing that the person to be arrested has committed it.
3. Where the peace officer has reasonable ground for believing that an indictable public offense has been committed and has reasonable ground for believing that the person to be arrested has committed it.
4. Where the peace officer has received from the department of public safety, or from any other peace officer of this state or any other state or the United States an official communication by bulletin, radio, telegraph, telephone, or otherwise, informing the peace officer that a warrant has been issued and is being held for the arrest of the person to be arrested on a designated charge.
5. If the peace officer has reasonable grounds for believing that domestic abuse, as defined in section 236.2, has occurred and has reasonable grounds for believing that the person to be arrested has committed it.

85 Acts, ch 175, §12 HF 549
NEW subsection 5

804.31 Arrest of hearing impaired person—use of interpreters—fee.

When a person is detained for questioning or arrested for an alleged violation of a law or ordinance and there is reason to believe that the person is hearing impaired, the peace officer making the arrest or taking the person into custody or any other officer detaining the person shall determine if the person is a hearing impaired person as defined in section 622B.1. If the officer so determines, the officer, at the earliest possible time and prior to commencing any custodial interrogation of the person, shall procure a qualified interpreter in accordance with section 622B.2 and the rules adopted by the supreme court under section 622B.1 unless the hearing impaired person knowingly, voluntarily, and intelligently waives the right to an interpreter in writing by executing a form prescribed by the Iowa department of health and the Iowa county attorneys association. The interpreter shall interpret the officer's warnings of constitutional rights and protections and all other warnings, statements, and questions spoken or written by any officer, attorney, or other person present and all statements and questions communicated in sign language by the hearing impaired person.

This section does not prohibit the request for and administration of a preliminary breath screening test or the request for and administration of a chemical test of a body substance or substances under chapter 321B prior to the arrival of a qualified interpreter for a hearing impaired person who is believed to have committed a violation of section 321.281. However, upon the arrival of the interpreter the officer who requested the chemical test shall explain through the interpreter the reason for the testing, the consequences of the person's consent or refusal, and the ramifications of the results of the test, if one was administered.

When an interpreter is not readily available and the hearing impaired person's identity is known, the person may be released by the law enforcement agency into the temporary custody of a reliable family member or other reliable person to await the arrival of the interpreter, if the person is eligible for release on bail and is not believed to be an immediate threat to the person's own safety or the safety of others.

An answer, statement, or admission, oral or written, made by a hearing impaired

person in reply to a question of a law enforcement officer or any other person having a prosecutorial function in a criminal proceeding is not admissible in court and shall not be used against the hearing impaired person if that answer, statement, or admission was not made or elicited through a qualified interpreter, unless the hearing impaired person had waived the right to an interpreter pursuant to this section. In the event of a waiver and criminal proceeding, the court shall determine whether the waiver and any subsequent answer, statement, or admission made by the hearing impaired person were knowingly, voluntarily, and intelligently made.

When communication occurs with a person through an interpreter pursuant to this section, all questions or statements and responses shall be relayed through the interpreter. The role of the interpreter is to facilitate communication between the hearing and hearing impaired parties. An interpreter shall not be compelled to answer any question or respond to any statement that serves to violate that role at the time of questioning or arrest or at any subsequent administrative or judicial proceeding.

An interpreter procured under this section shall be paid a reasonable fee and expenses by the governmental subdivision funding the law enforcement agency that procured the interpreter.

85 Acts, ch 131, §2 HF 526
Section struck and rewritten

CHAPTER 805

CITATIONS IN LIEU OF ARREST

805.6 Uniform citation and complaint.

1. a. The commissioner of public safety and the state conservation director, acting jointly, shall adopt a uniform, combined citation and complaint which shall be used for charging all traffic violations in Iowa under state law or local regulation or ordinance, and which shall be used for charging all other violations which are designated by section 805.8 to be scheduled violations. The court costs in parking violation cases are eight dollars per court appearance. The court costs in scheduled violation cases where a court appearance is not required are ten dollars. The court costs in scheduled violation cases where a court appearance is required are fifteen dollars. This subsection does not prevent the charging of any of those violations by information, by private complaint filed under chapter 804, or by a simple notice of fine where permitted by section 321.236, subsection 1. Each uniform citation and complaint shall be serially numbered and shall be in quintuplicate, and the officer shall deliver the original and a copy to the court where the defendant is to appear, two copies to the defendant, and a copy to the law enforcement agency of the officer. The court shall forward the copy of the uniform citation and complaint in accordance with section 321.207 when applicable.

The uniform citation and complaint shall contain spaces for the parties' names; the address of the alleged offender; the registration number of the offender's vehicle; the information required by section 805.2; a promise to appear as provided in section 805.3 and a place where the cited person may sign the promise to appear; a list of the scheduled fines prescribed by section 805.8, either separately or by group, and a statement of the court costs payable in scheduled violation cases, whether or not a court appearance is required or is demanded; a brief explanation of sections 805.9 and 805.10; and a space where the defendant may sign an admission of the violation when permitted by section 805.9; and the uniform citation and complaint shall require that the defendant appear before a court at a specified time and place. The uniform citation and complaint also may contain a space for the imprint of a credit card, and may contain any other information which the commissioner of public safety and the state conservation director may determine.

b. The uniform citation and complaint shall contain the following statement with a space immediately below it for the signature of the person being charged:

"I hereby give my unsecured appearance bond in the amount of dollars and enter my written appearance. I agree that if I fail to appear in person or by counsel to defend against the offense charged in this citation the court is authorized to enter a conviction and render judgment against me for the amount of my appearance bond in satisfaction of the penalty plus court costs."

c. Unless the officer issuing the citation arrests the alleged offender, or permits admission or requires submission of bail as provided in section 805.9, subsection 3, the officer shall enter in the blank contained in the statement required by paragraph "b" one of the following amounts and shall require the person to sign the written appearance:

(1) If the offense is one to which a scheduled fine is applicable, an amount equal to one and one-half times the scheduled fine plus court costs.

(2) If the violation charged involved or resulted in an accident or injury to property and the total damages are less than two hundred fifty dollars, the amount of fifty dollars plus court costs.

(3) If the violation is for any offense for which a court appearance is mandatory, the amount of one hundred dollars plus court costs.

d. The written appearance defined in paragraph "b" shall not be used for any offense other than a simple misdemeanor.

2. In addition to those violations which are required by subsection 1 to be charged upon a uniform citation and complaint, a violation of chapter 321 which is punishable as a simple, serious, or aggravated misdemeanor may be charged upon a uniform citation and complaint, whether or not the alleged offender is arrested by the officer making the charge.

3. Supplies of the uniform citation and complaint for municipal corporations and county agencies shall be paid for by the county. Supplies of the uniform citation and complaint for all other agencies shall be paid for out of the budget of the agency concerned.

4. The uniform citation and complaint shall contain a place for the verification of the officer issuing the complaint. The complaint may be verified before the chief officer of the law enforcement agency, or the chief officer's designee, and the chief officer of each law enforcement agency of the state is authorized to designate specific individuals to administer oaths and certify verifications.

5. The commissioner of public safety and the state conservation director, acting jointly, shall design and publish a compendium of scheduled violations and scheduled fines, containing other information which they deem appropriate, and shall distribute copies to all courts and law enforcement officers and agencies of the state upon request. The cost of the publication shall be paid out of the budget of the department of public safety and out of the budget of the state conservation commission, each budget being liable for half of those costs. Copies shall be made available to individuals upon request, and a charge may be collected which does not exceed the cost of printing.

6. Nothing contained in this section shall be deemed to invalidate forms of uniform citation and complaint in existence prior to January 1, 1978. Existing forms may be used until supplies are exhausted.

85 Acts, ch 197, §40, 41 SF 570

Subsection 1, paragraph a amended

Subsection 1, paragraph c, subparagraphs (1), (2) and (3) amended

805.8 Scheduled violations.

1. *Application.* Except as otherwise indicated, violations of sections of the Code specified in this section are scheduled violations, and the scheduled fine for each of those violations is as provided in this section, whether the violation is of state law or of a county or city ordinance. The criminal penalty surcharge required by section 911.2 shall be added to the scheduled fine.

2. *Traffic violations.*

a. For parking violations under sections 321.236, 321.239, 321.358, 321.360, and 321.361, the scheduled fine is five dollars: However, violations charged by a city upon simple notice of a fine instead of a uniform citation and complaint as permitted by section 321.236, subsection 1, paragraph "a", are not scheduled violations, and this section shall not apply to any offense charged in that manner. For a parking violation under section 111.38 or 321.362 the scheduled fine is ten dollars.

b. For registration violations under sections 321.32, 321.34, 321.37, 321.38, and 321.41 the scheduled fine is five dollars.

c. For improperly used or nonused, or defective or improper equipment, other than brakes, driving lights and brakelights, under sections 321.317, 321.387, 321.388, 321.389, 321.390, 321.391, 321.392, 321.393, 321.422, 321.432, 321.436, 321.437, 321.438, subsection 1 or 3, 321.439, 321.440, 321.441, 321.442, 321.444, 321.445 and 321.447, the scheduled fine is ten dollars.

d. For improper equipment under section 321.438, subsection 2, the scheduled fine is fifteen dollars.

e. For improperly used or nonused or defective or improper equipment under sections 321.383, 321.384, 321.385, 321.386, 321.398, 321.402, 321.403, 321.404, 321.409, 321.419, 321.420, 321.423, 321.430, 321.433, 321.448, 321.449 and 321.450, the scheduled fine is twenty dollars.

f. For violations of a restricted license under sections 321.180, 321.193 and 321.194, the scheduled fine is twenty dollars.

g. For excessive speed violations when not more than five miles per hour in excess of the limit under sections 111.36, 321.236, subsections 5 and 11, 321.285, 321.286 and 321.287, the scheduled fine is ten dollars.

Excessive speed in conjunction with a violation of section 321.278 is not a scheduled violation, whatever the amount of excess speed.

For excessive speed violations when in excess of the limit under those sections by five or less miles per hour the fine is ten dollars, by more than five and not more than ten miles per hour the fine is twenty dollars, by more than ten and not more than fifteen miles per hour the fine is thirty dollars, by more than fifteen and not more than twenty miles per hour the fine is forty dollars, and by more than twenty miles per hour the fine is forty dollars plus two dollars for each mile per hour of excessive speed over twenty miles per hour over the limit.

Excessive speed in whatever amount by a school bus is not a scheduled violation under any section listed in a subparagraph of this paragraph "g".

h. For operating, passing, turning and standing violations under sections 321.225, 321.236, subsections 3, 4, 9 and 12, 321.275, 321.295, 321.297, 321.299, 321.303, 321.304, subsections 1 and 2, 321.305, 321.306, 321.311, 321.312, 321.314, 321.315, 321.316, 321.318, 321.323, 321.340, 321.344, 321.353, 321.354, 321.363, 321.364, 321.365, 321.366, 321.368, 321.382 and 321.395, the scheduled fine is fifteen dollars.

i. For violations involving failures to yield or to observe pedestrians and other vehicles under sections 321.257, subsection 2, 321.288, 321.298, 321.300, 321.307, 321.308, 321.313, 321.319, 321.320, 321.321, 321.329, 321.333, and 321.367, the scheduled fine is twenty dollars.

j. For violations by pedestrians and bicyclists under sections 321.234, subsections 3 and 4, 321.236, subsection 10, 321.257, subsection 2, 321.325, 321.326, 321.328, 321.331, 321.332, 321.397 and 321.434, the scheduled fine is ten dollars.

k. For violations by operators of school buses and emergency vehicles, and for violations by other motor vehicle operators when in vicinity, under sections 321.231, 321.324, 321.372 and 321.377, the scheduled fine is twenty-five dollars: However, excessive speed by a school bus in excess of ten miles over the limit is not a scheduled violation.

l. For violations of traffic signs and signals, and for failure to obey an officer under sections 321.229, 321.236, subsections 2 and 6, 321.256, 321.257, subsection 2, 321.294,

321.304, subsection 3, 321.322, 321.341, 321.342, 321.343 and 321.415, the scheduled fine is twenty dollars.

m. For height, weight, length, width and load violations and towed vehicle violations under sections 321.309, 321.310, 321.381, 321.394, 321.437, 321.454, 321.455, 321.456, 321.457, 321.458, 321.461, and 321.462, the scheduled fine is twenty-five dollars. For weight violations under sections 321.459 and 321.466, the scheduled fine is twenty dollars for each two thousand pounds or fraction thereof of overweight.

n. For violation of display of identification required by section 326.22 and violation of trip permits as prescribed by section 326.23, the scheduled fine is twenty dollars.

o. For violation of registration provisions under section 321.17; violation of intrastate hauling on foreign registration under section 321.54; improper operation or failure to register under section 321.55; and display of registration or plates under section 321.98, the scheduled fine is twenty dollars.

For no evidence or improper evidence of intrastate authority carried or displayed under section 325.34; operation of vehicle by an unqualified driver under sections 325.34 and 327.22; and operating a vehicle in violation of maximum hours of service or failure to maintain and display evidence of hours of service under sections 325.34 and 327.22, the scheduled fine is twenty-five dollars.

For no or improper carrier identification markings under section 327B.1, the scheduled fine is fifteen dollars.

For no or improper evidence of interstate authority carried or displayed under section 327B.1, the scheduled fine is one hundred dollars.

p. For violations of section 324.52 or 324.74, subsections 2 and 6, the scheduled fine is ten dollars.

q. Violations of the schedule of axle and tandem axle and gross or group of axle weight violations in section 321.463 shall be scheduled violations subject to the provisions, procedures and exceptions contained in sections 805.6 to 805.11, irrespective of the amount of the fine under that schedule. Violations of the schedule of weight violations shall be chargeable, where the fine charged does not exceed one hundred dollars, only by uniform citation and complaint. Violations of the schedule of weight violations, where the fine charged exceeds one hundred dollars:

(1) Shall, when the violation is admitted and section 805.9 applies, be chargeable upon uniform citation and complaint, indictment, or county attorney's information,

(2) but otherwise, shall be chargeable only upon indictment or county attorney's information. In all cases of charges under the schedule of weight violations, the charge shall specify the amount of fine charged under the schedule. Where a defendant is convicted and the fine under the foregoing schedule of weight violations exceeds one hundred dollars, the conviction shall be of an indictable offense although section 805.9 is employed and whether the violation is charged upon uniform citation and complaint, indictment, or county attorney's information.

r. For failure to have a valid license or permit for operating a motor vehicle on the highways of this state, the scheduled fine is fifteen dollars.

s. For a violation of section 601E.6, regulating the use of handicapped parking spaces, the scheduled fine is fifteen dollars.

t. For failing to secure a child with a child restraint system, safety belt, or harness in violation of section 321.446, the scheduled fine is ten dollars.

3. *Violations of navigation laws.*

a. For violations of registration, inspections, identification, and record provisions under sections 106.5, 106.35, 106.37, and for unused or improper or defective lights and warning devices under section 106.9, subsections 3, 4, 5, 9, and 10, the scheduled fine is ten dollars.

b. For violations of registration, identification, and record provisions under sections 106.4 and 106.10 and for unused or improper or defective equipment under section 106.9, subsections 2, 6, 7, 8, and 13, and section 106.11 and for operation

violations under sections 106.26, 106.31 and 106.33, the scheduled fine is twenty dollars.

c. For operating violations under sections 106.12, 106.15, subsection 1, 106.24, and 106.34, the scheduled fine is twenty-five dollars. However, a violation of section 106.12, subsection 2, is not a scheduled violation.

d. For violations of use, location and storage of vessels, devices and structures under sections 106.27, 106.28 and 106.32, the scheduled fine is fifteen dollars.

e. For violations of all subdivision ordinances under section 106.17, subsection 2, except those relating to matters subject to regulation by authority of subsection 5 of section 106.31, the scheduled fine is the same as prescribed for similar violations of state law. For violations of subdivision ordinances for which there is no comparable state law the scheduled fine is ten dollars.

4. *Snowmobile violations.*

a. For registration and identification violations under sections 321G.3 and 321G.5, the scheduled fine is five dollars.

b. For operating violations under sections 321G.9, subsections 1, 2, 3, 4, 5 and 7, 321G.11, and 321G.13, subsections 4 and 9, the scheduled fine is twenty dollars.

c. For improper or defective equipment under section 321G.12, the scheduled fine is ten dollars.

d. For violations of section 321G.19, the scheduled fine is fifteen dollars.

5. *Fish and game law violations.*

a. For violations of section 110.1, the scheduled fine is twenty dollars: However, engaging without a license in any activity the license fee for which is greater than twenty dollars is not a scheduled violation.

b. For violations of sections 109.54, 109.80, first paragraph, 109.82, 109.91, 109.122, 109.123 and 110.19, the scheduled fine is twenty dollars.

c. For hunting or taking a raccoon during a closed season in violation of sections 109.38 and 109.39 or administrative orders or rules adopted under those sections, the scheduled fine is fifty dollars.

6. *Violations relating to the use and misuse of parks and preserves.*

a. For violations under sections 111.39, 111.45 and 111.50, the scheduled fine is ten dollars.

b. For violations under sections 111.40, 111.43, 111.46 and 111.49, the scheduled fine is fifteen dollars.

7. *Description of violations.* The descriptions of offenses used in this section are for convenience only and shall not be construed to define any offense or to include or exclude any offense other than those specifically included or excluded by reference to the Code. A reference to a section or subsection of the Code without further limitation includes every offense defined by that section or subsection.

8. *Energy emergency violations.* For violations of an executive order issued by the governor under the provisions of section 93.8, the scheduled fine is fifty dollars.

9. *Radar jamming devices.* For violation of section 321.232, the scheduled fine is ten dollars.

85 Acts, ch 40, §5 SF 70; 85 Acts, ch 195, §62 SF 329

See Code editor's note

Subsection 2, paragraphs i, j and l amended

805.9 Admission of scheduled violations.

1. In cases of scheduled violations, the defendant, before the time specified in the citation and complaint for appearance before the court, may sign the admission of violation on the citation and complaint and deliver or mail a copy of the citation and complaint, together with the minimum fine for the violation, plus court costs, to a scheduled violations office in the county. The office shall, if the offense is a moving violation under chapter 321, forward a copy of the citation and complaint and admission to the department of transportation as required by section 321.207. In this case the defendant is not required to appear before the court. The admission constitutes a conviction.

2. A defendant charged with a scheduled violation by information may obtain two copies of the information from the court and, before the time the defendant is required to appear before the court, deliver or mail the copies, together with the defendant's admission, fine, and court costs, to the scheduled violations office in the county. The procedure, fine, and costs are the same as when the charge is by citation and complaint, with the admission and the number of the defendant's operator's or chauffeur's license placed upon the information, when the violation involves the use of a motor vehicle.

3. When section 805.8 and this section are applicable but the officer does not deem it advisable to release the defendant and no court in the county is in session:

a. If the defendant wishes to admit the violation, the officer may release the defendant upon observing the person mail the citation and complaint, admission, and minimum fine, together with court costs, to a traffic violations office in the county, in an envelope furnished by the officer. The admission constitutes a conviction and judgment in the amount of the scheduled fine plus court costs. The officer may allow the defendant to use a credit card pursuant to rules adopted under section 805.14 by the department of public safety or to mail a check in the proper amount in lieu of cash. If the check is not paid by the drawee for any reason, the defendant may be held in contempt of court. The officer shall advise the defendant of the penalty for nonpayment of the check.

b. If the defendant does not comply with paragraph "a", the officer may release the defendant upon observing the defendant mail to a court in the county the citation and complaint and one and one-half times the minimum fine together with court costs, or in lieu of one and one-half times the fine and the court costs, a guaranteed arrest bond certificate as provided in section 321.1, subsection 70, as bail together with the following statement signed by the defendant:

"I agree that either (1) I will appear pursuant to this citation or (2) if I do not appear in person or by counsel to defend against the offense charged in this citation the court is authorized to enter a conviction and render judgment against me for the amount of one and one-half times the scheduled fine plus court costs."

c. If the defendant does not comply with paragraph "a" or "b", or when section 804.7 is applicable, the officer may arrest and confine the defendant if authorized by the latter section, and proceed according to chapter 804.

4. A defendant who admits a scheduled violation may appear before court. The procedure, costs, and fine, without suspension of the fine, after the hearing are the same as in the traffic violations office.

5. A defendant charged with a scheduled violation who does not fully comply with subsection 1, 2, 3, or 4 of this section before the time required to appear before the court must, at that time, appear before the court. If the defendant admits the violation, the procedure, costs, and fine, without suspension of the fine, after the hearing are the same before the court as before the traffic violations office, and are without prejudice, when applicable, to proceedings under section 321.487.

6. The court costs imposed by this section are the total costs collectible from a defendant upon either an admission of a violation without hearing, or upon a hearing pursuant to subsection 4.

85 Acts, ch 195, §63 SF 329; 85 Acts, ch 197, §42 SF 570
See Code editor's note
Section amended

805.11 Other penalties.

If the defendant is convicted of a scheduled violation, the penalty is the scheduled fine, without suspension of the fine prescribed in section 805.8 together with costs assessed and distributed as prescribed by section 602.8106, unless it appears from the evidence that the violation was of the type set forth in section 805.10, subsection 1 or 2, in which event the scheduled fine does not apply and the penalty shall be increased within the limits provided by law for the offense.

85 Acts, ch 195, §64 SF 329
Unnumbered paragraph 2 struck

CHAPTER 808

SEARCH AND SEIZURE

808.3 Application for search warrant.

A person may make application for the issuance of a search warrant by submitting before a magistrate a written application, supported by the person's oath or affirmation, which includes facts, information, and circumstances tending to establish sufficient grounds for granting the application, and probable cause for believing that the grounds exist. The application shall describe the person, place, or thing to be searched and the property to be seized with sufficient specificity to enable an independent reasonable person with reasonable effort to ascertain and identify the person, place, or thing. If the magistrate issues the search warrant, the magistrate shall endorse on the application the name and address of all persons upon whose sworn testimony the magistrate relied to issue the warrant together with the abstract of each witness' testimony, or the witness' affidavit. However, if the grounds for issuance are supplied by an informant, the magistrate shall identify only the peace officer to whom the information was given but shall include a determination that the information appears credible either because sworn testimony indicates that the informant has given reliable information on previous occasions or because the informant or the information provided by the informant appears credible for reasons specified by the magistrate. The magistrate may in the magistrate's discretion require that a witness upon whom the applicant relies for information appear personally and be examined concerning the information.

85 Acts, ch 39, §1 SF 85
Section amended

808.14 Administrative warrants.

The courts and other appropriate agencies of the judicial branch of the government of this state may issue administrative search warrants, in accordance with the statutory and common law requirements for the issuance of such warrants, to all governmental agencies or bodies expressly or impliedly provided with statutory or constitutional home rule authority for inspections to the extent necessary for the agency or body to carry out such authority, to be executed or otherwise carried out by an officer or employee of the agency or body.

85 Acts, ch 38, §1 SF 318
NEW section

CHAPTER 809

DISPOSITION OF SEIZED PROPERTY

Repealed by 85 Acts, ch 201, §22 SF 455; see chapter 809A

CHAPTER 809A

DISPOSITION OF SEIZABLE AND FORFEITABLE PROPERTY

809A.1 Definitions.

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

1. "*Seizable property*" means all or part of any property subject to seizure in the execution of a search warrant, arrest warrant, or arrest without warrant including, but not limited to, the following:

a. Property which has been obtained in violation of the law.

- b. Property, the possession of which is unlawful.
- c. Property used or possessed with the intent to be used as a means of committing a public offense or concealed to prevent an offense from being discovered.
- d. Property relevant and material as evidence in a criminal prosecution.
- 2. "Forfeitable property" means all or part of any property subject to forfeiture to the state including, but not limited to, the following:
 - a. Seizable property which has been seized and not returned pursuant to sections 809A.2 through 809A.5.
 - b. Property which is proceeds of or which may be traced to the proceeds of the commission of a public offense.
 - c. Money, coin, currency, negotiable instruments, valuable minerals, or other similar items of value used as or in lieu of currency, found in close proximity to seizable property or in close proximity to any record of the importation, manufacture or distribution of seizable property.
 - d. Property subject to forfeiture under any other statute or provision of law.

85 Acts, ch 201, § 4 SF 455
NEW section

809A.2 Notice of seizure of seizable property.

1. When seizable property is seized pursuant to this chapter, a notice of seizure shall be filed promptly with the clerk of the district court for the county in which the property was located when seized. The notice shall state the time and place where the seizure occurred and set forth the names of any persons from whom the property was seized and the names of any persons believed by the seizing officer to have an interest in the property. To identify persons who may have an interest in the property, the seizing officer or the county attorney shall make a reasonable examination of any appropriate records regarding the property to ascertain whether liens or interests in the property currently exist. The notice shall contain a complete list of all property seized and describe the property with as much particularity as practicable.

2. Within seventy-two hours of receiving a notice of seizure, the clerk shall mail a copy of the notice to the attorney general and cause to be served upon all lienholders of record and each person listed in the notice a copy of the notice and a statement that a person affected by the seizure has a right to file a claim for the return of the property.

85 Acts, ch 201, § 5 SF 455
NEW section

809A.3 Claim for return of seizable property.

1. A person claiming a right to possession of seizable property seized pursuant to this chapter may make application for its return in the office of the clerk of court for the county in which the property was seized. The application shall be filed within thirty days after receipt of the notice of seizure, and failure to file the application within this time period shall terminate the interest of the person.

2. The application for the return of seizable property shall state the specific item or items sought, the nature of the claimant's interest in the property, and the grounds upon which the claimant seeks to have the property returned. The fact that the property is inadmissible as evidence or that it may be suppressed is not grounds for its return.

3. The claimant shall cause a copy of the application to be served upon all persons listed in the notice of seizure, the county attorney, and the attorney general.

4. If an application for the return of seizable property is not timely made pursuant to this section, upon application of the county attorney or the attorney general the clerk shall enter an order forfeiting the property to the state.

5. Notwithstanding the provisions of this section to the contrary, seized property which was stolen or otherwise obtained in violation of the law may be returned to

the owner, if the owner was not the person from whom the property was seized, without hearing if all of the following are true:

- a. The identity of the owner is not in question.
- b. The owner's right to possess the property is not in question.
- c. The possession of the property is not prohibited by law.
- d. One of the following is also true:
 - (1) Criminal charges have not been filed and are not being contemplated regarding the theft of the property.
 - (2) Evidence regarding the property is not to be introduced in any proceeding.
 - (3) If evidence regarding the property is to be introduced, all of the following are true:
 - (a) The property has been photographed in such a manner as to fairly show the nature and condition of the property.
 - (b) The photographs are available for use in any subsequent proceeding.
 - (c) If the value of the property is in excess of one hundred dollars, the county attorney has notified the attorney for any person against whom the evidence regarding the property may be used of the intention to return the property following its being photographed and the person's attorney either exercised or waived an opportunity to examine the property within fourteen days.
 - (4) If the property may be introduced as evidence, it is of such a nature that it is not easily alterable without detection and arrangements satisfactory to both the county attorney and the attorneys for any persons against whom evidence regarding the property may be used have been made for its return for use as evidence.

85 Acts, ch 201, §6 SF 455
NEW section

809A.4 Hearing—appeal.

An application for the return of seizable property shall be set for hearing not less than five or more than thirty days after the filing of the application and shall be tried to the court. If the total value of the property sought to be returned meets the appropriate jurisdictional limit, the proceeding may be conducted by a magistrate or a district associate judge with appeal to be as in a case of small claims. In all other cases, the hearing shall be conducted by a district judge, with appeal as provided in section 809A.12.

85 Acts, ch 201, §7 SF 455
NEW section

809A.5 Return of seizable property.

1. Seizable property which is not required for evidence or use in an investigation may be returned by the officer to the person from whom it was seized without the requirement of a hearing, provided that the person's possession of the property is not prohibited by law.

2. If, upon a hearing pursuant to section 809A.4, it is determined that the right of possession is in favor of the claimant, the court shall order the return of the property, subject to both of the following:

- a. The claimant's possession of the property is not prohibited by law.
- b. The property is not needed as evidence in a judicial proceeding, or if needed, satisfactory arrangements have been made for its return for use as evidence. If the proceedings have not been completed, the court shall make satisfactory arrangements for the return of the property upon the completion of the proceedings.

85 Acts, ch 201, §8 SF 455
NEW section

809A.6 Nonreturned seized property.

Property which is seized but not returned pursuant to sections 809A.2 to 809A.5 is presumed to be forfeit and shall be proceeded against as provided in sections 809A.13 and 809A.14.

85 Acts, ch 201, §9 SF 455
NEW section

809A.7 Seizure of forfeitable property.

Forfeitable property shall be seized whenever and wherever the property is found within this state. Forfeitable property may be seized by a peace officer or county attorney or by the attorney general. Forfeitable property may be seized by serving upon the person in possession of the property a notice of forfeiture. If the court finds that forfeiture to the state is warranted, an order transferring ownership to the state shall be entered and the property shall be delivered to the attorney general as the attorney general directs.

85 Acts, ch 201, §10 SF 455
NEW section

809A.8 Notice of seizure of forfeitable property.

1. When property is seized pursuant to section 809A.7, a notice of seizure shall be filed promptly with the clerk of the district court for the county in which the property was located when seized. The notice shall state the time and place where the seizure occurred and shall set forth the names of any persons from whom the property was seized and the names of any persons believed by the seizing officer to have an interest in the property. To identify persons who may have an interest in the property, the seizing officer or the county attorney shall make a reasonable examination of any appropriate records including, but not limited to, the records of the secretary of state, county treasurer, county recorder and the clerk of court regarding the property to ascertain whether liens or interests in the property currently exist. The notice of seizure shall contain a complete list of all property seized and describe the property with as much particularity as practicable.

2. Within seventy-two hours of receiving a notice of seizure of forfeitable property, the clerk shall mail a copy of the notice to the attorney general and cause to be served upon all lienholders of record and each person listed in the notice a copy of the notice and a statement that a person affected by the seizure has a right to file a claim for the return of the property.

85 Acts, ch 201, §11 SF 455
NEW section

809A.9 Claim for return of forfeitable property.

1. A person claiming a right to possession of forfeitable property seized pursuant to sections 809A.7 and 809A.8 may make application for its return in the office of the clerk of court for the county in which the property was seized. The application shall be filed within thirty days after receipt of the notice of seizure, and failure to file the application within this time period shall terminate the interest of the person.

2. The application for the return of forfeitable property shall state the specific item or items sought, the nature of the claimant's interest in the property, and the grounds upon which the claimant seeks to have the property returned. The fact that the property is inadmissible as evidence or that it may be suppressed is not grounds for its return.

3. The claimant shall cause a copy of the application to be served upon all persons listed in the notice of seizure, the county attorney, and the attorney general.

85 Acts, ch 201, §12 SF 455
NEW section

809A.10 Forfeiture.

1. If an application for the return of forfeitable property is not timely made pursuant to section 809A.9, upon application of the county attorney or the attorney general the clerk shall enter an order forfeiting the property to the state.

2. If an application for the return of forfeitable property is timely made pursuant to section 809A.9, the claim shall be set for hearing and the hearing shall be held not less than five or more than thirty days after the filing of the claim and shall be tried to the court. If the total value of the property sought to be returned meets the appropriate jurisdictional limit, the proceeding may be conducted by a magistrate

or a district associate judge with appeal to be as in a case of small claims. In all other cases, the hearing shall be conducted by a district judge, with appeal as provided in section 809A.12.

85 Acts, ch 201, §13 SF 455
NEW section

809A.11 Procedures at hearing.

1. At the hearing, the burden is upon the state to prove by clear and convincing evidence that the property is forfeitable. However, forfeiture is not dependent upon a prosecution for, or conviction of, a criminal offense and forfeiture proceedings are separate and distinct from any related criminal action.

2. Court appointed counsel, at the state's expense, is not available in forfeiture proceedings. The attorney general shall represent the state in all forfeiture proceedings but may, at the attorney general's discretion, direct that the county attorney of the county in which the seizure of the property occurred shall serve in place of the attorney general.

3. The costs for a forfeiture action shall be as in the case of criminal actions filed by the county attorney, however, no costs for filing or service shall be assessed in a proceeding where no claim for return has been made.

4. The court may assess costs against a losing party or apportion costs against the parties.

5. Property which has been seized for forfeiture, and is not already secured as evidence in a criminal case, shall be safely secured or stored by the agency which caused its seizure unless directed otherwise by the attorney general.

85 Acts, ch 201, §14 SF 455
NEW section

809A.12 Appeals.

1. An appeal from a judgment of seizure or forfeiture by a district judge shall be made within thirty days after the entry of a judgment order. The appellant, other than the state, shall post a bond of a reasonable amount as the court may fix and approve, conditioned to pay all costs of the proceedings if the appellant is unsuccessful on appeal. The appellant, other than the state, may be required to post a supersedeas bond or other security the court finds to be reasonable in order to stay the operation of a forfeiture order.

2. If property forfeitable under this chapter is needed as evidence in a criminal proceeding, it shall be retained under the control of the prosecuting county attorney, or the county attorney's designee, until such time as its use as evidence is no longer required.

85 Acts, ch 201, §15 SF 455
NEW section

809A.13 Disposition of forfeited property.

1. Upon a final determination by a court that property is forfeited, the court shall enter an order that the ownership of the property be transferred to the state. The court shall also order that the person having control over the property deliver the property to the department of justice, or if no person has control over the property, the court shall authorize the department of justice to take measures necessary to provide for the delivery of the property to the department.

2. Forfeited property delivered to the department of justice may be used in the enforcement of the law. The department may give, sell, or trade property which is not subject to subsection 4 to other state agencies or to any other law enforcement agency within the state if, in the opinion of the attorney general, it will enhance law enforcement within the state.

3. Forfeited property which is not used by the department of justice in the enforcement of the law and which is not property subject to subsection 4, may be requisitioned by the department of public safety for use by a state or local law

enforcement agency or by the director of the department of general services to be disposed of in the same manner as property received pursuant to section 18.15.

4. Notwithstanding subsection 1, 2, or 3, forfeited property which is:

a. A controlled substance or a simulated, counterfeit, or imitation controlled substance shall be disposed of as provided in section 204.506.

b. A weapon or ammunition shall be deposited with the department of public safety to be disposed of in accordance with the rules of the department. All weapons or ammunition may be held for use in law enforcement, testing, or comparison by the criminalistics laboratory, or destroyed.

c. Material in violation of chapter 728 shall be destroyed.

85 Acts, ch 201, §16 SF 455
NEW section

809A.14 Nonforfeitable interests— purchase of forfeited interests.

1. Property shall not be forfeited under this chapter to the extent of the interest of an owner, other than a joint tenant, who had no part in the commission of the crime and who had no knowledge of the criminal use or intended use of the property. However, if it is established that the owner permitted the use of the property under circumstances in which a reasonable person should have inquired into the intended use of the property and that the owner failed to do so, there is a rebuttable presumption that the owner knew that the property was intended to be used in the commission of a crime.

2. Upon receipt of forfeited property the attorney general shall permit any owner or lienholder of record having a nonforfeitable property interest in the property the opportunity to purchase the property interest forfeited. If the owner or lienholder does not exercise the option under this subsection within thirty days the option shall be terminated, unless the time for exercising the option is extended by the attorney general.

3. A person having a valid, recorded lien or property interest in forfeited property, which has not been repurchased pursuant to subsection 2, shall either be reimbursed to the extent of the nonforfeitable interest or to the extent that the sale of the item produces sufficient revenue to do so, whichever amount is less. The sale of forfeited property should be conducted in a manner which is commercially reasonable and calculated to provide a sufficient return to cover the costs of the sale and reimburse any nonforfeitable interest. The validity of a lien or property interest is determined as of the date upon which the property becomes forfeitable.

4. This section does not preclude a civil suit by an owner of an interest in forfeited property against that party who, by criminal use, caused the property to become forfeited to the state.

85 Acts, ch 201, §17 SF 455
NEW section

809A.15 Combining proceedings.

In cases involving seizable property and forfeitable property, the court may order that the proceedings be combined for purposes of this chapter.

85 Acts, ch 201, §18 SF 455
NEW section

809A.16 Rulemaking.

The attorney general may adopt, amend, or repeal rules pursuant to chapter 17A to carry out the provisions of this chapter.

85 Acts, ch 201, §19 SF 455
NEW section

809A.17 Cumulative effect.

The provisions of this chapter are intended to be cumulative and in addition to other actions or proceedings against seizable or forfeitable property otherwise provided by statute.

85 Acts, ch 201, §20 SF 455
NEW section

CHAPTER 811

PRETRIAL RELEASE—BAIL

811.2 Conditions of release—penalty for failure to appear.

1. *Conditions for release of defendant.* All bailable defendants shall be ordered released from custody pending judgment or entry of deferred judgment on their personal recognizance, or upon the execution of an unsecured appearance bond in an amount specified by the magistrate unless the magistrate determines in the exercise of the magistrate's discretion, that such a release will not reasonably assure the appearance of the defendant as required or that release will jeopardize the personal safety of another person or persons. When such determination is made, the magistrate shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or deferral of judgment and the safety of other persons, or, if no single condition gives that assurance, any combination of the following conditions:

a. Place the defendant in the custody of a designated person or organization agreeing to supervise the defendant.

b. Place restrictions on the travel, association or place of abode of the defendant during the period of release.

c. Require the execution of an appearance bond in a specified amount and the deposit with the clerk of court or a public officer designated under section 602.1211, subsection 4, in cash or other qualified security of a sum not to exceed ten percent of the amount of the bond, the deposit to be returned to the defendant upon the performance of the appearances as required in section 811.6.

d. Require the execution of a bail bond with sufficient surety, or the deposit of cash in lieu of bond. However, except as provided in section 811.1, bail initially given remains valid until final disposition of the offense or entry of an order deferring judgment. If the amount of bail is deemed insufficient by the court before whom the offense is pending, the court may order an increase of bail and the defendant must provide the additional undertaking, written or in cash, to secure release.

e. Impose any other condition deemed reasonably necessary to assure appearance as required, or the safety of another person or persons including a condition requiring that the defendant return to custody after specified hours.

2. *Determination of conditions.* In determining which conditions of release will reasonably assure the defendant's appearance and the safety of another person or persons, the magistrate shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of the defendant's residence in the community, the defendant's record of convictions, and the defendant's record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

3. *Release at initial appearance.* This chapter does not preclude the release of an arrested person as authorized by section 804.21.

4. *Statement to all defendants.* When a defendant appears before a magistrate pursuant to R.Cr.P. 2 or 3, the defendant shall be informed of the defendant's right to have said conditions of release reviewed. If the defendant indicates that the defendant desires such a review and is indigent and unable to retain legal counsel, the magistrate shall appoint an attorney to represent the defendant for the purpose of such review. Unless the conditions of release are amended and the defendant is thereupon released, the magistrate shall set forth in writing the reasons for requiring conditions imposed. A defendant who is ordered released by a magistrate other than a district court judge or district associate judge on a condition which required that the defendant return to custody after specified hours, shall, upon application, be

entitled to review by the magistrate who imposed the condition in the same manner as a defendant who remains in full-time custody. In the event that the magistrate who imposed conditions of release is not available, any other magistrate in the judicial district may review such conditions.

5. *Statement of conditions when defendant is released.* A magistrate authorizing the release of a defendant under this section shall issue a written order containing a statement of the conditions imposed if any, shall inform the defendant of the penalties applicable to violation of the conditions of release and shall advise the defendant that a warrant for the defendant's arrest will be issued immediately upon such violation.

6. *Amendment of release conditions.* A magistrate ordering the release of the defendant on any conditions specified in this section may at any time amend the order to impose additional or different conditions of release, provided that, if the imposition of different or additional conditions results in the detention of the defendant as a result of the defendant's inability to meet such conditions, the provisions of subsection 3 of this section shall apply.

7. *Appeal from conditions of release.*

a. A defendant who is detained, or whose release on a condition requiring the defendant to return to custody after specified hours is continued, after review of the defendant's application pursuant to subsection 3 or 5 of this section, by a magistrate, other than a district judge or district associate judge having original jurisdiction of the offense with which the defendant is charged, may make application to a district judge or district associate judge having jurisdiction to amend the order. Said motion shall be promptly set for hearing and a record made thereof.

b. In any case in which a court denied a motion under paragraph "a" of this subsection to amend an order imposing conditions of release, or a defendant is detained after conditions of release have been imposed or amended upon such a motion, an appeal may be taken from the district court. The appeal shall be determined summarily, without briefs, on the record made. However, the defendant may elect to file briefs and may be heard in oral argument, in which case the prosecution shall have a right to respond as in an ordinary appeal from a criminal conviction. The appellate court may, on its own motion, order the parties to submit briefs and set the time in which such briefs shall be filed. Any order so appealed shall be affirmed if it is supported by the proceeding below. If the order is not so supported, the court may remand the case for a further hearing or may, with or without additional evidence, order the defendant released pursuant to subsection 1 of this section.

8. *Failure to appear—penalty.* Any person who, having been released pursuant to this section, willfully fails to appear before any court or magistrate as required shall, in addition to the forfeiture of any security given or pledged for the person's release, if the person was released in connection with a charge which constitutes a felony, or while awaiting sentence or pending appeal after conviction of any public offense, be guilty of a class "D" felony. If the defendant was released before conviction or acquittal in connection with a charge which constitutes any public offense not a felony, the defendant shall be guilty of a serious misdemeanor. If the person was released for appearance as a material witness, the person shall be guilty of a simple misdemeanor. In addition, nothing herein shall limit the power of the court to punish for contempt.

CHAPTER 812

CONFINEMENT OF MENTALLY ILL OR DANGEROUS PERSONS

812.5 Effect of restoration of mental capacity.

If the accused is committed to the department of human services, after the expiration of a period not to exceed six months, the court shall upon hearing review the confinement and determine whether there is a substantial probability the accused will regain capacity within a reasonable time. If not, the state shall be directed to institute civil commitment proceedings. When it thereafter appears that the accused can effectively assist in the accused's defense, the department shall give notice to the sheriff and county attorney of the proper county of such fact, and the sheriff, without delay, shall receive and hold the accused in custody until the accused is brought to trial or judgment, as the case may be, or is legally discharged, the expense for conveying and returning the accused, or any other, to be paid in the first instance by the county from which the accused is sent, but such county may recover the same from another county or municipal body required to provide for or maintain the accused elsewhere, and the sheriff shall be allowed for the sheriff's services the same fees as are allowed for conveying persons to institutions under section 331.655.

85 Acts, ch 21, §47 HF 186
Section amended

CHAPTER 814

APPEALS FROM THE DISTRICT COURT

814.4 Perfection of an appeal and application for discretionary review. Repealed by 85 Acts, ch 157, §9. HF 550

814.7 Duty of clerk when appeal is perfected or application made. Repealed by 85 Acts, ch 157, §9. HF 550

814.15 Appeals and applications—docketing—when determined.

Appeals and applications for discretionary review in criminal cases shall be docketed in the supreme court as provided in the rules of appellate procedure. Such causes shall take precedence over other business, and the appellate court shall consider and determine appeals and applications for discretionary review in criminal actions at the earliest time it may be done considering the rights of parties and proper administration of justice.

85 Acts, ch 157, §4 HF 550
Section amended

814.16 Failure of clerk to transmit papers as required. Repealed by 85 Acts, ch 157, §9. HF 550

814.18 Closing argument. Repealed by 85 Acts, ch 157, §9. HF 550

814.20 Decisions on appeals or applications by defendant.

An appeal or application taken by the defendant shall not be dismissed for an informality or defect in taking it if corrected as directed by the appellate court. The appellate court, after an examination of the entire record, may dispose of the case by affirmation, reversal or modification of the district court judgment. The appellate court may also order a new trial, or reduce the punishment, but shall not increase it.

85 Acts, ch 157, §5 HF 550
Section amended

814.21 Costs.

Costs shall be taxed as provided by the rules of appellate procedure.

85 Acts, ch 157, §6 HF 550
Section amended

814.24 Decision recorded and procedendo.

The decision of the appellate court with any opinion filed or judgment rendered must be recorded by its clerk. Procedendo shall be issued as provided in the rules of appellate procedure.

85 Acts, ch 157, §7 HF 550
Section amended

814.25 Cessation of jurisdiction of appellate court.

The jurisdiction of the appellate court shall cease when procedendo is issued. All proceedings for executing the judgment shall be had in the district court or by its clerk.

85 Acts, ch 157, §8 HF 550
Section amended

CHAPTER 815

COSTS—COMPENSATION AND FEES—INDIGENT DEFENSE

815.8 Sheriffs' fees.

For delivering defendants under the change of venue provisions of R.Cr.P. 10 or transferring arrested persons under section 804.24, sheriffs are entitled to the same fees as are allowed for the conveyance of persons to institutions under section 331.655.

85 Acts, ch 21, §48 HF 186
Section amended

815.11 Appropriations for indigent defense.

Costs incurred under sections 814.9, 814.10, 814.11, 815.4, 815.5, 815.6, 815.7, 815.10, or the rules of criminal procedure on behalf of an indigent shall be paid from funds appropriated by the general assembly to the supreme court for those purposes.

85 Acts, ch 195, §65 SF 329
Effective July 1, 1987; see article 11, ch 602 and Temporary Court Transition Rule 7.11
Section amended

815.13 Payment of prosecution costs.

The county or city which has the duty to prosecute a criminal action shall pay the costs of depositions taken on behalf of the prosecution, the costs of transcripts requested by the prosecution, and in criminal actions prosecuted by the county or city under county or city ordinance the fees that are payable to the clerk of the district court for services rendered and the court costs taxed in connection with the trial of the action or appeals from the judgment. The county or city shall pay witness fees and mileage in trials of criminal actions prosecuted by the county or city under county or city ordinance. These fees and costs are recoverable by the county or city from the defendant unless the defendant is found not guilty or the action is dismissed, in which case the state shall pay the witness fees and mileage in cases prosecuted under state law.

85 Acts, ch 197, §43 SF 570
Section amended

CHAPTER 901

JUDGMENT AND SENTENCING PROCEDURES

901.7 Commitment to custody.

In imposing a sentence of confinement for more than one year, the court shall commit the defendant to the custody of the director of the Iowa department of corrections. Upon entry of judgment and sentence, the clerk of the district court immediately shall notify the director of the commitment. The court shall make an order as appropriate for the temporary custody of the defendant pending the defendant's transfer to the custody of the director. The court shall order the county where a person was convicted to pay the cost of temporarily confining the person and of transporting the person to the state institution where the person is to be confined in execution of the judgment. The order shall require that a person transported to a state institution pursuant to this section shall be accompanied by a person of the same sex.

85 Acts, ch 21, §49 HF 186
Section amended

901.10 Imposition of mandatory minimum sentences.

A court sentencing a person for the person's first conviction under section 204.406, 204.413, or 902.7 may, at its discretion, sentence the person to a term less than provided by the statute if mitigating circumstances exist and those circumstances are stated specifically in the record. However, the state may appeal the discretionary decision on the grounds that the stated mitigating circumstances do not warrant a reduction of the sentence.

85 Acts, ch 41, §1 SF 213
NEW section

CHAPTER 904

BOARD OF PAROLE

904.6 Reports to the department of corrections.

The board of parole shall make detailed reports to the board of corrections as requested by the board of corrections or the director of the department of corrections.

85 Acts, ch 21, §50 HF 186
NEW section

CHAPTER 905

COMMUNITY-BASED CORRECTIONAL PROGRAM

905.7 Assistance by state department.

The Iowa department of corrections shall provide assistance and support to the respective judicial districts to aid them in complying with this chapter, and shall promulgate rules pursuant to chapter 17A establishing guidelines in accordance with and in furtherance of the purposes of this chapter. The guidelines shall include, but need not be limited to, requirements that each district department:

1. Provide pretrial release, presentence investigations, probation services, parole services, work release services, and residential treatment centers throughout the district, as necessary.

2. Locate community-based correctional program services in or near municipalities providing a substantial number of treatment and service resources.
3. Follow practices and procedures which maximize the availability of federal funding for the district department's community-based correctional program.
4. Provide for gathering and evaluating performance data relative to the district department's community-based correctional program and make other detailed reports to the Iowa department of corrections as requested by the board of corrections or the director of the department of corrections.
5. Maintain personnel and fiscal records on a uniform basis.
6. Provide a program to assist the court in placing defendants who as a condition of probation are sentenced to perform unpaid community service.
7. Provide for community participation in the planning and programming of the district department's community-based correctional program.

85 Acts, ch 21, §51 HF 186
Subsection 4 amended

CHAPTER 906

PAROLES

906.5 Record reviewed—eligibility of prior forcible felon for parole—rules.

Within one year after the commitment of a person other than a class "A" felon to the custody of the director of the Iowa department of corrections, a member of the board shall interview the person. Thereafter, at regular intervals, not to exceed one year, the board shall interview the person and consider the person's prospects for parole. At the time of an interview, the board shall consider all pertinent information regarding this person, including the circumstances of the person's offense, any presentence report which is available, the previous social history and criminal record of the person, the person's conduct, work, and attitude in prison, and the reports of physical and mental examinations that have been made.

If the person who is under consideration for parole is serving a sentence for conviction of a felony and has a criminal record of one or more prior convictions for a forcible felony or a crime of a similar gravity in this or any other state, parole shall be denied unless the person has served at least one-half of the maximum term of the defendant's sentence. However, the mandatory sentence provided for by this section shall not apply if the sentence being served is for a felony other than a forcible felony and the sentences for the prior forcible felonies expired at least five years before the date of conviction for the present felony.

A person while on parole is under the supervision of the district department of correctional services of the district designated by the board of parole. The department of corrections shall prescribe regulations for governing persons on parole. The board may adopt other rules not inconsistent with the rules of the department of corrections as it deems proper or necessary for the performance of its functions.

85 Acts, ch 21, §52 HF 186

See 85 Acts, ch 262, § 1, for special provisions relating to paroles and reductions of sentences necessitated by emergency conditions caused by prison overcrowding

Unnumbered paragraph 1 amended

CHAPTER 907

DEFERRED JUDGMENT, DEFERRED SENTENCE, SUSPENDED SENTENCE AND PROBATION

907.4 Deferred judgment docket.

Any deferment of judgment under section 907.3 shall be reported promptly by the clerk of the district court to the supreme court administrator who shall maintain a permanent record of the deferment including the name and date of birth of the defendant, the district court docket number, the nature of the offense, and the date of the deferment. Before granting deferment in any case, the court shall request of the supreme court administrator a search of the deferred judgment docket and shall consider any prior record of a deferment of judgment against the defendant. The permanent record provided for in this section is a confidential record exempted from public access under section 22.7 and shall be available only to justices of the supreme court, judges of the court of appeals, district judges, district associate judges, and judicial magistrates, and county attorneys requesting information pursuant to this section or the designee of a justice, judge, magistrate, or county attorney.

85 Acts, ch 197, §44 SF 570
Section amended

CHAPTER 907A

INTERSTATE PROBATION AND PAROLE COMPACT

Transferred in Code Supplement 1985 from §247.40 in Code 1985;
85 Acts, ch 21, §54 HF 186

907A.1 Interstate probation and parole compact.

Since the state of Iowa has been a signatory to the interstate probation and parole compact since 1937 by action of the governor pursuant to section 247.10,* the general assembly deems it advisable to enter the full text of the compact into the Code for easy accessibility by the general public.

The interstate probation and parole compact is hereby placed in the Code as entered into by this state with other states legally joining therein in the form substantially as follows:

THE INTERSTATE PROBATION AND PAROLE COMPACT

Entered into by and among the contracting states, signatories hereto, with the consent of the Congress of the United States of America, granted by an Act entitled "An Act granting the consent of Congress to any two or more states to enter into agreements or compacts for co-operative effort and mutual assistance in the prevention of crime and for other purposes."

The contracting states solemnly agree:

1. That it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact, to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact, while on probation or parole, if:

a. Such person is in fact a resident of or has a family residing within the receiving state and can obtain employment there.

b. Though not a resident of the receiving state and not having a family residing there, the receiving state consents to such person being sent there. Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to coming to the sending state and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which the person has been convicted.

2. That each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

3. That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state. Provided, however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against the probationer or parolee within the receiving state any criminal charge, or the probationer or parolee should be suspected of having committed within such state a criminal offense, the probationer or parolee shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

4. That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact, without interference.

5. That the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

6. That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

7. That this compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other state party hereto.

*Repealed by 66GA, ch 1245(4), § 525

Transferred in Code Supplement 1985 from §247.40 in Code 1985

907A.2 Information for transfer.

Prior to this state accepting a transfer request pursuant to section 907A.1, the person designated pursuant to section 907A.1, subsection 5, or that person's designee, shall first determine that sufficient information has been provided to permit the effective establishment of a case plan for the client. For purposes of this section, sufficient information may include, but is not limited to, a copy of the client's:

1. Presentence investigation.
2. Drug and alcohol evaluations.
3. Psychiatric and psychological evaluations.
4. Prior criminal history.

If such information exists, but has not been provided, the person designated pursuant to section 907A.1, or that person's designee, may either refuse to accept

the transfer request until the information has been provided or delay the acceptance until this state has obtained the information.

85 Acts, ch 63, §1 HF 584
NEW section

CHAPTER 909

FINES

909.5 Nonpayment of fines and court costs—contempt.

A person who is able to pay a fine, court-imposed court costs for a criminal proceeding, or both, or an installment of the fine or the court-imposed court costs, or both, and who refuses to do so, or who fails to make a good faith effort to pay the fine, court costs, or both, or any installment thereof, shall be held in contempt of court.

85 Acts, ch 52, §1 HF 419
Section amended

909.7 Ability to pay fine presumed.

A defendant is presumed to be able to pay a fine. However, if the defendant proves to the satisfaction of the court that the defendant cannot pay the fine, the defendant shall not be sentenced to confinement for the failure to pay the fine.

85 Acts, ch 197, §45 SF 570
NEW section

CHAPTER 910

VICTIM RESTITUTION

910.2 Restitution or community service to be ordered by sentencing court.

In all criminal cases except simple misdemeanors under chapter 321, in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to the victims of the offender's criminal activities and, if the court so orders and to the extent that the offender is reasonably able to do so, for court costs, court-appointed attorney's fees or the expense of a public defender when applicable. However, victims shall be paid in full before restitution is paid for court costs, court-appointed attorney's fees or for the expense of a public defender. When the offender is not reasonably able to pay all or a part of the court costs, court-appointed attorney's fees or the expense of a public defender, the court may require the offender in lieu of that portion of the court costs, court-appointed attorney's fees, or expense of a public defender for which the offender is not reasonably able to pay, to perform a needed public service for a governmental agency or for a private, nonprofit agency which provides a service to the youth, elderly or poor of the community. When community service is ordered, the court shall set a specific number of hours of service to be performed by the offender. The judicial district department of correctional services shall provide for the assignment of the offender to a public agency or private nonprofit agency to perform the required service.

85 Acts, ch 195, §66 SF 329
Section amended

CHAPTER 910A

VICTIM AND WITNESS PROTECTION ACT

910A.1 Title.

This chapter shall be known and may be cited as the "Victim and Witness Protection Act."

85 Acts, ch 174, §4 HF 462
NEW section

910A.2 Protection of child victim's privacy.

1. Prior to an arrest or the filing of an information or indictment, whichever occurs first, against a person charged with a violation of chapter 709, section 726.2, or section 728.12, committed with or on a child, as defined in section 702.5, the identity of the child or any information reasonably likely to disclose the identity of the child shall not be released to the public by any public employee except as authorized by the court of jurisdiction.

2. In order to protect the welfare of the child, the name of the child and identifying biographical information shall not appear on the information or indictment or any other public record. Instead, a nondescriptive designation shall appear on all public records. The nonpublic records containing the child's name and identifying biographical information shall be kept by the court. This subsection does not apply to the release of information to an accused or accused's counsel; however, the use or release of this information by the accused or accused's counsel for purposes other than the preparation of defense constitutes contempt.

3. A person who willfully violates this section or who willfully neglects or refuses to obey a court order made pursuant to this section commits contempt.

4. A release of information in violation of this section does not bar prosecution or provide grounds for dismissal of charges.

85 Acts, ch 174, §5 HF 462
NEW section

910A.3 Recorded evidence.

1. A court may, upon its own motion or upon motion of any party, order that the testimony of a child, as defined in section 702.5, be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court. Only the judge, parties, counsel, persons necessary to operate the equipment, and any person whose presence, in the opinion of the court, would contribute to the welfare and well-being of the child may be present in the room with the child during the child's testimony.

The court may require a party be confined to an adjacent room or behind a screen or mirror that permits the party to see and hear the child during the child's testimony, but does not allow the child to see or hear the party. However, if a party is so confined, the court shall take measures to insure that the party and counsel can confer during the testimony and shall inform the child that the party can see and hear the child during testimony.

2. The court may upon motion of a party order that the testimony of a child, as defined in section 702.5, be taken by recorded deposition for use at trial, pursuant to rule of criminal procedure 12(2)(b).

3. The court may upon motion of a party admit into evidence the recorded statements of a child, as defined in section 702.5, describing sexual contact performed with or on the child, not otherwise admissible in evidence by statute or court rule if the court determines that the recorded statements substantially comport with the requirements for admission under Iowa rules of evidence 803(24) or 804(5).

85 Acts, ch 174, §6 HF 462
NEW section

910A.4 Guardian ad litem for prosecuting witnesses.

A prosecuting witness who is a child, as defined in section 702.5, in a case involving a violation of chapter 709 or section 726.2, 726.3, 726.6, or 728.12, is entitled to have the witness' interests represented by a guardian ad litem at all stages of the proceedings arising from such violation. The guardian ad litem may but need not be a practicing attorney and shall be designated by the court after due consideration is given to the desires and needs of the child and the compatibility of the child and the child's interests with the prospective guardian ad litem. However, a person who is also a prosecuting witness in the same proceeding shall not be designated guardian ad litem. The guardian ad litem shall receive notice of and may attend all depositions, hearings and trial proceedings to support the child and advocate for the protection of the child but shall not be allowed to separately introduce evidence or to directly examine or cross-examine witnesses.

85 Acts, ch 174, §7 HF 462
NEW section

910A.5 Child victim services.

1. "*Victim*" means a child under the age of eighteen who has been sexually abused or subjected to any other unlawful sexual conduct under chapter 709 or 726 or who has been the subject of a forcible felony.

2. A professional licensed or certified by the state to provide immediate or short-term medical services or mental health services to a victim may provide the services without the prior consent or knowledge of the victim's parents or guardians. Such a professional shall not deny initial services to a victim due to the fact that the victim is personally unable to pay for the services at the time the services are provided.

3. Such a professional shall notify the victim if the professional is required to report an incidence of child abuse involving the victim pursuant to section 232.69.

85 Acts, ch 174, §8 HF 462
NEW section

CHAPTER 912

CRIME VICTIM REPARATION PROGRAM

912.4 Application for reparation.

1. To claim a reparation under the crime victim reparation program, a person shall apply in writing on a form prescribed by the commissioner and file the application with the commissioner within one hundred eighty days after the date of the crime, or of the discovery of the crime, or within one hundred twenty days after the date of death of the victim.

2. A person is not eligible for reparation unless the crime was reported to the local police department or county sheriff department within twenty-four hours of its occurrence. However, if the crime cannot reasonably be reported within that time period, the crime shall have been reported within twenty-four hours of the time a report can reasonably be made.

3. Notwithstanding subsection 2, a victim under the age of eighteen who has been sexually abused or subjected to any other unlawful sexual conduct under chapter 709 or 726 or who has been the subject of a forcible felony is not required to report the crime to the local police department or county sheriff department to be eligible for reparation if the crime was allegedly committed upon a child by a person responsible for the care of a child, as defined in section 232.68, subsection 6, and was reported to an employee of the department of human services and the employee verifies the report to the commissioner.

4. When immediate or short-term medical services or mental health services are

provided to a victim under section 910A.5, the department of human services shall file the claim for reparation as provided in subsection 3 for the victim and the provisions of section 912.7, subsection 2, paragraphs "b" and "c" do not apply.

5. When immediate or short-term medical services to a victim are provided pursuant to section 910A.5 by a professional licensed or certified by the state to provide such services, the professional shall file the claim for reparation, unless the department of human services is required to file the claim under this section, and the provisions of section 912.7, subsection 2, paragraphs "b" and "c" do not apply. The requirement to report the crime to the local police department or county sheriff department under subsection 2 does not apply to this subsection.

85 Acts, ch 174, §9, 10 HF 462
 Subsection 1 amended
 NEW subsections 3, 4 and 5

912.6 Computation of reparation.

The commissioner shall make reparation, as appropriate, for any of the following economic losses incurred as a direct result of an injury to or death of the victim:

1. Reasonable charges incurred for medical care not to exceed ten thousand dollars.
2. Reasonable charges incurred for counseling provided to victims of domestic abuse, as defined in section 236.2, to victims of sexual assault, or to victims under eighteen years of age by a psychologist licensed under chapter 154B or by an individual holding at least a master's degree in social work or counseling and guidance, not to exceed five hundred dollars.
3. Reasonable charges incurred for victim counseling provided by a victim counselor as defined in section 236A.1, not to exceed five hundred dollars.
4. Loss of income from work the victim would have performed and for which the victim would have received compensation if the victim had not been injured not to exceed two thousand dollars.
5. Reasonable replacement value of clothing that is held for evidentiary purposes not to exceed one hundred dollars.
6. Reasonable funeral and burial expenses not to exceed two thousand five hundred dollars.
7. Loss of support for dependents resulting from death or a period of disability of the victim of sixty days or more not to exceed two thousand dollars per dependent or a total of six thousand dollars.

85 Acts, ch 172, §1 HF 413
 Applicability of subsections 2 and 3 to reports received and claims filed on or after July 1, 1985; see 85 Acts, ch 172, §3
 NEW subsections 2 and 3 and subsequent subsections renumbered

912.7 Reductions and disqualifications.

Reparations are subject to reduction and disqualification as follows:

1. A reparation shall be reduced by the amount of any payment received, or to be received, as a result of the injury or death:
 - a. From or on behalf of, the person who committed the crime.
 - b. From an insurance payment or program, including but not limited to workers' compensation or unemployment compensation.
 - c. From public funds.
 - d. As an emergency award under section 912.11.
2. A reparation shall not be made when the bodily injury or death for which a benefit is sought was caused by any of the following:
 - a. Consent, provocation, or incitement by the victim.
 - b. An act committed by a person living in the same household with the victim, unless a criminal conviction for the act is obtained.
 - c. An act committed by a person who is, at the time of the criminal act, the spouse, child, stepchild, parent, stepparent, brother, stepbrother, sister, or stepsister of the victim, or the parent or stepparent of the victim's spouse, or a brother, stepbrother,

sister, or stepsister of the victim's spouse, unless a criminal conviction for the act is obtained.

d. The victim assisting, attempting, or committing a criminal act.

3. Notwithstanding subsection 2, paragraph "b" or "c", reparation for medical care under section 912.6, subsection 1 or for counseling under section 912.6, subsection 1, 2, or 3 shall be made if the bodily injury or death for which reparation is sought was caused by an act of domestic abuse, as defined in section 236.2, committed by a spouse of the victim or by a person living in the same household with the victim, if the victim seeks and receives victim counseling which qualifies for reparation under section 912.6, subsection 1, 2, or 3, and one of the following applies:

a. The act is the first act of domestic abuse involving the alleged perpetrator reported by the victim.

b. The act is the second act of domestic abuse involving the same alleged perpetrator reported by the victim, and a criminal complaint or trial information is filed or a grand jury returns an indictment against the alleged perpetrator.

4. A person is disqualified from receiving a reparation if the victim has not cooperated with an appropriate law enforcement agency in the investigation or prosecution of the crime relating to the claim, or has not cooperated with the department in the administration of the crime victim reparation program.

85 Acts, ch 172, §2 HF 413

Applicability of subsection 3 to reports received and claims filed on or after July 1, 1985; see 85 Acts, ch 172, §3

NEW subsection 3 and subsequent subsection renumbered

912.13 Rulemaking.

The department shall adopt rules pursuant to chapter 17A to implement the procedures for reparation payments with respect to section 910A.5 and section 912.4, subsections 3, 4, and 5.

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CODE EDITOR'S NOTES

Code Section

- 28.89** The amendment by 1985 Acts, chapter 195, section 67, creates no conflict because it repeals two of the sections in the 1984 Acts which amended section 28.89 and created an apparent, although not substantive, conflict.
- 85.59** It appears that the amendments do not conflict, so they were harmonized as authorized in section 4.11, Code 1985.
- 97B.7(2b)** Although 1985 Acts, chapter 190, section 1, strikes and rewrites paragraph b of subsection 2, which is also amended by 1985 Acts, chapter 227, section 7, it seems possible to harmonize the two amendments so that effect can be given to both, and this has been done in accordance with section 4.11, Code 1985.
- 123.53(8)** It appears that only new subsection 8 is to be repealed June 30, 1987, so the word "section" in the last sentence was editorially changed to "subsection".
- 123.59** See note to section 85.59.
- 144.13A** The phrase "or paid for under the statewide indigent patient care program established by chapter 249A" appears to have been left in the section by clerical error, so it was editorially deleted under the authority in section 14.13, Code 1985.
- 220.1(28)** See note to section 85.59.
- 246.702** See note to section 85.59.
- 258.7** It appears that the amendments cannot be harmonized. 1985 Acts, chapter 195, section 29, and chapter 99, section 7, amend subsections of section 258.7 as it existed before it was struck and rewritten by 1985 Acts, chapter 212, section 5. Although chapter 195 was enacted later, chapter 212, section 5, has been codified, under the principle that if amendments are irreconcilable, an amendment to a part which has been struck or repealed is void.
- 279.19A** Although 1985 Acts, chapter 74, section 1 purports to amend subsection 2 of section 279.19A, it does not include or amend the last sentence of that subsection which is a separate paragraph, so that has been retained as it appears in Code 1985.
- 317.3** 1985 Acts, chapter 160, section 1, omits but does not show as stricken the words which appeared in Code 1985, "appoint a deputy or the number of deputies necessary to carry out the purposes of this chapter". It appears that the intent was to strike these words and, in accordance with the principle that the words in the enrolled bill are controlling, the words have been omitted.

CODE EDITOR'S NOTES

Code Section

322D.7 and 322D.8

Chapter 322D, Code 1985, as enacted by 1984 Acts, chapter 1087, related solely to farm implement franchise agreements. The applicability dates were stated in section 322D.2, subsection 4. 1985 Acts, chapter 26 (enacted March 29 and effective April 12, 1985) strikes section 322D.2(4) and enacts new section 322D.7, which contains revised applicability provisions. Since motorcycle provisions had not yet been enacted, it appears that new section 322D.7 was meant to apply only to farm implement franchises, as its title indicates.

1985 Acts, chapter 47 (enacted April 25 and effective July 1, 1985) expands chapter 322D to include motorcycle franchise agreements throughout. Different applicability dates are established for the motorcycle agreements. This was done by striking section 322D.2(4), transferring its provisions on farm implement agreements to a temporary section (section 10) and adding parallel language for motorcycle agreements. It appears that the intent in chapter 47 was not to effect substantive changes in the farm implement provisions appearing in Code 1985, but only to transfer the applicability provisions to a temporary section, and the title of chapter 47, which does not mention farm implement franchises, supports this conclusion. Chapter 26 makes a specific substantive change as to farm implement franchise agreements and apparently does not contemplate inclusion of motorcycle franchises in chapter 322D. Chapter 47 makes a specific substantive change as to motorcycle franchise agreements and apparently does not contemplate changes in the substance of the applicability provisions affecting farm implement franchises. Therefore, under sections 4.4, 4.7, and 4.11 of Code 1985, the sections have been harmonized. Section 322D.7 (chapter 26, section 2) appears to prevail over the first sentence of chapter 47, section 10, as to farm implement franchise agreements. It has been printed with a headnote and footnote indicating its applicability. The second sentence of chapter 47, section 10, appears to prevail over chapter 26, section 2, as to those provisions of chapter 322D which relate to motorcycle franchise agreements. It has been codified in new section 322D.8 as the applicability provision relating to motorcycles.

331.361(5c)

The phrase at the end of the paragraph beginning "in accordance with" is not underlined in 1985 Acts, chapter 185, section 1, although it is new language. It has been printed under the principle that the words in the enrolled bill control.

422.10 and 422.33(5)

Although 1985 Acts, chapter 230, sections 5 and 7 fail to show by strikes and underlines that a reference to section 30 of the Internal Revenue Code was substituted for a reference to section 44F, the sections have been printed as they appear in the enrolled bill, under the principle that the enrolled bill controls.

422.42(3) and 422.43

See note to section 85.59.

427A.10

In 1985 Acts, chapter 32, section 105, the word "and" is omitted, but not shown as struck. It has been omitted in printing, in accordance with the principle that the enrolled bill controls.

558.44

This section has been reprinted to correct an error in Code 1985, where the words "or lease of agricultural land recorded more than one hundred" in the third sentence of the fourth paragraph were omitted, apparently due to a mistake in pagination.

CODE EDITOR'S NOTES

Code Section

- 598.14** See note to section 85.59.
- 598.23(2a)** The amendments were harmonized. In the one instance of a direct conflict in new language, the words "the direction," from the later enactment, 1985 Acts, chapter 178, section 9, have been printed.
- 602.8102(45)** Although an earlier strike will usually prevail over an amendment to the same language, in this case subsection 45 was struck and rewritten in the later enactment. It appears, therefore, that the new language in 1985 Acts, chapter 197, section 17, should be considered a substitute for the stricken subsection and it has been printed.
- 602.8105(1b)** See note to section 85.59.
- 602.9103** The amendments cannot be directly harmonized, so 1985 Acts, chapter 197, section 26, which is the later enactment, has been printed. Chapter 197 makes changes specifically related to court reorganization, whereas 1985 Acts, chapter 67 is a general, non-substantive act to make editorial corrections by deleting references to municipal and superior courts which no longer exist, and making style changes.
- 602.11102(2d)** See note to section 85.59.
- 615.4** 1985 Acts, chapter 252, section 42 (new section 615.4) contains an internal reference to new section 654.16. Both sections 46 and 47 of the chapter add sections tentatively numbered 654.16. It appears that, in this section, the reference to section 47, now renumbered 654.19, was intended.
- 628.29** 1985 Acts, chapter 252, section 44 (new section 628.29) contains internal references to new section 654.16. Both sections 46 and 47 of the chapter add sections tentatively numbered 654.16. It appears that, in this section, the reference to section 46, now renumbered 654.18, was intended.
- 631.6** See note to section 85.59.
- 654.1** 1985 Acts, chapter 252, section 45 (amending section 654.1) contains an internal reference to new section 654.16. Both sections 46 and 47 of the chapter add sections tentatively numbered 654.16. It appears that, in this section, the reference to section 46, now renumbered 654.18, was intended.
- 710.8** 1985 Acts, chapter 183, section 1, contains an internal reference to section 726.9. It appears that this was intended as a reference to section 2 of the chapter which was tentatively renumbered by amendment as section 710.9.
- 805.8(2j)** See note to section 85.59.
- 805.9(6)** See note to section 85.59.



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