

1991 IOWA CODE SUPPLEMENT

Containing

Sections of the Laws of Iowa
of a General and Permanent Nature
Enacted, Amended, Repealed or
otherwise affected by the
1991 Regular Session
of the

GENERAL ASSEMBLY OF THE
STATE OF IOWA



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PREFACE TO 1991 IOWA CODE SUPPLEMENT

This 1991 Iowa Code Supplement shows sections of the laws of Iowa enacted, amended, repealed, or otherwise affected by the 1991 regular session of the Iowa General Assembly, arranged in the numerical sequence followed by the 1991 Iowa Code. 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, 1991. See the 1991 Iowa Acts to determine specific effective dates not shown.

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 1991 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. Many of the footnotes from the 1991 Code are not included but will be corrected as necessary and appear in the 1993 Code. 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, stricken, stricken and rewritten, or renumbered.

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 required under 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 of the 1991 Code 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 1991 Acts, and a table of corresponding sections from the 1991 Code to the 1991 Code Supplement also appear at the end of this Supplement.

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

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only record of the original codification of statutes enacted in the odd-numbered year if those statutes are amended or repealed in the next even-numbered year.

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CHAPTER 2

GENERAL ASSEMBLY

2.10 Salaries and expenses — members of general assembly.

Members of the general assembly shall receive salaries and expenses as provided by this section.

1. Every member of the general assembly except the presiding officer of the senate, the speaker of the house, the majority and minority floor leader of each house, and the president pro tempore of the senate and speaker pro tempore of the house, shall receive an annual salary of eighteen thousand one hundred dollars for the year 1991 and subsequent years while serving as a member of the general assembly. In addition, each such member shall receive the sum of fifty dollars per day for expenses of office, except travel, for each day the general assembly is in session commencing with the first day of a legislative session and ending with the day of final adjournment of each legislative session as indicated by the journals of the house and senate, except that if the length of the first regular session of the general assembly exceeds one hundred ten calendar days and the second regular session exceeds one hundred calendar days, the payments shall be made only for one hundred ten calendar days for the first session and one hundred calendar days for the second session. However, members from Polk county shall receive thirty-five dollars per day. Each member shall receive a seventy-five dollar per month allowance for legislative district constituency postage, travel, telephone costs, and other expenses. Travel expenses shall be paid at the rate established by section 18.117 for actual travel in going to and returning from the seat of government by the nearest traveled route for not more than one time per week during a legislative session. However, any increase from time to time in the mileage rate established by section 18.117 shall not become effective for members of the general assembly until the convening of the next general assembly following the session in which the increase is adopted; and this provision shall prevail over any inconsistent provision of any present or future statute.

2. Reserved.

3. The speaker of the house, presiding officer of the senate, and the majority and minority floor leader of each house shall each receive an annual salary of twenty-seven thousand nine hundred dollars for the year 1991 and subsequent years while serving in that capacity. The president pro tempore of the senate and the speaker pro tempore of the house shall

receive an annual salary of nineteen thousand one hundred dollars for the year 1991 and subsequent years while serving in that capacity. Expense and travel allowances shall be the same for the speaker of the house and the presiding officer of the senate, the president pro tempore of the senate and the speaker pro tempore of the house, and the majority and minority leader of each house as provided for other members of the general assembly.

4. When a vacancy occurs and the term of any member of the general assembly is not completed, the member shall receive a salary or compensation proportional to the length of the member's service computed to the nearest whole month. A successor elected to fill such vacancy shall receive a salary or compensation proportional to the successor's length of service computed to the nearest whole month commencing with such time as the successor is officially determined to have succeeded to such office.

5. The director of revenue and finance shall pay the travel and expenses of the members of the general assembly commencing with the first pay period after the names of such persons are officially certified. The salaries of the members of the general assembly shall be paid pursuant to any of the following alternative methods:

a. During each month of the year at the same time state employees are paid.

b. During each pay period during the first six months of each calendar year.

c. During the first six months of each calendar year by allocating two-thirds of the annual salary to the pay periods during those six months and one-third of the annual salary to the pay periods during the second six months of a calendar year. Each member of the general assembly shall file with the director of revenue and finance a statement as to the method the member selects for receiving payment of salary. The presiding officers of the two houses of the general assembly shall jointly certify to the director of revenue and finance the names of the members, officers, and employees of their respective houses and the salaries and mileage to which each is entitled. Travel and expense allowances shall be paid upon the submission of vouchers to the director of revenue and finance indicating a claim for the same.

6. In addition to the salaries and expenses authorized by this section, members of the general assembly shall be paid fifty dollars per day, and necessary

travel and actual expenses incurred in attending meetings for which per diem or expenses are authorized by law for members of the general assembly who serve on statutory boards, commissions, or councils, and for standing or interim committee or subcommittee meetings subject to the provisions of section 2.14, or when on authorized legislative business when the general assembly is not in session. However, if a member of the general assembly is engaged in authorized legislative business at a location other than at the seat of government during the time the general assembly is in session, payment may be made for the actual transportation and lodging costs incurred because of the business. Such per diem or expenses shall be paid promptly from funds appropriated pursuant to section 2.12.

7. If a special session of the general assembly is convened, members of the general assembly shall receive, in addition to their annual salaries, the sum of fifty dollars per day for each day the general assembly is actually in special session, and the same travel allowances and expenses as authorized by this section. A member of the general assembly shall receive the additional per diem, travel allowances and expenses only for the days of attendance during a special session.

91 Acts, ch 258, §1 HF 709
Subsections 1 and 3 amended

2.14 Meetings of standing committees.

1. A standing committee of either house or a subcommittee when authorized by the chairperson of the standing committee, may meet when the general assembly is not in session in the manner provided in this section and upon call pursuant to the rules of the house or senate. In case of vacancy in the chair or in the chairperson's absence, the ranking member shall act as chairperson. A standing committee or subcommittee may act on bills and resolutions in the interim between the first and second regular sessions of a general assembly. The date, time and place of any meeting of a standing committee shall, by the person or persons calling the meeting, be reported to and be available to the public in the office of the director of the legislative service bureau at least five days prior to the meeting.

2. The legislative service bureau shall provide staff assistance for standing committees when authorized by the legislative council. The chairperson of the committee or subcommittee shall notify the legislative service bureau in advance of each meeting.

3. Interim studies utilizing the services of the legislative service bureau must be authorized by the general assembly or the legislative council. A standing committee may also study and draft proposed committee bills. However, unless the subject matter of a study or proposed committee bill has been assigned to a standing committee for study by the general assembly or legislative council, the services of the legislative service bureau cannot be utilized. Nonlegislative members shall not serve upon any

study committee, unless approved by the legislative council. A standing committee may hold public hearings and receive testimony upon any subject matter within its jurisdiction.

Nonlegislative members of study committees shall be paid their necessary travel and actual expenses incurred in attending committee or subcommittee meetings for the purposes of the study.

4. Standing committees and subcommittees of standing committees may meet when the general assembly is not in session under the following conditions:

a. A standing committee may meet one time at the discretion of the chairperson.

b. Additional meetings of standing committees or their subcommittees shall be authorized by the legislative council; however, such authorization may be given at any one time for as many meetings as deemed necessary by the legislative council.

c. Any study committee, other than an interim committee provided for in subsection 3 of this section, which utilizes staff of the legislative service bureau may meet at such times as authorized by the legislative council.

5. When the general assembly is not in session, a member of the general assembly shall be paid the per diem and necessary travel and actual expenses, as specified in section 2.10, subsection 6, incurred in attending meetings of a standing committee or subcommittee of which the legislator is a member in addition to regular compensation. However, the per diem and expenses shall be allowed only if the member attends a meeting of the committee or subcommittee for at least four hours.

91 Acts, ch 258, §2 HF 709
1991 amendment to subsection 5 retroactively applicable to January 1, 1991;
91 Acts, ch 258, §73 HF 709
Subsection 5 amended

2.35 Communications review committee established.

A communications review committee is established, consisting of three members of the senate appointed by the president of the senate, after consultation with the majority leader and the minority leader of the senate, and three members of the house of representatives appointed by the speaker of the house. The committee shall select a chairperson and vice chairperson. Meetings may be called by the chairperson or a majority of the members.

Members shall be appointed prior to the adjournment of the first regular session of each general assembly and shall serve for terms ending upon the convening of the following general assembly or when their successors are appointed, whichever is later. Vacancies shall be filled in the same manner as original appointments are made and shall be for the remainder of the unexpired term of the vacancy. The members of the committee shall be reimbursed for actual and necessary expenses incurred in the performance of their duties and shall be paid the per diem specified in section 2.10, subsection 6, for each

day in which engaged in the performance of their duties. However, per diem compensation and expenses shall not be paid when the general assembly is actually in session at the seat of government. Expenses and per diem shall be paid from funds appropriated pursuant to section 2.12.

Administrative assistance shall be provided by the legislative service bureau to the extent possible.

91 Acts, ch 258, §3 HF 709

1991 amendment to unnumbered paragraph 2 retroactively applicable to January 1, 1991, 91 Acts, ch 258, §73 HF 709

Unnumbered paragraph 2 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 approve the appointment of the Iowa Code editor and the administrative 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, and the Iowa Code, Code Supplement,

and session laws, including but not limited to: the style and format to be used in those publications, the frequency of publishing, the contents of the publications, the numbering system to be used in the Iowa Code, Code Supplement, 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 Iowa Code, Code Supplement, and session laws, the letting of contracts for the publication of the Iowa Code, Code Supplement, and session laws, the pricing of these publications, and any other matters deemed necessary to the publication of uniform and understandable publications.

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

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

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

91 Acts, ch 258, §4 HF 709

Subsection 11 amended

2.44 Expenses of council and special interim committees.

Members of the legislative council shall be reimbursed for actual and necessary expenses incurred in the performance of their duties, and shall be paid the per diem specified in section 2.10, subsection 6, for each day in which engaged in the performance of their duties. However, the per diem and expenses shall not be paid when the general assembly is actually in session at the seat of government. The expenses and per diem shall be paid in the manner provided in section 2.12.

Members of special interim study committees which may from time to time be created and members of the legislative fiscal committee who are not members of the legislative council shall be entitled to receive the same expenses and compensation provided for the members of the legislative council.

91 Acts, ch 258, §5 HF 709

1991 amendment to unnumbered paragraph 1 retroactively applicable to January 1, 1991, 91 Acts, ch 258, §73 HF 709

Unnumbered paragraph 1 amended

2.47A Powers and duties of legislative capital projects committee.

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

a. Receive the recommendations of the governor regarding the funding and priorities of proposed cap-

ital projects pursuant to section 8.3A, subsection 2, paragraph "b".

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

c. Receive the five-year capital project priority plan for all state agencies, pursuant to section 8.6, subsection 14.

d. Receive semiannual status reports for all ongoing capital projects of state agencies, pursuant to section 18.12, subsection 15.

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

2. The legislative capital projects committee, subject to the approval of the legislative council, may do all of the following:

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

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

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

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

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

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

91 Acts, ch 268, §601 SF 529

Subsection 1, paragraph d amended

2.91 Iowa boundary commission.

1. An Iowa boundary commission is established, consisting of three members of the senate appointed by the president of the senate, after consultation with the majority leader and the minority leader of the senate, and three members of the house of representatives appointed by the speaker of the house. The commission shall select a chairperson and shall meet at the call of the chairperson.

2. Members shall be appointed to a term of four years commencing on July 1 of the year of appointment. Vacancies shall be filled in the same manner as original appointments are made and shall be for the remainder of the unexpired term of the vacancy. The members of the commission shall be reimbursed for actual and necessary expenses incurred in the performance of their duties and shall be paid the per diem specified in section 2.10, subsection 6, for each day in which engaged in the performance of their duties. However, per diem and expenses shall not be paid when the general assembly is actually in session at the seat of government. Per diem and expenses of the commission and its members shall be paid from funds appropriated pursuant to section 2.12.

3. The commission is authorized to meet with appropriate representatives of affected states, agencies of those states and Iowa, and agencies of the United States to discuss Iowa's boundaries and problems related to those boundaries and to make periodic reports and recommendations to the general assembly. The commission is authorized to expend reasonable sums for the purchase of maps and other information helpful to its discussions.

4. The commission may hold hearings with authority to call witnesses, administer oaths, issue subpoenas, and cite for contempt.

5. If a proposal is negotiated between Iowa and affected states after meetings authorized under this section, the attorney general of this state shall assist the commission in drafting the necessary documents to be approved by the Iowa general assembly in preparation for the ratification of agreements between Iowa and affected states.

Staff assistance for meetings of the commission shall be provided by the legislative service bureau.

91 Acts, ch 258, §6 HF 709

1991 amendment to subsection 2 retroactively applicable to January 1, 1991.

91 Acts, ch 258, §73 HF 709

Subsection 2 amended

CHAPTER 2A

COMMISSION ON COMPENSATION, EXPENSES, AND SALARIES FOR ELECTED STATE OFFICIALS

2A.2 Terms.

Members of the commission shall serve for a term of office of five years. A vacancy on the commission shall be filled for the unexpired term in the same

manner as the original appointment was made.

91 Acts, ch 97, §1 HF 198
Section amended

CHAPTER 3

STATUTES AND RELATED MATTERS

3.6 Acts — where deposited — nullification resolutions.

The original Acts of the general assembly shall be deposited with and kept by the secretary of state.

The secretary of state shall submit to the administrative code editor a copy of any resolution nullifying

an administrative rule which is passed by the general assembly pursuant to Article III, section 40 of the Constitution of the State of Iowa.

91 Acts, ch 42, §1 HF 274
NEW unnumbered paragraph 2

CHAPTER 7

GOVERNOR AND LIEUTENANT GOVERNOR

7.14 Disability of governor to act.

1. Whenever it appears that the governor is unable to discharge the duties of office for reason of disability pursuant to Article IV, section 17, Constitution of Iowa, the person next in line of succession to the office of the governor, or the chief justice, may call a conference consisting of the person who is chief justice, the person who is director of mental health, and the person who is the dean of medicine at the state University of Iowa. Provided, if either the director or dean is not a physician duly licensed to practice medicine by this state the director or dean may assign a member of the director's or dean's staff so licensed to assist and advise on the conference. The three members of the conference shall within ten days after the conference is called examine the governor. Within seven days after the examination, or if upon attempting to examine the governor the members of the conference are unable to

examine the governor because of circumstances beyond their control, they shall conduct a secret ballot and by unanimous vote may find that the governor is temporarily unable to discharge the duties of the office.

2. The finding of or failure to find a disability shall be immediately made public, and if the governor is found to be unable to discharge the duties of the office, the person next in line of succession to the office of governor shall be immediately notified. After receiving the notification that person may, under Article IV, sections 17 and 19, Constitution of the State of Iowa, become governor until the disability is removed.

3. Whenever a governor who is unable to discharge the duties of the office believes the disability to be removed, the governor may call a conference consisting of the three persons referred to as members of such a conference in subsection 1. The three

members of the conference shall within ten days examine the disabled governor. Within seven days after the examination they shall conduct a secret ballot and by unanimous vote may find the disability removed.

4. The finding of or failure to find the disability removed shall be immediately made public.

91 Acts, ch 97, §2 HF 198
Subsection 2 amended

7.17 Office of administrative rules co-ordinator.

The governor shall establish the office of the administrative rules co-ordinator, and appoint its staff, which shall be a part of the governor's office. The administrative rules co-ordinator shall receive all notices and rules adopted pursuant to chapter 17A and

provide the governor with an opportunity to review and object to any rule as provided in chapter 17A. The administrative rules co-ordinator in consultation with the administrative code editor shall prescribe a uniform style and form by which an agency shall prepare and file a rule pursuant to chapter 17A, which shall correlate each rule to a uniform numbering system devised by the administrative rules co-ordinator. The administrative rules co-ordinator shall review all submitted rules for style and form and may return or revise a rule which is not in proper style and form. In prescribing the style and form, the administrative rules co-ordinator shall require that the agency include a reference to the statute which the rules are intended to implement.

91 Acts, ch 258, §7 HF 709
Section amended

CHAPTER 7C

PRIVATE ACTIVITY BOND ALLOCATION ACT

7C.4A Allocation of state ceiling.

For each calendar year, the state ceiling shall be allocated among bonds issued for various purposes as follows:

1. Thirty percent of the state ceiling shall be allocated solely to the Iowa finance authority for the following purposes:

- a. Issuing qualified mortgage bonds.
- b. Reallocating the amount, or any portion thereof, to another qualified political subdivision for the purpose of issuing qualified mortgage bonds; or
- c. Exchanging the allocation, or any portion thereof, for the authority to issue mortgage credit certificates by election under section 25(c) of the Internal Revenue Code.

However, at any time during the calendar year the executive director of the Iowa finance authority may determine that a lesser amount need be allocated to the Iowa finance authority and on that date this lesser amount shall be the amount allocated to the authority and the excess shall be allocated under subsection 6.

2. Twelve percent of the state ceiling shall be allocated to bonds issued to carry out programs established under chapters 280A, 280B, and 280C. However, at any time during the calendar year the director of the Iowa department of economic development may determine that a lesser amount need be allocated and on that date this lesser amount shall be the amount allocated for those programs and the excess shall be allocated under subsection 6.

3. Sixteen percent of the state ceiling shall be allocated to qualified student loan bonds. However, at any time during the calendar year the governor's des-

ignee, with the approval of the Iowa student loan liquidity corporation, may determine that a lesser amount need be allocated to qualified student loan bonds and on that date the lesser amount shall be the amount allocated for those bonds and the excess shall be allocated under subsection 6.

4. Sixteen percent of the state ceiling shall be allocated to qualified small issue bonds issued for first-time farmers. However, at any time during the calendar year the governor's designee, with the approval of the Iowa agricultural development authority, may determine that a lesser amount need be allocated to qualified small issue bonds for first-time farmers and on that date this lesser amount shall be the amount allocated for those bonds and the excess shall be allocated under subsection 6.

5. During the period of January 1 through October 25, five percent of the state ceiling shall be reserved for private activity bonds issued by political subdivisions, the proceeds of which are used by the issuing political subdivisions.

6. a. The amount of the state ceiling not allocated under subsections 1 through 4, and after October 25, the amount of the state ceiling reserved under subsection 5 and not allocated, shall be allocated to all bonds requiring an allocation under section 146 of the Internal Revenue Code without priority for any type of bond over another, except as otherwise provided in sections 7C.5 and 7C.11.

b. The population of the state shall be determined in accordance with the Internal Revenue Code.

91 Acts, ch 25, §1 SF 436
Subsection 4 amended

CHAPTER 7G

IOWA STATEHOOD SESQUICENTENNIAL

7G.1 Iowa statehood sesquicentennial commission.

1. *Organization.* An Iowa statehood sesquicentennial commission is established in the office of the governor. The commission shall be chartered and shall operate as a nonprofit corporation within the state of Iowa, according to the provisions of chapter 504A.

2. *Purpose.* The purpose of the commission shall be to plan, coordinate, and administer activities and programs relating to the celebration of the sesquicentennial of Iowa statehood which occurs in the year 1996.

3. *Membership.* The commission shall consist of twenty-five members, five of whom shall be appointed by the governor, and twenty of whom shall be selected by leaders of the general assembly. Of the five members appointed by the governor, one member shall be the administrator of the state historical society within the department of cultural affairs. Of the twenty members selected by leaders of the general assembly, five members each, who may be legislators or citizens, shall be selected by the majority leader of the senate and the speaker of the house, and the minority leaders of each body respectively. The governor shall appoint the chairperson and co-chairperson of the commission, subject to confirmation by the senate. Persons making appointments shall consult with one another to ensure that the commission is balanced by gender, political affiliation, and geographic location, and to ensure selection of members representing diverse interest groups. The provisions of chapters 21 and 22 shall apply to meetings and records of the commission.

4. *Rulemaking authority.* The commission may adopt rules in accordance with chapter 17A in order to accomplish the purpose of the commission.

5. *Authority.* The commission may receive and make grants, receive and expend appropriations, contract for services, hold licenses and copyrights, and otherwise act as is necessary to accomplish the purpose of the commission.

6. *Fund established.* The sesquicentennial fund is established as a separate fund in the state treasury under the control of the commission.

7. *Funds received.* All funds received by the commission, including but not limited to gifts, transfers, endowments, application and other fees related to the issuance of sesquicentennial motor vehicle registration plates pursuant to section 321.34, subsection 14, moneys from the sale of mementos and products related to the purposes of the commission, and appropriations, shall be credited to the sesqui-

centennial fund and are appropriated to the commission to be invested or used to support the activities of the commission. Notwithstanding section 8.33, any balance in the fund on June 30 of any fiscal year shall not revert to the general fund of the state.

8. *Personnel.*

a. The commission may employ personnel, including an executive director whose salary shall not exceed executive branch pay grade classification 35, to administer its programs and services. The personnel shall be considered state employees.

b. Personnel employed by the commission shall be exempt from the merit system provisions of chapter 19A.

9. *Expiration.* The commission shall expire no later than June 30, 1997. Upon expiration, all fund balances from appropriations of state funds shall be returned to the general fund of the state, and all other assets shall be transferred to the Iowa historical foundation authorized pursuant to section 303.9, subsection 3, subject to any conditions or restrictions previously placed on the assets.

91 Acts, ch 259, §1 HF 710
Confirmation, §2 32
NEW section

7G.2 County sesquicentennial commissions.

The Iowa statehood sesquicentennial commission shall certify a county sesquicentennial commission in each county in the state, for the purpose of receiving funds from the state commission and administering and coordinating a local celebration. No more than one county sesquicentennial commission shall be certified in each county.

1. *Membership.* Each county commission shall include one member appointed by the board of supervisors, one member appointed by the city council of each city in the county, and other members as required by administrative rules of the state commission established in section 7G.1.

2. *Authority.* Each county sesquicentennial commission may receive and expend moneys and otherwise act to coordinate and implement local celebrations of the sesquicentennial of Iowa statehood within the county of organization.

3. *Expiration.* Each county sesquicentennial commission shall expire no later than June 30, 1997. Upon expiration of each commission, all fund balances and all other assets shall be transferred to a designated incorporated local historical society or designated local historical societies located within the county.

91 Acts, ch 259, §2 HF 710
NEW section

CHAPTER 8

BUDGET AND FINANCIAL CONTROL ACT — MANAGEMENT DEPARTMENT

8.6 Specific powers and duties.

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

1. *Forms.* 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 director shall prescribe the procedures to be used and instruct the appropriate officials of the various municipalities on implementation of the procedures.

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

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

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

5. Reserved.

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

7. *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.

8. *Rules.* To make such rules, subject to the approval of the governor, as may be necessary for effectively carrying on the work of the department of management. The director 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.

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

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

b. A schedule showing a comparison of such esti-

mates with the askings of the several departments for the current fiscal year and with the expenditures of like character for the last two preceding fiscal years.

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 fiscal year.

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

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 fiscal years, 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 fiscal year.

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 fiscal year, if the director'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) Other data or information as the director deems advisable.

10. *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.

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

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

13. *Capital project budgeting requests.* To compile annually all capital project budgeting re-

quests of all state agencies, as defined in section 8.3A, and to consolidate the requests, with individual state agency priorities noted, into a report for submission to the legislative capital projects committee not later than November 1. Any additional information regarding the capital project budgeting requests or priorities shall be compiled and submitted in the same report.

14. *Capital project priority plan.* To prepare annually, in cooperation with the department of general services, a five-year capital project priority plan for all state agencies, as defined in section 8.3A, to be submitted no later than November 1, to the legislative capital projects committee. The plan shall include but is not limited to the following:

a. A detailed list of all proposed capital projects for all state agencies, which the department of management believes should be undertaken or continued for at least the next five fiscal years.

b. Background information regarding each proposed capital project and the need for the project.

c. Information regarding the fiscal effect of each capital project on future operating expenses of the affected state agency.

d. A notation of the priority listing of capital projects for each state agency.

e. The proposed means of funding each capital project.

f. A schedule for the planning and implementation or construction of each capital project.

g. A schedule for the next fiscal year of proposed debt service payments from issues of bonds previously authorized.

h. A review of capital projects which have recently been implemented or completed or are in the process of implementation or completion.

i. Recommendations as to the maintenance of physical properties and equipment of state agencies.

j. Such other information as the department of management deems relevant to the foregoing matters.

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

91 Acts, ch 268, §602, 603 SF 529

Subsection 13 amended

Subsection 14, unnumbered paragraph 1 amended

8.23 Annual departmental estimates.

On or before September 1, prior to each legislative session, all departments and establishments of the government shall transmit to the director, on blanks to be furnished by the director, estimates of their expenditure requirements, including every proposed expenditure, for the ensuing fiscal year, classified so

as to distinguish between expenditures estimated for administration, operation, and maintenance, and the cost of each project involving the purchase of land or the making of a public improvement or capital outlay of a permanent character, together with supporting data and explanations as called for by the director. The budget estimates shall include for those agencies which pay for energy directly a line item for energy expenses itemized by type of energy and location. The estimates of expenditure requirements shall be based upon seventy-five percent of the funding provided for the current fiscal year accounted for by program reduced by the historical employee vacancy factor in form specified by the director and the remainder of the estimate of expenditure requirements prioritized by program. The estimates shall be accompanied with performance measures for evaluating the effectiveness of the program. If a department or establishment fails to submit estimates within the time specified, the governor shall cause estimates to be prepared for that department or establishment as in the governor's opinion are reasonable and proper. The director shall furnish standard budget request forms to each department or agency of state government.

On or before November 15 all departments and establishments of government and the judicial department shall transmit to the department of management and the legislative fiscal bureau estimates of their receipts and expenditure requirements from federal or other nonstate grants, receipts, and funds for the ensuing fiscal year. The transmittal shall include the names of the grantor and the grant or the source of the funds, the estimated amount of the funds, and the planned expenditures and use of the funds. The format of the transmittal shall be specified by the legislative fiscal bureau.

91 Acts, ch 263, §31 SF 209
Unnumbered paragraph 1 amended

8.46 Lease-purchase — reporting.

For the purposes of this section, unless the context otherwise requires, “state agency” means any execu-

tive, judicial, or legislative department, commission, board, institution, division, bureau, office, agency, or other entity of state government.

1. Before entering into a contract involving a lease-purchase arrangement in which any part or the total amount of the contract is at least fifty thousand dollars, a state agency shall notify the legislative fiscal committee of the legislative council regarding the contract. The notification is required regardless of the source of payment for the lease-purchase arrangement. The notification shall include all of the following information:

- a. A description of the object of the lease-purchase arrangement.
- b. The cost of the contract.
- c. The terms of the contract.
- d. The total cost of the contract, including principal and interest costs.
- e. An identification of the means and source of payment of the contract.
- f. An analysis of consequences of delaying or abandoning the commencement of the contract.

2. The legislative fiscal committee shall report to the legislative council concerning the notifications it receives pursuant to this section.

3. A state agency shall report quarterly to the legislative fiscal committee concerning its contracts involving a lease-purchase arrangement. The format of the report shall be determined by the legislative fiscal bureau in consultation with the department of management. The report shall include all of the following information:

- a. A description of the objects of a lease-purchase arrangement under contract.
- b. The total costs of the contracts.
- c. Total principal and interest cost in each fiscal year of each contract.
- d. An identification of the means and source of payment for each contract.

91 Acts, ch 268, §606 SF 529
NEW section

8.47 to 8.50 Reserved.

CHAPTER 9

SECRETARY OF STATE

9.7 Access to corporation records.

The secretary of state shall offer to county recorders electronic access to corporation records. The secretary of state shall adopt rules providing for the

electronic access and for the dissemination of the information by the county recorders.

91 Acts, ch 211, §1 HF 556
NEW section

CHAPTER 9B

REGISTRATION OF WASTE TIRE HAULERS

9B.1 Registration of waste tire haulers — bond — penalty.

1. For the purposes of this section, “*waste tire hauler*” means a person who transports for hire more than forty waste tires in a single load for commercial purposes.

2. A waste tire hauler shall register with, and obtain a certificate of registration from, the secretary of state before hauling waste tires in this state. Requirements for registration of a waste tire hauler shall include a provision that waste tire haulers shall pay all amounts due to any individual or group of individuals when due for damages caused by improper disposal of waste tires by the waste tire hauler or the waste tire hauler’s employee while acting within the scope of employment. The waste tire hauler may apply for a certificate of registration by submitting the forms provided for that purpose and shall provide the name of the applicant and the address of the applicant’s principal place of business and any additional information as deemed appropriate by the secretary of state.

3. A certificate of registration issued under this section is valid for one year from the date of issuance. A registered waste tire hauler may renew the certificate by filing a renewal application in the form prescribed by the secretary of state, accompanied by any applicable renewal fee.

4. The secretary of state shall establish a reasonable registration fee sufficient to offset expenses incurred in the administration of this section.

5. The secretary of state shall require that a waste tire hauler have on file with the secretary of state before the issuance or renewal of a registration

certificate, a surety bond executed by a surety company authorized to do business in this state in the sum of a minimum of ten thousand dollars, which bond shall be continuous in nature until canceled by the surety. A surety shall provide at least thirty days’ notice in writing to the waste tire hauler and to the secretary of state indicating the surety’s intent to cancel the bond and the effective date of the cancellation. The surety bond shall be for the benefit of the citizens of this state and shall be conditioned upon the waste tire hauler’s willingness to comply with this section. The surety’s liability under this subsection is limited to the amount of the bond or the amount of the damages or moneys due, whichever is less. However, this subsection does not limit the amount of damages recoverable from a waste tire hauler to the amount of the surety bond. This subsection shall not limit the recovery of damages to the amount of the surety bond. The bond shall be made in a form prescribed by the commissioner of insurance and written by a company authorized by the commissioner of insurance to do business in this state.

6. The secretary of state shall adopt rules including imposition of civil penalties necessary for the implementation and administration of this chapter.

7. A person who knowingly and willfully violates a provision of this section is subject to a civil penalty in an amount not to exceed ten thousand dollars. Moneys collected from the penalties imposed shall be deposited in the waste volume reduction and recycling fund established pursuant to section 455D.15.

91 Acts, ch 257, §1 HF 706
Waste tires; see also §455D.11
NEW section

CHAPTER 10A

DEPARTMENT OF INSPECTIONS AND APPEALS

10A.402 Responsibilities.

The administrator shall coordinate the division’s conduct of various investigations as otherwise provided for by law including but not limited to the following:

1. Investigations relative to the practice of regulated professions and occupations, except those within the jurisdiction of the board of medical examiners, the board of pharmacy examiners, the board of dental examiners, and the board of nursing.

- 2. Investigations relative to proposed sales within the state of subdivided land situated outside of the state.
- 3. Investigations relative to applications for beer and liquor licenses.
- 4. Investigations relative to the standards and practices of hospitals, hospices, and health care facilities.
- 5. Investigations and collections relative to the liquidation of overpayment debts owed to the department of human services. Collection methods include but are not limited to small claims filings, debt setoff, and repayment agreements, and are subject to approval by the department of human services.

- 6. Investigations relative to the operations of the department of elder affairs.
- 7. Investigations relative to the administration of the state supplemental assistance program, the state medical assistance program, the food stamp program, the aid to dependent children program and any other state or federal benefit assistance program.
- 8. Investigations relative to the internal affairs and operations of agencies and departments within the executive branch of state government, except for institutions governed by the state board of regents.

91 Acts, ch 107, §1 SF 412
 Subsection 7 amended

CHAPTER 11

AUDITOR OF STATE

11.6 Examination of governmental subdivisions — consultative services — association of counties.

1. The financial condition and transactions of all cities and city offices, counties, county hospitals organized under chapters 347 and 347A, memorial hospitals organized under chapter 37, entities organized under chapter 28E having gross receipts in excess of one hundred thousand dollars in a fiscal year, merged areas, area education agencies, and all school offices in school districts, shall be examined at least once each year, except that cities having a population of seven hundred or more but less than two thousand shall be examined at least once every four years, and cities having a population of less than seven hundred may be examined as otherwise provided in this section. The examination shall cover the fiscal year next preceding the year in which the audit is conducted. The examination of school offices shall include an audit of all school funds, the certified annual financial report, and the certified enrollment as provided in section 257.11. Examinations of community colleges shall include an audit of eligible and noneligible contact hours as defined in section 286A.2. Eligible and noneligible contact hours and the certified enrollment shall be certified to the department of management.

Subject to the exceptions and requirements of subsection 2 and subsection 4, paragraph “c”, examinations shall be made as determined by the governmental subdivision either by the auditor of state or by certified public accountants, certified in the state of Iowa, and they shall be paid from the proper public funds of the governmental subdivision.

2. a. A city, community college, school district,

area education agency, entity organized under chapter 28E, county, county hospital, or memorial hospital desiring to contract with or employ certified public accountants shall utilize procedures which include a request for proposals.

b. The governing body of a city, community college, school district, area education agency, entity organized under chapter 28E, county, county hospital, or memorial hospital utilizing the auditor of state instead of a certified public accountant to perform an audit shall notify the auditor of state by June 1 of the year to be audited. If the governing body fails to notify the auditor of state of the decision to use the auditor of state, the auditor of state may perform the audit required in subsection 1 only if provisions are not made by the governing body to contract for the audit.

3. A township or city for which examinations are not required under subsection 1 may contract with or employ the auditor of state or certified public accountants for an examination of its financial transactions and condition of its funds. A financial examination is mandatory on application by one hundred or more taxpayers, or if there are fewer than five hundred taxpayers in the township or city, then by fifteen percent of the taxpayers. Payment for the examination shall be made from the proper public funds of the township or city.

4. In addition to the powers and duties under other provisions of the Code, the auditor of state may at any time cause to be made a complete or partial reaudit of the financial condition and transactions of any city, county, county hospital, memorial hospital, entity organized under chapter 28E, merged area, area education agency, school corpora-

tion, township, or other governmental subdivision, or an office of any of these, if one of the following conditions exists:

a. The auditor of state has probable cause to believe such action is necessary in the public interest because of a material deficiency in an audit of the governmental subdivision filed with the auditor of state or because of a substantial failure of the audit to comply with the standards and procedures established and published by the auditor of state.

b. The auditor of state receives from an elected official or employee of the governmental subdivision a written request for a complete or partial reaudit of the governmental subdivision.

c. The auditor of state receives a petition signed by at least fifty eligible electors of the governmental subdivision requesting a complete or partial reaudit of the governmental subdivision. If the governmental subdivision has not contracted with or employed a certified public accountant to perform an audit of the fiscal year in which the petition is received by the auditor of state, the auditor of state may perform an audit required by subsection 1 or 3.

The state audit shall be paid from the proper public funds available in the office of the auditor of state. In the event the audited governmental subdivision recovers damages from a person performing a previous audit due to negligent performance of that audit or breach of the audit contract, the auditor of state shall be entitled to reimbursement on an equitable basis for funds expended from any recovery made by the governmental subdivision.

5. The auditor of state may, within three years of filing, during normal business hours upon reasonable notice of at least twenty-four hours, review the audit work papers prepared by a certified public accountant in the performance of an audit or examination conducted pursuant to this section.

6. An audit required by this section shall be completed within nine months following the end of the fiscal year that is subject to the audit. At the request of the governmental subdivision, the auditor of state may extend the nine-month time limitation upon a finding that the extension is necessary and not contrary to the public interest and that the failure to meet the deadline was not intentional.

7. The auditor of state shall make guidelines available to the public setting forth accounting and auditing standards and procedures and audit and

legal compliance programs to be applied in the examination of the governmental subdivisions of the state. The guidelines shall include a requirement that the certified public accountant immediately notify the auditor of state regarding any suspected embezzlement or theft. The auditor shall also provide standard reporting formats for use in reporting the results of an examination of a governmental subdivision.

8. The auditor of state shall provide advice and counsel to public entities and certified public accountants concerning audit and examination matters. The auditor of state shall adopt rules in accordance with chapter 17A to establish a fee schedule based upon the prevailing rate for the service rendered. The auditor of state shall obtain payment from a public entity or certified public accountant for advisory and consultation services rendered pursuant to this subsection. The auditor of state may waive any charge provided in this subsection and may determine to provide certain services without cost.

9. The Iowa state association of counties shall keep accounts as required by the auditor of state. These accounts shall be audited annually by either the auditor of state or a certified public accountant certified in the state of Iowa. The audit shall state all moneys expended for expenses incurred by and salaries paid to legislative representatives and lobbyists of the association.

10. The auditor of state shall adopt rules in accordance with chapter 17A to establish and collect a filing fee for the filing of each report of examination conducted pursuant to subsections 1 through 3. The funds collected shall be maintained in a segregated account for use by the office of the auditor of state in performing audits conducted pursuant to subsection 4 and for work paper reviews conducted pursuant to subsection 5. Any funds collected by the auditor pursuant to subsection 4 shall be deposited in this account. Notwithstanding section 8.33, the funds in this account shall not revert at the end of any fiscal year.

11. Notwithstanding subsection 10, the filing fee collected for the filing of a report of examination shall not be collected if the audit was performed by the auditor of state.

91 Acts, ch 267, §222 HF 479

Subsection 1, unnumbered paragraph 1 amended

CHAPTER 12

TREASURER OF STATE

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 director of revenue and finance 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 director of revenue and finance 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, pay transaction costs for investments made by the treasurer of state, and pay administrative and related overhead costs incurred by the treasurer of state in the management of money. The treasurer of state shall coordinate with the affected departments to determine how compensating balances, transaction costs, or money management and related 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, with the approval of the investment board of the Iowa public employees' retirement system, may conduct a program of lending securities in the Iowa public employees' retirement system portfolio. When securities are loaned as provided by this paragraph, the treasurer shall act in the manner provided for investment of moneys in the Iowa public employees' retirement fund under section 97B.7. The treasurer of state shall report at least annually to the investment board of the Iowa public employees' retirement system on the program and shall provide additional information on the program upon the request of the investment board or the employees of the Iowa public employees' retirement system division of the department of personnel.

91 Acts, ch 268, §123 SF 529

Unnumbered paragraph 2 amended

12.27 Credit rules.

The treasurer shall adopt rules to implement the filing of information relating to open-end credit accounts and credit cards pursuant to section 535.15.

91 Acts, ch 152, §1 HF 502
Section amended

12.51 Main street linked investments loan program.

The treasurer of state shall adopt rules to implement a main street linked investments loan program to increase the availability of lower cost funds to stimulate building restorations or rehabilitations of historic buildings within the central business district of a city which is a certified local government, or in the Iowa main street program or the rural main street program.* The rules shall include the following conditions:

1. Linked investment loans shall be limited to projects for a building restoration or rehabilitation located in the central business district whose boundaries are the same as the main street or rural main street or central business district of a city which is a certified local government project area.

2. Eligible borrowers are limited to the property owner, contract purchaser of record, or long-term lessee.

3. Loan applications under this program shall be for the restoration or rehabilitation of facades of buildings which are eligible or nominated or listed on the national register of historic places. Public buildings are excluded.

4. A facade restoration or rehabilitation must follow United States secretary of interior's standards for rehabilitation and guidelines for rehabilitating historic buildings.

5. The maximum loan amount under the main street linked investments loan program is fifty thousand dollars per project.

6. No more than one-third of the amount authorized in section 12.34 may be used for purposes of this section.

91 Acts, ch 97, §3 HF 198

*See §99E 32(3z)

Unnumbered paragraph 1 amended

CHAPTER 13

ATTORNEY GENERAL

13.15 Rules and forms — fees.

The farm mediation service shall recommend rules to the farm assistance program coordinator. The coordinator shall adopt rules pursuant to chapter 17A to set the compensation of mediators and to implement this subchapter and chapters 654A and 654B.

The rules shall provide for an hourly mediation fee not to exceed fifty dollars for the borrower and one hundred dollars for the creditor. The hourly mediation fee may be waived for any party demonstrating financial hardship upon application to the farm mediation service.

The compensation of a mediator shall be no more than twenty-five dollars per hour, and all parties shall contribute an equal amount of the cost.

The coordinator shall adopt voluntary mediation application and mediation request forms.

91 Acts, ch 267, §410 HF 479
Unnumbered paragraph 2 amended

13.31 Victim assistance program.

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

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

2. Administer the state crime victim compensation program as provided in chapter 912.

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

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

5. Administer payment for sexual abuse medical examinations pursuant to section 709.10.

91 Acts, ch 181, §16 HF 430
Section amended to change terminology

CHAPTER 13B

PUBLIC DEFENDERS

13B.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. "*Appointed attorney*" means an attorney appointed by the court and compensated by the state to represent an indigent defendant.

2. "*Department*" means the department of inspections and appeals.

3. "*Financial statement*" means a full written disclosure of all assets, liabilities, current income, dependents, and other information required to determine if a client qualifies for legal assistance at public expense.

4. "*State public defender*" means the state public defender appointed pursuant to this chapter.

91 Acts, ch 268, §408 SF 529
1991 amendment to subsection 1 repealed July 1, 1995, instructions to Code editor, 91 Acts, ch 268, §439 SF 529
Subsection 1 amended

13B.2A Indigent defense advisory commission established.

An indigent defense advisory commission is estab-

lished within the department to advise and make recommendations to the state public defender regarding the establishment and implementation of cost-effective methods to provide indigent defense. The advisory commission shall consist of nine members: four members to be appointed by the governor, subject to senate confirmation, including two members from nominees made by the Iowa state bar association, and two members from nominees made by the Iowa judges association; two members appointed by the governor, subject to senate confirmation; one member to be appointed by the governor, subject to senate confirmation, from nominees made by the Iowa county attorneys association; and two members, one from each chamber of the general assembly, to be appointed by the legislative council with no more than one of the members from any one political party. Each member shall serve a three-year term, with initial terms to be staggered. The members should represent a balance of attorneys and nonattorneys.

The members of the commission are entitled to re-

ceive reimbursement for actual expenses incurred while engaged in the performance of the duties of the commission. Each member of the commission may also be eligible to receive compensation as provided in section 7E.6.

91 Acts, ch 268, §409 SF 529
Confirmation, §2 32
Section repealed July 1, 1995, 91 Acts, ch 268, §439 SF 529
NEW section

13B.2B Duties and powers of the indigent defense advisory commission.

The advisory commission shall advise the state public defender regarding all of the following:

1. Recommendations for quality, cost-effective methods for delivery of indigent defense services.
2. Recommendations for the budget to be developed by the state public defender for all indigent defense costs.
3. Recommendations for client indigency criteria to be applied statewide.
4. Recommendations related to mechanisms for enhancing restitution and recoupment efforts and for monitoring recoupment efforts.
5. Recommendations regarding other methods to contain indigent defense costs.
6. Recommendations regarding proposed administrative rules regarding the operations of the state public defender.
7. The advisory commission shall also make recommendations to the supreme court regarding fee guidelines for court-appointed counsel.

The advisory commission shall also file a written report with the governor and the general assembly on January 1 of each year regarding the recommendations and activities of the commission for the preceding fiscal year.

91 Acts, ch 268, §410 SF 529
Section repealed July 1, 1995, 91 Acts, ch 268, §439 SF 529
NEW section

13B.4 Duties and powers of state public defender.

1. The state public defender shall coordinate the provision of legal representation of all indigents under arrest or charged with a crime, on appeal in criminal cases, and on appeal in proceedings to obtain postconviction relief when ordered to do so by the district court in which the judgment or order was issued, and may provide for the representation of indigents in proceedings instituted pursuant to chapter 908. The state public defender shall not engage in the private practice of law.

2. The state public defender shall file with the court in each county served by a public defender a designation of which local public defender office shall receive notice of appointment of cases. Except as otherwise provided, in each county in which the state public defender files such designation, the state public defender or its designee shall be appointed by the court to all cases, whether criminal or juvenile in nature. Such appointment shall not be made if the state public defender notifies the court that the local

public defender will not provide legal representation in cases involving offenses as identified in the notification by the state public defender.

3. The state public defender may contract with persons admitted to practice law in this state for the provision of legal services to indigent persons where there is no local public defender available to provide such services.

4. The state public defender is authorized to review any claim made for payment of indigent defense costs and to request a hearing before the court granting a claim within thirty days of receipt of such claim if the state public defender believes the claim to be excessive.

5. The state public defender is authorized to contract with county attorneys to provide collection services related to court-ordered indigent defense restitution of court-appointed attorney fees or the expense of a public defender.

6. The state public defender shall adopt rules pursuant to chapter 17A, as necessary, to administer this chapter.

91 Acts, ch 268, §411 SF 529
Intent that state public defender provide for defense of major felony case defendants by public defenders on regional basis, 91 Acts, ch 268, §440 SF 529
1991 amendment repealed July 1, 1995, instructions to Code editor, 91 Acts, ch 268, §439 SF 529
Section stricken and rewritten

13B.8 Office of local public defender.

1. The state public defender may establish or abolish local public defender offices. In determining whether to establish or abolish a local public defender office, the state public defender shall consider the following:

- a. The number of cases or potential cases where a local public defender is or would be involved.
- b. The population of the area served or to be served.
- c. The willingness of the local private bar to participate in cases where a public defender is or would be involved.
- d. Other factors which the state public defender deems to be important.

Before establishing or abolishing a local public defender office, the state public defender shall provide a written report detailing the reasons for the action to be taken to the regulation appropriations subcommittee, the chairperson, vice chairperson, and ranking member of the senate committee on judiciary and committee on appropriations, and the chairperson, vice chairperson, and ranking member of the house of representatives committee on judiciary and law enforcement and committee on appropriations. The report shall contain a statement of the estimated fiscal impact of the action taken. Any action taken in establishing or abolishing a local public defender office shall only take effect upon the approval of the general assembly. If the state public defender proposes to abolish a local public defender office prior to the beginning of any regular session of the general assembly and the general assembly takes no action regarding that proposal during the first ninety

days of the first regular session occurring after the proposal is made, the office shall be abolished.

2. The state public defender may appoint a local public defender and may remove the local public defender for cause. The local public defender must be an attorney admitted to the practice of law before the Iowa supreme court.

3. The compensation of the local public defender and staff of the local public defender offices shall be fixed by the state public defender.

4. The state public defender shall provide suitable office space, furniture, equipment, and supplies for the office of local public defender out of funds appropriated to the department for this purpose.

91 Acts, ch 268, §412 SF 529
1991 amendment to subsection 1, unnumbered paragraph 2, repealed July 1, 1995, instructions to Code editor, 91 Acts, ch 268, §439 SF 529
Subsection 1, unnumbered paragraph 2 amended

13B.9 Powers and duties of local public defenders.

1. The local public defender shall do all of the following:

a. Represent without fee an indigent person who is under arrest or charged with a crime if the indigent person requests representation or the court orders representation. The local public defender shall counsel and defend an indigent defendant at every stage of the criminal proceedings and prosecute before or after conviction any appeals or other remedies which the local public defender considers to be in the interest of justice unless other counsel is appointed to the case.

b. Represent an indigent party, without fee and upon an order of the court, in child in need of assistance, family in need of assistance, delinquency, and termination of parental rights proceedings pursuant to chapter 232 in a county served by a public defender. The local public defender shall counsel and represent an indigent party in all proceedings pursuant to chapter 232 in a county served by a public defender and prosecute before or after judgment any appeals

or other remedies which the local public defender considers to be in the interest of justice unless other counsel is appointed to the case. The state public defender shall be reimbursed by the counties for services rendered by employees of the local public defenders' offices under this subsection, pursuant to section 232.141.

c. Make an initial determination of indigence as required under section 815.9 prior to the initial arraignment or other initial court appearance.

d. Make an annual report to the state public defender. The report shall include all cases handled by the local public defender during the preceding calendar year.

2. An appointed attorney under this section is not liable to a person represented by the attorney pursuant to this chapter for damages as a result of a conviction unless the court determines in a post-conviction appeal that the person's conviction resulted from ineffective assistance of counsel.

3. The local public defender may appoint the number of assistant public defenders, clerks, investigators, stenographers, and other employees as approved by the state public defender. An assistant local public defender must be an attorney licensed to practice before the Iowa supreme court. Appointments shall be made in the manner prescribed by the state public defender.

4. The local public defender shall handle every case to which the local public defender is appointed if the local public defender can reasonably handle the case.

5. If a conflict of interest arises or if the local public defender is unable to handle a case because of a temporary overload of cases, the local public defender shall return the case to the court. The court may appoint a contract attorney or a private non-contracting attorney, who has agreed to take the case, considering the experience of the attorney and the difficulty of the case.

91 Acts, ch 268, §413 SF 529
1991 amendment repealed July 1 1995, instructions to Code editor, 91 Acts, ch 268, §439 SF 529
Section amended

CHAPTER 14

IOWA CODE AND ADMINISTRATIVE CODE

14.1 Iowa Code and administrative code divisions — editors.

1. The Iowa Code and administrative code divisions are established within the legislative service bureau.

2. The director of the legislative service bureau shall appoint the Iowa Code editor and the adminis-

trative code editor, subject to the approval of the legislative council, as provided in section 2.42. The Iowa Code editor and the administrative code editor shall serve as the heads of their respective divisions, at the pleasure of the director of the legislative service bureau, and subject to the approval of the legislative council.

3. The Iowa Code and administrative code divisions are responsible for the editing, compiling, and proofreading of the publications they prepare, as provided in this chapter and notwithstanding section 18.76. The Iowa Code division is entitled to the temporary possession of the original enrolled Acts and resolutions as necessary to prepare them for publication.

91 Acts, ch 258, §8 HF 709
Section amended

14.2 to 14.4 Repealed by 71 Acts, ch 80, § 13.

14.5 Duties of administrative code division.

The administrative code division shall:

1. Cause the Iowa administrative bulletin and the Iowa administrative code to be published as provided in chapter 17A.

2. Cause the Iowa court rules to be published, as directed by the supreme court after consultation with the legislative council. The Iowa court rules shall consist of all rules prescribed by the supreme court. The court rules shall be published in loose-leaf form, appropriately indexed, and supplements shall be prepared and distributed as directed by the supreme court. The Iowa court rules and supplements to the court rules shall be priced as provided in section 17.22.

3. Cause to be published annually in pamphlet form a correct list of state officers and deputies, members of boards and commissions, judges of the supreme, appellate, and district courts including district associate judges and judicial magistrates, and members of the general assembly. The offices of the governor and secretary of state shall cooperate in the preparation of the list. This pamphlet shall be published as soon after July 1 as it becomes apparent that it will be reasonably current.

4. Notify the administrative rules coordinator if a rule is not in proper style or form.

5. Perform other duties as directed by the director of the legislative service bureau, the legislative council, or the administrative rules review committee and as provided by law.

91 Acts, ch 258, §9 HF 709
NEW section

14.6 Duties of Iowa Code division.

The Iowa Code division shall:

1. Submit recommendations as the Iowa Code editor deems proper to each general assembly for the purpose of amending, revising, codifying, and repealing portions of the statutes which are inaccurate, inconsistent, outdated, conflicting, redundant, or ambiguous, and present the recommendations in bill form to the appropriate committees of the general assembly.

2. Cause the annual session laws to be published, as provided in section 14.10, including copies of all Acts and joint resolutions passed at each session of the general assembly.

3. Cause the Iowa Code and Iowa Code Supplement to be published as provided in section 14.12.

4. Perform other duties as directed by the director of the legislative service bureau or the legislative council and as provided by law.

91 Acts, ch 258, §10 HF 709
Section amended

14.7 State roster pamphlet. Repealed by 91 Acts, ch 258, § 72. HF 709 See § 14.5.

14.8 Recommendations — printing and reference. Repealed by 91 Acts, ch 258, § 72. HF 709

14.9 Table of corresponding sections. Repealed by 91 Acts, ch 258, § 72. HF 709 See § 14.12.

14.10 Session laws.

1. The arrangement of the Acts and resolutions, and the size, style, type, binding, general arrangement, and tables of the session laws shall be printed and published in the manner determined by the Iowa Code editor in accordance with the policies set by the legislative council as provided in section 2.42.

2. Chapters of the first regular session shall be numbered from one and chapters of the second regular session shall be numbered from one thousand one.

3. Rules filed by the supreme court shall be included in accordance with section 602.4202.

4. A list of elective state officers and deputies, supreme court justices, judges of the court of appeals, and members of the general assembly shall be published annually with the session laws.

5. A statement of the condition of the state treasury shall be included, as provided by the Constitution of the State of Iowa. The statement shall be furnished by the director of revenue and finance.

6. The enrolling clerks of the house and senate shall arrange for the Iowa Code division to receive suitable copies of all Acts and resolutions as soon as they are enrolled.

91 Acts, ch 258, §11 HF 709
Section amended

14.11 Original enrolled bills. Repealed by 91 Acts, ch 258, § 72. HF 709 See § 14.1.

14.12 Iowa Code and Code Supplement.

1. A new Iowa Code shall be issued as soon as possible after the final adjournment of the second regular session of the general assembly. A new Code Supplement shall be issued as soon as possible after the first regular session of the general assembly. A Code Supplement may be issued after a special session of the general assembly or as required by the legislative council.

2. The entire Iowa Code shall be maintained on a computer data base which shall be updated as soon as possible after each session of the general assembly. The Iowa Code and Code Supplement shall be prepared and printed on a good quality of paper in one or more volumes, in the manner determined by the Iowa Code editor in accordance with the policies of the legislative council, as provided in section 2.42.

3. An edition of the Iowa Code or Code Supplement shall contain each Code section in its new or amended form. However, a new section or amendment which does not take effect until after the probable publication date of a succeeding Iowa Code or Code Supplement may be deferred for publication in that succeeding Iowa Code or Code Supplement. The sections shall be inserted in each edition in a logical order as determined by the Iowa Code editor in accordance with the policies of the legislative council.

4. Each section of an Iowa Code or Code Supplement shall be indicated by a number printed in boldface type and shall have an appropriate headnote printed in boldface type.

5. Appropriate historical references or source notes may be placed following each section.

6. The Iowa Code published after the second regular session of the general assembly shall include:

- a. An analysis of the Code by titles and chapters.
- b. The Declaration of Independence.
- c. The Articles of Confederation.
- d. The Constitution of the United States.
- e. The laws of the United States relating to the authentication of records.
- f. The Constitution of the State of Iowa.
- g. The Act admitting Iowa into the union as a state.

h. A chapter title, number, and chapter analysis at the head of each chapter. The chapter number shall be printed at the top of each page.

i. All of the statutes of Iowa of a general and permanent nature, except as provided in subsection 3.

j. A comprehensive index and a summary index covering the Constitution and statutes of the state of Iowa.

7. The Code Supplement published after the first regular session of the general assembly shall include:

a. All of the statutes of Iowa of a general and permanent nature which were enacted or amended during that session, except as provided in subsection 3, and an indication of all sections repealed during that session, and any amendments to the Constitution of the State of Iowa passed by the general assembly in that session.

b. A chapter title and number for each chapter or part of a chapter included.

c. An index covering the material included.

8. A Code or Code Supplement may include appropriate tables showing the disposition of Acts of the general assembly and other reference material as determined by the Iowa Code editor in accordance with policies of the legislative council.

91 Acts, ch 258, §12 HF 709
Section amended

14.13 Editorial powers and duties.

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

a. Correct misspelled words and grammatical and clerical errors including punctuation but without changing the meaning.

b. 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 maintain a record of the corrections made under this paragraph. The record shall be available to the public.

c. Transfer, divide, or combine sections or parts of sections and add or amend headnotes to sections and subsections. Pursuant to section 3.3, the headnotes are not part of the law.

2. The Iowa Code editor may prepare and publish comments deemed necessary for a proper explanation of the manner of printing a section or chapter of the Iowa Code.

3. The Iowa Code editor, in preparing the copy for an edition of the Iowa Code or a Code Supplement, and the administrative code editor in preparing the copy for an edition of the Iowa administrative code, shall edit the copy in order that words which designate one gender are changed to reflect both genders when the provisions of law apply to persons of both genders.

4. The Iowa Code editor shall seek direction from the senate committee on judiciary and the house committee on judiciary and law enforcement when making Iowa Code or Code Supplement changes, and the administrative code editor shall seek direction from the administrative rules review committee and the administrative rules coordinator when making Iowa administrative code changes, which appear to require substantial editing and which might otherwise be interpreted to exceed the scope of the authority granted in this section.

5. The Iowa Code editor and the administrative code editor shall maintain a record of the changes made under this section. The record shall be available to the public.

6. The Iowa Code editor and the administrative code editor shall not make editorial changes which go beyond the authority granted in this section or other law.

7. The effective date of all editorial changes in an edition of the Iowa Code or a Code Supplement is the date the legislative council approves the selling price for that publication. The effective date of all editorial changes for the Iowa administrative code is the date those changes are published in the Iowa administrative code.

91 Acts, ch 258, §13 HF 709
Section amended

14.14 Omissions in references to Code sections. Repealed by 91 Acts, ch 258, § 72. HF 709

14.15 Future Codes. Repealed by 91 Acts, ch 258, § 72. HF 709 See § 14.1, 14.12.

14.16 Preparation. Repealed by 91 Acts, ch 258, § 72. HF 709 See § 14.12.

14.17 Citation of permanent Code or Supplements and session laws.

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

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

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

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

91 Acts, ch 258, §14 HF 709
Section amended

14.18 Citation of session laws. Repealed by 91 Acts, ch 258, § 72. HF 709 See § 14.17.

14.19 Citation of prior Codes. Repealed by 91 Acts, ch 258, § 72. HF 709

14.20 Official statutes. Repealed by 91 Acts, ch 258, § 72. HF 709 See § 14.17.

14.21 Availability of parts of the Iowa Code and administrative code.

The Iowa Code division and the administrative code division, in accordance with policies established by the legislative council, may cause parts of the Iowa Code or administrative code to be made available for the use of public officers and other persons. This authority shall be exercised in a manner planned to avoid delay in the other publications of the divisions.

91 Acts, ch 258, §15 HF 709
Section amended

CHAPTER 15

DEPARTMENT OF ECONOMIC DEVELOPMENT

15.102 Definitions.

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

1. “*Board*” means the Iowa economic development board.

2. “*Department*” means the Iowa department of economic development.

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

4. “*Small business*” means any enterprise which is located in this state, which is operated for profit and under a single management, and which has either fewer than twenty employees or an annual gross income of less than three million dollars computed as the average of the three preceding fiscal years. This definition does not apply to any program or activity for which a definition for small business is provided for the program or activity by federal law or regulation or other state law.

5. “*Targeted small business*” means a small business which is fifty-one percent or more owned, oper-

ated, and actively managed by one or more women or minority persons, provided the business meets all of the following requirements:

a. Is located in this state.

b. Is operated for profit.

c. Has an annual gross income of less than three million dollars computed as an average of the three preceding fiscal years.

As used in this subsection, “*minority person*” means an individual who is a Black, Hispanic, Asian or Pacific Islander, American Indian, or Alaskan native American.

91 Acts, ch 103, §1 SF 257
Subsection 5 amended

15.108 Primary responsibilities.

The department has the following areas of primary responsibility:

1. *Finance.* To provide for financial assistance to businesses, local governments, and educational institutions through loans and grants of state and fed-

eral funds to enable them to promote and achieve economic development within the state. To carry out this responsibility, the department shall:

a Expend federal funds received as community development block grants as provided in section 8.41.

b Provide staff assistance to the corporation formed under authority of sections 28.11 to 28.16 to receive and disburse funds to further the overall development and well-being of the state.

c Provide financial assistance to local development corporations as provided for in sections 28.25 to 28.29.

d Provide administration for the Iowa product development corporation created in sections 28.81 to 28.94.

e Administer the funds appropriated from the community economic betterment account of the Iowa plan fund for economic development as provided in section 99E.32, subsection 2.

2. *Marketing* To coordinate, develop, and make available technical services on the state and local levels in order to aid businesses in their start-up or expansion in the state. To carry out this responsibility, the department shall:

a Establish within the department a federal procurement office staffed with individuals experienced in marketing to federal agencies.

b Aid in the marketing and promotion of Iowa products and services. The department may adopt, subject to the approval of the board, a label or trademark identifying Iowa products and services together with any other appropriate design or inscription and this label or trademark shall be registered in the office of the secretary of state. In authorizing the use of a marketing label or trademark to an applicant, the state, and any state agency, official, or employee involved in the authorization, is immune from a civil suit for damages, including but not limited to a suit based on contract, breach of warranty, negligence, strict liability, or tort. Authorization of the use of a marketing label or trademark by the state, or any state agency, official, or employee, is not an express or implied guarantee or warranty concerning the safety, fitness, merchantability, or use of the applicant's product or service. This paragraph does not create a duty of care to the applicant or any other person.

(1) The department may register or file the label or trademark under the laws of the United States or any foreign country which permits registration, making the registration as an association or through an individual for the use and benefit of the department.

(2) The department shall establish guidelines for granting authority to use the label or trademark to persons or firms who make a satisfactory showing to the department that the product or service meets the guidelines as manufactured, processed, or originating in Iowa. The trademark or label use shall be registered with the department.

(3) A person shall not use the label or trademark

or advertise it, or attach it on any promotional literature, manufactured article or agricultural product without the approval of the department.

(4) The department may deny permission to use the label or trademark if the department believes that the planned use would adversely affect the use of the label or trademark as a marketing tool for Iowa products or its use would be inconsistent with the marketing objectives of the department. Notwithstanding chapter 17A, the Iowa administrative procedure Act, the department may suspend permission to use the label or trademark prior to an evidentiary hearing which shall be held within a reasonable period of time following the denial.

c Promote an import substitution program to encourage the purchase of domestically produced Iowa goods by identifying and inventorying potential purchasers and the firms that can supply them, contacting the suppliers to determine their interest and ability in meeting the potential demand, and making the buyers aware of the potential suppliers.

d Aid in the promotion and development of the agricultural processing industry in the state.

3. *Local government and service coordination* To coordinate the development of state and local government economic development-related programs in order to promote efficient and economic use of federal, state, local, and private resources.

a To carry out this responsibility, the department shall:

(1) Provide the mechanisms to promote and facilitate the coordination of management and technical assistance services to Iowa businesses and industries and to communities by the department, by the community colleges, and by the state board of regents institutions, including the small business development centers, the center for industrial research and service, and extension activities. In order to achieve this goal, the department may establish periodic meetings with representatives from the community colleges and the state board of regents institutions to develop this coordination. The community colleges and the state board of regents institutions shall cooperate with the department in seeking to avoid duplication of economic development services through greater coordinating efforts in the utilization of space, personnel, and materials and in the development of referral and outreach networks. The department shall annually report on the degree to which economic development activities have been coordinated and the degree to which there are future coordination needs, and the community colleges and the state board of regents institutions shall be given an opportunity to review and comment on this report prior to its printing or release. The department shall also establish a registry of applications for federal funds related to management and technical assistance programs.

(2) Provide office space and staff assistance to the city development board as provided in section 368.9.

(3) Provide technical and financial assistance to

local and regional government organizations in Iowa, analyze intergovernmental relations in Iowa, and recommend policies to state agencies, local governments, the governor, and the general assembly as these pertain to economic development

(4) Train field experts in local development and through them provide continuing support to small local organizations

b In addition to the duties specified in paragraph "a", the department may

(1) Perform state and interstate comprehensive planning and related activities

(2) Perform planning for metropolitan or regional areas or areas of rapid urbanization including interstate areas

(3) Provide planning assistance to cities, other municipalities, counties, groups of adjacent communities, metropolitan and regional areas, and official governmental planning agencies

(4) Assist public or private universities and colleges and urban centers to

(a) Organize, initiate, develop, and expand programs which will provide special training in skills needed for economic and efficient community development

(b) Support state and local research that is needed in connection with community development

4 *Exporting* To promote and aid in the marketing and sale of Iowa industrial and agricultural products and services outside of the state To carry out this responsibility, the department shall

a Establish and carry out the purposes of the Iowa export trading company as provided in sections 28 106 to 28 108

b Prepare a report for the governor and the general assembly indicating the areas of export development in which this state could be more actively involved and how this involvement could occur The initial report shall be available to the governor and members of the general assembly by December 1, 1986 Subsequent reports may be submitted as deemed necessary The report shall include, but is not limited to

(1) Information on the financial requirements of export trade activity and the potential roles for state involvement in export trade financing

(2) Information on financing of export trade activity undertaken by other states and the results of this activity

(3) Recommendations for a long-term export trade policy for the state

(4) Recommendations regarding state involvement in export trade financing requirements

(5) Other findings and recommendations deemed relevant to the understanding of export trade development

c Perform the duties and activities specified for the agricultural marketing program under sections 15 201 and 15 202

d Perform the duties and activities specified for the industrial and business export trade plan under section 15 231

e To the extent deemed feasible and in coordination with the board of regents and the area community colleges, work to establish a conversational foreign language training program

f To the extent deemed feasible, promote and assist in the creation of one or more international currency and barter exchanges

g Seek assistance and advice from the export advisory board appointed by the governor and the Iowa district export council which advises the United States department of commerce The governor is authorized to appoint an export advisory board

h To the extent deemed feasible, develop a program in which graduates of Iowa institutions of higher education or former residents of the state who are residing in foreign countries and who are familiar with the language and customs of those countries are utilized as cultural advisors for the department and for Iowa businesses participating in trade missions and other foreign trade activities, and in which foreign students studying at Iowa institutions of higher education are provided means to establish contact with Iowa businesses engaged in export activities, and in which foreign students returning to their home countries are used as contacts for trading purposes

5 *Tourism* To promote Iowa's public and private recreation and tourism opportunities to Iowans and out-of-state visitors and aid promotional and development efforts by local governments and the private sector To carry out this responsibility, the department shall

a Build general public consensus and support for Iowa's public and private recreation, tourism, and leisure opportunities and needs

b Recommend high quality site management and maintenance standards for all public and private recreation and tourism opportunities

c Coordinate and develop with the state department of transportation, the state department of natural resources, the state department of cultural affairs, and other state agencies public interpretation and education programs which encourage Iowans and out-of-state visitors to participate in recreation and leisure opportunities available in Iowa

d Coordinate with other divisions of the department to add Iowa's recreation, tourism, and leisure resources to the agricultural and other images which characterize the state on a national level

e Consolidate and coordinate the many existing sources of information about local, regional, state wide, and national opportunities into a comprehensive, state-of-the-art information delivery system for Iowans and out-of-state visitors

f Formulate and direct marketing and promotion programs to specific out-of-state market populations exhibiting the highest potential for consuming Iowa's public and private tourism products

g Provide ongoing long range planning on a statewide basis for improvements in Iowa's public and private tourism opportunities

h Provide the private sector and local communi-

ties with advisory services including analysis of existing resources and deficiencies, general development and financial planning, marketing guidance, hospitality training, and others.

i. Measure the change in public opinion of Iowans regarding the importance of recreation, tourism, and leisure.

j. Provide annual monitoring of tourism visitation by Iowans and out-of-state visitors to Iowa attractions, public and private employment levels, and other economic indicators of the recreation and tourism industry and report predictable trends.

k. Identify new business investment opportunities for private enterprise in the recreation and tourism industry.

l. Cooperate with and seek assistance from the state department of cultural affairs.

m. Seek coordination with and assistance from the state department of natural resources in regard to the Mississippi river parkway under chapter 308 for the purposes of furthering tourism efforts.

n. Collect, assemble, and publish a list of farmers who have agreed to host overnight guests, for purposes of promoting agriculture in the state and farm tourism, to the extent that funds are available.

6. *Job training and entrepreneurial assistance.* To develop job training strategies which will promote economic growth and the creation of new job opportunities and to administer related programs including the federal Job Training Partnership Act. To carry out this responsibility, the department shall:

a. Coordinate and perform the duties specified under the job training partnership program in chapter 7B, the Iowa industrial new jobs training Act in chapter 280B, and the Iowa small business new jobs training Act in chapter 280C. In performing these duties, the department shall:

(1) Develop a job training delivery system which will minimize administrative costs through a single delivery system, maximize the use of public and private resources for job training initiatives, and assume the coordination of services and activities with other related programs at both the state and local level.

(2) Manage a job training program reporting and evaluation system which will measure program performance, identify program accomplishments and service levels, evaluate how well job training programs are being coordinated among themselves and with other related programs, and show areas where job training efforts need to be improved.

(3) Maintain a financial management system, file appropriate administrative rules, and monitor the performance of agencies and organizations involved with the administration of job training programs assigned to the department.

b. Develop job training strategies which will promote economic growth and the creation of new job opportunities. Specifically, the department shall:

(1) Work closely with representatives of business and industry, labor organizations, and educational institutions to determine the job training needs of

Iowa employers, and where possible, provide for the development of industry-specific training programs.

(2) Promote Iowa job training programs to potential and existing Iowa employers and to employer associations.

(3) Develop annual goals and objectives which will identify both short-term and long-term methods to improve program performance, create employment opportunities for residents, and enhance the delivery of services.

(4) Develop job training and technical assistance programs which will promote entrepreneurial activities, assist small businesses, and help generate off-farm employment opportunities for persons engaged in farming.

(5) Coordinate job training activities with other economic development finance programs to stimulate job growth.

(6) Develop policies and plans under the youth program provisions of appropriate programs which will emphasize employing Iowa youth on projects designed to improve Iowa parks and recreation areas, restore historical sites, and promote tourism. The department shall coordinate its youth program efforts with representatives of educational institutions to promote the understanding by youth of career opportunities in business and industry.

c. To the extent feasible, develop from available state and federal job training program resources an entrepreneurship training program to help encourage the promotion of small businesses within the state. The department of education and the state board of regents shall cooperate with the department on this program. The entrepreneurship training program shall coordinate its activities with other financial and technical assistance efforts within the department.

d. Administer the Iowa "self-employment loan program" under section 15.241.

e. To the extent feasible, provide assistance to the department of human services in obtaining a waiver to provide self-employment opportunities to recipients of aid to families with dependent children.

f. Provide assistance to workers seeking economic conversion of closed or economically distressed plants located in the state including, but not limited to, the following:

(1) Evaluating the feasibility and economic viability of proposed employee-owned businesses.

(2) Working with the small business development centers to provide technical assistance and counseling services including, but not limited to, legal, tax, management, marketing, labor, and contract assistance to persons who seek to form employee-owned businesses.

(3) Assisting persons in obtaining financing for the purchase and operation of employee-owned businesses.

7. *Small business.* To provide assistance to small business, targeted small business, and entrepreneurs creating small businesses to ensure continued viability and growth. To carry out this responsibility, the department shall:

a. Receive and review complaints from individual small businesses that relate to rules or decisions of state agencies, and refer questions and complaints to a governmental agency where appropriate.

b. Establish and administer the regulatory information service provided for in section 28.17.

c. Aid for the development and implementation of the Iowa targeted small business procurement Act established in sections 73.15 through 73.21 and the targeted small business financial assistance program established in section 15.247. The duties of the director under this paragraph include the following:

(1) The director, in conjunction with the director of the department of management, shall publicize the procurement goal program for targeted small businesses and to agencies of state government, attempt to locate targeted small businesses able to perform contracts, and encourage program participation. The director may request the cooperation of the department of general services, the department of transportation, the state board of regents, or any other agency of state government in publicizing this program.

(2) The director, in conjunction with the director of the department of management, shall publicize the financial assistance program established in section 15.247 to targeted small businesses.

(3) When the director determines, or is notified by the head of another agency of state government, that a targeted small business is unable to perform a procurement contract, the director shall assist the small business in attempting to remedy the causes of the inability to perform. In assisting the small business, the director may use any management or financial assistance programs available through state or governmental agencies or private sources.

(4) The director, in conjunction with the director of the department of management and jointly with the universities under the jurisdiction of the state board of regents, and the community colleges, shall develop and make available in all areas of the state, programs to offer and deliver concentrated, in-depth advice and services to assist targeted small businesses. The advice and services shall extend to all areas of business management in its practical application, including but not limited to accounting, engineering, drafting, grant writing, obtaining financing, locating bond markets, market analysis, and projections of profit and loss.

(5) The director shall submit an annual report to the governor and the general assembly relating progress toward realizing the goals and objectives of the procurement goal program and the financial assistance program established in section 15.247 during the preceding fiscal year. The director of the department of management shall assist in compiling the data to be included in the report. The report shall include the following information:

(a) The total dollar value and number of potential targeted small business procurement contracts identified and the percentage of total state procurements this reflects.

(b) The total dollar value and number of procurement contracts awarded to targeted small businesses with appropriate designation as to the total number and value of contracts awarded to each certified targeted small business, and the percentages of the total state procurements the figures of total dollar value and the number of targeted small business contracts reflect.

(c) The number of contracts which were designated to satisfy targeted small business procurement goals established pursuant to sections 73.15 through 73.21, but which were not awarded to a targeted 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.

(d) The efforts undertaken to identify targeted small businesses and to publicize and encourage participation in the procurement goal and loan guarantee programs during the preceding year.

(e) The efforts undertaken to develop technical assistance programs and to remedy the inability of targeted small businesses to perform on potential procurement contracts.

(f) Information about the number of applications received and processed by the Iowa finance authority under the loan guarantee program, the value of loans guaranteed, and follow-up information on targeted small businesses which have been awarded loan guarantees.

(g) The director's recommendations for strengthening the procurement goal program and delivery of services to targeted small businesses. The director of the department of management shall provide recommendations to the director regarding strengthening contract compliance activities by state agencies.

(h) The department of general services, the department of transportation, the state board of regents, and all other agencies of state government shall provide all relevant information requested by the director for the preparation of the annual report.

d. If determined necessary by the board, provide training for bank loan officers to increase their level of expertise in regard to business loans.

e. To the extent feasible, cooperate with the department of employment services to establish a program to educate existing employers and new or potential employers on the rates and workings of the state unemployment compensation program and the state workers' compensation program.

f. Study the feasibility of reducing the total number of state licenses, permits, and certificates required to conduct small businesses.

g. Encourage and assist small businesses to obtain state contracts and subcontracts by cooperating with the directors of purchasing in the department of general services, the state board of regents, and the department of transportation in performing the following functions:

(1) Developing a uniform small business vendor

application form which can be adopted by all agencies and departments of state government to identify small businesses and targeted small businesses which desire to sell goods and services to the state. This form shall also contain information which can be used to determine certification as a targeted small business pursuant to section 10A.104, subsection 8.

(2) Compiling and maintaining a comprehensive source list of small businesses.

(3) Assuring that responsible small businesses are solicited on each suitable purchase.

(4) Assisting small businesses in complying with the procedures for bidding and negotiating for contracts.

(5) Simplifying procurement specifications and terms in order to increase the opportunities for small business participation.

(6) When economically feasible, dividing total purchases into tasks or quantities to permit maximum small business participation.

(7) Preparing timely forecasts of repetitive contracting requirements by dollar volume and types of contracts to enhance the participation of responsible small businesses in the public purchasing process.

(8) Developing a mechanism to measure and monitor the amount of participation by small businesses in state procurement.

h. In addition, the department shall provide assistance to a small business advisory council which shall consist of nine members appointed as follows:

(1) Not more than five of the members shall be from the same political party. The governor shall appoint the members of the advisory council to four-year terms beginning and ending as provided by section 69.19, subject to confirmation by the senate. Two-thirds of the membership of the advisory council shall consist of individuals who own and operate a small business or individuals employed in the management of a small business.

(2) A vacancy on the advisory council shall be filled in the same manner as regular appointments are made for the unexpired portion of the regular term.

(3) The advisory council shall meet in May of each year for the purpose of electing one of its members as chairperson and one of its members as vice chairperson. However, the chairperson and vice chairperson shall not be from the same political party. The advisory council shall meet at least quarterly.

(4) Members of the advisory council shall be allowed their actual and necessary expenses incurred in the performance of their duties. All expenses shall be paid from appropriations to the department for those purposes.

(5) The duties of the advisory council may include but shall not be limited to the following:

(a) Advise and consult with the board with respect to matters which are of concern to small business.

(b) Submit recommendations to the board relating to actual or proposed activities concerning small business.

(c) Submit recommendations for legislative or administrative action.

(d) Review and monitor small business programs and agencies in order to determine their effectiveness and whether they complement or compete with each other, and to coordinate the delivery of programs and services aimed at small businesses.

(e) Initiate small business studies as deemed necessary.

(f) Provide other information or perform other duties which would be of assistance to small business.

i. Assist in the development, promotion, implementation, and administration of a statewide network of regional corporations designed to increase the availability of financing for small businesses.

8. *Case management.* To provide case management assistance to low-income persons for the purpose of establishing or expanding small business ventures as provided in section 15.246.

9. *Miscellaneous.* To provide other necessary services, the department shall:

a. Collect and assemble, or cause to have collected and assembled, all pertinent information available regarding the industrial, agricultural, and public and private recreation and tourism opportunities and possibilities of the state of Iowa, including raw materials and products that may be produced from them; 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 of the state, as industrial locations; the development of a grain alcohol motor fuel industry and its related products; and other fields of research and study as the board deems necessary. This 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 those industries. The information shall also consider the changing composition of the Iowa family, the level of poverty among different age groups and different family structures in Iowa society, and the changing composition of the Iowa work force and the impact of those changes on Iowa families.

b. Apply for, receive, contract for, and expend federal funds and grants and funds and grants from other sources.

c. Except as otherwise provided in sections 19.33, 28.82, 28.87, 262.9, and 280A.23, provide that an inventor whose research is funded in whole or in part by the state shall assign to the state a proportionate part of the inventor's rights to a letter patent resulting from that research. 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. However, the department in conjunction with other state agencies, including the board of regents, shall provide incentives to inventors whose research is funded in whole or in part by the state for having their products produced in

the state. These incentives may include taking a smaller portion of the inventor's royalties or earnings than would otherwise occur under this paragraph or other provisions of the law.

d. Administer or oversee federal rural economic development programs in the state.

91 Acts, ch 28, §1 HF 322, 91 Acts, ch 109, §1 SF 479
 Subsection 7, paragraph h stricken and rewritten
 Subsection 9, paragraph a amended

15.232 Ambassador's program established.
 Repealed by 91 Acts, ch 267, § 319. HF 479

15.282 Purpose.

The purpose of this part is to assist communities and rural areas of the state with their development and governmental responsibilities by providing low-interest and no-interest loans or grants for traditional infrastructure, new infrastructure, and housing, and their efforts relating to community, business, and economic development under the community builder program established in section 15.308.

The department may also provide assistance for infrastructure assessment or planning efforts pursuant to rules established by the department.

91 Acts, ch 23, §1 SF 254
 Section amended

15.283 Program.

The department shall establish a program to effectuate the purposes of this part subject to the following guidelines:

1. General program criteria and applications are to be developed by the finance division of the department in conjunction with the Iowa finance authority, subject to approval of the boards of the department and Iowa finance authority.
2. The program shall provide for four categories of assistance. These are the traditional infrastructure category, the new infrastructure category, the housing category, and the planning category.
3. All moneys available for the traditional infrastructure category, the new infrastructure category, and the planning category shall be administered by the department. All moneys available for the housing category shall be administered by the Iowa finance authority. The Iowa finance authority may transfer a portion of the funds appropriated for the housing category to the department for purposes of the planning category to be administered by the department.
4. Moneys available under this program for the traditional infrastructure category, the new infrastructure category, and the planning category shall be allocated by the director. Annually, not more than three hundred thousand dollars of the funds for the program shall be allocated for the planning category. Moneys available under this program for the housing category shall be allocated by the executive director of the Iowa finance authority who may transfer a portion of the moneys to the department for the planning category. If moneys allocated to the housing category are not used or dedicated by April 1 of the fiscal year, the moneys shall be reallocated to the

other categories that have the most need as determined by the department. At least one-third of the moneys allocated for the traditional infrastructure category, the new infrastructure category, and the housing category shall be set aside for cities with populations of five thousand or less. For the purposes of this set-aside, a city located in a county with a population in excess of three hundred thousand, if the city is contiguous to another city in the county and that other city is contiguous to the largest city in that county, shall be considered as having a population in excess of five thousand.

5. The department may establish an interest or principal payment program to pay up to all the interest or an amount of principal equal to the total interest amount due on municipal bonds sold by the local community as authorized by this section. The department may use part or all of the moneys available for traditional or new infrastructure assistance for the interest or principal payment program. The program shall only be available to communities which demonstrate a substantial local effort to assist in community development. The department shall develop rules defining "substantial local effort".

91 Acts, ch 23, §2-5 SF 254
 Exception to subsection 4, see 91 Acts, ch 267, §301 HF 479
 Subsections 2 and 3 amended
 Subsection 4 stricken and rewritten
 Subsection 6 stricken

15.284 Traditional infrastructure.

1. The traditional infrastructure category contains projects that include, but are not limited to, sewer, water, roads, bridges, airports, and other projects described in section 384.24, subsection 3.
2. Any Iowa city, county, rural water district created under chapter 357A, or nonprofit corporation created for the purpose of operating a rural water system is eligible to apply for loans or grants from this category. Along with the application, the applicant shall submit the following:
 - a. A needs assessment study.
 - b. A capital improvement program.
 - c. Evidence of matching contribution of at least twenty-five percent of the total project cost.
3. Applications must be seeking funds to improve the physical assets of the traditional infrastructure of the applicant in aid of development.
4. The department shall rank the applicants according to financial need, cost-benefit of the project, percent of match, impact, including an increase in fire or public safety because of completion of the project, and ability to administer the project.
5. The interest rate for a loan, if assessed, may range from zero to five percent. The department may charge applicants an administration fee, not to exceed one percent of the principal amount of the loan or grant, to be paid as a lump sum.
6. The department may coordinate with the department of natural resources to assist applicants receiving federal or other state aid for waste water treatment facilities. However, the department shall not allocate more than fifty percent of the moneys available to this category for this purpose.

91 Acts, ch 23, §6 SF 254
 Subsection 4 amended

15.285 New infrastructure.

1. The new infrastructure category contains projects described in section 384.24, subsection 4, and projects which include, but are not limited to, communication systems, day care, technology transfer adaptation, medical decision-support systems, special transportation services, physical improvements under town square and main street programs, physical improvements to historic, art, and cultural sites and attractions, emergency medical services, and speculative shell buildings built by a local community development organization.

2. Any political subdivision, or nonprofit development corporation, is eligible to apply for loans or grants under this category.

3. Along with the application, the following shall be submitted:

- a. A needs assessment study.
- b. A capital improvement plan.
- c. Evidence of a match of at least ten percent.

4. The department shall rank the applications according to the applicant's financial need, cost-benefit of the project, current conditions or situations, percent of private investment or contribution, and ability to administer the project.

5. The interest rate for a loan, if assessed, may range from zero to five percent. The department may charge applicants an administration fee, not to exceed one percent of the principal amount of the loan or grant, to be paid as a lump sum percent or a percent of the interest rate.

6. The new infrastructure category shall include new infrastructure systems or networks of the state of Iowa, its agencies or instrumentalities which the governor, by executive order, finds and determines will provide local communities with the benefits of new infrastructure. Proceeds of bonds issued to fund costs of state new infrastructure shall not be considered moneys available under the program for purposes of the allocation under subsection 4 of section 15.283. Subsections 2, 3, and 5 of this section are not applicable to state new infrastructure.

91 Acts, ch 23, §7, 8 SF 254
Subsections 1 and 4 amended

15.286 Housing.

1. Any Iowa city, county, housing agency, or developer shall be eligible to apply for loans or grants under this category. Along with the application the person shall submit the following:

- a. A needs assessment for the area to be served.
- b. A demographic documentation of the housing trend.
- c. Evidence of a local commitment of at least twenty-five percent.

2. Applicants must be seeking funds to assist in meeting the area needs of lower and very low income families in pursuit of decent housing or in meeting the purposes of the housing improvement fund program as described in section 220.100, subsection 2.

3. For purposes of this section:

a. "Lower income families" means lower income families as defined in section 220.1, subsection 3.

b. "Very low income families" means very low income families as defined in section 220.1, subsection 4.

4. a. The Iowa finance authority shall develop criteria to award assistance based upon the applicant's financial need, the cost-benefit of the project, the accessibility to the project by handicapped persons as defined in section 321L.1, percent of private investment, percent leveraged by other programs, assessment of local housing situation, and ability to administer the program.

b. The Iowa finance authority shall give a preference in the awarding of assistance as follows:

- (1) Assistance that will be used to meet the purposes of the housing improvement fund program.
- (2) An applicant that is a nonprofit entity.
- (3) Programs to assist lower income, the disadvantaged, or the disabled.

(4) A project that will qualify for the low-income housing credit under section 42 of the Internal Revenue Code, as defined in section 422.3.

(5) A project that will not otherwise qualify for the low-income housing credit but will provide an income mix of the residents as described in section 42(g)(1)(A) or (B) of the Internal Revenue Code, as defined in section 422.3.

(6) A project involving a community development corporation or financial institution participating in a federal or state community reinvestment program.

5. Interest charged to applicants for a loan, may range from zero to five percent. The Iowa finance authority may charge applicants an administration fee, not to exceed one percent of the principal amount of the loan or grant, to be paid as a lump sum percent.

6. A housing project which receives funds under the rural community 2000 program, for the portion of the project receiving funding under the rural community 2000 program shall provide, as nearly as practical, that twenty-five percent of the housing units, as nearly as practical, be available for very low income families and seventy-five percent of the housing units be available for lower income families.

91 Acts, ch 267, §309, 310 HF 479

Subsection 2 amended

Subsection 4, paragraph b, subparagraph (1) amended

15.286A Planning.

1. The planning category contains projects that include but are not limited to planning efforts leading to completion of the community builder program established in section 15.308 and for statewide or regional infrastructure assessment or planning.

2. A city, cluster of cities, county, group of counties, council of governments, or regional planning commission, or one of these entities on behalf of an unincorporated community or group of unincorporated communities, is eligible to apply for loans or grants from this category for planning efforts related to the community builder program.

3. The department may issue requests for proposals for applications on a competitive basis or may

negotiate with one or more public or private contractors for statewide or regional infrastructure assessment or planning.

4. The department shall adopt rules pursuant to chapter 17A for administration of this category.

91 Acts, ch 23, §9 SF 254, 91 Acts, ch 267, §311 HF 479
NEW section
Subsection 2 amended

15.287 Revolving fund.

The Iowa finance authority shall establish a revolving fund for the program and shall transfer to the department moneys to be administered by the department. If, during a fiscal year, moneys are not appropriated for the specific purpose of the housing category, the executive director of the Iowa finance authority may retain up to twenty-five percent of the funds appropriated for the program. The moneys in the revolving fund are appropriated for purposes of the program. Notwithstanding section 8.33, moneys in the fund at the end of a fiscal year shall not revert to any other fund but shall remain in the revolving fund. The fund shall consist of all appropriations, grants, or gifts received by the authority or the department specifically for use under this part and all repayments of loans or grants made under this part. However, loan repayments from loans made under section 28.120, which are not allocated to another program, shall be deposited in the revolving fund and shall be available for allocation by the director for categories administered by the department.

91 Acts, ch 23, §10 SF 254, 91 Acts, ch 267, §312 HF 479
See Code editor's note
Section amended

15.291 Definitions.

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

1. "Agreement" means a written contract between the department and a participating business which provides for the retraining of participating workers in a retraining program approved by the department.

2. "Applicant" means a business or group of businesses submitting an application for approval by the department.

3. "Community college" means a vocational school or a community college established under chapter 280A.

4. "Business" means a commercial enterprise engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate or intrastate commerce, but excludes retail, health, or professional services. "Business" does not include a commercial enterprise which closes or substantially reduces its operation in one area of this state and relocates substantially the same operation in another area of this state, but does include a commercial enterprise expanding its operations in another area of this state provided that existing operations of a similar nature are not closed or substantially reduced.

5. "Business production site" means a facility in which a business operates the means to manufacture, process, or assemble products or conduct research, or a center which provides services in intrastate or interstate commerce, excluding retail, health, or professional services.

6. "Department" means the Iowa department of economic development.

7. "Fund" means the Iowa employment retraining fund established under section 15.298.

8. "Job quality" means the value of an employment position to a business based on consideration of factors, including but not limited to the following:

a. The dollar value of annual wages and benefits that a worker beginning in the position earns.

b. Whether the employment position is a permanent full-time, permanent part-time, temporary full-time, or temporary part-time position. If the position is other than permanent full-time, consideration of the value of the position shall include the number of hours demanded from the position each year.

c. The number of times in the last three years that the position has been occupied.

9. "Participating business" means one or more existing businesses which are parties to an agreement as provided in section 15.296.

10. "Participating worker" means a person who prior to being accepted into a retraining program is an employee of the participating business and who the department determines is substantially at risk of becoming displaced within the following ten years, due to the retooling of the business.

11. "Person" means a natural person.

12. "Retooling" means upgrading, modernizing, or expanding a business to increase the production or efficiency of business operations, including replacing equipment, introducing new manufacturing processes, or changing managerial procedures.

13. "Retraining" means the process designed to instruct participating workers in skills related to the retooled operation of the participating business and includes any of the following skills:

a. Basic academic skills, including fundamental skills of reading, computation of numbers, and written and verbal communication required to successfully function in the workplace.

b. Job specific skills, including skills required to perform tasks of a specific employment position or cluster of employment positions.

14. "Retraining agency" means a community college, or other public educational facility, private entity, or organization which provides retraining to workers.

15. "Retraining program" means a program for retraining participating workers, including a program established pursuant to section 15.297.

91 Acts, ch 82, §1 HF 498
Subsection 8, paragraph d stricken

15.295 Approval of applications.

1. The department, in reviewing an application, shall consider the contents of the application, including the business information and the retraining proposal.

2. The department shall approve, deny, or defer applications and award financial assistance based on selection criteria. The department shall score and rank the criteria according to the relative importance of the criteria. The importance assigned to each criterion shall be determined by the department. Approval, denial, or deferral of an application shall be based on, but not limited to, the following selection criteria:

a. The past, current, and future financial commitment of the business to increase productivity or efficiency, including capital investments in retooling, and the general financial viability of the business as demonstrated by the business's financial information.

b. A ratio comparing the total amount planned to be invested by the business in the actual costs of retraining to the amount of dollars being requested for retraining. This ratio shall indicate that the business's investment amount is at least equal to the amount requested. If not the application shall be denied.

c. The quality of jobs resulting from the retraining proposal.

d. The need of the proposed business for retraining assistance.

e. The number of businesses, contained in the training proposal, applying for combined assistance.

f. The endorsement of the labor union or affiliate which represents workers proposed to participate in retraining.

g. The degree to which the products or processes of the business's retooling operation are new, create new or expanded marketing opportunities, diversify the state's economy, introduce new manufacturing processes into state industry, or improve existing manufacturing processes.

h. The cost of retraining each worker.

i. The procedure to evaluate the proposed retraining program and collect data required to make the evaluation, based on a procedure which monitors the retraining program, including accounting and auditing systems adequate to ensure the accuracy and reliability of expenditures recorded by the business and related to the proposed retraining.

j. The relevance of the retraining proposal to the retooling project.

3. Each applicant shall be notified in writing, within the time period set by rules adopted by the department, of the department's final disposition of the application.

91 Acts, ch 82, §2 HF 498
Subsection 2 amended

15.308 Community builder program.

1. A community builder program is established in the Iowa department of economic development.

The purpose of the program is to encourage a city, cluster of cities, county, group of counties, unincorporated community or group of unincorporated communities to implement planning efforts for community, business, and economic development.

2. A city, cluster of cities, county, group of counties, unincorporated community or group of unincorporated communities which participate and receive certification under this program may be eligible for additional consideration under the following state financial assistance programs:

a. The community economic betterment account under section 99E.32.

b. The community development block grant program.

c. The rural community 2000 program under this chapter.

d. Recycling projects under section 455D.15.

e. Revitalize Iowa's sound economy fund under chapter 315.

f. Programs administered by the Iowa finance authority under chapter 220.

g. Water, conservation, or any resource enhancement and protection program under the control of the department of natural resources.

3. A department administering a program under subsection 2 shall adopt administrative rules providing bonus points of not less than five percent and not more than twenty percent of the points available under the program for certified participants under this section.

4. A city, cluster of cities, county, group of counties, unincorporated community or group of unincorporated communities not yet certified under this section but awarded a grant or initiative from the state shall initiate a process to establish a community builder program within six months of the award. The community builder program shall be completed within one year, or prior to the completion of the contract period if the contract is longer than one year. However, the program shall be completed within three years of the receipt of the award. The department administering the state financial assistance program may grant an extension if the contract period is less than three years.

5. A city, cluster of cities, county, group of counties, unincorporated community, or group of unincorporated communities shall submit a community builder program to the regional coordinating council for coordination, review, and comment and to the department for certification.

6. A community builder program shall include, but is not limited to, all of the following information:

a. A plan to improve infrastructure, cultural and fine arts resources, housing, primary health care services, and natural resources, conservation, and recreational facilities. The plan shall include a prioritization of identified needs.

b. A community database including an inventory and assessment of infrastructure, cultural and fine arts resources, housing, primary health care services, and natural resources, conservation and recreational

facilities. The database shall also include an assessment of applicants' participation in a county or regional economic development plan.

c. A five-year community economic development strategic plan designed to meet the needs of the community.

d. A list of local community programs to encourage economic development including public and private financial resources, an analysis of current and potential local tax revenues, and tax abatement programs.

e. A county or regional survey of the available employment and labor force.

7. Contingent on the availability of funding for this purpose, the department may enter into a contract with service providers to provide technical assistance to a city, cluster of cities, county, group of counties, or unincorporated community, or group of unincorporated communities participating in a community builder program.

8. The department shall adopt administrative rules pursuant to chapter 17A to administer this part.

91 Acts, ch 23, §11 SF 254
Subsection 4 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. Director of revenue and finance on fiscal condition of state.
2. Treasurer of state as to the condition of the treasury.
3. Secretary of agriculture.
4. Director of the department of education.
5. Director of the department of human services.
6. Board of regents.
7. Superintendent of printing.
8. State historical society board of trustees.
9. State librarian.
10. Library commission.
11. Department of general services.
12. Director of department of natural resources.
13. 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 director of revenue and finance. All officials and agencies submitting re-

ports shall consult with the director of revenue and finance and the director of the department of management, and shall devise standardized report forms for submission to the governor and members of the general assembly.

91 Acts, ch 258, §16 HF 709
Subsection 8 stricken and former subsections 9 through 14 renumbered as 8 through 13

17.8 Superintendent of banking.

The annual report of the superintendent of banking shall cover the year ending June 30 of each year, and shall be filed as soon as practicable after said date and not later than December 31.

91 Acts, ch 220, §1 SF 507
Section amended

17.11 Documents filed with the general assembly.

1. It is the intent of the general assembly that a department or official may notify the chief clerk of the house of representatives and the secretary of the senate of the availability of documents and materials other than those covered by subsection 2.

2. A department or official required to file a document with the general assembly shall only be required to send one copy of the document to each of the following:

- a. The chief clerk of the house of representatives.
- b. The secretary of the senate.
- c. Each caucus or research staff director of the general assembly.

3. The chief clerk of the house of representatives and the secretary of the senate shall transmit a list of the documents received, and a list of the documents and materials available to the general assem-

bly to the legislative service bureau, which shall maintain the lists, as well as a list of addresses where copies of the documents may be ordered. The legislative service bureau shall distribute copies of these lists to members of the general assembly weekly

when the general assembly is in session, and monthly during the legislative interim.

91 Acts, ch 47, §1 HF 592
NEW section

CHAPTER 17A

ADMINISTRATIVE PROCEDURE ACT

17A.4 Procedure for adoption of rules.

1. Prior to the adoption, amendment, or repeal of any rule an agency shall:

a. Give notice of its intended action by submitting three copies of the notice to the administrative rules coordinator, who shall assign an ARC number to each rulemaking document and forward two copies to the administrative code editor for publication in the "Iowa Administrative Bulletin" created pursuant to section 17A.6. Any notice of intended action shall be published at least thirty-five days in advance of the action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views.

b. Afford all interested persons not less than twenty days to submit data, views or arguments in writing. If timely requested in writing by twenty-five interested persons, by a governmental subdivision, by the administrative rules review committee, by an agency, or by an association having not less than twenty-five members, the agency must give interested persons an opportunity to make oral presentation. The opportunity for oral presentation must be held at least twenty days after publication of the notice of its time and place in the Iowa administrative bulletin. The agency shall consider fully all written and oral submissions respecting the proposed rule. Within one hundred eighty days following either the notice published according to the provisions of subsection 1, paragraph "a" or within one hundred eighty days after the last date of the oral presentations on the proposed rule, whichever is later, the agency shall adopt a rule pursuant to the rulemaking proceeding or shall terminate the proceeding by publishing notice of termination in the Iowa administrative bulletin. If requested to do so by an interested person, either prior to adoption or within thirty days thereafter, the agency shall issue a concise statement of the principal reasons for and against the rule it adopted, incorporating therein the reasons for overruling considerations urged against the rule.

c. Upon the request of at least two members of the administrative rules review committee publish in the Iowa administrative bulletin an estimate of the economic impact of a proposed rule upon all persons affected by it and upon the agency itself. If the agency determines that such an estimate cannot be formulated the reasons for impossibility of formulation shall be published instead of the estimate. An estimate shall be published at least fifteen days in advance of the adoption, amendment or repeal of the rule. In the case of a rule issued under subsection 2 or made effective under the provisions of section 17A.5, subsection 2, paragraph "b", an estimate, or the reasons for the impossibility of formulating an estimate shall be published within forty-five days of the request.

d. Mail the number of copies of the proposed rule as requested to the state office of a trade or occupational association which has registered its name and address with the agency. The trade or occupational association shall reimburse the agency for the actual cost incurred in providing the copies of the proposed rule under this paragraph. Failure to provide copies as provided in this paragraph shall not be grounds for the invalidation of a rule, unless that failure was deliberate on the part of that agency or the result of gross negligence.

2. When an agency for good cause finds that notice and public participation would be unnecessary, impracticable, or contrary to the public interest, the provisions of subsection 1 shall be inapplicable. The agency shall incorporate in each rule issued in reliance upon this provision either the finding and a brief statement of the reasons for the finding, or a statement that the rule is within a very narrowly tailored category of rules whose issuance has previously been exempted from subsection 1 by a special rule relying on this provision and including such a finding and statement of reasons for the entire category. If the administrative rules review committee by a two-thirds vote, the governor, or the attorney general files with the administrative code editor an objection to the adoption of any rule pursuant to this subsection, that rule shall cease to be effective one hundred

eighty days after the date the objection was filed. A copy of the objection, properly dated, shall be forwarded to the agency at the time of filing the objection. In any action contesting a rule adopted pursuant to this subsection, the burden of proof shall be on the agency to show that the procedures of subsection 1 were impracticable, unnecessary, or contrary to the public interest and that, if a category of rules was involved, the category was very narrowly tailored.

3. No rule adopted after July 1, 1975, is valid unless adopted in substantial compliance with the above requirements of this section. However, a rule shall be conclusively presumed to have been made in compliance with all of the above procedural requirements of this section if it has not been invalidated on the grounds of noncompliance in a proceeding commenced within two years after its effective date.

4. a. If the administrative rules review committee created by section 17A.8, the governor, or the attorney general finds objection to all or some portion of a proposed or adopted rule because that rule is deemed to be unreasonable, arbitrary, capricious, or otherwise beyond the authority delegated to the agency, the committee, governor, or attorney general may, in writing, notify the agency of the objection. In the case of a rule issued under subsection 2, or a rule made effective under section 17A.5, subsection 2, paragraph "b", the committee, governor, or attorney general may notify the agency of such an objection. The committee, governor, or attorney general shall also file a certified copy of such an objection in the office of the administrative code editor and a notice to the effect that an objection has been filed shall be published in the next issue of the Iowa administrative bulletin and in the Iowa administrative code when that rule is printed in it. The burden of proof shall then be on the agency in any proceeding for judicial review or for enforcement of the rule heard subsequent to the filing to establish that the rule or portion of the rule timely objected to according to the above procedure is not unreasonable, arbitrary, capricious, or otherwise beyond the authority delegated to it.

b. If the agency fails to meet the burden of proof prescribed for a rule objected to according to the provisions of paragraph "a" of this subsection, the court shall declare the rule or portion of the rule objected to invalid and judgment shall be rendered against the agency for court costs. Such court costs shall include a reasonable attorney fee and shall be payable by the director of revenue and finance from the support appropriations of the agency which issued the rule in question.

5. Upon the vote of two-thirds of its members the administrative rules review committee may delay the effective date of a rule seventy days beyond that permitted in section 17A.5, unless the rule was promulgated under section 17A.5, subsection 2, paragraph "b". This provision shall be utilized by the committee only if further time is necessary to study and examine the rule. Notice of an effective date that

was delayed under this provision shall be published in the Iowa administrative code and bulletin.

6. The governor may rescind an adopted rule by executive order within seventy days of the rule becoming effective. The governor shall provide a copy of the executive order to the administrative code editor who shall include it in the next publication of the Iowa administrative bulletin.

91 Acts, ch 258, §17, 18 HF 709

Rules mandating expenditures by political subdivisions, limitations, fiscal notes, §25B 6

Subsection 1, paragraph a, and subsection 2 amended

Subsection 4, paragraph a, and subsection 6 amended

17A.5 Filing and taking effect of rules.

1. Each agency shall file in the office of the administrative rules coordinator three certified copies of each rule adopted by it. The administrative rules coordinator shall assign an ARC number to each rulemaking document and forward two copies to the administrative code editor. The administrative rules coordinator shall keep a permanent register of the rules open to public inspection.

2. A rule adopted after July 1, 1975, is effective thirty-five days after filing, as required in this section, and indexing and publication in the Iowa administrative bulletin except that:

a. If a later date is required by statute or specified in the rule, the later date is the effective date.

b. Subject to applicable constitutional or statutory provisions, a rule becomes 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, if the agency finds:

(1) That a statute so provides;

(2) That the rule confers a benefit or removes a restriction on the public or some segment thereof; or

(3) That this effective date is necessary because of imminent peril to the public health, safety or welfare. In any subsequent action contesting the effective date of a rule promulgated under this paragraph, the burden of proof shall be on the agency to justify its finding. The agency's finding and a brief statement of the reasons therefor shall be filed with and made a part of the rule. Prior to indexing and publication, the agency shall make reasonable efforts to make known to the persons who may be affected by it a rule made effective under the terms of this paragraph.

91 Acts, ch 258, §19 HF 709

Subsection 1 amended

17A.6 Publications.

1. The administrative code editor shall cause the "Iowa Administrative Bulletin" to be published in pamphlet form at least every other week containing the following:

a. Notices of intended action and adopted rules prepared in such a manner so that the text of a proposed or adopted rule shows the text of any existing rule being changed and the change being made.

b. All proclamations and executive orders of the governor which are general and permanent in nature.

c. Resolutions nullifying administrative rules passed by the general assembly pursuant to Article III, section 40 of the Constitution of the State of Iowa.

d. Other materials deemed fitting and proper by the administrative rules review committee.

2. Subject to the direction of the administrative rules coordinator, the administrative code editor shall cause the "Iowa Administrative Code" to be compiled, indexed, and published in loose-leaf form containing all rules adopted and filed by each agency. The administrative code editor further shall cause loose-leaf supplements to the Iowa administrative code to be published as determined by the administrative rules coordinator and the administrative rules review committee, containing all rules filed for publication in the prior time period. The supplements shall be in such form that they may be inserted in the appropriate places in the permanent compilation. The administrative rules coordinator shall devise a uniform numbering system for rules and may renumber rules before publication to conform with the system.

3. The administrative code editor may omit or cause to be omitted from the Iowa administrative code or bulletin any rule the publication of which would be unduly cumbersome, expensive or otherwise inexpedient, if the rule in printed or processed form is made available on application to the adopting agency at no more than its cost of reproduction, and if the Iowa administrative code or bulletin contains a notice stating the specific subject matter of the omitted rule and stating how a copy of the omitted rule may be obtained.

The administrative code editor shall omit or cause to be omitted from the Iowa administrative code any rule or portion of a rule nullified by the general assembly pursuant to Article III, section 40 of the Constitution of the State of Iowa.

4. The Iowa administrative code, its supplements, and the Iowa administrative bulletin shall be made available upon request to all persons who subscribe to any of them through the state printing division. Copies of this code so made available shall be kept current by the division.

5. All expenses incurred by the administrative code editor under this section shall be defrayed under section 14.22.

6. The administrative code editor, with the approval of the administrative rules review committee and the administrative rules coordinator, may delete a rule from the Iowa administrative code if the agency that adopted the rule has ceased to exist, no successor agency has jurisdiction over the rule, and no statutory authority exists supporting the rule.

7. The Iowa administrative code shall be cited as (agency identification number) IAC, (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

8. The Iowa administrative bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

91 Acts, ch 42, §2, 3 HF 274, 91 Acts, ch 258, §20 HF 709

See Code editor's note to §15 287

Omission of rules nullified by general assembly prior to July 1, 1991, notice to affected agencies, 91 Acts, ch 42, §4 HF 274

Subsection 1 amended

Subsections 2, 3, 5, and 6 amended

Subsection 3, NEW unnumbered paragraph 2

17A.8 Administrative rules review committee.

1. There is created the "Administrative Rules Review Committee." The committee shall be bipartisan and shall be composed of the following members:

a. Five senators appointed by the majority leader of the senate.

b. Five representatives appointed by the speaker of the house.

2. A committee member shall be appointed prior to the adjournment of a regular session convened in an odd-numbered year. The term of office shall be for four years beginning May 1 of the year of appointment. However, a member shall serve until a successor is appointed. A vacancy on the committee shall be filled by the original appointing authority for the remainder of the term. A vacancy shall exist whenever a committee member ceases to be a member of the houses from which the member was appointed.

3. A committee member shall be paid the per diem specified in section 2.10, subsection 6, for each day in attendance and shall be reimbursed for actual and necessary expenses. There is appropriated from money in the general fund not otherwise appropriated an amount sufficient to pay costs incurred under this section.

4. The committee shall choose a chairperson from its membership and prescribe its rules of procedure. The committee may employ a secretary or may appoint the administrative code editor or a designee to act as secretary.

5. A regular committee meeting shall be held at the seat of government on the second Tuesday of each month. Unless impracticable in advance of each such meeting the subject matter to be considered shall be published in the Iowa administrative bulletin. A special committee meeting may be called by the chairperson at any place in the state and at any time. Unless impracticable, in advance of each special meeting notice of the time and place of such meeting and the subject matter to be considered shall be published in the Iowa administrative bulletin.

6. The committee shall meet for the purpose of selectively reviewing rules, whether proposed or in effect. A regular or special committee meeting shall be open to the public and an interested person may be heard and present evidence. The committee may require a representative of an agency whose rule or proposed rule is under consideration to attend a committee meeting.

7. The committee may refer a rule to the speaker

of the house and the president of the senate at the next regular session of the general assembly. The speaker and the president shall refer such a rule to the appropriate standing committee of the general assembly.

8. If the committee finds objection to a rule, it may utilize the procedure provided in section 17A.4, subsection 4. In addition or in the alternative, the committee may include in the referral, under subsection 7, a recommendation that this rule be overcome by statute. If the committee of the general assembly to which a rule is referred finds objection to the referred rule, it may recommend to the general assembly that this rule be overcome by statute. This section shall not be construed to prevent a committee of the general assembly from reviewing a rule on its own motion.

9. Upon a vote of two-thirds of its members, the administrative rules review committee may delay the

effective date of a rule until the adjournment of the next regular session of the general assembly. The committee shall refer a rule whose effective date has been delayed to the speaker of the house of representatives and the president of the senate who shall refer the rule to the appropriate standing committees of the general assembly. If the general assembly has not disapproved of the rule by a joint resolution, the rule shall become effective. If a rule is disapproved, it shall not become effective and the agency shall withdraw the rule. This section shall not apply to rules made effective under section 17A.5, subsection 2, paragraph "b".

10. Notwithstanding section 13.7, the committee may employ necessary legal and technical staff.

91 Acts, ch 258, §21-23 HF 709
1991 amendments retroactively applicable to January 1, 1991, 91 Acts, ch 258, §73 HF 709
Subsection 1, paragraphs a and b amended
Subsections 3 and 4 amended

CHAPTER 18

GENERAL SERVICES DEPARTMENT

18.12 Duties — state property — employees — reports — lease-purchase — appropriation.

In addition to other duties the director shall:

1. See that all visitors, at proper hours, are properly escorted over capitol grounds and capitol buildings, free of expense.

2. Have at all times, charge of and supervision over the janitors, and other employees of the department in and about the capitol and other state buildings, except the buildings and grounds referred to in section 601L.3, subsection 6, at the seat of government.

3. Institute, in the name of the state, and with the advice and consent of the attorney general, civil and criminal proceedings against any person for injury or threatened injury to any public property under the person's control.

4. Keep in the director's office a complete record containing an itemized account of all state property, including furniture and equipment, under the director's care and control, and plans and surveys of the public grounds, buildings, and underground constructions at the seat of government.

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

6. At the time provided by law, make a verified report which shall cover all transactions for the pre-

ceding annual, fiscal or calendar period and show in detail:

a. All expenditures made on account of the department for public buildings and property.

b. The condition of all real and personal property of the state under the director's care and control, together with a report of any loss or destruction, or injury to any such property, with the causes thereof.

c. The measures necessary for the care and preservation of the property under the director's control.

d. Any recommendations as to methods which would tend to render the public service more efficient and economical.

e. Any other matter ordered by the governor.

7. Contract, with the approval of the executive council, for the repair, remodeling or, if the condition warrants, demolition of all buildings and grounds of the state at the seat of government and the institutions of the department of human services and the department of corrections for which no specific appropriation has been made, if the cost of repair, remodeling or demolition will not exceed one hundred thousand dollars when completed. The cost of repair projects for which no specific appropriation has been made shall be paid from the fund provided in section 19.29.

8. Dispose of all personal property of the state under the director's control when it becomes unnecessary or unfit for further use by the state. Proceeds from the sale of personal property shall be deposited in the state general fund.

9. Lease all buildings and office space necessary to carry out the provisions of this chapter or necessary for the proper functioning of any state agency at the seat of government, with the approval of the executive council if no specific appropriation has been made. The cost of any lease for which no specific appropriation has been made shall be paid from the fund provided in section 19.29.

When the general assembly is not in session, the director of general services may request funds from the executive council for moving state agencies located at the seat of government from one location to another. The request may include moving costs, telephone costs, repair costs, or any other costs relating to the move. The executive council may approve and shall pay the costs from funds provided in section 19.29 if it determines the agency or department has no available funds for these expenses.

10. On behalf of the department, enter into lease-purchase contracts for real or personal property, wherever located within the state, to be used for buildings, facilities, and structures, or for additions or improvements to existing buildings, facilities, and structures, to carry out the provisions of this section or for the proper use and benefit of the state and its state agencies on the following terms and conditions:

a. The director shall coordinate the location, design, plans and specifications, construction, and ultimate use of the real or personal property lease-purchased with the state agency for whose benefit and use the property is being obtained and the terms and conditions of the lease-purchase contract with both the state agency for whose benefit and use the property is being obtained and the treasurer of state. Upon awarding the contract for construction of a building or for site development, the director shall have sole authority to administer the contract.

b. The lease-purchase contract may provide for ultimate ownership of the property by the state. Title to all property acquired in this manner shall be taken and held in the name of the state. The state shall be the lessee or contracting party under all lease-purchase contracts entered into pursuant to this section. The lease-purchase contract may contain provisions similar to provisions customarily found in lease-purchase contracts between private persons, including, but not limited to, provisions prohibiting the acquisition or use by the lessee of competing property or property in substitution for the lease-purchased property, obligating the lessee to pay costs of operation, maintenance, insurance, and taxes relating to the property, and permitting the lessor to retain a security interest in the property lease-purchased, until title passes to the state, which may be assigned or pledged by the lessor. The director may contract for additional security or liquidity for a lease-purchase contract and may enter into agreements for letters of credit, lines of credit, insurance, or other forms of security with respect to rental and other payments due under a lease-purchase contract. Fees for the costs of additional security or liquidity are a cost of entering into the lease-purchase

contract and may be paid from funds annually appropriated by the general assembly to the state agency for which the property is being obtained or from other funds legally available. The lease-purchase contract may include the costs of entering into the lease-purchase contract as a cost of the lease-purchased property. The provision of a lease-purchase contract which provides that a portion of the periodic rental payment be applied as interest is subject to chapter 74A. Other laws relating to interest rates do not apply. Chapter 75 does not apply to lease-purchase contracts entered into pursuant to this section. Rental and other costs due under lease-purchase contracts entered into pursuant to this section shall be payable from funds annually appropriated by the general assembly to the state agency for which the property is being obtained or from other funds legally available.

c. A lease-purchase contract to which the state is a party is an obligation of a state for 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 other fiduciaries responsible for the investment of funds.

d. The director shall not enter into lease-purchase contracts pursuant to this section without prior authorization by a constitutional majority of each house of the general assembly and approval by the governor of the use, location, and maximum cost, not including interest expense, of the real or personal property to be lease-purchased. However, the director shall not enter into a lease-purchase contract for real or personal property which is to be constructed for use as a prison or prison-related facility without prior authorization by a constitutional majority of each house of the general assembly and approval by the governor of the use, location, and maximum cost, not including interest expense, of the real or personal property to be lease-purchased and with the construction in accordance with space needs as established by an independent study of space needs authorized by the general assembly.

e. A contract for acquisition, construction, erection, demolition, alteration, or repair by a private person of real or personal property to be lease-purchased by the director pursuant to this section is exempt from section 18.6, subsections 1 and 9, unless the lease-purchase contract is funded in advance by a deposit of the lessor's moneys to be administered by the director under a lease-purchase contract which requires rent payments to commence upon delivery of the lessor's moneys to the lessee.

This subsection provides an alternative and independent method for carrying out projects under this chapter and for entering into lease-purchase contracts in connection with the projects, without reference to any other statute, and is not an amendment of or subject to the provision of any other law. No publication of any notice, whether under section 23.12 or otherwise, and no other or further proceed-

ings with respect to the lease-purchase contracts referred to in this section are required except as set forth in this section, any provisions of other statutes of the state to the contrary notwithstanding.

For purposes of this subsection and subsection 12, “state agency” means a board, commission, bureau, division, office, department, or branch of state government.

11. Establish rental fees for space owned by the state and provided by the department to a state agency to which the general assembly has specifically appropriated funds to pay the rental fees.

The director shall notify each state agency provided space by the department to which an appropriation for the rental of that space has been made of the rental fee for the space. The fee shall be based on the cost of the space, services provided to the agency by the division of buildings and grounds, maintenance, utilities, administration, and other property management costs. The state agency shall pay the fee to the department in the same manner as other expenses of the state agency are paid. Fees collected shall be deposited in the general fund of the state.

12. Coordinate the leasing of buildings and office space by state agencies throughout the state and develop cooperative relationships with the state board of regents to promote the collocation of state agencies.

13. With the authorization of a constitutional majority of each house of the general assembly and approval by the governor, dispose of real property belonging to the state and its state agencies upon terms, conditions, and consideration as the director may recommend. If real estate subject to sale under this subsection has been purchased or acquired from appropriated funds, the proceeds of the sale shall be deposited with the treasurer of state and credited to the general fund of the state or other fund from which appropriated. There is appropriated from that same fund, with the prior approval of the executive council and in cooperation with the director, a sum equal to the proceeds so deposited and credited to the state agency to which the disposed property belonged or by which it was used, for purposes of the state agency.

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

15. Prepare semiannual status reports for all ongoing capital projects of all state agencies, as defined in section 8.3A, and submit the status reports to the legislative capital projects committee.

16. Call upon any state agency, as defined in section 8.3A, for assistance the director may require in performing the director’s duties under subsection 15 regarding capital project status reports. All state agencies, upon the request of the director and with the approval of the director of the department of management, shall assist the director and are authorized to make available to the director any existing

studies, surveys, plans, data, and other materials in the possession of the state agencies which are relevant to the director’s duties.

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

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

19. Perform all other duties required by law.

91 Acts, ch 268, §607, 608 SF 529
Subsections 10 and 15 amended

18.18 State purchases — recycled products — starch-based plastics and soybean-based inks.

1. When purchasing paper products, the department of general services shall, when the price is reasonably competitive and the quality as intended, purchase the recycled product. The department of general services shall also purchase, when the price is reasonably competitive and the quality as intended, and in keeping with the schedule established in this subsection, soybean-based inks and starch-based plastics, including but not limited to starch-based plastic garbage can liners.

a. By July 1, 1989, a minimum of fifty percent of the purchases of inks which are used for newsprint printing services performed internally or contracted for by the department of general services shall be soybean-based. The percentage of purchases by the department of soybean-based inks used for newsprint printing services shall increase by July 1, 1991, to one hundred percent of the total purchases of inks used for newsprint printing services.

b. By July 1, 1991, a minimum of twenty-five percent of the purchases of inks, other than inks which are used for newsprint printing services, and which are used internally or contracted for by the department of general services, shall be soybean-based to the extent formulations for such inks are available. The percentage of purchases by the department of the soybean-based inks, to the extent formulations for such inks are available, shall increase by July 1, 1992, to fifty percent of the total purchases of the inks, and shall increase by July 1, 1993, to one hundred percent of the total purchases of the inks.

c. By July 1, 1989, a minimum of fifteen percent of the purchases of garbage can liners made by the

department of general services shall be starch-based plastic garbage can liners. The percentage purchased shall increase by five percent annually until fifty percent of the purchases of garbage can liners are purchases of starch-based plastic garbage can liners.

d. The department of general services shall report to the general assembly on February 1 of each year the following:

(1) Plastic products which are regularly purchased by the department of general services and other state agencies for which starch-based product alternatives are available. The report shall also include the cost of the plastic products purchased and the cost of the starch-based product alternatives.

(2) Information relating to soybean-based inks and starch-based garbage can liners regularly purchased by the department and other state agencies. The report shall include the cost of purchasing soybean-based inks and starch-based garbage can liners, the percentage of inks purchased which are soybean-based and the percentage of liners purchased which are starch-based.

2. a. As used in this subsection, unless the context otherwise requires:

(1) "*Recycled paper*" means a paper product with not less than forty percent of its total weight consisting of postconsumer material and recovered paper material. At least ten percent of the total weight of recycled paper shall be postconsumer materials.

(2) "*Postconsumer material*" means only those products generated by a business or consumer which have served their intended end uses, and which have been separated or diverted from solid waste for the purposes of collection, recycling, and disposition.

(3) "*Recovered paper material*" means paper waste generated after the completion of the paper-making process, such as postconsumer material, envelope cuttings, bindery trimmings, printing waste, cutting and other converting waste, butt rolls and mill wrappers, obsolete inventories, and rejected unused stock. "*Recovered paper material*" does not mean fibrous waste generated during the manufacturing process such as fibers recovered from waste water, or trimmings of paper machine rolls; or fibrous by-products of harvesting, extractive, or woodcutting processes; or forest residue such as bark.

b. The department, in conjunction with recommendations made by the department of natural resources, shall purchase and use recycled printing and writing paper so that twenty-five percent by January 1, 1990, fifty percent by January 1, 1992, seventy-five percent by January 1, 1996, and ninety percent by January 1, 2000, of the volume of printing and writing paper purchased is recycled paper.

3. The department of general services, in conjunction with the department of natural resources, shall review the procurement specifications currently used by the state to eliminate, wherever possible, discrimination against the procurement of products manufactured with recovered materials, starch-based plastics, and soybean-based inks.

4. The department of natural resources shall assist the department of general services in locating suppliers of recycled products, starch-based plastics, and soybean-based inks and collecting data on recycled content, starch-based plastic, and soybean-based ink purchases.

5. Information on recycled content shall be requested on all bids for paper products issued by the state and on other bids for products which could have recycled content such as oil, plastic products, including but not limited to starch-based plastic products, compost materials, aggregate, solvents, soybean-based inks, and rubber products.

6. The department of general services, in conjunction with the department of natural resources, shall adopt rules and regulations to carry out the provisions of this section.

7. All state agencies shall fully cooperate with the departments of general services and natural resources in all phases of implementing this section.

91 Acts, ch 97, §4 HF 198

Subsection 1, unnumbered paragraph 1 amended

18.75 Duties.

The superintendent of printing shall:

1. Have an office at the seat of government and devote full time to the duties of the position.

2. Have charge of office equipment and supplies and of the stock, if any, required in connection with printing contracts.

3. Have general supervision of all matters pertaining to the enforcement of contracts for printing.

4. Prepare the specifications and advertisements for printing.

5. Have control and direction of the document department.

6. Have legal custody of all Codes, session laws, books of annotations, tables of corresponding sections, publications, except premium lists published by the Iowa state fair board, containing reprints of statutes or administrative rules, or both, reports of state departments, and reports of the supreme court, and sell, account for, and distribute the same as provided by law.

7. Be responsible on an official bond for the public property coming into the superintendent's possession.

8. By November 1 of each year supply a report which contains the name, gender, county or city of residence when possible, official title, salary received during the previous fiscal year, base salary as computed on July 1 of the current fiscal year, and traveling and subsistence expense of the personnel of each of the departments, boards, and commissions of the state government except personnel who receive an annual salary of less than one thousand dollars. The number of the personnel and the total amount received by them shall be shown for each department in the report. All employees who have drawn salaries, fees, or expense allowances from more than one department or subdivision shall be listed separately under the proper departmental heading. On the re-

quest of the superintendent, the head of each department, board, or commission shall furnish the data covering that agency. The report shall be paid for out of moneys in the general fund not otherwise appropriated. A report shall be distributed upon request without charge to each member of the general assembly and the state law library. Six copies shall be distributed without charge to the state library and one copy shall be distributed without charge to each library which is designated as a documents depository by the state library. Other persons may purchase a copy for a fee not less than the amount required to print the copy. All funds from the sale of the report shall be deposited in the general fund.

9. Perform such other duties as are necessary, or incident to the position, or which may be ordered by the director, or required by law.

91 Acts, ch 97, §5 HF 198
 Appropriation for salary book limited for fiscal year beginning July 1, 1991,
 91 Acts, ch 267, §507 HF 479
 Subsection 2 amended

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 historical division of the department of cultural affairs 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 the chief clerk of the house and secretary of the senate such number as may be required by the house and senate.

14. To the following offices such number of copies as will enable them to perform the duties of their respective offices.

- a. Iowa Code editor and administrative code editor.
- b. Attorney general.
- c. Legislative service bureau.
- d. Legislative fiscal bureau.
- e. State court administrator.
- f. Each district court administrator.

15. 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

16. To the library of the United States supreme court 1 copy

17. To the library division of the department of cultural affairs of Iowa 1 copy
 for each depository library

18. To each member of the Iowa congressional delegation 1 copy

19. To each board of supervisors for each county 1 copy

20. 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.

91 Acts, ch 258, §24 HF 709
 Subsection 14, paragraph a amended

18.115 Vehicle dispatcher — employees — powers and duties — fuel economy requirements.

The director of the department of general services shall appoint a state vehicle dispatcher and other employees as necessary to administer this division. The state vehicle dispatcher shall serve at the pleasure of the director and is not governed by the merit system provisions of chapter 19A. Subject to the approval of the director, the state vehicle dispatcher has 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. A motor vehicle operated under this subsection shall not operate on gasoline other than gasoline blended with at least ten percent ethanol, unless under emergency circumstances. A state-issued credit card used to purchase gasoline shall not be valid to purchase gasoline other than gasoline blended with at least ten percent ethanol, if commercially available. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on gasoline blended with ethanol.

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 department 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.

In conjunction with the requirements of section 18.3, subsection 1, effective January 1, 1991, the

state vehicle dispatcher, and any other state agency or local governmental political subdivision purchasing new motor vehicles for other than law enforcement purposes, shall purchase new passenger vehicles and light trucks such that the average fuel efficiency for the fleet of new passenger vehicles and light trucks purchased in that year by the state vehicle dispatcher or other state agency or local governmental political subdivision equals or exceeds the average fuel economy standard for the vehicles' model year as established by the United States secretary of transportation under 15 U.S.C. § 2002. This paragraph does not apply to vehicles purchased for any of the following: law enforcement purposes, school buses, off-road maintenance work, or work vehicles used to pull loaded trailers. The group of comparable vehicles within the total fleet purchased by the state vehicle dispatcher, or any other state agency or local governmental political subdivision purchasing motor vehicles for other than law enforcement purposes, shall have an average fuel efficiency rating equal to or exceeding the average fuel economy rating for that model year for that class of comparable vehicles as defined in 40 C.F.R. § 315-82. As used in this paragraph, "fuel economy" means the average number of miles traveled by an automobile per gallon of gasoline consumed as determined by the United States environmental protection agency administrator in accordance with 26 U.S.C. § 4064(c). For purposes of this paragraph, "state agency" includes, but is not limited to, a community college or an institution under the control of the state board of regents.

The state vehicle dispatcher shall annually report the average combined fuel economy for all new motor vehicles purchased by classification (passenger automobiles, enforcement automobiles, vans, and light trucks) no later than January 31 of each year to the department of management and the energy and geological resources division of the department of natural resources. As used in this paragraph, "combined fuel economy" means the combined fuel economy as defined in 40 C.F.R. § 600.002.

a. Effective January 1, 1993, the state vehicle dispatcher, after consultation with the department of management and the various state agencies exempted from obtaining vehicles for use through the state vehicle dispatcher, shall adopt by rule pursuant to chapter 17A, a system of uniform standards for assigning vehicles available for use to maximize the average passenger miles per gallon of motor vehicle fuel consumed. The standards should consider the number of passengers traveling to a destination, the fuel economy of and passenger capacity of vehicles available for assignment, and any other relevant information, to assure assignment of the most energy efficient vehicle or combination of vehicles for a trip from those vehicles available for assignment. The standards adopted by the state vehicle dispatcher shall not apply to special work vehicles, and law enforcement vehicles. The rules when adopted shall apply to the following agencies:

- (1) State vehicle dispatcher.

(2) State department of transportation.

(3) Institutions under the control of the state board of regents.

(4) The department for the blind.

(5) Any other state agency exempted from obtaining vehicles for use through the state vehicle dispatcher.

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

5. Of all new passenger vehicles and light pickup trucks purchased by the state vehicle dispatcher, institutions under the control of the state board of regents, community colleges, and any other state agency purchasing such new vehicles and trucks, beginning July 1, 1992, a minimum of five percent, and beginning July 1, 1994, a minimum of ten percent of all such vehicles and trucks purchased shall be equipped with engines which utilize alternative methods of propulsion including but not limited to those propelled by flexible fuels, compressed natural gas, propane, solar energy, or electricity. For the purpose of this subsection, "*flexible fuels*" means fuels which are blended with eighty-five percent ethanol and fifteen percent gasoline. The provisions of this subsection do not apply to such vehicles and trucks purchased for the following purposes: law enforcement, off-road maintenance work, or work vehicles used to pull loaded trailers. This subsection also does not apply to school corporations, with the exceptions of those designated above. It is the intent of the general assembly that the members of the midwest energy compact promote the development and purchase of motor vehicles equipped with engines which utilize alternative methods of propulsion.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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. The state vehicle dispatcher and other state agencies, when advertising for bids for gasoline, shall also seek bids for ethanol-blended gasoline.

11. The state vehicle dispatcher is responsible for insuring motor vehicles owned by the state. Insurance coverage may be through a self-insurance program administered by the division or purchased from an insurer. If the determination is made to utilize a self-insurance program the vehicle dispatcher shall maintain loss and exposure data for the vehicles under the dispatcher's jurisdiction. Each agency

shall provide to the division all requested motor vehicle loss and loss exposure information.

91 Acts, ch 253, §1 SF 508, 91 Acts, ch 254, §1 SF 545
 Subsection 3 amended
 NEW subsection 5 and former subsections 5-10 renumbered as 6-11

18.117 Private use prohibited — rate for state business.

A state officer or employee shall not use a state-owned motor vehicle for personal private use, nor shall the officer or employee be compensated for driving a privately owned motor vehicle unless it is done on state business with the approval of the state vehicle dispatcher, and in that case the officer or employee shall receive an amount to be determined by the state which may be the maximum allowable under the federal internal revenue service rules per mile, notwithstanding established mileage requirements or depreciation allowances. A statutory provision stipulating necessary mileage, travel, or actual expenses reimbursement to a state officer falls under the mileage reimbursement limitation provided in this section unless specifically provided otherwise. Any peace officer employed by the state as defined in section 801.4 who is required to use a private vehicle in the performance of official duties shall receive reimbursement for mileage expense at the rate specified in this section. However, the state vehicle dispatcher may delegate authority to officials of the state, and department heads, for the use of private vehicles on state business up to a yearly mileage figure established by the director of general services. If a state motor vehicle has been assigned to a state officer or employee, the officer or employee shall not collect mileage for the use of a privately owned vehicle unless the state vehicle assigned is not usable.

This section does not apply to officials and employees of the state whose mileage is paid by other than state agencies and this section does not apply to elected officers of the state, judicial officers, or court employees.

91 Acts, ch 267, §602 HF 479
 Unnumbered paragraph 1 amended

18.137 State communications network fund.

There is created in the office of the treasurer of state a temporary fund to be known as the state com-

munications network fund. There is appropriated to the state communications network fund for the fiscal year beginning July 1, 1989, and ending June 30, 1990, the sum of two million one hundred forty-two thousand six hundred twenty-one dollars from the general fund of the state. There is appropriated from the general fund of the state to the state communications network fund for each fiscal year of the fiscal period beginning July 1, 1991, and ending June 30, 1996, the sum of five million dollars. Notwithstanding section 8.33, unobligated and unencumbered moneys from the appropriation for a fiscal year remaining on June 30 of that fiscal year shall not revert to the general fund of the state but shall remain available for expenditure during the next following fiscal year. There shall also be deposited into the state communications network fund proceeds from bonds issued for purposes of projects authorized pursuant to section 18.136, matching funds received from the community colleges and the local school boards, funds received from leases pursuant to section 18.134, and other moneys by law credited to or designated by a person for deposit into the fund. Notwithstanding the requirements of section 18.136, subsection 1, for the fiscal year beginning July 1, 1990, and ending June 30, 1991, thirty-one thousand dollars of moneys in the state communications network fund may be expended for the state's share of the cost for the design of a disaster recovery facility to be built in conjunction with the Iowa communications network facility and emergency operation center. The department of general services may increase its fees for data processing in order to collect an additional amount not exceeding two hundred thousand dollars during the fiscal year beginning July 1, 1991, to pay for the state's share of the cost of construction of the disaster recovery facility.

The Iowa public broadcasting board shall use the net increase in the federal match awarded to the Iowa public broadcasting board as a result of this appropriation in order to meet the needs of the educational telecommunications system. These funds shall be deposited in a separate account within the state communications network fund, and shall be administered by the Iowa public broadcasting board for purposes of the fund.

91 Acts, ch 264, §610 SF 532
 Unnumbered paragraph 1 amended

CHAPTER 18B

INTERNATIONAL NETWORK ON TRADE

18B.5 Board of directors.

1. INTERNET shall be governed by a board of directors consisting of the following:

a. The president of the university of Iowa, or the president's designee.

b. The president of Iowa state university of science and technology, or the president's designee.

c. The president of the university of northern Iowa, or the president's designee.

d. The director of the department of economic development, or the director's designee.

e. The chairperson of the agricultural products advisory council, who shall serve as an ex officio non-voting member.

f. The secretary of agriculture or the secretary's designee.

g. Three designees of the Iowa association of independent colleges and universities. The association shall give preference to appointing designees representing schools which are members of INTERNET.

h. Three designees of the Iowa association of community college presidents. A designee shall not represent more than one community college.

i. Four designees who are elected from the business membership. The designees must be business persons actively engaged in international trade. At least two of the persons must have experience in exporting and at least one of the persons must have experience in international finance. No two members shall represent the same business.

j. Two designees who are elected from the business membership. The designees must represent associations operating not for profit to promote or facilitate international trade on a local or regional basis. No two designees shall be employees of the same association.

2. The voting members of the board shall serve staggered terms of four years except that of the first terms, seven voting members shall serve terms of

two years. A person appointed to fill a vacancy for a director shall serve only for the unexpired portion of the term. A director is eligible for reappointment. A director may be removed from office by a two-thirds vote of the board for misfeasance, malfeasance, or willful neglect of duty or other just cause after notice and hearing, unless the notice and hearing is expressly waived by the director in writing.

3. In designating or electing persons to serve on the board, INTERNET members, to the extent practicable, shall designate or elect a board membership which is geographically and gender balanced.

4. Nine voting members constitute a quorum and the affirmative vote of a majority of the voting members is necessary for substantive action taken by the board. The majority shall not include a voting member who has a conflict of interest and a statement by a voting member that the voting member has a conflict of interest is conclusive for this purpose. A vacancy in the board's membership does not impair the right of a quorum to exercise all rights and perform all duties of the board.

5. The directors actively engaged in international trade, the directors representing international trade associations, and the directors appointed by the Iowa association of independent colleges and universities are entitled to a per diem as specified in section 7E.6 for each day spent in performance of duties as directors, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as directors.

6. The board shall elect a chairperson from among its directors.

7. Meetings of the board shall be held at the call of the chairperson or at the written request of four directors to the chairperson.

91 Acts, ch 258, §25 HF 709

1991 amendment to subsection 5 retroactively applicable to January 1, 1991,

91 Acts, ch 258, §73 HF 709

Subsection 5 amended

CHAPTER 19A

DEPARTMENT OF PERSONNEL

19A.1 Creation of department of personnel — responsibilities.

1. A department of personnel is created.
2. The department is the central agency responsible for state personnel management, including the following:
 - a. Policy development, planning, and research.
 - b. Employment activities and transactions, including recruitment, testing, and certification of personnel seeking employment or promotion.
 - c. Compensation and benefits, including position classification, wages and salaries, and employee benefits. Employee benefits include, but are not limited to, group medical, life, and long-term disability insurance, workers' compensation, unemployment benefits, sick leave, deferred compensation, holidays and vacations, tuition reimbursement, and educational leaves. Employee benefits include the Iowa department of public safety peace officers' retirement, accident, and disability system and the Iowa public employees' retirement system, which are maintained as distinct and independent systems within the department.
 - d. Equal employment opportunity and affirmative action programs.
 - e. Education and training.
 - f. Personnel records and administration, including the audit of all personnel-related documents.
 - g. Employment relations, including the negotiation and administration of collective bargaining agreements on behalf of the executive branch of the state and its departments and agencies as provided in chapter 20. However, the state board of regents, for the purposes of implementing and administering collective bargaining pursuant to chapter 20, shall act as the exclusive representative of the state with respect to its faculty, scientific, and other professional staff.
3. The following part-time boards and commissions are within the department:
 - a. The personnel commission, created by section 19A.4.
 - b. The board of trustees of the public safety peace officers' retirement, accident, and disability system, created by section 97A.5.
 - c. The investment board of the Iowa public employees' retirement system created by section 97B.8.
 - d. The affirmative action task force created pursuant to executive order, or its successor.
4. Specific powers and duties of the department, its director, and the boards and commissions within the department are set forth in this chapter, chapters 79, 97A, 97B, and other provisions of law. Section 8.23 applies to the department.

5. The personnel management powers and duties of the department do not extend to the legislative branch or the judicial branch of state government, except for functions related to administering compensation and benefit programs.

91 Acts, ch 33, §1 SF 104
Subsection 2, paragraph f amended

19A.3 Applicability — exceptions.

The merit system shall apply to all employees of the state and to all positions in 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 judicial officers and court employees.
3. The staff of the governor.
4. All board members and commissioners whose appointments are provided for by the Code.
5. All presidents, deans, directors, teachers, professional and scientific personnel, and student employees under the jurisdiction of the state board of regents. The state board of regents shall adopt rules not inconsistent with the objectives of this chapter for all of its employees not cited specifically in this subsection. The rules are subject to approval by the director of the department of personnel. 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 may direct the board to correct the rules. The rules of the board are not in compliance until the corrections are made.
6. All appointments which are by law made by the governor.
7. All personnel of the armed services under state jurisdiction.
8. Part-time persons who are paid a fee on a contract-for-services basis.
9. Seasonal employees appointed during the period of April 15 through October 15.
10. Residents, patients, or inmates working in state institutions, or persons on parole working in work experience programs for a period no longer than one year.
11. Professional employees under the supervision of the attorney general, the state public defender, the auditor of state, the treasurer of state, and the public employment relations board. However, employees of the consumer advocate division of the department of justice, other than the consumer advocate, are subject to the merit system.

12. Production and engineering personnel under the jurisdiction of the Iowa public broadcasting board.

13. Members of the Iowa highway safety patrol and other peace officers employed by the department of public safety. The commissioner of public safety shall adopt rules not inconsistent with the objectives of this chapter for the persons described in this subsection.

14. Professional employees of the arts division of the department of cultural affairs.

15. The chief deputy administrative officer and each division head of each executive department not otherwise specifically provided for in this section, and physicians not otherwise specifically provided for in this section. As used in this subsection, "division head" means a principal administrative position designated by a chief administrative officer and approved by the department of personnel or as specified by law.

16. All confidential employees.

17. Other employees specifically exempted by law.

18. The administrator and the deputy administrator of the credit union division of the department of commerce, all members of the credit union review board, and all employees of the credit union division.

19. The superintendent and the deputy superintendent of the banking division of the department of commerce, all members of the state banking board, and all employees of the banking division.

20. The superintendent of savings and loan associations and all employees of the savings and loan division of the department of commerce.

21. Chief deputy industrial commissioners.

22. The appointee serving as the coordinator of

the office of renewable fuel, as provided in section 159A.3.

The director of the department of personnel shall negotiate agreements with the director of the department for the blind and with the director of the department of education concerning the applicability of the merit system to the professional employees of their respective agencies.

91 Acts, ch 254, §2 SF 545
NEW subsection 22

19A.12A Combined charitable campaign program, fees, revolving fund.

1. The department shall establish and administer a combined charitable campaign program for state employees.

2. A combined charitable campaign revolving fund is created in the state treasury. The moneys credited to the fund shall be used for the purpose of paying actual and necessary expenses incurred by the department in administering the program. Administrative expenses shall not exceed five percent of the contributions pledged the previous year. All fees, grants, or specific appropriations for this purpose shall be credited to the fund. The fees for the program shall be set by the director to cover only the cost of administration and materials and shall not cover salaries of state employees involved in the administration of the program. The fees shall be paid to the department from the voluntary employee contributions and the payment shall be credited to the revolving fund. Notwithstanding section 8.33, any unencumbered or unobligated balance in the fund shall not revert.

91 Acts, ch 33, §2 SF 104
See also §79 14 and 79 15
NEW section

CHAPTER 20

**PUBLIC EMPLOYMENT RELATIONS
(COLLECTIVE BARGAINING)**

20.4 Exclusions.

The following public employees shall be excluded from the provisions of this chapter:

1. Elected officials and persons appointed to fill vacancies in elective offices, and members of any board or commission.

2. Representatives of a public employer, including the administrative officer, director or chief executive officer of a public employer or major division thereof as well as the officer's or director's deputy, first assistant, and any supervisory employees.

"Supervisory employee" means any individual

having authority in the interest of the public employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other public employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. All school superintendents, assistant superintendents, principals and assistant principals shall be deemed to be supervisory employees.

3. Confidential employees.

4. Students working as part-time public employees twenty hours per week or less, except graduate or other postgraduate students in preparation for a profession who are engaged in academically related employment as a teaching, research, or service assistant.

5. Temporary public employees employed for a period of four months or less.

6. Commissioned and enlisted personnel of the Iowa national guard.

7. Judicial officers, and confidential, professional, or supervisory employees of the judicial department.

8. Patients and inmates employed, sentenced or committed to any state or local institution.

9. Persons employed by the state department of justice, except nonsupervisory employees of the consumer advocate division who are employed primarily for the purpose of performing technical analysis of nonlegal issues.

10. Persons employed by the credit union division of the department of commerce.

11. Persons employed by the banking division of the department of commerce.

12. Persons employed by the savings and loan division of the department of commerce.

13. The appointee serving as the coordinator of the office of renewable fuel, as provided in section 159A.3.

91 Acts, ch 254, §3 SF 545
NEW subsection 13

20.6 General powers and duties of the board.

The board shall:

1. Administer the provisions of this chapter.

2. Collect, for public employers other than the state and its boards, commissions, departments, and agencies, data and conduct studies relating to wages, hours, benefits and other terms and conditions of public employment and make the same available to any interested person or organization.

3. Establish minimum qualifications for arbitrators and mediators, establish procedures for appointing, maintaining, and removing from a list persons representative of the public to be available to serve as arbitrators and mediators, and establish compensation rates for arbitrators and mediators.

4. Hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and delegate such power to a member of the board, or persons appointed or employed by the board, including administrative law judges, for the performance of its functions. The board may petition the district court at the seat of government or of the county where a hearing is held to enforce a board order compelling the attendance of witnesses and production of records.

5. Adopt rules in accordance with the provisions of chapter 17A as it may deem necessary to carry out the purposes of this chapter.

91 Acts, ch 174, §1 SF 501
Subsection 3 stricken and rewritten

20.11 Prohibited practice violations.

1. Proceedings against a party alleging a violation of section 20.10, shall be commenced by filing a complaint with the board within ninety days of the alleged violation causing a copy of the complaint to be served upon the accused party in the manner of an original notice as provided in this chapter. The accused party shall have ten days within which to file a written answer to the complaint. However, the board may conduct a preliminary investigation of the alleged violation, and if the board determines that the complaint has no basis in fact, the board may dismiss the complaint. The board shall promptly thereafter set a time and place for hearing in the county where the alleged violation occurred. The parties shall be permitted to be represented by counsel, summon witnesses, and request the board to subpoena witnesses on the requester's behalf. Compliance with the technical rules of pleading and evidence shall not be required.

2. The board may designate an administrative law judge to conduct the hearing. The administrative law judge has the powers as may be exercised by the board for conducting the hearing and shall follow the procedures adopted by the board for conducting the hearing. The decision of the administrative law judge may be appealed to the board and the board may hear the case de novo or upon the record as submitted before the administrative law judge, utilizing procedures governing appeals to the district court in this section so far as applicable.

3. The board shall appoint a certified shorthand reporter to report the proceedings and the board shall fix the reasonable amount of compensation for such service, which amount shall be taxed as other costs.

4. The board shall file its findings of fact and conclusions of law within sixty days of the close of any hearing, receipt of the transcript, or submission of any briefs. If the board finds that the party accused has committed a prohibited practice, the board may, within thirty days of its decision, enter into a consent order with the party to discontinue the practice, or after the thirty days following the decision may petition the district court for injunctive relief pursuant to rules of civil procedure 320 to 330.

5. The board's review of proposed decisions and the rehearing or judicial review of final decisions is governed by the provisions of chapter 17A.

91 Acts, ch 174, §2 SF 501
Subsection 4 amended

20.17 Procedures.

1. The employee organization certified as the bargaining representative shall be the exclusive representative of all public employees in the bargaining unit and shall represent all public employees fairly. However, any public employee may meet and adjust individual complaints with a public employer. To sustain a claim that a certified employee organization has committed a prohibited practice by breaching its duty of fair representation, a public employee

must establish by a preponderance of the evidence action or inaction by the organization which was arbitrary, discriminatory, or in bad faith.

2. The employee organization and the public employer may designate any individual as its representative to engage in collective bargaining negotiations.

3. Negotiating sessions, strategy meetings of public employers or employee organizations, mediation and the deliberative process of arbitrators shall be exempt from the provisions of chapter 21. However, the employee organization shall present its initial bargaining position to the public employer at the first bargaining session. The public employer shall present its initial bargaining position to the employee organization at the second bargaining session, which shall be held no later than two weeks following the first bargaining session. Both sessions shall be open to the public and subject to the provisions of chapter 21. Hearings conducted by arbitrators shall be open to the public.

4. The terms of a proposed collective bargaining agreement shall be made available to the public by the public employer and reasonable notice shall be given to the public employees by the employee organization prior to a ratification election. The collective bargaining agreement shall become effective only if ratified by a majority of those voting by secret ballot.

5. Terms of any collective bargaining agreement may be enforced by a civil action in the district court of the county in which the agreement was made upon the initiative of either party.

6. No collective bargaining agreement or arbitrators' decision shall be valid or enforceable if its implementation would be inconsistent with any statutory limitation on the public employer's funds, spending or budget or would substantially impair or limit the performance of any statutory duty by the public employer. A collective bargaining agreement or arbitrators' award may provide for benefits conditional upon specified funds to be obtained by the public employer, but the agreement shall provide either for automatic reduction of such conditional benefits or for additional bargaining if the funds are not obtained or if a lesser amount is obtained.

7. If agreed to by the parties nothing in this chapter shall be construed to prohibit supplementary bargaining on behalf of public employees in a part of the bargaining unit concerning matters uniquely affecting those public employees or co-operation and co-ordination of bargaining between two or more bargaining units.

8. The salaries of all public employees of the state under a merit system and all other fringe benefits which are granted to all public employees of the state shall be negotiated with the governor or the governor's designee on a state-wide basis, except those benefits which are not subject to negotiations pursuant to the provisions of section 20.9.

9. A public employee or any employee organization shall not negotiate or attempt to negotiate di-

rectly with a member of the governing board of a public employer if the public employer has appointed or authorized a bargaining representative for the purpose of bargaining with the public employees or their representative, unless the member of the governing board is the designated bargaining representative of the public employer.

10. The negotiation of a proposed collective bargaining agreement by representatives of a state public employer and a state employee organization shall be complete not later than March 15 of the year when the agreement is to become effective. The board shall provide, by rule, a date on which any impasse item must be submitted to binding arbitration and for such other procedures as deemed necessary to provide for the completion of negotiations of proposed state collective bargaining agreements not later than March 15. The date selected for the mandatory submission of impasse items to binding arbitration shall be sufficiently in advance of March 15 to insure that the arbitrators' decision can be reasonably made before March 15.

11. If the public employees in a certified employee organization are teachers licensed under chapter 260, and the public employer is a school district, community college, or area education agency, the negotiation of a proposed collective bargaining agreement shall be complete not later than April 15 of the year when the agreement is to become effective. The board shall provide, by rule, a date on which any impasse item must be submitted to binding arbitration and for such other procedures as deemed necessary to provide for the completion of negotiations of proposed collective bargaining agreements not later than April 15. The date selected for the mandatory submission of impasse items to binding arbitration shall be sufficiently in advance of April 15 to insure that the arbitrators' decision can be reasonably made before April 15.

91 Acts, ch 174, §3 SF 501
NEW subsection 11

20.19 Impasse procedures — agreement of parties.

As the first step in the performance of their duty to bargain, the public employer and the employee organization shall endeavor to agree upon impasse procedures. Such agreement shall provide for implementation of these impasse procedures not later than one hundred twenty days prior to the certified budget submission date of the public employer. However, if the public employees represented by the employee organization are teachers licensed under chapter 260, and the public employer is a school district, community college, or area education agency, the agreement shall provide for implementation of impasse procedures not later than ninety days prior to the certified budget submission date of the public employer. If the parties fail to agree upon impasse procedures under the provisions of this section, the impasse procedures provided in sections 20.20 to 20.22 shall apply.

91 Acts, ch 174, §4 SF 501
Section amended

20.20 Mediation.

In the absence of an impasse agreement between the parties or the failure of either party to utilize its procedures, one hundred twenty days prior to the certified budget submission date, or ninety days prior to the certified budget submission date if the public employees represented by the employee organization are teachers licensed under chapter 260 and the public employer is a school district, community college, or area education agency, the board shall, upon the request of either party, appoint an impartial and disinterested person to act as mediator. It shall be the function of the mediator to bring the parties together to effectuate a settlement of the dispute, but the mediator may not compel the parties to agree.

91 Acts, ch 174, §5 SF 501
Section amended

20.21 Fact-finding.

If the impasse persists ten days after the mediator has been appointed, the board shall appoint a fact-finder representative of the public, from a list of qualified persons maintained by the board. The fact-finder shall conduct a hearing, may administer

oaths, and may request the board to issue subpoenas. The fact-finder shall make written findings of facts and recommendations for resolution of the dispute and, not later than fifteen days from the day of appointment, shall serve such findings on the public employer and the certified employee organization.

The public employer and the certified employee organization shall immediately accept the fact-finder's recommendation or shall within five days submit the fact-finder's recommendations to the governing body and members of the certified employee organization for acceptance or rejection. If the dispute continues ten days after the report is submitted, the report shall be made public by the board.

However, the board shall not appoint a fact-finder representative of the public if the public employees represented by a certified employee organization are teachers licensed under chapter 260 and the public employer is a school district, community college, or area education agency. The board shall adopt rules regarding the time period after mediation when binding arbitration procedures must begin for teachers exempt from this section.

91 Acts, ch 174, §6 SF 501
NEW unnumbered paragraph 3

CHAPTER 21

OFFICIAL MEETINGS OPEN TO PUBLIC

21.2 Definitions.

As used in this chapter:

1. "Governmental body" means:

a. A board, council, commission or other governing body expressly created by the statutes of this state or by executive order.

b. A board, council, commission, or other governing body of a political subdivision or tax-supported district in this state.

c. A multimembered body formally and directly created by one or more boards, councils, commissions, or other governing bodies subject to paragraphs "a" and "b" of this subsection.

d. Those multimembered bodies to which the state board of regents or a president of a university has delegated the responsibility for the management and control of the intercollegiate athletic programs at the state universities.

e. An advisory board, advisory commission, or task force created by the governor or the general assembly to develop and make recommendations on public policy issues.

f. A nonprofit corporation other than a county or district fair or agricultural society, whose facilities or indebtedness are supported in whole or in part with property tax revenue and which is licensed to conduct pari-mutuel wagering pursuant to chapter 99D or a nonprofit corporation which is a successor to the nonprofit corporation which built the facility.

g. A nonprofit corporation licensed to conduct gambling games pursuant to chapter 99F.

2. "Meeting" means a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body's policy-making duties. Meetings shall not include a gathering of members of a governmental body for purely ministerial or social purposes when there is no discussion of policy or no intent to avoid the purposes of this chapter.

3. "Open session" means a meeting to which all members of the public have access.

91 Acts, ch 258, §26 HF 709
Subsection 1, paragraph f amended

CHAPTER 22

EXAMINATION OF PUBLIC RECORDS

22.1 Definitions.

As used in this chapter, “*public records*” includes all records, documents, tape, or other information, stored or preserved in any medium, of or belonging to this state or any county, city, township, school corporation, political subdivision, nonprofit corporation other than a county or district fair or agricultural society, whose facilities or indebtedness are supported in whole or in part with property tax revenue and which is licensed to conduct pari-mutuel wagering pursuant to chapter 99D, or tax-supported district in this state, or any branch, department, board, bureau, commission, council, or committee of any of the foregoing.

The term “*government body*” means this state, or any county, city, township, school corporation, political subdivision, tax-supported district, nonprofit corporation other than a county or district fair or agricultural society, whose facilities or indebtedness are supported in whole or in part with property tax revenue and which is licensed to conduct pari-mutuel wagering pursuant to chapter 99D, or other entity of this state, or any branch, department, board, bureau, commission, council, committee, official or officer, of any of the foregoing or any employee delegated the responsibility for implementing the requirements of this chapter.

The term “*lawful custodian*” means the government body currently in physical possession of the

public record. The custodian of a public record in the physical possession of persons outside a government body is the government body owning that record. Each government body shall delegate to particular officials or employees of that government body the responsibility for implementing the requirements of this chapter and shall publicly announce the particular officials or employees to whom responsibility for implementing the requirements of this chapter has been delegated. “*Lawful custodian*” does not mean an automated data processing unit of a public body if the data processing unit holds the records solely as the agent of another public body, nor does it mean a unit which holds the records of other public bodies solely for storage.

91 Acts, ch 258, §27 HF 709
Unnumbered paragraphs 1 and 2 amended

22.13 Settlements — governmental bodies.

A written summary of the terms of settlement, including amounts of payments made to or through a claimant, or other disposition of any claim for damages made against a governmental body or against an employee, officer, or agent of a governmental body, by an insurer pursuant to a contract of liability insurance issued to the governmental body, shall be filed with the governmental body and shall be a public record.

91 Acts, ch 96, §1 SF 327
NEW section

CHAPTER 25A

STATE TORT CLAIMS ACT

25A.14 Exceptions.

The provisions of this chapter shall not apply with respect to any claim against the state, to:

1. Any claim based upon an act or omission of an employee of the state, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion be abused.

2. Any claim arising in respect to the assessment or collection of any tax or fee, or the detention of any goods or merchandise by any law enforcement officer.

3. Any claim for damages caused by the imposition or establishment of a quarantine by the state, whether such quarantine relates to persons or property.

4. Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution,

abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

5. Any claim by an employee of the state which is covered by the Iowa workers' compensation law or the Iowa occupational disease law.

6. Any claim by an inmate as defined in section 85.59.

7. A claim based upon damage to or loss or destruction of private property, both real and personal, or personal injury or death, when the damage, loss, destruction, injury or death occurred as an incident to the training, operation, or maintenance of the national guard while not in "active state service" as defined in section 29A.1, subsection 1.

8. Any claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent construction or reconstruction of a highway, secondary road, or street as defined in section 321.1, subsection 48, that was constructed or reconstructed in accordance with a generally recognized engineering or safety standard, criteria, or design theory in existence at the time of the construction or reconstruction. A claim under this chapter shall not be allowed for failure to upgrade, improve, or alter any aspect of an existing highway, secondary road, or street, to new, changed, or altered design standards. In respect to highways and roads, sealcoating, asphaltting, patching, resurfacing, ditching, draining, repairing, graveling, rocking, blading, or maintaining an existing highway or road does not constitute reconstruction. This subsection shall not apply to claims based upon gross negligence.

9. Any claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent construction or reconstruction of a public improvement as defined in section 384.37, subsection 1, or other pub-

lic facility that was constructed or reconstructed in accordance with a generally recognized engineering or safety standard, criteria, or design theory in existence at the time of the construction or reconstruction. A claim under this chapter shall not be allowed for failure to upgrade, improve, or alter any aspect of an existing public improvement or other public facility to new, changed, or altered design standards. This subsection shall not apply to claims based upon gross negligence. This subsection takes effect July 1, 1984 and applies to all cases tried or retried on or after July 1, 1984.

10. Any claim based upon the enforcement of chapter 89B.

11. Any claim for financial loss based upon an act or omission in financial regulation, including but not limited to examinations, inspections, audits, or other financial oversight responsibilities, pursuant to Titles XIX through XXIII, and chapter 87 of Title V.

Subsection 11 applies to all cases filed on or after July 1, 1986, and does not expand any existing cause of action or create any new cause of action against the state.

12. Any claim based upon the actions of a care review committee member in the performance of duty if the action is undertaken and carried out in good faith.

13. A claim relating to a swimming pool or spa as defined in section 135I.1 which has been inspected in accordance with chapter 135I, or a swimming pool or spa inspection program, which has been established or certified by the state in accordance with that chapter, unless the claim is based upon an act or omission of an officer or employee of the state and the act or omission constitutes actual malice or a criminal offense.

91 Acts, ch 160, §2 SF 441
Subsection 11 amended

CHAPTER 25B

STATE MANDATES ACT

25B.6 State rules.

A state agency or department shall not propose or adopt an administrative rule which exceeds its statutory authority by mandating expenditures by political subdivisions, or agencies and entities which contract with political subdivisions to provide services. A state administrative rule, proposed pursuant to chapter 17A, which necessitates additional annual expenditures exceeding one hundred thousand dollars by political subdivisions or agencies and entities which contract with a political subdivision to pro-

vide services shall be accompanied by a fiscal note outlining the costs. The affected political subdivision, or an entity representing the affected political subdivision, shall cooperate in the preparation of the fiscal note. The fiscal note shall be submitted to the administrative rules coordinator for publication in the Iowa administrative bulletin along with the notice of intended action.

The fiscal note shall also be submitted to the legislative fiscal committee of the legislative council. Beginning in the first full fiscal year after adoption of

the state administrative rule, the fiscal committee shall annually prepare a report for each fiscal note submitted detailing the fiscal impact of the administrative rule on the affected political subdivision, or agencies and entities which contract with the politi-

cal subdivision to provide services. The report shall be transmitted to the governor and the general assembly.

91 Acts, ch 179, §1 SF 182
Section amended

CHAPTER 28

DEVELOPMENT ACTIVITIES

28.28 Repayment.

1. The amounts loaned to a local development corporation by the Iowa department of economic development shall be repaid in full to the department when any of the following occurs:

- a. The local development corporation sells the building.
- b. The local development corporation leases the building for a period exceeding thirty days.
- c. The end of the sixth year after completion of the building's construction.

2. The local development corporation shall report to the department the amount of all moneys received from leasing the building for periods of less than thirty days and that amount shall either be deducted from the amounts to be loaned or remitted to the department as the department determines.

3. All funds received by the department under this section shall be credited to the building loan fund.

4. If a local development corporation is unable to repay a loan as required by subsection 1, the local development corporation may negotiate a repayment schedule with the department.

5. Notwithstanding subsection 3, amounts repaid in accordance with subsection 1 or 4 shall be deposited in the rural community 2000 program revolving fund established under section 15.287.

6. Subsections 4 and 5 are applicable to the repayment of loans made under this division.

91 Acts, ch 13, §1 HF 199
NEW subsections 4, 5 and 6

28.112 Value-added agricultural products and processes financial assistance fund.

1. The department may establish a value-added agricultural products and processes financial assistance fund. The fund shall be a revolving fund composed of any money appropriated by the general assembly for that purpose and any other moneys available to and obtained or accepted by the department from the federal government or private sources for placement in the fund. Except as otherwise provided in subsection 2, the assets of the fund shall be

used by the department only for carrying out the purposes of section 28.111.

2. The department may use moneys in the fund to do any of the following:

a. Contract, sue and be sued, and adopt administrative rules necessary to carry out the provisions of this section and section 28.111, but the department shall not in any manner directly or indirectly pledge the credit of the state.

b. Authorize payment from the fund for costs, commissions, attorney fees, and other reasonable expenses related to and necessary for insuring or guaranteeing loans under section 28.111, and for the recovery of loan moneys insured or guaranteed or the management of property acquired in connection with such loans.

3. Section 8.33 shall not apply to moneys in the fund.

91 Acts, ch 260, §1202 HF 173
Section amended

28.120 Loan repayments.

1. Cities which have received loans under the former Iowa community development loan program, sections 7A.41 through 7A.49, Code 1985, are still obligated to repay borrowed funds to the state and to comply with terms and conditions of existing promissory notes.

2. After July 1, 1986, loan repayments made by recipient cities are payable to the Iowa department of economic development in an amount and at the time required by existing promissory notes.

3. Loan agreements with cities receiving loans under the former Iowa community development loan program for projects which have not been completed as of July 1, 1986 shall be amended by substituting "Iowa department of economic development" for "office for planning and programming". The Iowa department of economic development shall assume the state's administrative responsibilities for these uncompleted projects.

4. All loan agreements and promissory notes with cities with completed projects shall, on July 1, 1986, be amended by substituting "Iowa department

of economic development” for “office for planning and programming”.

5. Loan repayments received by the Iowa department of economic development shall be deposited into a special account to be used at its discretion as matching funds to attract financial assistance from and to participate in programs with national rural development and finance corporations or as provided in subsection 6. Funds in this special account shall not revert to the state general fund at the end of any fiscal year. If the programs for which the funds in the special account are to be used are terminated or expire, the funds in the special account and funds that would be repaid, if any, to the special account shall be transferred or repaid to the community economic betterment account of the Iowa plan fund for economic development as established in section 99E.31.

6. If the Iowa department of economic development determines that sufficient funds exist in the special account provided in subsection 5 for the purposes provided in subsection 5, up to twenty-five percent of the loan repayments for the fiscal year received by the Iowa department of economic development may be deposited in the revolving loan fund to operate the self-employment loan program as both were established in section 15.241 under the department of economic development. Funds in this revolving loan fund shall not revert to the state general fund at the end of any fiscal year. Loan repayments from the self-employment loan program shall be deposited in the revolving loan fund. Deposits of funds under this subsection may occur for the fiscal years beginning July 1, 1986, July 1, 1987, July 1, 1988, and July 1, 1989.

7. Loan repayments made under this section and unallocated in the special account in subsection 5, shall be allocated to the revolving account of the rural community 2000 program created in section 15.287.

91 Acts, ch 23, §12 SF 254, 91 Acts, ch 264, §512 SF 532, 91 Acts, ch 267, §313 HF 479

See Code editor's note to §15.287

Exception to subsections 5 and 6 for 1991 1992 fiscal year, see 91 Acts, ch 267, §302 HF 479

Former subsection 7 stricken

NEW subsection 7

28.143 Board of directors.

1. The board shall consist of twelve directors, seven of which represent the public and five of which represent the shareholders. The seven public directors consist of:

- a. The director of the department.
- b. The director of the Iowa finance authority.
- c. The president of the Iowa product development corporation.
- d. The superintendent of banking.
- e. The superintendent of credit unions.
- f. The commissioner of insurance.
- g. The treasurer of state.
- h. Or the designees of the officials named in paragraphs “a” through “g”.

2. The director of the department, or the director's designee, shall serve as chairperson of the board, and the president of the Iowa product development corporation, or the president's designee, shall serve as vice chairperson of the board.

3. Within sixty days of July 1, 1988, the chairperson shall convene the public directors for the purpose of organizing the corporation under chapter 490.

4. Within sixty days of the completion of the initial stock offering, the chairperson shall convene a meeting of the shareholders for the purpose of the initial election of the private directors. The private directors hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after their election, and until their successors are elected and qualify unless sooner removed in accordance with the bylaws. A vacancy in the office of a director elected by the shareholders shall be filled by the other directors elected by the shareholders.

5. If stock is not issued and private directors are not elected, all powers of the board shall be exercised by the public directors.

Notwithstanding any provisions of law to the contrary, officers and directors of insurance companies and other financial institutions may be members of the board of the corporation organized for the purposes of this division to which the insurance company or other financial institution may make a loan or may make an investment.

91 Acts, ch 267, §314 HF 479

Subsection 1, paragraph e amended

28.144 President of the corporation.

The director of the department shall appoint the president of the corporation from the division within the department that administers business financial assistance programs. Administrative and staff support shall be furnished by the department.

91 Acts, ch 267, §315 HF 479

Section stricken and rewritten

CHAPTER 28C

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Future repeal of chapter, see § 28C 8
Former chapter 28C repealed by
86 Acts, ch 1073, § 1, effective June 30, 1990

28C.1 Findings and objectives.

The general assembly finds that there is a need for an intergovernmental body to study and report on the following:

1. Current pattern of local governmental structure.
2. Powers and functions of local governments, including their fiscal powers.
3. Existing, necessary, and desirable relationships among local governments and the state.
4. Necessary and desirable allocation of state and local fiscal resources.
5. Necessary and desirable roles of the state as the creator of local governmental systems.
6. Special problems in interstate areas facing their general local governments, interstate regional units, and areawide bodies, the studies, where possible, to be conducted in conjunction with studies of commissions on intergovernmental relations of other states.

91 Acts, ch 21, §1 SF 92
NEW section

28C.2 Commission created — membership.

1. An Iowa advisory commission on intergovernmental relations is created.
2. The membership of the commission shall be:
 - a. Four elected or appointed state officers, four elected or appointed county officers, four elected or appointed city officers, four elected or appointed officers of school corporations, and one member or staff member of a regional council of governments established under chapter 28H, appointed by the governor.
 - b. Two state senators appointed by the majority leader of the senate.
 - c. Two state representatives appointed by the speaker of the house of representatives.
3. In making all appointments, consideration shall be given to gender, race or ethnic representation, population and demographic factors, and representation of different geographic regions. All appointments shall comply with sections 69.16 and 69.16A.
4. The initial chairperson of the commission shall be designated by the governor from among the commission members for a term of one year. Subsequent chairpersons shall be elected by the commission from among its membership for a term of one year. A vice chairperson may be elected by the commission from among its membership for a one-year

term. In case of the absence or disability of the chairperson and vice chairperson, the members of the commission shall elect a temporary chairperson by a majority vote of those members who are present and voting.

5. The members shall be appointed to two-year staggered terms and the terms shall commence on February 1 of the year of appointment. If a vacancy occurs, a successor shall be appointed to serve the unexpired term. If a member ceases to be an officer or employee of the governmental unit or agency which qualifies the person for membership on the commission, a vacancy exists and a successor shall be appointed in the same manner and subject to the same qualifications as the original appointment to serve the unexpired term.

6. Of the members who are county officers appointed by the governor, not more than two shall be members of the same political party. Of the members appointed by the majority leader of the senate and the speaker of the house of representatives, not more than one from each house shall be a member of the same political party.

7. A majority of the commission constitutes a quorum.

91 Acts, ch 21, §2 SF 92
NEW section

28C.3 Powers and duties.

The commission shall:

1. Engage in activities and make studies and investigations as necessary or desirable to accomplish the purposes specified in section 28C.1.
2. Encourage and, where appropriate, coordinate studies relating to intergovernmental relations conducted by universities, state, local, and federal agencies, and research and consulting organizations.
3. Review the recommendations of national commissions studying federal, state, and local government relationships and problems and assess their possible application to this state.
4. Carry out studies and investigations relating to intergovernmental problems and relations as requested by the legislative council.

91 Acts, ch 21, §3 SF 92
NEW section

28C.4 Organization — meetings.

1. The commission shall meet quarterly and at other times as necessary. The commission may hold public hearings on matters within its purview.

2. The commission may establish committees as it deems advisable and feasible, whose membership shall include at least one member of the commission, but only the commission may take final action on a proposal or recommendation of a committee.

3. The commission is not an agency as defined in, or for the purpose of, chapter 17A.

4. All meetings of the commission or a committee established by the commission at which public business is discussed or formal action is taken, shall comply with the requirements of chapter 21.

91 Acts, ch 21, §4 SF 92
NEW section

28C.5 Staff — facilities — expenses.

1. The commission and committees established by the commission may accept technical and operational assistance from the staff of the legislative service bureau and the legislative fiscal bureau, other state or federal agencies, units of local governments, or any other public or private source. The directors of the legislative service bureau and the legislative fiscal bureau may assign professional, technical, legal, clerical, or other staff, as necessary and authorized by the legislative council for continued operation of the commission. However, the technical and operational assistance shall be provided within existing appropriations made to or with existing resources of the state or local agencies to carry out its powers and duties.

2. The legislative council may also provide available facilities and equipment as requested by the commission.

3. The members of the commission are entitled

to reimbursement for travel and other necessary expenses incurred in the performance of official duties. Each member may also be eligible to receive compensation as provided in section 7E.6. The expenses shall be paid from funds appropriated pursuant to section 2.12.

91 Acts, ch 21, §5 SF 92
NEW section

28C.6 Reports.

The commission shall submit an annual report of its findings and recommendations to the governor, president of the senate, speaker of the house, and the majority and minority leaders of each house, and make the report available to legislators upon request. The report shall also be made available to the public.

91 Acts, ch 21, §6 SF 92
NEW section

28C.7 Information.

The commission may request from any state agency or official the information and assistance as needed to perform the duties of the commission. A state agency or official shall furnish the information or assistance requested within the authority and resources of the state agency or official. This section does not require the production or opening of any public record which is required by law to be kept confidential.

91 Acts, ch 21, §7 SF 92
NEW section

28C.8 Future repeal.

This chapter is repealed effective July 1, 1995.

91 Acts, ch 21, §8 SF 92
NEW section

CHAPTER 28E

JOINT EXERCISE OF GOVERNMENTAL POWERS

REGIONAL METROPOLITAN SERVICE AREA

28E.40 Regional metropolitan service area.

Two or more contiguous counties, cities, or cities and counties may establish a regional metropolitan

service area to provide for the joint delivery of services by an agreement under this chapter, subject to the limitations and requirements of sections 331.232, 331.260, 331.261, and 331.262, subsection 2.

91 Acts, ch 256, §1 HF 693
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, facilities used for the conversion of solid waste to energy, and 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 or chapter 389. 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.

91 Acts ch 168 §1 HF 689
Unnumbered paragraph 1 amended

CHAPTER 29C

DISASTER SERVICES AND PUBLIC DISORDERS

29C.12A Participation in funding disaster recovery facility.

All state government departments and agencies may participate in sharing the cost of the design, construction, and operation of a disaster recovery facility located in the STARC armory at Camp Dodge.

State departments and agencies may use funds from any source, including but not limited to user fees and appropriations for operational or capital purposes, to participate in the facility.

91 Acts ch 263 §36 SF 209
NEW section

CHAPTER 30

CHEMICAL EMERGENCIES — EMERGENCY RESPONSE COMMISSION

30.7 Duties to be allocated to department of employment services.

Agreements negotiated by the commission and the department of employment services shall provide for the allocation of duties to the department of employment services as follows:

1. Material safety data sheets or a list for chemicals required to be submitted to the commission under section 311 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11021, shall be submitted to the department of employment services. Submission to that department constitutes compliance with the requirement for notification to the commission.

2. Emergency and hazardous chemical inventory forms required to be submitted to the commission under section 312 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11022, shall be submitted to the department of employment services. Submission to that department constitutes compliance with the requirement for notification to the commission.

3. The department of employment services shall advise the commission of the failure of any facility owner or operator to submit information as required under sections 311 and 312 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11021 and 11022.

4. The department of employment services shall make available to the public upon request during normal working hours the information forms in its possession pursuant to sections 312 and 324 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11022 and 11044.

5. The department of employment services shall compile data or information from the emergency and hazardous chemical inventory forms required to be submitted to the commission under section 312 of the Emergency Planning and Community Right-to-

know Act, 42 U.S.C. § 11022, by county, and shall make the compiled reports available, annually, to each county in the state by providing the report to at least one public library in the named county.

91 Acts, ch 255, §6 HF 683
NEW subsection 5

30.8 Duties to be allocated to department of natural resources.

Agreements negotiated by the commission and the department of natural resources shall provide for the allocation of duties to the department of natural resources as follows:

1. Emergency notifications of releases required to be submitted to the commission under section 304 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11004, shall be submitted to the department of natural resources. Submission to that department constitutes compliance with the requirement for notification to the commission.

2. The department of natural resources shall advise the commission of the failure of any facility owner or operator to submit a notification as required under section 304 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11004.

3. The department of natural resources shall make available to the public upon request during normal working hours the information in its possession pursuant to section 324 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11044.

4. The department of natural resources shall compile the data collected pursuant to section 313 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11023, and shall make the compiled data available to the public upon request.

91 Acts, ch 255, §7 HF 683
NEW subsection 4

CHAPTER 40

CONGRESSIONAL DISTRICTS

40.1 Congressional districts.

The state of Iowa is hereby organized and divided into five congressional districts, which shall be composed, respectively, of the following counties:

1. The first district shall consist of the counties of Cedar, Clinton, Johnson, Jones, Linn, Louisa, Scott, and Muscatine.

2. The second district shall consist of the counties of Worth, Mitchell, Howard, Winneshiek, Allamakee, Cerro Gordo, Floyd, Chickasaw, Butler, Bremer, Fayette, Clayton, Grundy, Black Hawk, Buchanan, Delaware, Dubuque, Jackson, Tama, Benton, and Iowa.

3. The third district shall consist of the counties of Story, Marshall, Jasper, Poweshiek, Warren, Marion, Mahaska, Keokuk, Washington, Adams,

Union, Clarke, Lucas, Monroe, Wapello, Jefferson, Henry, Des Moines, Lee, Van Buren, Davis, Appanoose, Wayne, Decatur, Ringgold, Taylor, and Page.

4. The fourth district shall consist of the counties of Harrison, Shelby, Audubon, Guthrie, Dallas, Polk, Pottawattamie, Cass, Adair, Madison, Mills, Montgomery, and Fremont.

5. The fifth district shall consist of the counties of Lyon, Osceola, Dickinson, Emmet, Kossuth, Winnebago, Hancock, Palo Alto, Clay, O'Brien, Sioux, Plymouth, Cherokee, Buena Vista, Pocahontas, Humboldt, Wright, Franklin, Hardin, Hamilton, Webster, Calhoun, Sac, Ida, Woodbury, Monona, Crawford, Carroll, Greene, and Boone.

91 Acts, ch 223, §1 SF 546
Section stricken and rewritten

CHAPTER 41

STATE SENATE AND REPRESENTATIVE DISTRICTS

41.1 Representative districts.

The state of Iowa is hereby divided into one hundred representative districts, as follows:

1. The first representative district shall consist of that portion of the city of Sioux City bounded by a line commencing at the point Hamilton boulevard intersects the north corporate limit of the city of Sioux City, then proceeding southerly along Hamilton boulevard until it intersects Buckwalter drive, then proceeding first easterly then southerly along Buckwalter drive until it intersects Forty-first street, then proceeding west along Forty-first street until it intersects Cheyenne boulevard, then proceeding southerly along Cheyenne boulevard until it intersects Thirty-seventh street, then proceeding westerly along Thirty-seventh street until it intersects Thirty-eighth street, then proceeding west along Thirty-eighth street until it intersects Jones street, then proceeding south along Jones street until it intersects Twenty-ninth street, then proceeding east along Twenty-ninth street until it intersects Court street, then proceeding south along Court street until it intersects Twenty-eighth street, then proceeding east along Twenty-eighth street until it intersects Court street, then proceeding south along

Court street until it intersects Twenty-sixth street, then proceeding west along Twenty-sixth street until it intersects Jones street, then proceeding south along Jones street until it intersects Twenty-fourth street, then proceeding west along Twenty-fourth street until it intersects East Solway street, then proceeding southerly along East Solway street until it intersects West Solway street, then proceeding west and northwest along West Solway street until it intersects West Twenty-fourth street, then proceeding west along West Twenty-fourth street until it intersects Hamilton boulevard, then proceeding south along Hamilton boulevard until it intersects West Nineteenth street, then proceeding east along West Nineteenth street until it intersects Omaha street, then proceeding south along Omaha street until it intersects West Seventeenth street, then proceeding east along West Seventeenth street until it intersects Cook street, then proceeding south along Cook street until it intersects West Sixteenth street, then proceeding east along West Sixteenth street until it intersects Main street, then proceeding south along Main street until it intersects Fourteenth street, then proceeding east along Fourteenth street until it intersects Summit street, then proceeding

south along Summit street until it intersects Bluff street, then proceeding south along Bluff street until it intersects West Eighth street, then proceeding southeast along West Eighth street until it intersects Perry street, then proceeding southwest along Perry street until it intersects Wesley way, then proceeding southerly along Wesley way until it intersects the south corporate limit of the city of Sioux City, then proceeding first west and then in a clockwise manner along the corporate limits of the city of Sioux City to the point of origin.

2. The second representative district shall consist of that portion of the city of Sioux City bounded by a line commencing at the point Hamilton boulevard intersects the north corporate limit of the city of Sioux City, then proceeding first east and then in a clockwise manner along the corporate limits of the city of Sioux City until it intersects Correctionville road, then proceeding westerly along Correctionville road until it intersects Westcott street, then proceeding southerly along Westcott street until it intersects Gordon drive, then proceeding westerly along Gordon drive until it intersects Court street, then proceeding south along Court street and its extension until it intersects the southwesterly corporate limit of the city of Sioux City, then proceeding westerly along the corporate limits of the city of Sioux City until it intersects Wesley way, then proceeding first north and then in a counterclockwise manner along the boundary of the first representative district to the point of origin.

3. The third representative district shall consist of:

a. That portion of the city of Sioux City not contained in the first, second, or fourth representative district.

b. In Woodbury county, Woodbury, Liberty, Grange, and Lakeport townships.

4. The fourth representative district shall consist of:

a. In Woodbury county:

(1) Concord, Banner, Floyd, and Arlington townships.

(2) That portion of the city of Sioux City bounded by a line commencing at the point Correctionville road intersects the east corporate limit of the city of Sioux City, then proceeding south along the corporate limits of the city of Sioux City until it intersects Stone avenue, then proceeding west along Stone avenue until it intersects South Royce street, then proceeding south along South Royce street until it intersects Vine avenue, then proceeding west along Vine avenue until it intersects South Paxton street, then proceeding north along South Paxton street until it intersects Stone avenue, then proceeding west along Stone avenue until it intersects South Cecelia street, then proceeding northerly along South Cecelia street until it intersects South Alice street, then proceeding north along South Alice street until it intersects Correctionville road, then proceeding easterly along Correctionville road to the point of origin.

b. Plymouth county, except for the following:

(1) Fredonia, Meadow, Henry, and Garfield townships.

(2) That portion of Remsen township lying outside the corporate limits of Remsen.

(3) The cities of Kingsley and Oyens.

5. The fifth representative district shall consist of Sioux county except Sheridan, Grant, and Lynn townships.

6. The sixth representative district shall consist of:

a. Lyon county.

b. Osceola county.

c. In Sioux county, Sheridan, Grant, and Lynn townships.

d. In O'Brien county:

(1) Lincoln, Floyd, and Carroll townships.

(2) That portion of Franklin township lying outside the corporate limits of the city of Sanborn.

(3) That portion of Hartley township lying outside the corporate limits of the city of Hartley.

(4) The city of Archer.

7. The seventh representative district shall consist of:

a. Dickinson county.

b. Emmet county.

c. In Palo Alto county, Lost Island and Walnut townships.

8. The eighth representative district shall consist of:

a. Palo Alto county, except Lost Island and Walnut townships.

b. Clay county, except Herdland and Garfield townships.

c. In Kossuth county, Garfield, Whittemore, and Lotts Creek townships.

9. The ninth representative district shall consist of:

a. That portion of O'Brien county not contained in the sixth representative district.

b. That portion of Plymouth county not contained in the fourth representative district.

c. Cherokee county.

d. In Buena Vista county, Nokomis township.

10. The tenth representative district shall consist of:

a. Buena Vista county, except Nokomis township.

b. Pocahontas county.

c. In Clay county, Herdland and Garfield townships.

11. The eleventh representative district shall consist of:

a. Sac county.

b. Ida county.

c. That portion of Woodbury county not contained in the first, second, third, fourth, or twelfth representative district.

12. The twelfth representative district shall consist of:

a. Crawford county.

b. Monona county.

c. In Woodbury county, Sloan township.

13. The thirteenth representative district in Webster county shall consist of:

- a. Jackson, Deer Creek, and Douglas townships.
- b. The city of Fort Dodge.
- c. That portion of Cooper township which lies west of the Des Moines river.

14. The fourteenth representative district shall consist of:

- a. Calhoun county.
- b. That portion of Webster county not contained in the thirteenth representative district.
- c. In Hamilton county, Webster, Hamilton, Marion, and Clear Lake townships.
- d. In Boone county, Pilot Mound, Dodge, and Harrison townships and the city of Fraser.

15. The fifteenth representative district shall consist of:

- a. Humboldt county.
- b. That portion of Kossuth county not contained in the eighth representative district.

16. The sixteenth representative district shall consist of:

- a. Winnebago county.
- b. Hancock county.
- c. In Wright county, Boone, Norway, and Belmont townships, and the city of Belmont.

17. The seventeenth representative district shall consist of:

- a. That portion of Wright county not contained in the sixteenth representative district.
- b. That portion of Hamilton county not contained in the fourteenth representative district.
- c. In Hardin county, Sherman, Tipton, Grant, and Concord townships.
- d. That portion of the city of Dows which lies in Franklin county.

18. The eighteenth representative district shall consist of:

- a. That portion of Franklin county not contained in the seventeenth representative district.
- b. That portion of Hardin county not contained in the seventeenth representative district.

19. The nineteenth representative district shall consist of that portion of Cerro Gordo county which is not contained in the twentieth representative district.

20. The twentieth representative district shall consist of:

- a. Worth county.
- b. In Mitchell county, Otranto and Newburg townships.
- c. In Cerro Gordo county:

(1) Grant, Lincoln, Lime Creek and Falls townships.

(2) That portion of the city of Mason City and Mason township bounded by a line commencing at the point U.S. highway 18 intersects the west corporate limit of the city of Mason City, then proceeding east along U.S. highway 18 until it intersects South Pierce avenue, then proceeding north along South Pierce avenue until it intersects Second street southwest, then proceeding east along Second street

southwest until it intersects South Jackson avenue, then proceeding north along South Jackson avenue until it intersects First street southwest, then proceeding east along First street southwest until it intersects the first railroad track of the Chicago and Northwestern Transportation Company, then proceeding south along said railroad track until it intersects Second street southwest, then proceeding east along Second street southwest until it intersects South Federal avenue, then proceeding south along South Federal avenue until it intersects Sixth street, then proceeding east along Sixth street southeast until it intersects South Kentucky avenue, then proceeding north along South Kentucky avenue until it intersects U.S. highway 18, then proceeding east along U.S. highway 18 until it intersects the east corporate limit of the city of Mason City, then proceeding first north and then west along the corporate limits of the city of Mason City until it intersects the east boundary of Mason township, then proceeding first north and then west along the boundary of Mason township until it intersects the north corporate limit of the city of Mason City, then proceeding first west and then in a counterclockwise manner along the corporate limits of the city of Mason City to the point of origin.

21. The twenty-first representative district shall consist of:

- a. Grundy county.
- b. Butler county.

22. The twenty-second representative district shall consist of:

- a. Bremer county.
- b. In Black Hawk county:

(1) Union, Washington, and Bennington townships.

(2) That portion of Mt. Vernon township lying outside the corporate limits of the city of Cedar Falls.

(3) That portion of East Waterloo township not contained in the twenty-fourth or twenty-sixth representative districts.

(4) That portion of Poyner township not contained in the twenty-sixth or twenty-seventh representative districts.

23. The twenty-third representative district in Black Hawk county shall consist of:

a. Black Hawk township and that portion of Cedar Falls township which lies to the west of the corporate limits of the city of Cedar Falls.

b. That portion of the city of Cedar Falls bound by a line commencing at the point East Ridgeway avenue intersects the east corporate limit of the city of Cedar Falls, then proceeding west along East Ridgeway avenue until it intersects South Main street, then proceeding north along South Main street until it intersects Oregon road, then proceeding easterly along Oregon road until it intersects Dallas drive, then proceeding north along Dallas drive until it intersects Utah road, then proceeding east along Utah road until it intersects Tuscon drive, then proceeding north along Tuscon drive until it in-

tersects Idaho road, then proceeding east along Idaho road until it intersects Boulder drive, then proceeding south along Boulder drive until it intersects Lilac lane, then proceeding east along Lilac lane until it intersects Woodridge drive, then proceeding south along Woodridge drive until it intersects Orchard drive, then proceeding east along Orchard drive until it intersects Carlton drive, then proceeding southeasterly along Carlton drive until its second intersection with Maryhill drive, then proceeding northerly along Maryhill drive until it intersects Primrose drive, then proceeding east along Primrose drive until it intersects Rownd street, then proceeding north along Rownd street until it intersects Orchard drive, then proceeding west along Orchard drive until it intersects McClain drive, then proceeding north along McClain drive until it intersects University avenue, then proceeding northwesterly along University avenue until it intersects Waterloo road, then proceeding northwesterly along Waterloo road until it intersects Elmwood avenue, then proceeding north along Elmwood avenue until it intersects Rainbow drive, then proceeding west along Rainbow drive until it intersects Schreiber street, then proceeding north along Schreiber street until it intersects Newman avenue, then proceeding east along Newman avenue until it intersects Birch street, then proceeding north along Birch street until it intersects Grand boulevard, then proceeding southeasterly along Grand boulevard until it intersects Belle avenue, then proceeding north along Belle avenue (and its extension) until it intersects the Iowa Northern Railway Company railroad track, then proceeding northwesterly along the Iowa Northern Railway Company railroad track until it intersects Dry run, then proceeding northeasterly along Dry run until it intersects the middle of the main channel of the Cedar river, then proceeding first north and then northwesterly along the middle of the main channel of the Cedar river until it intersects Center street, then proceeding northerly along Center street until it intersects West Lone Tree road, then proceeding easterly along West Lone Tree road until it intersects East Lone Tree road, then proceeding easterly along East Lone Tree road until it intersects Big Woods road, then proceeding south along Big Woods road until it intersects East Lake street, then proceeding east along East Lake street until it intersects the east corporate limit of the city of Cedar Falls, then proceeding first north and then in a counterclockwise manner along the corporate limits of the city of Cedar Falls to the point of origin.

24. The twenty-fourth representative district in Black Hawk county shall consist of:

a. Orange township.

b. Those portions of Cedar Falls and East Waterloo townships and the cities of Cedar Falls and Waterloo bounded by a line commencing at the point East Ridgeway avenue intersects the west corporate limit of the city of Waterloo, then proceeding first south then in a counterclockwise manner along the corporate limits of the city of Waterloo until it inter-

sects Hawkeye road, then proceeding north along Hawkeye road until it intersects East San Marnan road, then proceeding west along East San Marnan road until it intersects an extension of Kimball avenue, then proceeding north along Kimball avenue (and its extension) until it intersects West Park lane, then proceeding westerly along West Park lane until it intersects Colby road, then proceeding south along Colby road until it intersects Rachael street, then proceeding west along Rachael street until it intersects South Hill drive, then proceeding north along South Hill drive until it intersects Rachael street, then proceeding west along Rachael street until it intersects Loralin drive, then proceeding south along Loralin drive until it intersects Ridgemont road, then proceeding west along Ridgemont road until it intersects Ansborough avenue, then proceeding north along Ansborough avenue until it intersects West Ridgeway avenue, then proceeding west along West Ridgeway avenue until it intersects Ansborough avenue, then proceeding north along Ansborough avenue until it intersects Martin road, then proceeding west along Martin road until it intersects Sergeant road, then proceeding northeasterly along Sergeant road until it intersects Carrington avenue, then proceeding easterly along Carrington avenue until it intersects Ansborough avenue, then proceeding north along Ansborough avenue (and its extension) until it intersects Black Hawk creek, then proceeding northeasterly along Black Hawk creek until it intersects Westfield avenue, then proceeding northwesterly along Westfield avenue until it intersects West Conger street, then proceeding northeasterly along West Conger street until it intersects the middle of the main channel of the Cedar river, then proceeding southeasterly along the middle of the main channel of the Cedar river until it intersects the extension of Burton avenue, then proceeding north along Burton avenue (and its extension) until it intersects Conger street, then proceeding east along Conger street until it intersects Avon avenue, then proceeding north along Avon avenue until it intersects Dawson street, then proceeding west along Dawson street until it intersects Burton avenue, then proceeding north along Burton avenue until it intersects West Parker street, then proceeding west along West Parker street until it intersects Longfellow avenue, then proceeding north along Longfellow avenue until it intersects Northey street, then proceeding west along Northey street until it intersects Normandy street, then proceeding north along Normandy street until it intersects West Donald street, then proceeding west along West Donald street until it intersects Cedar Bend street, then proceeding north along Cedar Bend street until it intersects Broadway street, then proceeding northwesterly along Broadway street until it intersects Wagner street, then proceeding north along Wagner street until it intersects the north corporate limit of the city of Waterloo, then proceeding first westerly and then in a counterclockwise manner along the corporate limits of the city of Waterloo until it intersects

the east corporate limit of the city of Cedar Falls, then proceeding first south and then in a clockwise manner along the boundary of the twenty-third representative district to the point of origin.

25. The twenty-fifth representative district in Black Hawk county shall consist of that portion of the city of Waterloo bounded by a line commencing at the point West Ridgeway avenue intersects Ansborough avenue, then proceeding east along West Ridgeway avenue until it intersects Hillcrest road, then proceeding north along Hillcrest road until it intersects Midlothian boulevard, then proceeding easterly along Midlothian boulevard until it intersects Ivanhoe road, then proceeding east along Ivanhoe road until it intersects Kimball avenue, then proceeding north along Kimball avenue until it intersects Terrace drive, then proceeding east along Terrace drive until it intersects Sioux street, then proceeding north along Sioux street until it intersects Cornwall avenue, then proceeding east along Cornwall avenue until it intersects Baltimore street, then proceeding north along Baltimore street until it intersects Mitchell avenue, then proceeding east along Mitchell avenue until it intersects West Ninth street, then proceeding north along West Ninth street until it intersects Johnson street, then proceeding southeast along Johnson street until it intersects Williston avenue, then proceeding east along Williston avenue until it intersects West Eighteenth street, then proceeding northeasterly along West Eighteenth street until it intersects Vinton street, then proceeding north along Vinton street until it intersects Franklin street, then proceeding east along Franklin street until it intersects Dubuque road, then proceeding southeast along Dubuque road until it intersects Colorado street, then proceeding north along Colorado street until it intersects Madison street, then proceeding west along Madison street until it intersects Nevada street, then proceeding north along Nevada street until it intersects Independence avenue, then proceeding west along Independence avenue until it intersects the Chicago, Central and Pacific Railroad Company railroad track, then proceeding northwest along the Chicago, Central and Pacific Railroad Company railroad track until it intersects Glenwood street, then proceeding east along Glenwood street until it intersects Steely street, then proceeding north along Steely street (and its extension) until it intersects the Chicago and Northwestern Transportation Company railroad track, then proceeding easterly along the Chicago and Northwestern Transportation Company railroad track until it intersects the Chicago, Central and Pacific Railroad Company railroad track, then proceeding southerly along the Chicago, Central and Pacific Railroad Company railroad track until it intersects Independence avenue, then proceeding easterly along Independence avenue until it intersects the east corporate limit of the city of Waterloo, then proceeding first north and then in a counterclockwise manner along the corporate limits of the city of Waterloo until it intersects Wagner

street, then proceeding first south and then in a clockwise manner along the boundary of the twenty-fourth representative district to the point of origin.

26. The twenty-sixth representative district in Black Hawk county shall consist of:

- a. That portion of the city of Waterloo not contained in the twenty-fourth or twenty-fifth representative district.
- b. The cities of Evansdale and Elk Run Heights.
- c. Cedar township.

27. The twenty-seventh representative district shall consist of:

- a. In Black Hawk county:

(1) That portion of Poyner township bounded by a line commencing at the point Gilbertville road intersects the east corporate limit of the city of Evansdale immediately to the south of Interstate 380, then proceeding southeasterly along Gilbertville road until it intersects Indian Creek road, then proceeding east along Indian Creek road until it intersects the east boundary of Poyner township, then proceeding first south and then in a clockwise manner along the boundary of Poyner township to the point of origin.

(2) Lester, Barclay, Fox, Spring Creek, and Big Creek townships.

b. In Buchanan county, Perry, Westburg, Jefferson, Homer, Liberty, Cono, Middlefield, Newton, and Fremont townships, and that portion of Sumner township lying outside the corporate limits of the city of Independence.

c. In Delaware county, Richland, Honey Creek, Elk, Coffins Grove, Delaware, Oneida, Prairie, Milo, Adams, and Hazel Green townships and the city of Delaware.

28. The twenty-eighth representative district shall consist of:

- a. That portion of Buchanan county not contained in the twenty-seventh representative district.
- b. That portion of Fayette county not contained in the thirty-second representative district.

29. The twenty-ninth representative district shall consist of:

- a. Floyd county.
- b. Mitchell county, except Newburg and Otranto townships.

c. In Howard county, that portion of the city of Riceville which lies in Howard county.

30. The thirtieth representative district shall consist of:

- a. Howard county, except the city of Riceville.
- b. Chickasaw county.
- c. In Winneshiek county, Fremont, Burr Oak, Orleans, Bluffton, Lincoln, Madison, Sumner, Calmar, and Jackson townships and the city of Calmar.

31. The thirty-first representative district shall consist of:

- a. That portion of Winneshiek county not contained in the thirtieth representative district.
- b. Allamakee county, except Linton and Fairview townships and that portion of the city of Postville which lies in Allamakee county.

32. The thirty-second representative district shall consist of:

a. In Allamakee county, Linton and Fairview townships and that portion of the city of Postville which lies in Allamakee county.

b. Clayton county.

c. In Fayette county, Clermont, Pleasant Valley, Union, Westfield, and Illyria townships and the cities of Fayette and West Union.

33. The thirty-third representative district shall consist of:

a. That portion of Delaware county not contained in the twenty-seventh representative district.

b. That portion of Dubuque county not contained in the thirty-fourth, thirty-fifth, or thirty-sixth representative district.

34. The thirty-fourth representative district shall consist of:

a. Jackson county.

b. In Dubuque county:

(1) Prairie Creek, Washington, and Mosalem townships.

(2) That portion of Table Mound township not contained in the thirty-sixth representative district.

(3) That portion of Dubuque township bounded by a line commencing at the point the south boundary of Dubuque township intersects the west corporate limit of the city of Dubuque, then proceeding first north and then in a clockwise manner along the corporate limits of the city of Dubuque until it intersects John F. Kennedy road, then proceeding northwesterly along John F. Kennedy road until it intersects Derby Grange road, then proceeding westerly along Derby Grange road until it intersects the west boundary of Dubuque township, then proceeding first south and then in a counterclockwise manner along the boundary of Dubuque township to the point of origin.

35. The thirty-fifth representative district in Dubuque county consists of that portion of the city of Dubuque bounded by a line commencing at the point Prescott street intersects Roosevelt street, then proceeding northerly and then westerly along Roosevelt street until it intersects McDonald private road, then proceeding first north and then east along McDonald private road until it intersects Shiras avenue, then proceeding north along the extension of Shiras avenue until it intersects the north corporate limit of the city of Dubuque, then proceeding first northwesterly and then in a counterclockwise manner along the corporate limits of the city of Dubuque until it intersects Asbury road, then proceeding easterly along Asbury road until it intersects Bonson road, then proceeding north along Bonson road until it intersects Kaufmann avenue, then proceeding easterly along Kaufmann avenue until it intersects Martin drive, then proceeding south along Martin drive until it intersects Theda drive, then proceeding northwest along Theda drive until it intersects Crissy drive, then proceeding southwest along Crissy drive until it intersects Asbury road, then proceeding northwest along Asbury road until it inter-

sects John F. Kennedy road, then proceeding south along John F. Kennedy road until it intersects South Hillcrest road, then proceeding easterly along South Hillcrest road until it intersects Hillcrest road, then proceeding easterly along Hillcrest road until it intersects Carter road, then proceeding southerly along Carter road until it intersects St. Anne drive, then proceeding east along St. Anne drive until it intersects Churchill drive, then proceeding south along Churchill drive until it intersects Pennsylvania avenue, then proceeding easterly along Pennsylvania avenue until it intersects Flora Park road, then proceeding northerly along Flora Park road until it intersects Wilbricht lane, then proceeding east along Wilbricht lane until it intersects Asbury road, then proceeding southeasterly along Asbury road until it intersects University avenue, then proceeding southwest along University avenue until it intersects Finley street, then proceeding southeast along Finley street until it intersects Pearl street, then proceeding northeast along Pearl street until it intersects O'Hagen street, then proceeding southerly along O'Hagen street until it intersects Mineral street, then proceeding easterly along Mineral street until it intersects McCormick street, then proceeding southwest along McCormick street until it intersects Bennett street, then proceeding easterly along Bennett street until it intersects South Algona street, then proceeding southerly along South Algona street until it intersects Hale street, then proceeding east along Hale street until it intersects North Grandview avenue, then proceeding northerly along North Grandview avenue until it intersects West Third street, then proceeding easterly along West Third street until it intersects College street, then proceeding northwesterly along College street until it intersects West Fifth street, then proceeding westerly along West Fifth street until it intersects Delhi street, then proceeding northeasterly along Delhi street until it intersects University avenue, then proceeding westerly along University avenue until it intersects Wood street, then proceeding northwesterly along Wood street until it intersects Loras boulevard, then proceeding northeasterly along Loras boulevard until it intersects Cox street, then proceeding northwesterly along Cox street until it intersects West Seventeenth street, then proceeding northeasterly along West Seventeenth street until it intersects West Locust street, then proceeding southeasterly along West Locust street until it intersects Locust street, then proceeding southeasterly along Locust street until it intersects Loras boulevard, then proceeding northeasterly along Loras boulevard until it intersects Main street, then proceeding south along Main street until it intersects West Thirteenth street, then proceeding northeast along West Thirteenth street until it intersects Central avenue, then proceeding northwesterly along Central avenue until it intersects East Twentieth street, then proceeding northeasterly along East Twentieth street until it intersects Garfield avenue, then proceeding northeasterly along Garfield avenue

until it intersects Stafford street, then proceeding southeasterly along the extension of Stafford street until it intersects the main line of the Soo Line Railroad Company railroad track, then proceeding northeasterly along the main line of the Soo Line Railroad Company railroad track until it intersects Ann street, then proceeding northwesterly along Ann street until it intersects Thomas street, then proceeding northeasterly along Thomas street until it intersects Ascension street, then proceeding southeast along Ascension street until it intersects Prescott street, then proceeding northeasterly along Prescott street to the point of origin.

36. The thirty-sixth representative district in Dubuque county shall consist of those portions of the city of Dubuque and Table Mound township bounded by a line commencing at the point Fengler street intersects the Soo Line Railroad Company railroad track, then proceeding southeast along Fengler street until it intersects Kerper boulevard, then proceeding southeasterly along Kerper boulevard until it intersects East Sixteenth street, then proceeding northeast along East Sixteenth street until it intersects the middle of the channel of the Mississippi river which lies to the west of City Island, then proceeding northeasterly along the middle of said channel of the Mississippi river until it intersects the east corporate limit of the city of Dubuque, then proceeding first southeasterly and then in a clockwise manner along the corporate limits of the city of Dubuque until it intersects the east boundary of Table Mound township, then proceeding south along the east boundary of Table Mound township until it intersects the east corporate limit of the city of Dubuque, then proceeding first south and then in a clockwise manner along the corporate limits of the city of Dubuque until it intersects Asbury road, then proceeding first east and then in a counterclockwise manner along the boundary of the thirty-fifth representative district to the point of origin.

37. The thirty-seventh representative district shall consist of:

a. In Clinton county, those portions of Camanche and Eden townships and the city of Clinton bounded by a line commencing at the point First avenue intersects Riverview drive, then proceeding east along First avenue (and its extension) until it intersects the east corporate limit of the city of Clinton, then proceeding first southeasterly and then in a clockwise manner along the corporate limits of the city of Clinton until it intersects the east boundary of Camanche township, then proceeding first southeasterly and then in a clockwise manner along the boundary of Camanche township until it intersects the south corporate limit of the city of Clinton, then proceeding first west and then in a clockwise manner along the corporate limits of the city of Clinton until it intersects the south corporate limit of the city of Low Moor, then proceeding first westerly and then in a clockwise manner along the corporate limits of the city of Low Moor until it intersects the west corporate limit of the city of Clinton, then proceeding

north along the west corporate limit of the city of Clinton until it intersects the boundary of Camanche township, then proceeding first west and then in a clockwise manner along the boundary of Camanche township until it intersects Lincoln way, then proceeding east along Lincoln way until it intersects South Sixtieth street, then proceeding north along South Sixtieth street until it intersects Hart's Mill road, then proceeding easterly along Hart's Mill road until it intersects South Bluff boulevard, then proceeding northeasterly along South Bluff boulevard until it intersects South Seventeenth street, then proceeding south along South Seventeenth street until it intersects Thirteenth avenue south, then proceeding easterly along Thirteenth avenue south (and its extension) until it intersects South Tenth street, then proceeding north along South Tenth street until it intersects Eleventh avenue south, then proceeding easterly along Eleventh avenue south until it intersects South Ninth street, then proceeding north along South Ninth street until it intersects Tenth avenue south, then proceeding easterly along Tenth avenue south until it intersects South Eighth street, then proceeding north along South Eighth street until it intersects Ninth avenue south, then proceeding east along Ninth avenue south until it intersects South Sixth street, then proceeding north along South Sixth street until it intersects Second avenue south, then proceeding west along Second avenue south until it intersects South Bluff boulevard, then proceeding northeasterly along South Bluff boulevard until it intersects North Bluff boulevard, then proceeding northeasterly along North Bluff boulevard until it intersects Fifth avenue north, then proceeding southeasterly along Fifth avenue north (and its extension) until it intersects a railroad track of the Soo Line Railroad Company, then proceeding southerly along said Soo Line Railroad Company railroad track until it intersects Fourth avenue north, then proceeding easterly along Fourth avenue north until it intersects an unnamed road through River View park, then proceeding along the unnamed road through River View park until it intersects First avenue, then proceeding easterly along First avenue to the point of origin.

b. In Scott county:

(1) Princeton and Le Claire townships.

(2) That portion of Pleasant Valley township not contained in the forty-first representative district.

38. The thirty-eighth representative district shall consist of:

a. That portion of the city of Clinton not contained in the thirty-seventh representative district.

b. In Clinton county:

(1) Deep Creek, Elk River, Center, Hampshire, and De Witt townships.

(2) That portion of Eden township lying outside the corporate limits of the city of Low Moor.

39. The thirty-ninth representative district shall consist of:

a. Cedar county.

b. In Jones county, Greenfield, Rome, Hale, and Oxford townships.

c. In Clinton county, Sharon, Brookfield, Bloomfield, Waterford, Washington, Welton, Grant, Liberty, Spring Rock, Olive, and Orange townships.

40. The fortieth representative district in Scott county shall consist of:

a. Liberty, Allens Grove, Winfield, Butler, Hickory Grove, and Sheridan townships.

b. That portion of the city of Walcott lying in Scott county.

c. That portion of the city of Davenport and Blue Grass township bounded by a line commencing at the point the north boundary of Blue Grass township intersects the west corporate limit of the city of Davenport, then proceeding first east and then in a clockwise manner along the corporate limits of the city of Davenport until it intersects the northbound lane of Brady street, then proceeding southerly along the northbound lane of Brady street until it intersects East Sixty-fifth street, then proceeding west along East Sixty-fifth street until it intersects West Sixty-fifth street, then proceeding west along West Sixty-fifth street until it intersects North Ripley street, then proceeding southerly along North Ripley street until it intersects West Sixty-first street, then proceeding east along West Sixty-first street until it intersects East Sixty-first street, then proceeding east along East Sixty-first street until it intersects Brady street, then proceeding southerly along Brady street until it intersects East Kimberly road, then proceeding west along East Kimberly road until it intersects Fair avenue, then proceeding south along Fair avenue until it intersects East Thirty-seventh street, then proceeding west along East Thirty-seventh street until it intersects Fair avenue, then proceeding south along Fair avenue until it intersects West Thirty-fifth street, then proceeding westerly along West Thirty-fifth street until it intersects Northwest boulevard, then proceeding northwesterly along Northwest boulevard until it intersects North Pine street, then proceeding south along North Pine street until it intersects West Fifty-ninth street, then proceeding west along West Fifty-ninth street until it intersects North Linwood avenue, then proceeding south along North Linwood avenue until it intersects West Fifty-eighth street, then proceeding east along West Fifty-eighth street until it intersects North Pine street, then proceeding south along North Pine street until it intersects West Forty-ninth street, then proceeding westerly along West Forty-ninth street until it intersects North Fairmount street, then proceeding southerly along North Fairmount street (and its extension) until it intersects the Iowa Interstate Railroad Limited railroad track, then proceeding southeasterly along the Iowa Interstate Railroad Limited railroad track until it intersects Duck creek, then proceeding westerly along Duck creek until it intersects the west corporate limit of the city of Davenport lying to the west of Interstate 280, then proceeding first southerly and then in a counterclockwise manner along the corporate limits of the city of Davenport until it intersects the south boundary of Blue Grass township, then

proceeding west along the south boundary of Blue Grass township until it intersects the east corporate limit of the city of Blue Grass, then proceeding first north and then in a counterclockwise manner along the corporate limits of the city of Blue Grass until it intersects the south boundary of Blue Grass township, then proceeding first west and then in a clockwise manner along the boundary of Blue Grass township to the point of origin.

41. The forty-first representative district in Scott county shall consist of:

a. Lincoln township.

b. Those portions of Pleasant Valley township and the city of Davenport bounded by a line commencing at the point the west corporate limit of the city of Bettendorf intersects the north corporate limit of the city of Davenport, then proceeding south along the corporate limits of the city of Bettendorf until it intersects East Seventy-sixth street, then proceeding east along East Seventy-sixth street until it intersects Devils Glen road, then proceeding south along Devils Glen road until it intersects Central avenue, then proceeding west along Central avenue until it intersects Twenty-third street, then proceeding south along Twenty-third street (and its extension) until it intersects the south corporate limit of the city of Bettendorf, then proceeding first westerly and then in a clockwise manner along the corporate limits of the city of Bettendorf until it intersects Interstate 74, then proceeding northerly along Interstate 74 until it intersects Pheasant creek, then proceeding southwesterly along Pheasant creek until it intersects East Forty-sixth street, then proceeding west along East Forty-sixth street until it intersects Jersey Ridge road, then proceeding south along Jersey Ridge road until it intersects Windsor drive, then proceeding west along Windsor drive until it intersects Winding Hill road, then proceeding first southwesterly and then west along Winding Hill road until it intersects Eastern avenue, then proceeding south along Eastern avenue until it intersects East Kimberly road, then proceeding westerly along East Kimberly road until it intersects Brady street, then proceeding first north and then in a counterclockwise manner along the boundary of the fortieth representative district until it intersects the north corporate limit of the city of Davenport, then proceeding first southeasterly and then in a clockwise manner along the corporate limits of the city of Davenport to the point of origin.

42. The forty-second representative district in Scott county shall consist of that portion of the city of Davenport bounded by a line commencing at the point Brady street intersects East Kimberly road, then proceeding west along East Kimberly road until it intersects Fair avenue, then proceeding south along Fair avenue until it intersects East Thirty-seventh street, then proceeding east along East Thirty-seventh street until it intersects Brady street, then proceeding southerly along Brady street until it intersects East Thirtieth street, then proceeding west along East Thirtieth street until it intersects

Dubuque street, then proceeding south along Dubuque street until it intersects East Thirtieth street, then proceeding west along East Thirtieth street until it intersects West Thirtieth street, then proceeding west along West Thirtieth street until it intersects Sheridan street, then proceeding south along Sheridan street until it intersects West Columbia avenue, then proceeding west along West Columbia avenue until it intersects North Main street, then proceeding south along North Main street until it intersects West Central Park avenue, then proceeding east along West Central Park avenue until it intersects East Central Park avenue, then proceeding east along East Central Park avenue until it intersects Brady street, then proceeding southerly along Brady street until it intersects West Locust street, then proceeding westerly along West Locust street until it intersects North Ripley street, then proceeding south along North Ripley street until it intersects West Seventeenth street, then proceeding west along West Seventeenth street until it intersects Scott street, then proceeding north along Scott street until it intersects an alley lying to the north of West Locust street, then proceeding east along said alley until it intersects an alley lying to the south of West Pleasant street, then proceeding north along said alley until it intersects West Pleasant street, then proceeding west along West Pleasant street until it intersects Scott street, then proceeding north along Scott street until it intersects West Lombard street, then proceeding west along West Lombard street until it intersects North Gaines street, then proceeding south along North Gaines street until it intersects West Ninth street, then proceeding west along West Ninth street until it intersects Marquette street, then proceeding south along Marquette street until it intersects West Eighth street, then proceeding west along West Eighth street until it intersects Taylor street, then proceeding south along Taylor street until it intersects West Fifth street, then proceeding easterly along West Fifth street until it intersects Brown street, then proceeding north along Brown street until it intersects West Sixth street, then proceeding east along West Sixth street until it intersects North Main street, then proceeding north along North Main street until it intersects West Seventh street, then proceeding east along West Seventh street until it intersects East Seventh street, then proceeding east along East Seventh street until it intersects Iowa street, then proceeding north along Iowa street until it intersects East Eighth street, then proceeding east along East Eighth street until it intersects Farnam street, then proceeding south along Farnam street until it intersects East Seventh street, then proceeding east along East Seventh street until it intersects Grand avenue, then proceeding south along Grand avenue until it intersects East Sixth street, then proceeding easterly along East Sixth street until it intersects Charlotte street, then proceeding southeasterly along Charlotte street until it intersects Oneida avenue, then proceeding south-erly along Oneida avenue until it intersects East

River drive, then proceeding southwesterly along East River drive until it intersects Carey street, then proceeding southeasterly along Carey street (and its extension) until it intersects the south corporate limit of the city of Davenport, then proceeding first northeasterly and then in a counterclockwise manner along the corporate limits of the city of Davenport until it intersects the west corporate limit of the city of Bettendorf, then proceeding first north and then in a clockwise manner along the boundary of the forty-first representative district to the point of origin.

43. The forty-third representative district in Scott county shall consist of that portion of the city of Davenport bounded by a line commencing at the point West Fifth street intersects Taylor street, then proceeding south along Taylor street until it intersects West Fourth street, then proceeding westerly along West Fourth street until it intersects North Lincoln avenue, then proceeding north along North Lincoln avenue until it intersects Telegraph road, then proceeding northeasterly along Telegraph road until it intersects North Lincoln court, then proceeding northwesterly along North Lincoln court until it intersects Newberry street, then proceeding northeasterly along Newberry street until it intersects North Pine street, then proceeding south along North Pine street until it intersects Glasspell street, then proceeding northeasterly along Glasspell street until it intersects Belmont street, then proceeding southeasterly along Belmont street until it intersects Telegraph road, then proceeding northeasterly along Telegraph road until it intersects the Iowa Interstate Railroad Limited railroad track, then proceeding northerly along the Iowa Interstate Railroad Limited railroad track until it intersects the western extension of West Pleasant street, then proceeding east along West Pleasant street (and its extension) until it intersects Frisco drive, then proceeding northerly along Frisco drive until it intersects Hickory Grove road, then proceeding northwesterly along Hickory Grove road until it intersects West Central Park avenue, then proceeding westerly along West Central Park avenue until it intersects North Dittmer street, then proceeding northerly along North Dittmer street until it intersects Heatherton drive, then proceeding southeasterly along Heatherton drive until it intersects North Clark street, then proceeding north along North Clark street (and its extension) until it intersects the Iowa Interstate Railroad Limited railroad track, then proceeding northwesterly along the Iowa Interstate Railroad Limited railroad track until it intersects the south extension of North Fairmount street, then proceeding first north and then in a counterclockwise manner along the boundary of the fortieth representative district until it intersects the west boundary of the forty-second representative district, then proceeding first east and then in a counterclockwise manner along the boundary of the forty-second representative district to the point of origin.

44. The forty-fourth representative district in Scott county shall consist of:

a. Those portions of the city of Davenport and Blue Grass township which are not contained in the fortieth, forty-first, forty-second, or forty-third representative district.

b. Buffalo township.

c. The city of Blue Grass.

45. The forty-fifth representative district in Johnson county shall consist of:

a. The city of University Heights.

b. That portion of the city of Iowa City bounded by a line commencing at the point U.S. highway 6 intersects Mormon Trek boulevard, then proceeding southwesterly and then south along Mormon Trek boulevard until it intersects West Benton street, then proceeding easterly along West Benton street until it intersects South Riverside drive, then proceeding north along South Riverside drive until it intersects the Iowa Interstate Railroad Limited railroad track, then proceeding easterly along the Iowa Interstate Railroad Limited railroad track until it intersects the south extension of South Lucas street, then proceeding north along South Lucas street (and its extension) until it intersects Bowery street, then proceeding east along Bowery street until it intersects South Governor street, then proceeding north along South Governor street until it intersects East Burlington street, then proceeding east along East Burlington street until it intersects South Summit street, then proceeding north along South Summit street until it intersects East College street, then proceeding east along East College street until it intersects Ralston creek, then proceeding southerly along Ralston creek until it intersects East Court street, then proceeding east along East Court street until it intersects South First avenue, then proceeding south along South First avenue until it intersects Muscatine avenue, then proceeding east along Muscatine avenue until it intersects Scott boulevard, then proceeding south along Scott boulevard until it intersects the east corporate limit of the city of Iowa City, then proceeding first east and then in a counterclockwise manner along the corporate limits of the city of Iowa City until it intersects North Dodge street, then proceeding southwesterly along North Dodge street until it intersects North Governor street, then proceeding south along North Governor street until it intersects Davenport street, then proceeding west along Davenport street until it intersects North Lucas street, then proceeding south along North Lucas street until it intersects East Bloomington street, then proceeding west along East Bloomington street until it intersects North DuBuque street, then proceeding north along North DuBuque street until it intersects Davenport street, then proceeding west along Davenport street (and its extension) until it intersects North Madison street, then proceeding south along North Madison street until it intersects West Iowa street, then proceeding west along West Iowa street until it intersects Newton road, then proceeding westerly along Newton road until it intersects U.S. highway 6 then proceeding northwesterly along U.S. highway 6 to the point of origin.

46. The forty-sixth representative district in Johnson county shall consist of:

a. Those portions of the city of Iowa City and West Lucas township bounded by a line commencing at the point Scott boulevard intersects the east corporate limit of the city of Iowa City to the south of Muscatine avenue, then proceeding first south and then in a clockwise manner along the corporate limits of the city of Iowa City until it intersects the west boundary of East Lucas township, then proceeding first southwest and then in a counterclockwise manner along the boundary of East Lucas township until it intersects the south boundary of West Lucas township, then proceeding west along the south boundary of West Lucas township until it intersects the east corporate limit of the city of Hills, then proceeding first northwesterly and then in a counterclockwise manner along the corporate limits of the city of Hills until it intersects the south boundary of West Lucas township, then proceeding first west and then in a clockwise manner along the boundary of West Lucas township until it intersects the south corporate limit of the city of Iowa City, then proceeding first west and then in a clockwise manner along the corporate limits of the city of Iowa City until it intersects Mormon Trek boulevard, then proceeding first southwesterly and then in a counterclockwise manner along the boundary of the forty-fifth representative district to the point of origin.

b. Scott, Sharon, Union, Hardin, and Washington townships.

47. The forty-seventh representative district shall consist of:

a. Louisa county.

b. In Johnson county:

(1) Liberty, Pleasant Valley, Lincoln, and Fremont townships.

(2) The city of Hills.

(3) That portion of East Lucas township bounded by a line commencing at the point U.S. highway 6 intersects the east boundary of East Lucas township, then proceeding first south and then in a clockwise manner along the boundary of East Lucas township until it intersects the south corporate limit of the city of Iowa City, then proceeding first north-easterly and then in a counterclockwise manner along the corporate limits of the city of Iowa City to the point of origin.

c. In Muscatine county:

(1) Wapsinonoc, Goshen, Moscow, Pike, Lake, Orono, and Cedar townships.

(2) Those portions of Bloomington, Seventy-six, and Fruitland townships lying outside the corporate limits of the city of Muscatine.

(3) The city of Wilton.

48. The forty-eighth representative district shall consist of:

a. That portion of Muscatine county not contained in the forty-seventh representative district.

b. In Scott county, that portion of Cleona township lying outside the corporate limits of the city of Walcott.

49. The forty-ninth representative district in Johnson county shall consist of:

- a. The cities of Coralville and North Liberty.
- b. Those portions of the city of Iowa City, East Lucas township, and West Lucas township, which are not contained in the forty-fifth or forty-sixth representative district.

- c. Newport and Penn townships.

50. The fiftieth representative district shall consist of:

- a. That portion of Johnson county not contained in the forty-fifth, forty-sixth, forty-seventh, or forty-ninth representative district.

- b. In Linn county, that portion of Linn county not contained in the fifty-first, fifty-second, fifty-third, fifty-fourth, fifty-fifth, or fifty-sixth representative district.

51. The fifty-first representative district in Linn county shall consist of:

- a. The city of Marion.
- b. Those portions of the city of Cedar Rapids and Bertram and Marion townships bounded by a line commencing at the point the south corporate limit of the city of Marion intersects state highway 13, then proceeding south along state highway 13 until it intersects the north boundary of Bertram township, then proceeding first east and then in a clockwise manner along the boundary of Bertram township until it intersects the south corporate limit of the city of Cedar Rapids, then proceeding first east and then in a counterclockwise manner along the corporate limits of the city of Cedar Rapids until it intersects the Chicago and Northwestern Transportation Company railroad track at the west boundary of Bertram township, then proceeding west along the north branch of the Chicago and Northwestern Transportation Company railroad track until it intersects Cole street southeast, then proceeding north along Cole street southeast until it intersects Fir avenue southeast, then proceeding westerly along Fir avenue southeast until it intersects Cole street southeast, then proceeding north along Cole street southeast until it intersects Otis road southeast, then proceeding northeasterly along Otis road southeast until it intersects Memorial drive southeast, then proceeding northerly along Memorial drive southeast until it intersects Fourteenth avenue southeast, then proceeding easterly along Fourteenth avenue southeast until it intersects Thirty-third street southeast, then proceeding north along Thirty-third street southeast until it intersects Henderson avenue southeast, then proceeding east along Henderson avenue southeast until it intersects Thirty-fourth street southeast, then proceeding north along Thirty-fourth street southeast until it intersects Dalewood avenue southeast, then proceeding east along Dalewood avenue southeast until it intersects Fortieth street southeast, then proceeding south along Fortieth street southeast until it intersects Mount Vernon road southeast, then proceeding easterly along Mount Vernon road southeast until it intersects the east corporate limit of the city

of Cedar Rapids, then proceeding first east and then in a counterclockwise manner along the corporate limits of the city of Cedar Rapids until it intersects Boyson road northeast, then proceeding west along Boyson road northeast until it intersects Brentwood drive northeast, then proceeding first south and then in a clockwise manner along Brentwood drive northeast until it intersects Windsor drive northeast, then proceeding first northerly and then westerly along Windsor drive northeast until it intersects "C" avenue northeast, then proceeding north along "C" avenue northeast until it intersects the north corporate limit of the city of Cedar Rapids to the east of "C" avenue northeast, then proceeding first east and then in a clockwise manner along the corporate limits of the city of Cedar Rapids until it intersects the north corporate limit of the city of Marion, then proceeding first east and then in a clockwise manner along the corporate limits of the city of Marion to the point of origin.

52. The fifty-second representative district shall consist of those portions of the city of Cedar Rapids and Bertram and Marion townships bounded by a line commencing at the point Dalewood avenue southeast intersects Thirty-fourth street southeast, then proceeding west along Dalewood avenue southeast until it intersects Knoll street southeast, then proceeding north along Knoll street southeast until it intersects Soutter avenue southeast, then proceeding west along Soutter avenue southeast until it intersects Thirty-second street southeast, then proceeding north along Thirty-second street southeast until it intersects Meadowbrook drive southeast, then proceeding west along Meadowbrook drive southeast until it intersects Thirtieth street southeast, then proceeding south along Thirtieth street southeast until it intersects Dalewood avenue southeast, then proceeding west along Dalewood avenue southeast until it intersects Twenty-ninth street southeast, then proceeding south along Twenty-ninth street southeast until it intersects Dalewood avenue southeast, then proceeding west along Dalewood avenue southeast until it intersects Memorial drive southeast, then proceeding south along Memorial drive southeast until it intersects Mount Vernon road southeast, then proceeding west along Mount Vernon road southeast until it intersects Nineteenth street southeast, then proceeding first north and then in a counterclockwise manner along the boundary of the fifty-third representative district until it intersects Forty-second street northeast, then proceeding north along Council street northeast until it intersects the north corporate limit of the city of Cedar Rapids to the east of Council street northeast and to the north of Seventy-fourth street northeast, then proceeding first east and then in a clockwise manner along the corporate limits of the city of Marion until it intersects the north boundary of the fifty-first representative district, then proceeding first south and then in a counterclockwise manner along the boundary of the fifty-first representative district to the point of origin.

53. The fifty-third representative district in Linn county shall consist of that portion of the city of Cedar Rapids bounded by a line commencing at the point Nineteenth street southeast intersects Mount Vernon road southeast, then proceeding west along Mount Vernon road southeast until it intersects Nineteenth street southeast, then proceeding north along Nineteenth street southeast until it intersects Fifth avenue southeast, then proceeding easterly along Fifth avenue southeast until it intersects Twenty-first street southeast, then proceeding northerly along Twenty-first street southeast until it intersects Park avenue southeast, then proceeding west along Park avenue southeast until it intersects Nineteenth street southeast, then proceeding north along Nineteenth street southeast until it intersects Grande avenue southeast, then proceeding west along Grande avenue southeast until it intersects Eighteenth street southeast, then proceeding north along Eighteenth street southeast until it intersects Third avenue southeast, then proceeding southwest along Third avenue southeast until it intersects Fourteenth street southeast, then proceeding northwest along Fourteenth street southeast until it intersects Fourteenth street northeast, then proceeding northwest along Fourteenth street northeast until it intersects "C" avenue northeast, then proceeding southwest along "C" avenue northeast until it intersects Center Point road northeast, then proceeding northwest along Center Point road northeast until it intersects Oakland road northeast, then proceeding northerly along Oakland road northeast until it intersects Hollywood boulevard northeast, then proceeding northwest along Hollywood boulevard northeast until it intersects Richmond road northeast, then proceeding northerly along Richmond road northeast until it intersects Council street northeast, then proceeding north along Council street northeast until it intersects Forty-second street northeast, then proceeding west along Forty-second street northeast until it intersects the abandoned Chicago, Central, & Pacific Railroad Company railroad bed, then proceeding southerly along the abandoned Chicago, Central, & Pacific Railroad Company railroad bed until it intersects Interstate 380, then proceeding northwest along Interstate 380 until it intersects Glass road northeast, then proceeding westerly along Glass road northeast until it intersects Redbud road northeast, then proceeding northerly along Redbud road northeast until it intersects Birchwood drive northeast, then proceeding westerly along Birchwood drive northeast until it intersects Northwood drive northeast, then proceeding southerly along Northwood drive northeast until it intersects Glass road northeast, then proceeding west along Glass road northeast until it intersects Wenig road northeast, then proceeding south along Wenig road northeast until it intersects Coldstream avenue northeast, then proceeding easterly along Coldstream avenue northeast until it intersects Linmar drive northeast, then proceeding southerly along Linmar drive northeast until it intersects Sier-

ra drive northeast, then proceeding southerly along Sierra drive northeast until it intersects "J" avenue northeast, then proceeding first southwest, then northwest, then southwest along "J" avenue northeast (and its extension) until it intersects the middle of the main channel of the Red Cedar river, then proceeding southeasterly along the middle of the main channel of the Red Cedar river until it intersects the northeast extension of Ellis lane northwest, then proceeding southwest along Ellis lane northwest (and its extension) until it intersects Eighth street northwest, then proceeding southeast along Eighth street northwest until it intersects "Q" avenue northwest, then proceeding west along "Q" avenue northwest until it intersects Tenth street northwest, then proceeding south along Tenth street northwest until it intersects Penn avenue northwest, then proceeding east along Penn avenue northwest until it intersects Ellis boulevard northwest, then proceeding south along Ellis boulevard northwest until it intersects "M" avenue northwest, then proceeding west along "M" avenue northwest until it intersects Ninth street northwest, then proceeding north along Ninth street northwest until it intersects "O" avenue northwest, then proceeding west along "O" avenue northwest until it intersects Highwood drive northwest, then proceeding southerly along Highwood drive northwest until it intersects Belmont parkway northwest, then proceeding easterly along Belmont parkway northwest (and its extension) until it intersects the north extension of Eighteenth street northwest, then proceeding southerly along Eighteenth street northwest (and its extension) until it intersects Johnson avenue northwest, then proceeding first easterly and then in a counterclockwise manner along Johnson avenue northwest until it intersects "A" avenue northwest, then proceeding east along "A" avenue northwest until it intersects Fourteenth street northwest, then proceeding south along Fourteenth street northwest until it intersects First avenue southwest, then proceeding northeast along First avenue southwest until it intersects Twelfth street southwest, then proceeding southeast along Twelfth street southwest until it intersects Third avenue southwest, then proceeding east along Third avenue southwest until it intersects the Chicago and Northwestern Transportation Company railroad track, then proceeding northerly along the Chicago and Northwestern Transportation Company railroad track until it intersects Second avenue southwest, then proceeding northeast along Second avenue southwest until it intersects Eighth street southwest, then proceeding southeast along Eighth street southwest until it intersects Third avenue southwest, then proceeding northeast along Third avenue southwest until it intersects Seventh street southwest, then proceeding southeasterly along Seventh street southwest until it intersects Fifth avenue southwest, then proceeding east along Fifth avenue southwest until it intersects the north extension of Seventh street southwest, then proceeding south along Seventh street southwest (and its extension)

until it intersects Eighth avenue southwest, then proceeding east along Eighth avenue southwest until it intersects Sixth street southwest, then proceeding north along Sixth street southwest until it intersects Seventh avenue southwest, then proceeding easterly along Seventh avenue southwest until it intersects "L" street southwest, then proceeding southeast along "L" street southwest until it intersects Eighth avenue southwest, then proceeding northeast along Eighth avenue southwest until it intersects Second street southwest, then proceeding south along Second street southwest until it intersects the Cedar Rapids and Iowa City Railway Company railroad track, then proceeding northeast along the Cedar Rapids and Iowa City Railway Company railroad track until it intersects First street southwest, then proceeding southeast along First street southwest until it intersects "C" street southwest, then proceeding southeast along "C" street southwest until it intersects Sixteenth avenue southwest, then proceeding southwesterly along Sixteenth avenue southwest until it intersects "J" street southwest, then proceeding south along "J" street southwest until it intersects Wilson avenue southwest, then proceeding east along Wilson avenue southwest until it intersects Southland street southwest, then proceeding south along Southland street southwest until it intersects Twenty-fourth avenue southwest, then proceeding west along Twenty-fourth avenue southwest until it intersects Schaefer drive southwest, then proceeding south along Schaefer drive southwest until it intersects Twenty-sixth avenue southwest, then proceeding west along Twenty-sixth avenue southwest until it intersects "J" street southwest, then proceeding south along "J" street southwest until it intersects the Chicago and Northwestern Transportation Company railroad track, then proceeding northeasterly along the Chicago and Northwestern Transportation Company railroad track until it intersects the middle of the main channel of the Red Cedar river, then proceeding northerly along the middle of the main channel of the Red Cedar river until it intersects the south extension of Nineteenth street southeast (and its extension) until it intersects Van Vechten Park road, then proceeding first east and then northeasterly along Van Vechten Park road until it intersects McCarthy road southeast, then proceeding northwesterly along McCarthy road southeast until it intersects Nineteenth street southeast, then proceeding north along Nineteenth street southeast to the point of origin.

54. The fifty-fourth representative district in Linn county shall consist of those portions of the city of Cedar Rapids and Fairfax and Clinton townships bounded by a line commencing at the point "J" street southwest intersects Twenty-seventh avenue southwest, then proceeding west along Twenty-seventh avenue southwest until it intersects Sixth street southwest, then proceeding southerly along Sixth street southwest until it intersects the Chicago and Northwestern Transportation Company rail-

road track, then proceeding southwestern along the Chicago and Northwestern Transportation Company railroad track until it intersects the west corporate limit of the city of Cedar Rapids, then proceeding first north and then in a clockwise manner along the corporate limits of the city of Cedar Rapids until it intersects Rogers road northwest, then proceeding westerly along Rogers road northwest until it intersects the southerly extension of the west corporate limit of the city of Cedar Rapids to the west of Morris avenue, then proceeding north along the west corporate limit (and its southern extension), and then west along the corporate limit, then south along the corporate limit and its extension until it intersects Rogers road northwest, then proceeding westerly along Rogers road northwest until it again intersects the southern extension of the west corporate limit of the city of Cedar Rapids, then proceeding north along the west corporate limit of the city of Cedar Rapids until it intersects the west corporate limit of the city of Cedar Rapids, then proceeding first north and then in a clockwise manner along the corporate limits of the city of Cedar Rapids until it intersects the middle of the main channel of the Red Cedar river, then proceeding northeasterly along the middle of the main channel of the Red Cedar river until it intersects Edgewood road northwest, then proceeding southerly along Edgewood road northwest until it intersects "O" avenue northwest, then proceeding east along "O" avenue northwest until it intersects Hillside drive northwest, then proceeding north along Hillside drive northwest until it intersects Elaine drive northwest, then proceeding east along Elaine drive northwest until it intersects Thirtieth street northwest, then proceeding south along Thirtieth street northwest until it intersects "O" avenue northwest, then proceeding east along "O" avenue northwest until it intersects Highwood drive northwest, then proceeding first southwesterly and then in a counterclockwise manner along the boundary of the fifty-third representative district to the point of origin.

55. The fifty-fifth representative district in Linn county shall consist of:

a. Grant, Washington, Fayette, and Monroe townships.

b. The city of Robins.

c. That portion of the city of Cedar Rapids bounded by a line commencing at the point Edgewood road northwest intersects the middle of the main channel of the Red Cedar river, then proceeding southwesterly along the middle of the main channel of the Red Cedar river until it intersects the west corporate limit of the city of Cedar Rapids, then proceeding first north and then in a clockwise manner along the corporate limits of the city of Cedar Rapids until it intersects Council street northeast, then proceeding south along Council street northeast until it intersects the west boundary of the fifty-second representative district, then proceeding south along the west boundary of the fifty-second representative district until it intersects the north boundary of the

fifty-third representative district, then proceeding first west and then in a clockwise manner along the boundary of the fifty-third representative district until it intersects the boundary of the fifty-fourth representative district, then proceeding first west and then in a clockwise manner along the boundary of the fifty-fourth representative district to the point of origin.

56. The fifty-sixth representative district shall consist of:

a. That portion of Jones county not contained in the thirty-ninth representative district.

b. In Linn county, Spring Grove, Jackson, Boulder, Otter Creek, Maine, Buffalo, Brown, and Linn townships, and that portion of Marion township not contained in the fifty-first or fifty-second representative district.

57. The fifty-seventh representative district in Jasper county shall consist of:

a. Clear Creek, Independence, Malaka, Poweshiek, Sherman, Newton, Washington, Mound Prairie, Des Moines, and Fairview townships.

b. That portion of the city of Newton and Palo Alto township bounded by a line commencing at the point West Fifteenth street south intersects the south corporate limit of the city of Newton lying to the west of West Fifteenth street south, then proceeding first west and then in a clockwise manner along the corporate limits of the city of Newton to the point of origin.

58. The fifty-eighth representative district shall consist of:

a. That portion of Jasper county not contained in the fifty-seventh representative district.

b. Poweshiek county.

c. In Mahaska county, Union and Pleasant Grove townships.

d. In Marshall county, Greencastle township.

59. The fifty-ninth representative district shall consist of:

a. Iowa county.

b. That portion of Benton county not contained in the sixtieth representative district.

60. The sixtieth representative district shall consist of:

a. Tama county.

b. In Black Hawk county, Lincoln and Eagle townships.

c. In Benton county, Bruce, Cedar, Harrison, Polk, Taylor, Jackson, Monroe, and Homer townships, and the city of Vinton.

61. The sixty-first representative district in Story county shall consist of that portion of the city of Ames bounded by a line commencing at the point Thackery avenue, Lincoln way, and the corporate limits of the city of Ames intersect, then proceeding east along Lincoln way until it intersects Wilmoth avenue, then proceeding north along Wilmoth avenue until it intersects Story street, then proceeding east along Story street until it intersects Howard avenue, then proceeding north along Howard avenue until it intersects West street, then proceeding east-

erly along West street until it intersects Beyer court, then proceeding first south and then westerly along Beyer court until it intersects the sidewalk lying to the west of Friley hall, then proceeding southwest along the sidewalk lying to the west of Friley hall (and its extension) until it intersects Lincoln way, then proceeding east along Lincoln way until it intersects Squaw creek, then proceeding northerly along Squaw creek until it intersects the Chicago and Northwestern Transportation Company railroad track, then proceeding southeasterly along the Chicago and Northwestern Transportation Company railroad track until it intersects Grand avenue, then proceeding north along Grand avenue until it intersects Seventh street, then proceeding east along Seventh street until it intersects Duff avenue, then proceeding north along Duff avenue until it intersects East Sixteenth street, then proceeding east along East Sixteenth street until it intersects Glendale avenue, then proceeding south along Glendale avenue until it intersects East Thirteenth street, then proceeding east along East Thirteenth street until it intersects the north corporate limit of the city of Ames to the north of East Thirteenth street, then proceeding first northerly and then in a counterclockwise manner along the corporate limits of the city of Ames to the point of origin.

62. The sixty-second representative district in Story county shall consist of:

a. Those portions of the city of Ames and Washington township not contained in the sixty-first representative district.

b. That portion of Grant township lying outside the corporate limits of the city of Nevada.

c. Palestine, Union, and Indian Creek townships.

63. The sixty-third representative district shall consist of:

a. That portion of Story county not contained in the sixty-first or sixty-second representative districts.

b. That portion of Marshall county not contained in the fifty-eighth or sixty-fourth representative district.

64. The sixty-fourth representative district in Marshall county shall consist of:

a. Timber Creek and Le Grand townships.

b. That portion of the city of Marshalltown and Marietta township bounded by a line commencing at the point Highland Acres road, West Main street, and the corporate limits of the city of Marshalltown intersect, then proceeding first east and then in a clockwise manner along the corporate limits of the city of Marshalltown to the point of origin.

65. The sixty-fifth representative district shall consist of that portion of Polk county bounded by a line commencing at the point the west corporate limit of the city of Sheldahl intersects the north boundary of Polk county, then proceeding first south and then in a counterclockwise manner along the corporate limits of the city of Sheldahl until it intersects the west boundary of Lincoln township, then proceeding first south and then east along the

boundary of Lincoln township until it intersects the west boundary of Douglas township, then proceeding south along the west boundary of Douglas township until it intersects the north corporate limit of the city of Ankeny, then proceeding first south then in a clockwise manner along the corporate limits of the city of Ankeny until it intersects the east boundary of Crocker township north of Northeast One Hundred Fifth place, then proceeding south along the east boundary of Crocker township until it intersects the corporate limits of the city of Ankeny, then proceeding first east and then in a clockwise manner along the corporate limits of the city of Ankeny until it intersects the east boundary of Crocker township, then proceeding south along the east boundary of Crocker township until it intersects the east boundary of Saylor township, then proceeding south along the east boundary of Saylor township until it intersects the north corporate limit of the city of Des Moines, then proceeding first west and then in a counterclockwise manner along the corporate limits of the city of Des Moines until it intersects the middle of the main channel of the Des Moines river, then proceeding northerly along the middle of the main channel of the Des Moines river until it intersects the west boundary of Polk county, then proceeding first north and then east along the boundary of Polk county to the point of origin.

66. The sixty-sixth representative district shall consist of that portion of Polk county bounded by a line commencing at the point Delaware avenue intersects the north corporate limit of the city of Des Moines, then proceeding first east and then in a clockwise manner along the corporate limits of the city of Des Moines until it intersects the south boundary of Polk county, then proceeding first east and then in a counterclockwise manner along the boundary of Polk county until it intersects the east boundary of the sixty-fifth representative district, then proceeding first south and then in a clockwise manner along the boundary of the sixty-fifth representative district to the point of origin.

67. The sixty-seventh representative district in Polk county shall consist of that portion of the city of Des Moines bounded by a line commencing at the point the south corporate limit of the city of Des Moines intersects Fleur drive, then proceeding north along Fleur drive until it intersects Kenyon avenue, then proceeding easterly along Kenyon avenue until it intersects Southwest Thirteenth street, then proceeding north along Southwest Thirteenth street until it intersects Frazier avenue, then proceeding east along Frazier avenue until it intersects Southwest Ninth street, then proceeding north along Southwest Ninth street until it intersects McKinley avenue, then proceeding west along McKinley avenue until it intersects Southwest Fourteenth street, then proceeding north along Southwest Fourteenth street until it intersects Watrous avenue, then proceeding east along Watrous avenue until it intersects Southwest Ninth street, then proceeding northerly along Southwest Ninth street until it intersects Olin-

da avenue, then proceeding east along Olinda avenue until it intersects South Union street, then proceeding north along South Union street until it intersects Hartford avenue, then proceeding east along Hartford avenue until it intersects Southeast Fifth street, then proceeding south along Southeast Fifth street until it intersects East Bell avenue, then proceeding east along East Bell avenue until it intersects Southeast Fourteenth street, then proceeding southerly along Southeast Fourteenth street until it intersects U.S. highways 65 and 69 at Army Post road, then proceeding southeasterly along U.S. highways 65 and 69 until it intersects the south boundary of the corporate limits of the city of Des Moines, then proceeding west along the corporate limits of the city of Des Moines to the point of origin.

68. The sixty-eighth representative district in Polk county shall consist of those portions of the city of Des Moines and Bloomfield township bounded by a line commencing at the point Olinda avenue intersects Ninth street southwest, then proceeding northerly along Ninth street southwest until it intersects the Raccoon river, then proceeding first westerly and then northerly along the Raccoon river until it intersects Fleur drive, then proceeding northeasterly along Fleur drive until it intersects Eighteenth street, then proceeding northerly along Eighteenth street until it intersects Grand avenue, then proceeding easterly along Grand avenue until it intersects Seventeenth street, then proceeding northerly along Seventeenth street until it intersects Center street, then proceeding west along Center street until it intersects Eighteenth street, then proceeding north along Eighteenth street until it intersects School street, then proceeding west along School street until it intersects Harding road, then proceeding north along Harding road until it intersects Interstate 235, then proceeding easterly along Interstate 235 until it intersects East University avenue, then proceeding east along East University avenue until it intersects the east corporate limit of the city of Des Moines, then proceeding first south and then in a clockwise manner along the corporate limits of the city of Des Moines until it intersects U.S. highways 65 and 69, then proceeding first northwesterly and then in a counterclockwise manner along the boundary of the sixty-seventh representative district to the point of origin.

69. The sixty-ninth representative district in Polk county shall consist of that portion of the city of Des Moines bounded by a line commencing at the point East Fifteenth street intersects Interstate 235, then proceeding north along East Fifteenth street until it intersects Maple street, then proceeding east along Maple street until it intersects East Sixteenth street, then proceeding northerly along East Sixteenth street until it intersects East University avenue, then proceeding west along East University avenue until it intersects East Sixteenth street, then proceeding north along East Sixteenth street until it intersects East Washington avenue, then proceeding east along East Washington avenue until it inter-

sects East Seventeenth street, then proceeding north along East Seventeenth street until it intersects Guthrie avenue, then proceeding west along Guthrie avenue until it intersects York street, then proceeding north along York street until it intersects Arthur avenue, then proceeding east along Arthur avenue until it intersects East Fourteenth street, then proceeding north along East Fourteenth street until it intersects the north corporate limit of the city of Des Moines, then proceeding first east and then in a clockwise manner along the corporate limits of the city of Des Moines until it intersects East University avenue, then proceeding west along East University avenue until it intersects Interstate 235, then proceeding southwesterly along Interstate 235 to the point of origin.

70. The seventieth representative district in Polk county shall consist of that portion of the city of Des Moines bounded by a line commencing at the point East Fifteenth street intersects Interstate 235, then proceeding westerly along Interstate 235 until it intersects Harding road, then proceeding north along Harding road until it intersects Atkins street, then proceeding west along Atkins street until it intersects Twenty-first street, then proceeding north along Twenty-first street until it intersects University avenue, then proceeding east along University avenue until it intersects Harding road, then proceeding north along Harding road until it intersects Clark street, then proceeding east along Clark street until it intersects Eleventh street, then proceeding north along Eleventh street until it intersects Jefferson avenue, then proceeding east along Jefferson avenue until it intersects Sixth avenue, then proceeding north along Sixth avenue until it intersects the middle of the main channel of the Des Moines river, then proceeding northerly along the middle of the main channel of the Des Moines river until it intersects the north corporate limit of the city of Des Moines, then proceeding first east and then in a clockwise manner along the corporate limits of the city of Des Moines until it intersects East Fourteenth street, then proceeding first south and then in a counterclockwise manner along the boundary of the sixty-ninth representative district to the point of origin.

71. The seventy-first representative district in Polk county shall consist of that portion of the city of Des Moines bounded by a line commencing at the point Fleur drive intersects the Raccoon river, then proceeding northeasterly along Fleur drive until it intersects the north spur of the Des Moines Union Railway Company railroad track, then proceeding southwesterly along said Des Moines Union Railway Company railroad track until it intersects the south extension of Twenty-eighth street, then proceeding north along the south extension of Twenty-eighth street until it intersects Terrace drive, then proceeding westerly along Terrace drive until it intersects Thirty-first street, then proceeding north along Thirty-first street until it intersects Grand avenue, then proceeding west along Grand avenue until it intersects Thirty-fifth street, then proceeding north

along Thirty-fifth street until it intersects Woodland avenue, then proceeding west along Woodland avenue until it intersects Thirty-seventh street, then proceeding north along Thirty-seventh street until it intersects Center street, then proceeding east along Center street until it intersects Thirty-seventh street, then proceeding north along Thirty-seventh street until it intersects Rollins avenue, then proceeding east along Rollins avenue until it intersects Thirty-fifth street, then proceeding north along Thirty-fifth street until it intersects Interstate 235, then proceeding westerly along Interstate 235 until it intersects Forty-second street, then proceeding north along Forty-second street until it intersects Cottage Grove avenue, then proceeding east along Cottage Grove avenue until it intersects Thirty-first street, then proceeding north along Thirty-first street until it intersects University avenue, then proceeding east along University avenue until it intersects Thirtieth street, then proceeding north along Thirtieth street until it intersects Hickman road, then proceeding west along Hickman road until it intersects Thirty-eighth street, then proceeding north along Thirty-eighth street until it intersects Douglas avenue, then proceeding east along Douglas avenue until it intersects Thirtieth street, then proceeding north along Thirtieth street until it intersects Seneca avenue, then proceeding west along Seneca avenue until it intersects Lawnwoods drive, then proceeding north along Lawnwoods drive until it intersects Madison avenue, then proceeding west along Madison avenue until it intersects Lower Beaver road, then proceeding northwesterly along Lower Beaver road until it intersects Aurora avenue, then proceeding west along Aurora avenue until it intersects Thirty-eighth street, then proceeding north along Thirty-eighth street until it intersects Brinkwood road, then proceeding east along Brinkwood road until it intersects Lower Beaver road, then proceeding northwest along Lower Beaver road until it intersects Hillcrest drive, then proceeding east along Hillcrest drive until it intersects the north corporate limit of the city of Des Moines, then proceeding first southeast and then in a clockwise manner along the corporate limits of the city of Des Moines until it intersects the middle of the main channel of the Des Moines river, then proceeding first south and then in a counterclockwise manner along the boundary of the seventieth representative district until it intersects the boundary of the sixty-eighth representative district, then proceeding first south and then in a counterclockwise manner along the boundary of the sixty-eighth representative district to the point of origin.

72. The seventy-second representative district in Polk county shall consist of that portion of the city of Des Moines bounded by a line commencing at the point Cottage Grove avenue intersects Forty-second street, then proceeding north along Forty-second street until it intersects University avenue, then proceeding west along University avenue until it intersects Fifty-sixth street, then proceeding south

along Fifty-sixth street until it intersects Interstate 235, then proceeding west along Interstate 235 until it intersects the west corporate limit of the city of Des Moines, then proceeding first north and then in a clockwise manner along the corporate limits of the city of Des Moines until it intersects Aurora avenue, then proceeding east along Aurora avenue until it intersects Beaver avenue, then proceeding east along the south boundary of Webster township until it intersects Aurora avenue, then proceeding easterly along Aurora avenue until it intersects Lower Beaver road, then proceeding first southeast and then in a counterclockwise manner along the boundary of the seventy-first representative district to the point of origin.

73. The seventy-third representative district in Polk county shall consist of those portions of the cities of Des Moines and West Des Moines and Bloomfield township which are bounded by a line commencing at the point Interstate 235 intersects Fifty-sixth street, then proceeding south along Fifty-sixth street until it intersects North Valley drive, then proceeding southwest along North Valley drive until it intersects Walnut creek, then proceeding northwesterly along Walnut creek until it intersects Grand avenue, then proceeding west along Grand avenue until it intersects First street, then proceeding south along First street until it intersects Railroad avenue, then proceeding west along Railroad avenue until it intersects Grand avenue, then proceeding northeast along Grand avenue until it intersects Vine street, then proceeding west and then northwesterly along Vine street until it intersects Thirty-second street, then proceeding southwest along Thirty-second street until it intersects Meadow lane, then proceeding southeasterly along Meadow lane until it intersects Twenty-eighth street, then proceeding southerly along Twenty-eighth street until it intersects Giles street, then proceeding westerly along Giles street until it intersects Thirty-third street, then proceeding southerly along Thirty-third street until it intersects Maple street, then proceeding westerly along Maple street until it intersects Thirty-fifth court, then proceeding southerly along Thirty-fifth court (and its extension) until it intersects the Chicago and Northwestern Transportation Company railroad track, then proceeding westerly along the Chicago and Northwestern Transportation Company railroad track until it intersects Thirty-ninth street, then proceeding south along Thirty-ninth street until it intersects Delavan drive, then proceeding west along Delavan drive (and its extension) until it intersects Interstate 35, then proceeding north along Interstate 35 until it intersects Jordan creek, then proceeding westerly along Jordan creek until it intersects the Chicago and Northwestern Transportation Company railroad track, then proceeding westerly along the Chicago and Northwestern Transportation Company railroad track until it intersects Jordan creek, then proceeding westerly along Jordan creek until it intersects the west boundary of Polk county, then proceeding first south

and then east along the boundary of Polk county until it intersects Fleur drive, then proceeding first north and then in a clockwise manner along the boundary of the sixty-seventh representative district until it intersects the boundary of the sixty-eighth representative district, then proceeding first north and then in a clockwise manner along the boundary of the sixty-eighth representative district until it intersects the boundary of the seventy-first representative district, then proceeding first north and then in a clockwise manner along the boundary of the seventy-first representative district until it intersects the boundary of the seventy-second representative district, then proceeding first north and then in a clockwise manner along the boundary of the seventy-second representative district to the point of origin.

74. The seventy-fourth representative district in Polk county shall consist of the following portions of the cities of Des Moines and West Des Moines bounded by a line commencing at the point Jordan creek intersects the west boundary of Polk county, then proceeding north along the boundary of Polk county until it intersects the north corporate limit of the city of West Des Moines, then proceeding first east and then in a clockwise manner along the corporate limits of the city of West Des Moines until it intersects Center street, then proceeding easterly along Center street until it intersects Sixty-third street, then proceeding north along Sixty-third street until it intersects Interstate 235, then proceeding east along Interstate 235 until it intersects Fifty-sixth street, then proceeding first south and then in a counterclockwise manner along the boundary of the seventy-third representative district to the point of origin.

75. The seventy-fifth representative district in Polk county shall consist of that portion bounded by a line commencing at the point Sixty-ninth street intersects Douglas avenue, then proceeding north along Sixty-ninth street until it intersects Airline avenue, then proceeding east along Airline avenue (and its extension) until it intersects the unnamed road lying to the west of Merle Hay mall, then proceeding north and then west on said unnamed road until it intersects the east corporate limit of the city of Urbandale, then proceeding first south and then in a clockwise manner along the corporate limits of the city of Urbandale until it intersects the north corporate limit of the city of Windsor Heights, then proceeding first east and then in a clockwise manner along the corporate limits of the city of Windsor Heights until it intersects the south corporate limit of the city of Clive, then proceeding first northwest and then in a clockwise manner along the corporate limits of the city of Clive until it intersects the west boundary of Polk county at Northwest One Hundred Forty-second street, then proceeding north along the west boundary of Polk county until it intersects Northwest Seventieth avenue, then proceeding east along Northwest Seventieth avenue until it intersects the west corporate limit of the city of Grimes,

then proceeding first north and then in a clockwise manner along the corporate limits of the city of Grimes until it intersects the north boundary of Webster township, then proceeding east along the north boundary of Webster township until it intersects the west corporate limit of the city of Johnston, then proceeding first south and then in a counterclockwise manner along the corporate limits of the city of Johnston until it intersects the north corporate limit of the city of Urbandale, then proceeding first south and then in a clockwise manner along the corporate limits of the city of Urbandale until it intersects Meredith drive, then proceeding east along Meredith drive until it intersects North Walnut creek, then proceeding southerly along North Walnut creek until it intersects Douglas avenue, then proceeding east along Douglas avenue to the point of origin.

76. The seventy-sixth representative district shall consist of:

a. That portion of Polk county not contained in the sixty-fifth, sixty-sixth, sixty-seventh, sixty-eighth, sixty-ninth, seventieth, seventy-first, seventy-second, seventy-third, seventy-fourth, or seventy-fifth representative districts.

b. In Dallas county, Beaver, Des Moines, Sugar Grove, and Grant townships and the city of Dallas Center.

77. The seventy-seventh representative district shall consist of:

a. That portion of Dallas county not contained in the seventy-sixth representative district.

b. In Madison county, Penn, Madison, Jefferson, Lee, Jackson, Douglas, Union, and Crawford townships.

78. The seventy-eighth representative district shall consist of:

a. That portion of Madison county not contained in the seventy-seventh representative district.

b. Guthrie county.

c. Adair county.

79. The seventy-ninth representative district shall consist of:

a. That portion of Boone county not contained in the fourteenth representative district.

b. In Greene county, Highland, Dawson, Paton, Bristol, Junction, Franklin, and Washington townships and those portions of Grant and Hardin townships lying outside the corporate limits of the city of Jefferson.

80. The eightieth representative district shall consist of:

a. That portion of Greene county not contained in the seventy-ninth representative district.

b. Carroll county.

81. The eighty-first representative district shall consist of:

a. Audubon county.

b. Shelby county.

c. In Pottawattamie county, Neola, Minden, Pleasant, Knox, Layton, Lincoln, Valley, James, York, and Norwalk townships.

82. The eighty-second representative district shall consist of:

a. Harrison county.

b. That portion of Pottawattamie county not contained in the eighty-first, eighty-third, eighty-fourth, eighty-fifth, or eighty-sixth representative district.

83. The eighty-third representative district in Pottawattamie county shall consist of:

a. The city of Carter Lake.

b. Those portions of the city of Council Bluffs and Kane township bounded by a line commencing at the point the north boundary of Kane township intersects Indian creek, then proceeding west along the north boundary of Kane township until it intersects the north corporate limit of the city of Council Bluffs, then proceeding first west and then in a counterclockwise manner along the corporate limits of the city of Council Bluffs until it intersects Interstate 480, then proceeding easterly along Interstate 480 until it intersects West Broadway, then proceeding east along West Broadway until it intersects South Twenty-third street, then proceeding southerly along South Twenty-third street until it intersects Third avenue, then proceeding east along Third avenue until it intersects South Twenty-first street, then proceeding south along South Twenty-first street until it intersects Ninth avenue, then proceeding easterly along Ninth avenue until it intersects South Twelfth street, then proceeding north on South Twelfth street until it intersects Fourth avenue, then proceeding east along Fourth avenue until it intersects South Eleventh street, then proceeding north along South Eleventh street until it intersects West Broadway, then proceeding east along West Broadway until it intersects North Eighth street, then proceeding north along North Eighth street until it intersects West Washington avenue, then proceeding easterly along West Washington avenue until it intersects Kanesville boulevard, then proceeding northeasterly along Kanesville boulevard until it intersects North First street, then proceeding south along North First street until it intersects East Broadway, then proceeding northeasterly along East Broadway until it intersects Union street, then proceeding southeasterly along Union street until it intersects East Pierce street, then proceeding northeast along East Pierce street until it intersects Frank street, then proceeding northwest along Frank street until it intersects East Broadway, then proceeding northeast along East Broadway until it intersects East Oak street, then proceeding southeast along East Oak street until it intersects East Pierce Street, then proceeding northeasterly along East Pierce street until it intersects North avenue, then proceeding north along North avenue until it intersects East Kanesville boulevard, then proceeding northeasterly along East Kanesville boulevard until it intersects McKensie avenue, then proceeding northerly along McKensie avenue until it intersects South Ridge road, then proceeding east along South Ridge road until it intersects North Ridge road, then proceeding

northerly along North Ridge road until it intersects the north corporate limit of the city of Council Bluffs, then proceeding west along the north corporate limit until it intersects the east boundary of Kane township, then proceeding north and then west along the boundary of Kane township until it intersects the north corporate limit of the city of Council Bluffs, then proceeding first north and then in a counterclockwise manner along the corporate limits of the city of Council Bluffs until it intersects the north boundary of Kane township, then proceeding west along the north boundary of Kane township to the point of origin.

84. The eighty-fourth representative district shall consist of that portion of Pottawattamie county bounded by a line commencing at the point North avenue intersects East Kaneshville boulevard, then proceeding south along North avenue until it intersects East Pierce street, then proceeding easterly along East Pierce street until it intersects McPherson avenue, then proceeding southeasterly along McPherson avenue until it intersects Gleason avenue, then proceeding west along Gleason avenue until it intersects Morningside avenue, then proceeding north along Morningside avenue until it intersects Park lane, then proceeding west on Park lane until it intersects Lincoln avenue, then proceeding southeasterly along Lincoln avenue until it intersects Bennett avenue, then proceeding southwesterly along Bennett avenue until it intersects Madison avenue, then proceeding southeasterly along Madison avenue until it intersects the east corporate limit of the city of Council Bluffs, then proceeding southwest along the corporate limits of the city of Council Bluffs until it intersects the east boundary of Kane township, then proceeding southerly along the east boundary of Kane township until it intersects the east corporate limit of the city of Council Bluffs, then proceeding first south and then in a clockwise manner along the corporate limits of the city of Council Bluffs until it intersects state highway 92, then proceeding northeasterly along state highway 92 until it intersects the east boundary of Lewis township, then proceeding south along the east boundary of Lewis township until it intersects the south boundary of Pottawattamie county, then proceeding first west and then in a clockwise manner along the boundary of Pottawattamie county until it intersects Interstate 480, then proceeding first east and then in a counterclockwise manner along the boundary of the eighty-third representative district to the point of origin.

85. The eighty-fifth representative district shall consist of:

a. In Pottawattamie county, Hardin, Washington, Belknap, Center, Grove, Carson, Macedonia, Silver Creek, and Keg Creek townships.

b. Mills county.

c. Fremont county.

86. The eighty-sixth representative district shall consist of:

a. Cass county.

b. Montgomery county.

c. In Pottawattamie county, Wright and Waveland townships.

87. The eighty-seventh representative district shall consist of:

a. Adams county.

b. Page county.

c. That portion of Taylor county not contained in the eighty-eighth representative district.

88. The eighty-eighth representative district shall consist of:

a. Union county.

b. Ringgold county.

c. Decatur county.

d. In Taylor county, Grant, Gay, and Jefferson townships.

89. The eighty-ninth representative district shall consist of that portion of Warren county bounded by a line commencing at the point the west corporate limit of the city of Norwalk intersects the north boundary of Warren county, then proceeding first south and then in a counterclockwise manner along the corporate limits of the city of Norwalk until it intersects the east boundary of Linn township at Wright road, then proceeding south along the east boundary of Linn township until it intersects the east boundary of Jefferson township, then proceeding south along the east boundary of Jefferson township until it intersects the south boundary of Lincoln township, then proceeding east along the south boundary of Lincoln township until it intersects the west corporate limit of the city of Indianola, then proceeding first south and then in a counterclockwise manner along the corporate limits of the city of Indianola until it intersects the south boundary of Lincoln township, then proceeding east along the south boundary of Lincoln township until it intersects the west boundary of Union township, then proceeding first north and then in a clockwise manner along the boundary of Union township until it intersects the east boundary of Warren county, then proceeding first north and then in a counterclockwise manner along the boundary of Warren county to the point of origin.

90. The ninetieth representative district shall consist of:

a. That portion of Warren county not contained in the eighty-ninth representative district.

b. That portion of Marion county not contained in the ninety-fifth representative district.

91. The ninety-first representative district shall consist of:

a. Clarke county.

b. Lucas county.

c. Wayne county.

d. In Appanoose county, Independence, Walnut, Johns, Bellair, Lincoln, Franklin, and Pleasant townships.

92. The ninety-second representative district shall consist of:

a. Monroe county.

b. Davis county.

c. That portion of Appanoose county not contained in the ninety-first representative district.

d. In Van Buren county, that portion of Jackson township lying outside the corporate limits of the city of Cantril.

93. The ninety-third representative district in Wapello county shall consist of Adams, Green, and Center townships, and the city of Ottumwa.

94. The ninety-fourth representative district shall consist of:

a. Jefferson county.

b. That portion of Van Buren county not contained in the ninety-second representative district.

c. In Wapello county, Keokuk, Washington, Agency, and Pleasant townships, and that portion of Dahlonga township lying outside the corporate limits of the city of Ottumwa.

95. The ninety-fifth representative district shall consist of:

a. In Marion county, Lake Prairie township.

b. In Mahaska county:

(1) Richland, Prairie, Black Oak, Madison, Scott, Garfield, Lincoln, Jefferson, West Des Moines, and East Des Moines townships.

(2) The cities of Oskaloosa and University Park.

96. The ninety-sixth representative district shall consist of:

a. That portion of Mahaska county not contained in the fifty-eighth or ninety-fifth representative districts.

b. Keokuk county.

c. That portion of Wapello county not contained in the ninety-third or ninety-fourth representative district.

d. In Washington county, Lime Creek, English River, Iowa, Seventy-six, Cedar, Jackson, Highland, Dutch Creek, and Clay townships and the city of Brighton.

97. The ninety-seventh representative district shall consist of:

a. That portion of Washington county not contained in the ninety-sixth representative district.

b. That portion of Henry county not contained in the ninety-eighth representative district.

c. In Des Moines county, Washington and Pleasant Grove townships.

98. The ninety-eighth representative district shall consist of:

a. In Henry county, Tippecanoe, Salem, Jackson, and Baltimore townships.

b. That portion of Lee county not contained in the ninety-ninth representative district.

99. The ninety-ninth representative district shall consist of:

a. In Lee county:

(1) Washington and Green Bay townships.

(2) That portion of the city of Fort Madison and Jefferson township bounded by a line commencing at the point Sheppard's lane intersects the west corporate limit of the city of Fort Madison, then proceeding first southwest and then in a counterclockwise manner along the corporate limits of the city of Fort Madison to the point of origin.

b. That portion of Des Moines county not contained in the ninety-seventh or one hundredth representative district.

100. The one hundredth representative district in Des Moines county shall consist of:

a. Concordia township.

b. Those portions of the city of Burlington and Union and Tama townships bounded by a line commencing at the point West Avenue road intersects the south corporate limit of the city of Burlington, then proceeding north along the corporate limits of the city of Burlington until it intersects West avenue, then proceeding east along West avenue until it intersects the corporate limits of the city of Burlington proceeding to the south of West avenue, then proceeding first south and then in a counterclockwise manner along the corporate limits of the city of Burlington to the point of origin.

91 Acts, ch 223, §2 SF 546

References based on January 1, 1990, boundaries and official census maps, 91 Acts, ch 223, §5 SF 546

Membership beginning in 1993, see 91 Acts, ch 223, §4 SF 546

Special election under §69 14 to fill vacancy in general assembly; see 91 Acts, ch 223, §3, SF 546 as to districts applicable before January 1, 1993

Section stricken and rewritten

41.2 Senate districts.

The state of Iowa is hereby divided into fifty senatorial districts, each composed of two of the representative districts established by section 41.1, as follows:

1. The first senatorial district shall consist of the first and second representative districts.

2. The second senatorial district shall consist of the third and fourth representative districts.

3. The third senatorial district shall consist of the fifth and sixth representative districts.

4. The fourth senatorial district shall consist of the seventh and eighth representative districts.

5. The fifth senatorial district shall consist of the ninth and tenth representative districts.

6. The sixth senatorial district shall consist of the eleventh and twelfth representative districts.

7. The seventh senatorial district shall consist of the thirteenth and fourteenth representative districts.

8. The eighth senatorial district shall consist of the fifteenth and sixteenth representative districts.

9. The ninth senatorial district shall consist of the seventeenth and eighteenth representative districts.

10. The tenth senatorial district shall consist of the nineteenth and twentieth representative districts.

11. The eleventh senatorial district shall consist of the twenty-first and twenty-second representative districts.

12. The twelfth senatorial district shall consist of the twenty-third and twenty-fourth representative districts.

13. The thirteenth senatorial district shall consist of the twenty-fifth and twenty-sixth representative districts.

14. The fourteenth senatorial district shall consist of the twenty-seventh and twenty-eighth representative districts.

15. The fifteenth senatorial district shall consist of the twenty-ninth and thirtieth representative districts.

16. The sixteenth senatorial district shall consist of the thirty-first and thirty-second representative districts.

17. The seventeenth senatorial district shall consist of the thirty-third and thirty-fourth representative districts.

18. The eighteenth senatorial district shall consist of the thirty-fifth and thirty-sixth representative districts.

19. The nineteenth senatorial district shall consist of the thirty-seventh and thirty-eighth representative districts.

20. The twentieth senatorial district shall consist of the thirty-ninth and fortieth representative districts.

21. The twenty-first senatorial district shall consist of the forty-first and forty-second representative districts.

22. The twenty-second senatorial district shall consist of the forty-third and forty-fourth representative districts.

23. The twenty-third senatorial district shall consist of the forty-fifth and forty-sixth representative districts.

24. The twenty-fourth senatorial district shall consist of the forty-seventh and forty-eighth representative districts.

25. The twenty-fifth senatorial district shall consist of the forty-ninth and fiftieth representative districts.

26. The twenty-sixth senatorial district shall consist of the fifty-first and fifty-second representative districts.

27. The twenty-seventh senatorial district shall consist of the fifty-third and fifty-fourth representative districts.

28. The twenty-eighth senatorial district shall consist of the fifty-fifth and fifty-sixth representative districts.

29. The twenty-ninth senatorial district shall consist of the fifty-seventh and fifty-eighth representative districts.

30. The thirtieth senatorial district shall consist of the fifty-ninth and sixtieth representative districts.

31. The thirty-first senatorial district shall consist of the sixty-first and sixty-second representative districts.

32. The thirty-second senatorial district shall consist of the sixty-third and sixty-fourth representative districts.

33. The thirty-third senatorial district shall consist of the sixty-fifth and sixty-sixth representative districts.

34. The thirty-fourth senatorial district shall consist of the sixty-seventh and sixty-eighth representative districts.

35. The thirty-fifth senatorial district shall consist of the sixty-ninth and seventieth representative districts.

36. The thirty-sixth senatorial district shall consist of the seventy-first and seventy-second representative districts.

37. The thirty-seventh senatorial district shall consist of the seventy-third and seventy-fourth representative districts.

38. The thirty-eighth senatorial district shall consist of the seventy-fifth and seventy-sixth representative districts.

39. The thirty-ninth senatorial district shall consist of the seventy-seventh and seventy-eighth representative districts.

40. The fortieth senatorial district shall consist of the seventy-ninth and eightieth representative districts.

41. The forty-first senatorial district shall consist of the eighty-first and eighty-second representative districts.

42. The forty-second senatorial district shall consist of the eighty-third and eighty-fourth representative districts.

43. The forty-third senatorial district shall consist of the eighty-fifth and eighty-sixth representative districts.

44. The forty-fourth senatorial district shall consist of the eighty-seventh and eighty-eighth representative districts.

45. The forty-fifth senatorial district shall consist of the eighty-ninth and ninetieth representative districts.

46. The forty-sixth senatorial district shall consist of the ninety-first and ninety-second representative districts.

47. The forty-seventh senatorial district shall consist of the ninety-third and ninety-fourth representative districts.

48. The forty-eighth senatorial district shall consist of the ninety-fifth and ninety-sixth representative districts.

49. The forty-ninth senatorial district shall consist of the ninety-seventh and ninety-eighth representative districts.

50. The fiftieth senatorial district shall consist of the ninety-ninth and one hundredth representative districts.

Membership beginning in 1993 and effect on incumbent senators, see 91 Acts, ch 223, §4

Special election under §69 14 to fill vacancy in general assembly, see 91 Acts, ch 223, §3, SF 546 as to districts applicable before January 1, 1993

Footnote added, section not amended

CHAPTER 43

PARTISAN NOMINATIONS — PRIMARY ELECTION

43.14 Form of nomination papers.

All nomination papers shall be about eight and one-half by thirteen inches in size and in substantially the following form:

I, the undersigned, an eligible elector of county or legislative district, and state of Iowa, hereby nominate of county or legislative district, state of Iowa, who has registered with the party, as a candidate for the office of to be voted for at the primary election to be held on

No signatures shall be counted unless they are on sheets each having such form written or printed at the top thereof. Nomination papers on behalf of candidates for seats in the general assembly need only designate the number of the senatorial or representative district, as appropriate, and not the county or counties, in which the candidate and the petitioners reside.

91 Acts, ch 129, §1 HF 420
Unnumbered paragraph 2 amended

43.18 Affidavit by candidate.

Every candidate shall make and file an affidavit in substantially the following form:

I,, being duly sworn, say that I reside at street, city of county of in the state of Iowa; that I am eligible to the office for which I am a candidate, and that I am registered with the party; that I am a candidate for nomination to the office of to be made at the primary election to be held on, and hereby request that my name be printed upon the official primary ballot as provided by law, as a candidate of that party. I furthermore declare that if I am nominated and elected I will qualify as such officer.

I am aware that I shall not cause nomination papers for more than one public office to be voted for at the primary election, to remain filed in the office of the state commissioner or the commissioner unless I, not later than the final date for filing nomination papers, notify the state commissioner or the commissioner by affidavit of the office for which I elect to be a candidate. I am aware that violation of section 43.20 will invalidate my candidacy for any office to be filled at the primary election.

I am further aware that section 43.20, subsection 4, unnumbered paragraph 3, does not apply to the of-

fices of county agricultural extension council, soil and water conservation district commission, or regional library board of trustees.

I am aware that I am required to organize a candidate's committee which shall file an organization statement and disclosure reports if my committee or I receive contributions, make expenditures, or incur indebtedness in excess of two hundred fifty dollars for the purpose of supporting my candidacy for public office. This paragraph does not apply to candidates for federal offices.

.....
(Signed)

Subscribed and sworn to (or affirmed) before me by on this day of 19.....

.....
(Name)

.....
(Official title)

91 Acts, ch 129, §2,3 HF 420
Unnumbered paragraph 2 amended
NEW unnumbered paragraphs 3 and 4

43.42 Change or declaration of party affiliation at polls.

Any qualified elector may change or declare a party affiliation at the polls on election day and shall be entitled to vote at any primary election. Each elector doing so shall indicate the elector's change or declaration of party affiliation on the voter's declaration of eligibility affidavit.

91 Acts, ch 129, §4 HF 420
See Code editor's note
Section stricken and rewritten

43.43 Voter's declaration of eligibility.

Each person voting at a primary election shall sign a declaration of eligibility which shall be in substantially the following form:

I do solemnly swear or affirm that I am a resident of the precinct, ward or township, city of, county of Iowa.

I am a qualified elector. I have not voted and will not vote in any other precinct in this election.

I am affiliated with the party. If my current voter registration record indicates another party affiliation or no party affiliation, I swear or affirm that I have in good faith changed my previously declared party affiliation, or declared my party affili-

and addresses of presidential electors shall be stated, and the names of the candidates for president and vice president shall be added to the name of the organization.

f. The name and address of each member of the organization's executive or central committee.

g. The provisions, if any, made for filling vacancies in nominations.

h. The name and address of each delegate or voter in attendance at a convention or caucus where a nomination is made.

2. Be accompanied by an affidavit executed by the candidate nominated by the convention or caucus, in substantially the following form:

I,, being duly sworn, say that I reside at street, city of, county of, in the state of Iowa; that I am a candidate for election to the office of at the election to be held on, as the candidate of the (name of political organization) and hereby request that my name be so printed upon the official ballot for that election as provided by law. I furthermore declare that I am eligible to the office for which I am a candidate and that if I am elected I will qualify as such officer.

I am aware that I shall not cause nomination papers for more than one public office to be filled at the general election, to remain filed in the office of the state commissioner or the commissioner unless I, not later than the final date for filing nomination papers, notify the state commissioner or the commissioner by affidavit of the office for which I elect to be a candidate. I am aware that violation of section 49.41 will invalidate my candidacy for any office to be filled at the general election.

I am further aware that section 49.41 does not apply to the offices of county agricultural extension council, soil and water conservation district commission, or regional library board of trustees.

.....
(Signed)

Subscribed and sworn to (or affirmed) before me by on this day of, 19.....

.....
(Name)

.....
(Official title)

The affidavit required to be filed under the provisions of this section shall include a statement in substantially the following form:

I am aware that I am required to organize a candidate's committee which shall file an organization statement and disclosure reports if my committee or I receive contributions, make expenditures, or incur indebtedness in excess of two hundred fifty dollars for the purpose of supporting my candidacy for public office. This paragraph does not apply to candidates for federal offices.

91 Acts, ch 129, §7 HF 420
Subsection 2, NEW unnumbered paragraphs 3 and 4

44.9 Withdrawals.

Any candidate named under this chapter may withdraw the candidate's nomination by a written request filed as follows:

1. In the office of the state commissioner, at least seventy-four days before the date of the election.

2. In the office of the proper commissioner, at least sixty-four days before the date of the election.

3. In the office of the proper school board secretary, at least thirty-five days before the day of a regularly scheduled school election.

4. In the office of the state commissioner, in case of a special election to fill vacancies in Congress or the general assembly, not more than:

a. Twenty days after the date on which the governor issues the call for a special election to be held on at least forty days' notice.

b. Five days after the date on which the governor issues the call for a special election to be held on at least ten but less than forty days' notice.

5. In the office of the proper commissioner or school board secretary in case of a special election to fill vacancies, at least twenty-five days before the day of election.

6. In the office of the proper city clerk, at least forty-two days before the regularly scheduled or special city election.

91 Acts, ch 129, §8 HF 420
Subsections 5 and 6 amended

CHAPTER 45

NOMINATIONS BY PETITION

45.3 Preparation of petition and affidavit.

Each eligible elector who signs a nominating petition drawn up in accordance with this chapter shall add to the signature the elector's residence address and the date of signing. The person whose nomination is proposed by the petition shall not sign it. A person may sign nomination petitions under this chapter for more than one candidate for the same office, and the signature is not invalid solely because the person signed nomination petitions for one or more other candidates for the office.

Before the petition is filed, there shall be endorsed upon or attached to it an affidavit executed by that candidate, in substantially the following form:

I,, being duly sworn, say that I reside at street, city of, county of, in the state of Iowa; that I am a candidate for election to the office of, at the election to be held on, and hereby request that my name be printed upon the official ballot for that election as provided by law. I furthermore declare that I am eligible to the office for which I am a candidate and that if I am elected I will qualify as such officer.

I am aware that I shall not cause nomination papers for more than one public office to be filed at the general election, to remain filed in the office of the state commissioner or the commissioner unless I, not later than the final date for filing nomination papers, notify the state commissioner or the commissioner by affidavit of the office for which I elect to be a candidate. I am aware that violation of section

49.41 will invalidate my candidacy for any office to be filled at the general election.

I am further aware that section 49.41 does not apply to the offices of county agricultural extension council, soil and water conservation district commission, or regional library board of trustees.

.....
(Signed)

Subscribed and sworn to (or affirmed) before me by on this day of, 19

.....
(Name)

.....
(Official title)

The affidavit required to be filed under the provisions of this section shall include a statement in substantially the following form:

I am aware that I am required to organize a candidate's committee which shall file an organization statement and disclosure reports if my committee or I receive contributions, make expenditures, or incur indebtedness in excess of two hundred fifty dollars for the purpose of supporting my candidacy for public office. This paragraph does not apply to candidates for federal offices.

91 Acts, ch 129, §9 HF 420
See Code editor's note
NEW unnumbered paragraphs 4 and 5

CHAPTER 47

ELECTION COMMISSIONERS

47.1 State commissioner of elections.

The secretary of state is designated as the state commissioner of elections and shall supervise the activities of the county commissioners of elections. There is established within the office of the secretary of state a division of elections which shall be under the direction of the state commissioner of elections. The state commissioner of elections may appoint a

person to be in charge of the division of elections who shall perform the duties assigned by the state commissioner of elections. The state commissioner of elections shall prescribe uniform election practices and procedures, shall prescribe the necessary forms required for the conduct of elections, shall assign a number to each proposed constitutional amendment and statewide public measure for identi-

fication purposes, and shall adopt rules, pursuant to chapter 17A, to carry out this section.

The state commissioner of elections may exercise emergency powers over any election being held in a district in which either a natural disaster or extremely inclement weather has occurred. The state commissioner of elections may also exercise emergency powers during an armed conflict involving United States armed forces, or mobilization of those forces,

or if an election contest court finds that there were errors in the conduct of an election making it impossible to determine the result.

The state commissioner shall adopt rules describing the emergency powers and the situations in which the powers will be exercised.

91 Acts, ch 129, §10 HF 420
NEW unnumbered paragraphs 2 and 3

CHAPTER 48

PERMANENT REGISTRATION

48.31 Cancellation of registration.

The registration of a qualified elector shall be canceled in any of the following instances:

1. The elector fails to vote once in the last preceding four consecutive calendar years after the elector's most recent registration or change of name, address or party affiliation, or after the elector most recently voted. For the purpose of this subsection, registration includes the submission of a registration form which makes no change in the elector's existing registration.

2. The elector registers to vote in another place.

3. The elector dies.

4. The clerk of district court sends notification of an elector's conviction of a felony, as defined in section 701.7.

5. The clerk of district court sends notification of a legal determination that the elector is severely or profoundly mentally retarded, or has been found incompetent in a proceeding held pursuant to section 229.27, or is otherwise under conservatorship or guardianship by reason of incompetency. Certification by the clerk that any such person has been found no longer incompetent by a court, or the termination by the court of any such conservatorship or guardianship shall qualify any such ward to again

be an elector, subject to the other provisions of this chapter.

6. When first-class mail, which is designated "not to be forwarded", was addressed to the elector at the address shown on the registration records and is returned by the postal service. However, if any first-class mail, other than a registration receipt mailed pursuant to section 48.3, was addressed to a qualified elector and is returned by the postal service less than sixty days before the date of a general election, the elector's registration shall not be canceled until after the general election is held.

7. Upon receipt of a written request from the qualified elector, presented in person with proper identification in the office of the county commissioner of registration.

Whenever a registration is canceled, notice of the cancellation shall be sent to the registrant at the registrant's last known address shown upon the registration records. Such notice shall be sent first-class mail and bear the words "Please Forward". However, notice is not necessary when the cancellation is due to death or if an authorization for the removal of the registration is received as provided in this chapter.

91 Acts, ch 129, §11 HF 420
Subsection 6 amended

CHAPTER 49

METHOD OF CONDUCTING ELECTIONS

49.31 Arrangement of names on ballot — restrictions.

1. All nominations of any political party or group of petitioners, except as provided in section 49.30, shall be placed under the party name or title of such party or group, as designated by them in their certificates of nomination or petitions, or if none be designated, then under some suitable title, and the ballot shall contain no other names, except as provided in section 49.32.

2. The commissioner shall prepare a list of the election precincts of the county, by arranging the various townships and cities in the county in alphabetical order, and the wards or precincts in each city or township in numerical order under the name of such city or township. The commissioner shall then arrange the surnames of each political party's candidates for each office to which two or more persons are to be elected at large alphabetically for the respective offices for the first precinct on the list; thereafter, for each political party and for each succeeding precinct, the names appearing first for the respective offices in the last preceding precinct shall be placed last, so that the names that were second before the change shall be first after the change. The commissioner may also rotate the names of candidates of a political party in the reverse order of that provided in this subsection or alternate the rotation so that the candidates of different parties shall not be paired as they proceed through the rotation. The procedure for arrangement of names on ballots provided in this section shall likewise be substantially followed in elections in political subdivisions of less than a county.

3. The ballots for any city elections, school elections, special election, or any other election at which any office is to be filled on a nonpartisan basis and the statutes governing the office to be filled are silent as to the arrangement of names on the ballot, shall contain the names of all nominees or candidates arranged in alphabetical order by surname under the heading of the office to be filled. When a city election, school election, special election, or any other election at which an office is to be filled on a nonpartisan basis, is held in more than one precinct, the candidates' names shall be rotated on the ballot from precinct to precinct in the manner prescribed by subsection 2 unless there are no more candidates for an office than the number of persons to be elected to that office.

4. If electors in any precinct are entitled to vote for more than one nominee or candidate for a particular office, the heading for that office on the precinct

ballot shall be immediately followed by a notation of the maximum number of nominees or candidates for that office for whom each elector may vote. Provision shall be made on the ballot to allow the elector to write in the name of any person for whom the elector desires to vote for any office or nomination on the ballot.

5. The name of a candidate printed on the ballot shall not include parentheses, quotation marks, or any personal or professional title.

6. For the purpose of ballot rotation the absentee ballot and special voters precinct may be considered a separate precinct.

91 Acts, ch 129, §12 HF 420
Subsection 6 amended

49.41 More than one office prohibited.

A person shall not be a candidate for more than one office to be filled at the same election. A person who has been nominated for more than one office shall file a written notice declaring the office for which the person wishes to appear on the ballot.

If the nomination papers for all offices for which the candidate has been nominated are required to be filed with the same commissioner of elections, the candidate shall file a written notice with that commissioner no later than five p.m. on the final date upon which nomination papers may be filed for the election. The notice shall state the office for which the person wishes to appear on the ballot. If the required notice is not filed, the candidate's name shall not be certified by the state commissioner for any office for which nomination papers are filed with the state commissioner and the county commissioner of elections shall not include the candidate's name on the ballot for any office in any county.

If a person is a candidate for one or more offices for which nomination papers are required to be filed with the state commissioner and one or more offices for which nomination papers are required to be filed with the county commissioner, the candidate shall notify the state commissioner and the county commissioner in writing. The notice shall state the office for which the person chooses to remain a candidate. The notice shall be filed no later than the last day to file nomination papers with the commissioner. If the required notice is not filed, the candidate's name shall not appear on the ballot for any office in any county.

If necessary, the county commissioner shall certify to the state commissioner the name of any person who is a candidate for more than one office which will appear on the ballot for the election. The certifi-

cation of dual candidacy shall be made no later than five p.m. on the day following the final day to file nomination papers in the office of the commissioner.

When the state commissioner receives notice from the county commissioner that a candidate for a state or federal office has also been nominated for a county or township office, the state commissioner shall amend the certificate issued pursuant to section 43.73 and notify the commissioners of any other

counties to whom the candidate's name was originally certified and instruct them to remove the candidate's name from the ballot in those counties.

This section does not apply to the following public offices: county agricultural extension council, soil and water conservation district commission, or regional library board of trustees.

91 Acts, ch 129, §13 HF 420
Section stricken and rewritten

CHAPTER 50

CANVASS OF VOTES

50.13 Destruction of ballots.

If, at the expiration of the length of time specified in section 50.12, a contest is not pending, the commissioner, without opening the package in which they have been enclosed, shall destroy the ballots, in the presence of two electors, one from each of the two leading political parties, who shall be designated by the chairperson of the board of supervisors.

If the ballots are to be shredded, the package may be opened, if necessary, but the ballots shall not be examined before shredding. Shredded ballots may be recycled.

91 Acts, ch 129, §14 HF 420
NEW unnumbered paragraph 2

50.30 Abstracts forwarded to state commissioner.

The commissioner shall, within ten days after the election, forward to the state commissioner one of the duplicate abstracts of votes for each of the following offices:

1. President and vice president of the United States.

2. Senator in Congress.
3. Representative in Congress.
4. Governor and lieutenant governor.
5. Senator or representative in the general assembly by districts.
6. A state officer not otherwise specified above.

The abstracts for all offices except governor and lieutenant governor shall be enclosed in a securely sealed envelope.

91 Acts, ch 129, §15 HF 420
Section amended

50.32 Endorsement on other envelope.

The envelope for offices other than governor and lieutenant governor shall be endorsed substantially in the manner provided in section 50.31, with changes necessary to indicate the particular offices, and shall be addressed, "To the State Commissioner of Elections".

91 Acts, ch 129, §16 HF 420
Section amended

CHAPTER 52

ALTERNATIVE VOTING SYSTEMS

52.21 Canvass of vote — tally sheet.

As soon as the polls of the election are closed, the precinct election officials thereat shall immediately lock the voting machine against voting and open the counting compartments in the presence of all per-

sons who may be lawfully within the polling place, and proceed to canvass the vote. Said officials shall use a voting machine return and tally sheet in substantially the following form:

VOTING MACHINE RETURN AND TALLY SHEET
ELECTION 19 , COUNTY OF

	President and Vice President	United States Senator	United States Representative	Governor and Lt Governor	Etc
Republican Party	1A (name of candidate)	2A	3A	4A	5A
Machine No					
Machine No					
Machine No					
Machine No					
Machine No					
Return Sheet Total					
Democratic Party	1B (name of candidate)	2B	3B	4B	5B
Machine No					
Machine No					
Machine No					
Machine No					
Machine No					
Return Sheet Total					
Independents	1C (name of candidate)	2C	3C	4C	5C
Machine No					
Machine No					
Machine No					
Machine No					
Machine No					
ETC					
Public Measures	1F For	2F Against	3F	4F	5F
Machine No					
Machine No					
Machine No					
Machine No					
Machine No					
Return Sheet Total					

The reverse side of said return shall carry a certificate in substantially the following form:

CERTIFICATE OF ELECTION OFFICIALS AND CANVASS

STATE OF IOWA)
COUNTY OF) ss.

We, the undersigned Precinct Election Officials for, Precinct No. of the county of and state of Iowa, do hereby certify that voting machine (was or were) used in the above-mentioned precinct at the election held on the day of, 19.....

1. That before opening of the polls we compared the ballot labels on (the or each) machine with the sample ballots furnished, and found the names, numbers and letters thereon agreed.

2. That we compared the number on the seal which sealed the curtain lever and the number on the protective counter and we found the same as follows:

Table with 3 columns: Machine, Curtain Lever Seal, Protective Counter. Rows for No.....

3. That the public counter was set at 000 and that we opened the rear of (the or each) machine and examined every registering counter and that each registered 000, or, if the machines used have a capability to produce a printed record, that an inspection sheet from each machine used at this election was produced immediately prior to any vote being cast upon it showing that all counters were set at 000.

4. That the following statement shows the number of the seal with which the curtain lever was sealed, the number on the public counter and the number on the protective counter after the poll was closed and the vote thereon canvassed and the machine locked:

Table with 4 columns: Machine, Curtain Lever Seal, Protective Counter, Public Counter. Rows for No.....

5. That we are Precinct Election Officials of the Election in and for, Precinct No. in the county of and state of Iowa, on the day of, 19....., and that we have canvassed all the votes registered on the voting machines for each candidate, and all irregular ballots written on the paper roll of each machine used in said precinct, and do hereby severally certify that the canvass thereof was duly and legally made, and the result of said canvass is correctly set forth in the within return-sheet statement, and that the said statement is true in all respects.

Dated this day of, 19.....

.....
.....
.....
.....
.....
.....
.....
Precinct Election Officials

After the canvass has been completed the officials shall immediately report the result of the canvass in the manner provided by section 50.11.

In a precinct in which only one voting machine is used and that machine can deliver, immediately upon the conclusion of voting, multiple copies of a printed record of the votes cast and the totals for each candidate or question appearing on the face of the machine, one of the copies may be used in lieu of the tally sheet specified in this section for the canvasses provided under sections 50.1 and 50.24. The state commissioner of elections may adopt rules regarding the certification of the printed record to allow its use in lieu of the tally sheet.

91 Acts, ch 97, §63 HF 198
Form amended per directive in 91 Acts, ch 97, §63 HF 198

CHAPTER 53

ABSENT VOTERS LAW

53.2 Application for ballot.

Any qualified elector, under the circumstances specified in section 53.1, may on any day, except election day, and not more than seventy days prior to the date of the election, apply in person for an absentee ballot at the commissioner's office or at any location designated by the commissioner, or make written application to the commissioner for an absentee ballot. The state commissioner shall prescribe a form for absentee ballot applications. However, if an elector submits an application that includes all of the information required in this section, the prescribed form is not required.

This section does not require that a written communication mailed to the commissioner's office to request an absentee ballot, or any other document be notarized as a prerequisite to receiving or marking an absentee ballot or returning to the commissioner an absentee ballot which has been voted.

Each application shall contain the name and signature of the qualified elector, the address at which the elector is qualified to vote, and the name or date of the election for which the absentee ballot is requested, and such other information as may be necessary to determine the correct absentee ballot for the qualified elector. If insufficient information has been provided, the commissioner shall, by the best means available, obtain the additional necessary information.

If the application is for a primary election ballot and the request is for a ballot of a party different from that recorded on the qualified elector's voter registration record, the requested ballot shall be mailed or given to the applicant together with a "Change or Declaration of Party Affiliation" form as prescribed in section 43.42, to be completed by the qualified elector at the time of voting. Upon receipt of the properly completed form, the commissioner shall approve the change or declaration and enter a notation of the change on the registration records.

If an application for an absentee ballot is received from an eligible elector who is not a qualified elector the commissioner shall send a registration form under section 48.3 and an absentee ballot to the eligible elector. If the application is received so late that it is unlikely that the registration form can be returned in time to be effective on election day, the commissioner shall enclose with the absentee ballot a notice to that effect, informing the voter of the registration time limits in sections 48.3 and 48.11. The commissioner shall record on the elector's application that the elector is not currently registered to vote. If the registration form is properly returned by

the time provided by section 48.3, the commissioner shall record on the elector's application the date of receipt of the registration form and enter a notation of the registration on the registration records.

A qualified elector who has not moved from the county in which the elector is registered to vote may submit a change of name, telephone number, or address on the form prescribed in section 48.3 when casting an absentee ballot. Upon receipt of a properly completed form, the commissioner shall enter a notation of the change on the registration records.

91 Acts, ch 129, §17 HF 420
Unnumbered paragraph 1 amended

53.7 Solicitation by public employees.

1. It shall be unlawful for any employee of the state or any employee of a political subdivision to solicit any application or request for application for an absentee ballot, or to take an affidavit in connection with any absentee ballot while the employee is on the employer's premises or otherwise in the course of employment. However, any such employee may take such affidavit in connection with an absentee ballot which is cast by the qualified elector in person in the office where such employee is employed in accordance with section 53.11. This subsection shall not apply to any elected official.

2. Any public officer or employee, or any person acting under color of a public officer or employee, who knowingly requires that a public employee solicit an application or request for an application for an absentee ballot, or knowingly requires that an employee take an affidavit or request for an affidavit in connection with an absentee ballot application, commits a serious misdemeanor.

91 Acts, ch 129, §18 HF 420
Section amended

53.11 Personal delivery of absentee ballot.

The commissioner shall deliver an absentee ballot to any qualified elector applying in person at the commissioner's office, or at any location designated by the commissioner, not more than forty days before the date of the general election or the primary election, and for all other elections, as soon as the ballot is available. The qualified elector shall immediately mark the ballot, enclose and seal it in a ballot envelope, subscribe to the affidavit on the reverse side of the envelope, and return the absentee ballot to the commissioner. The commissioner shall record the numbers appearing on the application and ballot envelope along with the name of the qualified elector.

91 Acts, ch 129, §19 HF 420
Section amended

53.18 Manner of preserving ballot and application.

Upon receipt of the absentee ballot, the commissioner shall at once record the number appearing on the application and return carrier envelope and time of receipt of such ballot and attach the elector's application to the unopened envelope. Absentee ballots shall be stored in a secure place until they are delivered to the absentee and special voters.

91 Acts, ch 129, §20 HF 420
Section amended

53.50 Appropriation.

There is hereby appropriated to the state commissioner from the general fund of the state such sums as are necessary to pay the state commissioner's expenses and perform the state commissioner's functions under this division. Warrants shall be drawn by the director of revenue and finance upon certification by the state commissioner or the state commissioner's deputy.

Appropriation limited for fiscal year beginning July 1, 1991, 91 Acts, ch 267, §507 HF 479
Footnote added, section not amended

CHAPTER 56

CAMPAIGN FINANCE DISCLOSURE

56.2 Definitions.

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

1. "Ballot issue" means a question, other than the nomination or election of a candidate to a public office, which has been approved by a political subdivision or the general assembly or is required by law to be placed before the voters of the political subdivision by a commissioner of elections, or to be placed before the voters by the state commissioner of elections.

2. "Campaign function" means any meeting related to a candidate's campaign for election.

3. "Candidate" means any individual who has taken affirmative action to seek nomination or election to a public office but shall exclude any judge standing for retention in a judicial election.

4. "Candidate's committee" means the committee designated by the candidate to receive contributions, expend funds, or incur indebtedness in the aggregate as follows:

a. For federal, state, or county office, in excess of two hundred fifty dollars in any calendar year on behalf of the candidate.

b. For city or school office, in excess of five hundred dollars in any calendar year on behalf of the candidate.

5. "Commission" means the campaign finance disclosure commission created under section 56.9.

6. "Committee" includes a political committee and a candidate's committee.

7. "Consultant" means a person who provides or procures services for or on behalf of a candidate including but not limited to consulting, public relations, advertising, fundraising, polling, managing or organizing services.

8. "Contribution" means:

a. A gift, loan, advance, deposit, rebate, refund, or transfer of money or a gift in kind.

b. The payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee for any such purpose.

"Contribution" shall not include services provided without compensation by individuals volunteering their time on behalf of a candidate's committee or political committee or a state or county statutory political committee except when organized or provided on a collective basis by a business, trade association, labor union, or any other organized group or association. "Contribution" shall not include refreshments served at a campaign function so long as such refreshments do not exceed fifty dollars in value or transportation provided to a candidate so long as its value computed at a rate of twenty cents per mile does not exceed one hundred dollars in value in any one reporting period. "Contribution" shall not include something provided to a candidate for the candidate's personal consumption or use and not intended for or on behalf of the candidate's committee.

9. "County office" includes the office of drainage district trustee.

10. "County statutory political committee" means a committee as defined in section 43.100.

11. "Disclosure report" means a statement of contributions received, expenditures made, and indebtedness incurred on forms prescribed by rules promulgated by the commission in accordance with chapter 17A.

12. "Fundraising event" means any campaign function to which admission is charged or at which goods or services are sold.

13. "National political party" means a party which meets the definition of a political party established for this state by section 43.2, and which also meets the statutory definition of the term "political

party” or a term of like import in at least twenty-five other states of the United States.

14. “*Person*” means, without limitation, any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, labor union, or any other legal entity.

15. “*Political committee*” means a committee, but not a candidate’s committee, which accepts contributions, makes expenditures, or incurs indebtedness in the aggregate of more than two hundred fifty dollars in any one calendar year for the purpose of supporting or opposing a candidate for public office or ballot issue, or an association, lodge, society, cooperative, union, fraternity, sorority, educational institution, civic organization, labor organization, religious organization, or professional organization which makes contributions in the aggregate of more than two hundred fifty dollars in any one calendar year for the purpose of supporting or opposing a candidate for public office or a ballot issue. “*Political committee*” also includes a committee which accepts contributions, makes expenditures, or incurs indebtedness in the aggregate of more than two hundred fifty dollars in a calendar year to cause the publication or broadcasting of material in which the public policy positions or voting record of an identifiable candidate is discussed and in which a reasonable person could find commentary favorable or unfavorable to those public policy positions or voting record.

16. “*Public office*” means any federal, state, county, city, or school office filled by election.

17. “*State income tax liability*” means the state individual income tax imposed under section 422.5 reduced by the sum of the deductions from the computed tax as provided under section 422.12.

18. “*State statutory political committee*” means a committee as defined in section 43.111.

91 Acts, ch 226, §1 SF 476
Subsection 4 stricken and rewritten

56.3 Committee treasurer — duties.

1. Every committee shall appoint a treasurer. An expenditure shall not be made by the treasurer or treasurer’s designee for or on behalf of a committee without the approval of the chairperson of the committee, or the candidate.

2. A person who receives contributions for a committee shall, not later than fifteen days from the date of receipt of the contributions or on demand of the treasurer, render to the treasurer the contributions and an account of the total of all contributions; including the name and address of each person making a contribution in excess of ten dollars, the amount of the contributions, and the date on which the contributions were received. The treasurer shall deposit all contributions within seven days of receipt by the treasurer in an account maintained by the committee in a financial institution. All funds of a committee shall be segregated from any other funds held by officers, members, or associates of the committee or the committee’s candidate. However, if a

candidate’s committee receives contributions only from the candidate, or if a permanent organization temporarily engages in activity which qualifies it as a political committee and all expenditures of the organization are made from existing general operating funds and funds are not solicited or received for this purpose from sources other than operating funds, then that committee is not required to maintain a separate account in a financial institution. The funds of a committee are not attachable for the personal debt of the committee’s candidate or an officer, member, or associate of the committee.

3. The treasurer of a committee shall keep a detailed and exact account of:

a. All contributions made to or for the committee.

b. The name and mailing address of every person making contributions in excess of ten dollars, and the date and amount of the contribution.

c. All disbursements made from contributions by or on behalf of the committee.

d. The name and mailing address of every person to whom any expenditure is made, the purpose of the expenditure, the date and amount of the expenditure and the name and address of, and office sought by each candidate, if any, on whose behalf the expenditure was made. Notwithstanding this paragraph, the treasurer may keep a miscellaneous account for disbursements of less than five dollars which need only show the amount of the disbursement so long as the aggregate miscellaneous disbursements to any one person during a calendar year do not exceed one hundred dollars.

e. Notwithstanding the provisions of subsection 3, paragraph “d”, of this section, when an expenditure is made by a committee in support of the entire state or local political party ticket, only the name of the party shall be given.

4. The treasurer shall preserve all records required to be kept by this section for a period of one year from the date of the election.

91 Acts, ch 226, §2 SF 476
Subsection 2 amended

56.5 Organization statement.

1. Every committee, as defined in this chapter, shall file a statement of organization within ten days from the date of its organization.

2. The statement of organization shall include:

a. The name, purpose, mailing address and telephone number of the committee.

b. The name, mailing address, and position of the committee officers.

c. The name, address, office sought, and the party affiliation of all candidates whom the committee is supporting and if the committee is supporting the entire ticket of any party, the name of the party.

d. The disposition of funds which will be made in the event of dissolution if the committee is not a statutory committee.

e. Such other information as may be required by this chapter or rules adopted pursuant to this chapter.

f A signed statement by the treasurer of the committee which shall be in the following form:

"I am aware that I am required to file disclosure reports if the committee receives contributions, makes expenditures, or incurs indebtedness in excess of two hundred fifty dollars in a calendar year for the purpose of supporting or opposing any candidate for public office or ballot issue."

g The identification of any parent entity or other affiliates or sponsors.

h The name of the financial institution in which the committee receipts will be deposited.

3. Any change in information previously submitted in a statement of organization or notice in case of dissolution of the committee shall be reported to the commission or commissioner not more than thirty days from the date of the change or dissolution.

4. A list, by office and district, of all candidates who have filed an affidavit of candidacy in the office of the secretary of state shall be prepared by the secretary of state and delivered to the commission not more than ten days after the last day for filing nomination papers.

5. A committee not domiciled in Iowa which makes a contribution to a candidate's committee or political committee domiciled in Iowa shall disclose each contribution to the commission. A committee not domiciled in Iowa which is not registered and filing full disclosure reports of all financial activities with the federal election commission or another state's disclosure commission shall register and file full disclosure reports with the commission pursuant to this chapter. A committee which is currently filing a disclosure report in another jurisdiction shall either file a statement of organization under subsections 1 and 2 and file disclosure reports, the same as those required of Iowa-domiciled committees, under section 56.6, or shall file one copy of a verified statement with the commission and a second copy with the treasurer of the committee receiving the contribution. The form shall be completed and filed at the time the contribution is made. The verified statement shall be on forms prescribed by the commission. The form shall include the complete name, address, and telephone number of the contributing committee, the state or federal jurisdiction under which it is registered or operates, the identification of any parent entity or other affiliates or sponsors, its purpose, the name and address of an Iowa resident authorized to receive service of original notice and the name and address of the receiving committee, the amount of the cash or in-kind contribution, and the date the contribution was made.

91 Acts, ch 226 §3 SF 476
Subsection 5 amended

56.5A Candidate's committee.

Each candidate for federal, state, or county office shall organize one, and only one, candidate's committee for a specific office sought when the candidate receives contributions, makes expenditures, or incurs indebtedness in excess of two hundred fifty dollars in a calendar year.

Each candidate for city or school office shall organize one, and only one, candidate's committee for a specific office sought when the candidate receives contributions, makes expenditures, or incurs indebtedness in excess of five hundred dollars in a calendar year.

91 Acts ch 226 §4 SF 476
Section amended

56.6 Disclosure reports.

1. *a* Each treasurer of a committee shall file with the commission or commissioner disclosure reports of contributions received and disbursed on forms prescribed by rules as provided by chapter 17A. The reports from all committees, except those committees for municipal and school elective offices and for local ballot issues, shall be filed on the twentieth day or mailed bearing a United States postal service postmark dated on or before the nineteenth day of January, May, July, and October of each year. The May, July, and October reports shall be current as of five days prior to the filing deadline. The January report shall be the annual report covering activity through December 31. However, a state or county statutory political committee is not required to file the May and July reports for a year in which no primary or general election is held. A candidate's committee, other than for municipal and school elective offices, for a year in which the candidate is not standing for election, is not required to file the May, July, and October reports. Reports for committees for a ballot issue placed before the voters of the entire state shall be filed at the January, May, July, and October deadlines.

b A candidate's committee of a candidate for statewide office or the general assembly shall file a supplementary report in a year in which a primary, general or special election for that office is held if the committee of a candidate for governor receives ten thousand dollars or more, a committee of a candidate for any other statewide office receives five thousand dollars or more, or the committee of a candidate for the general assembly receives one thousand dollars or more after the close of the period covered by the last report filed prior to that primary, general or special election. The amounts of contributions causing a supplementary report under this paragraph shall include the estimated fair market value of in-kind contributions. The report shall be filed by the Friday immediately preceding the election and be current through the Tuesday immediately preceding the election.

c A candidate's committee of a state officeholder shall file a letter report to be received within fourteen days of the receipt of any contribution from a political committee or from a lobbyist registered under the rules adopted by either house of the general assembly while the general assembly is in session. The committee may request, in writing, a fourteen-day extension on a letter report which shall be granted if received on or before the date the report is due. The letter report shall notify the commission of the following:

- (1) The name of the candidate's committee.
- (2) The name and complete address of the political committee or registered lobbyist making the contribution.
- (3) The amount of the contribution.
- (4) The date the contribution was received.
- (5) In the event the contribution was caused by a fund-raiser, an explanation of the sponsor and type of event held.

The provisions of this paragraph are in addition to any other reporting requirements of this chapter and any reporting rules adopted by either house of the general assembly.

d. A candidate's committee for a candidate for the general assembly at a special election shall file a report by the fourteenth day prior to the special election which is current through the nineteenth day prior to the special election.

e. Committees for municipal and school elective offices and local ballot issues shall file their first reports five days prior to any election in which the name of the candidate or the local ballot issue which they support or oppose appears on the printed ballot and shall file their next report on the first day of the month following the final election in a calendar year in which the candidate's name or the ballot issue appears on the ballot. A committee supporting or opposing a candidate for a municipal or school elective office or a local ballot issue shall also file disclosure reports on the twentieth day of January and October of each year in which the candidate or ballot issue does not appear on the ballot and on the twentieth day of January, May, and July of each year in which the candidate or ballot issue appears on the ballot, until the committee dissolves. These reports shall be current to five days prior to the filing deadline and are considered timely filed if mailed bearing a United States postal service postmark one or more calendar days preceding the due date.

f. A state statutory political committee and congressional district committees as authorized by the constitution of the state statutory political committee are not subject to this subsection if the state statutory political committee and congressional district political committees file copies of campaign disclosure reports as required by federal law with the commission at the times the reports are required to be filed under federal law, provided that the federal reports contain all information required by this chapter. A committee of a national political party is not required to file a disclosure report with the commission if it is required by federal law to file a campaign disclosure report with a federal agency.

2. If any committee, after having filed a statement of organization or one or more disclosure reports, dissolves or determines that it shall no longer receive contributions or make disbursements, the treasurer of the committee shall notify the commission or the commissioner within thirty days following such dissolution by filing a dissolution report on forms prescribed by the commission. Moneys refunded in accordance with a dissolution statement

shall be considered a disbursement or expense but the names of persons receiving refunds need not be released or reported unless the contributors' names were required to be reported when the contribution was received.

3. Each report under this section shall disclose:

a. The amount of cash on hand at the beginning of the reporting period.

b. The name and mailing address of each person who has made one or more contributions of money to the committee including the proceeds from any fund-raising events except those reportable under paragraph "f" of this subsection, when the aggregate amount in a calendar year exceeds the amount specified in the following schedule:

- (1) For any candidate for school or township office \$ 25
- (2) For any candidate for city office \$ 25
- (3) For any candidate for county office.. \$ 25
- (4) For any candidate for the general assembly \$ 25
- (5) For any candidate for the Congress of the United States \$100
- (6) For any candidate for statewide office \$ 25
- (7) For any committee of a national political party \$200
- (8) For any state statutory political committee \$200
- (9) For any county statutory political committee \$ 50
- (10) For any other political committee ... \$ 25
- (11) For any ballot issue \$ 25

c. The total amount of contributions made to the political committee during the reporting period and not reported under paragraph "b" of this subsection.

d. The name and mailing address of each person who has made one or more in-kind contributions to the committee when the aggregate market value of the in-kind contribution in a calendar year exceeds the amount specified in subsection 3, paragraph "b," of this section. In-kind contributions shall be designated on a separate schedule from schedules showing contributions of money and shall identify the nature of the contribution and provide its estimated fair market value.

e. Each loan to any person or committee within the calendar year in an aggregate amount in excess of those amounts enumerated in the schedule in paragraph "b" of this subsection, together with the name and mailing address of the lender and endorsers, the date and amount of each loan received, and the date and amount of each loan repayment. Loans received and loan repayments shall be reported on a separate schedule.

f. The total amount of proceeds from any fund-raising event. Contributions and sales at fund-raising events which involve the sale of a product acquired at less than market value and sold for an amount of money in excess of the amount specified in paragraph "b" of this subsection shall be designat-

ed separately from in-kind and monetary contributions and the report shall include the name and address of the donor, a description of the product, the market value of the product, the sales price of the product, and the name and address of the purchaser.

g. The name and mailing address of each person to whom disbursements or loan repayments have been made by the committee from contributions during the reporting period and the amount, purpose, and date of each disbursement except that disbursements of less than five dollars may be shown as miscellaneous disbursements so long as the aggregate miscellaneous disbursements to any one person during a calendar year do not exceed one hundred dollars. If disbursements are made to a consultant, the consultant shall provide the committee with a statement of disbursements made by the consultant during the reporting period showing the name and address of the recipient, amount, purpose, and date to the same extent as if made by the candidate, which shall be included in the report by the committee.

h. The amount and nature of debts and obligations owed in excess of those amounts stated in the schedule in paragraph "b" of this section by the committee. Loans made to a committee and reported under paragraph "b" of this subsection shall not be considered a debt or obligation under this paragraph. A loan made by a committee to any person shall be considered a disbursement.

i. If a person listed under paragraph "b", "d", "e", or "f" as making a contribution or loan to or purchase from a candidate's committee is related to the candidate within the third degree of consanguinity or affinity, the existence of that person's family relationship shall be indicated on the report.

j. The name and mailing address of each person with whom a candidate's committee has entered into a contract during the reporting period for future or continuing performance and the nature of the performance, period of performance and total, anticipated compensation for performance. For a report filed under subsection 1, paragraph "b", this paragraph also requires the reporting of estimates of performance which the candidate's committee reasonably expects to contract for during the balance of the period running until thirty days after the election.

k. Other pertinent information required by this chapter, by rules adopted pursuant to this chapter, or forms approved by the commission.

4. If no contributions have been accepted nor any disbursements made or indebtedness incurred during that reporting period, the treasurer of the committee shall file a disclosure statement which shows only the amount of cash on hand at the beginning of the reporting period.

5. A committee shall not dissolve until all loans, debts and obligations are paid, forgiven or transferred and the remaining money in the account is distributed according to the organization statement. If a loan is transferred or forgiven, the amount of the transferred or forgiven loan must be reported as an

in-kind contribution and deducted from the loans payable balance on the disclosure form. A statutory political committee is prohibited from dissolving, but may be placed in an inactive status upon the approval of the commission. Inactive status may be requested for a statutory political committee when no officers exist and the statutory political committee has ceased to function. The request shall be made by the previous treasurer or chairperson of the committee and by the appropriate state statutory political committee. A statutory political committee granted inactive status shall not solicit or expend funds in its name until the committee reorganizes and fulfills the requirements of a political committee under this chapter.

6. A permanent organization temporarily engaging in activity which would qualify it as a political committee shall organize a political committee and shall keep the funds relating to that political activity segregated from its operating funds. The political committee shall file reports in accordance with this chapter. When the permanent organization ceases to be involved in the political activity, it shall dissolve the political committee.

A communication regarding any subject by a permanent organization, which is a nonprofit organization, to its dues-paying members is not political activity requiring the organization of a political committee, reporting, or disclosure pursuant to this chapter.

As used in this subsection, "*permanent organization*" means an organization which is continuing, stable, and enduring, and which was originally organized for purposes other than engaging in election activities.

91 Acts, ch 165, §1 HF 644, 91 Acts, ch 226, §5 SF 476
Subsection 1, paragraph a amended
Subsection 6, NEW unnumbered paragraphs 2 and 3

56.10 Duties of commission.

The commission shall:

1. Review the contents of all disclosure reports and other statements filed with the commission and promptly advise each committee of errors found. The commission may verify information contained in the reports with other parties to assure accurate disclosure. The commission may, upon its own motion, initiate action and conduct a hearing under section 56.11, subsections 1 and 2. The commission may require the county commissioner to file summary reports with it periodically.

2. Prepare and publish a manual setting forth examples of approved uniform systems of accounts for use by persons required to file statements and reports by this chapter.

3. Assure that the statements and reports which have been filed in accordance with this chapter are available for public inspection and copying during the regular office hours of the commission and county commissioners.

4. Adopt rules pursuant to chapter 17A and levy civil penalties to carry out this chapter. The rules

shall provide that the candidate of a candidate's committee, or the chairperson of a political committee, is responsible for filing disclosure reports as required by this chapter, and shall receive notice from the commission if the committee has failed to file a disclosure report at the time required by this chapter. A candidate of a candidate's committee, or chairperson of a political committee, may be subject to a civil penalty for failure to file a disclosure report required by this chapter if the report has not been filed when required by section 56.6, subsection 1.

5. Determine, in case of dispute, at what time a person has become a candidate.

6. The commission shall:

a. Develop forms for the filing of reports and statements required to be filed under this chapter.

b. Furnish the necessary forms to persons required to file reports and statements and to the commissioners.

c. Distribute the necessary forms to each commissioner to be furnished to persons required to file reports and statements.

7. The commissioners shall furnish the necessary forms to persons required to file reports and statements in their office.

8. The commission and the commissioner shall:

a. Make the reports and statements filed available for public inspection and copying, not later than the end of the day following the day during which a report or statement was received. There may be a charge which shall be established by rule as provided under chapter 17A for copying these reports and statements. Upon receipt of payment, the commission shall mail copies of reports to persons requesting them. Information copied from reports and statements shall not be used by any person other than statutory political committees for the purpose of soliciting contributions or for any commercial purpose.

b. Preserve the reports and statements for a period of five years from the date of receipt.

c. Prepare and publish such other reports as may be deemed appropriate.

9. The commission and the commissioners shall provide proper forms to each committee which is required to file a report with them. A form packet shall be mailed to each active committee on or about April 25 of each year.

91 Acts, ch 226, §6 SF 476
Subsection 4 amended

56.12A Use of public moneys for political purposes.

The governing body of a county, city, or other political subdivision of the state shall not expend or permit the expenditure of public moneys for political purposes, including supporting or opposing a ballot issue.

This section shall not be construed to limit the freedom of speech of the governing body of, or the officials or employees of the governing body of, a county, city, or other political subdivision of the state.

91 Acts, ch 226, §7 SF 476
NEW section

56.31 through 56.39 Reserved.

CAMPAIGN FUNDS AND PROPERTY

56.40 Campaign funds.

As used in this division, "*campaign funds*" means contributions to a candidate or candidate's committee which are required by this chapter to be deposited in a separate campaign account.

91 Acts, ch 226, §9 SF 476
NEW section

56.41 Uses of campaign funds.

1. A candidate and the candidate's committee shall use campaign funds only for campaign purposes, and shall not use campaign funds for personal expenses.

2. Campaign funds shall not be used for any of the following purposes:

a. Payment of civil or criminal penalties. However, payment of civil penalties relating to campaign finance and disclosure requirements is permitted.

b. Satisfaction of personal debts, other than campaign loans.

c. Personal services, including the services of attorneys, accountants, physicians, and other professional persons. However, payment for personal services directly related to campaign activities is permitted.

d. Clothing or laundry expense of a candidate or members of the candidate's family.

e. Purchase of or installment payments for a motor vehicle. However, a candidate may lease a motor vehicle during the duration of the campaign if the vehicle will be used for campaign purposes. If a vehicle is leased, detailed records shall be kept on the use of the vehicle and the cost of noncampaign usage shall not be paid from campaign funds. Candidates and campaign workers may be reimbursed for actual mileage for campaign-related travel at a rate not to exceed the current rate of reimbursement allowed under the standard mileage rate method for computation of business expenses pursuant to the Internal Revenue Code.

f. Mortgage payments, rental payments, furnishings, or renovation or improvement expenses for a permanent residence of a candidate or family member, including a residence in the state capital during a term of office or legislative session.

g. Membership in professional organizations.

h. Membership in service organizations, except those organizations which the candidate joins solely for the purpose of enhancing the candidacy.

i. Meals, groceries, or other food expense, except for tickets to meals that the candidate attends solely for the purpose of enhancing the candidacy or the candidacy of another person. However, payment for food and drink purchased for campaign related purposes and for entertainment of campaign volunteers is permitted.

j. Payments clearly in excess of the fair market value of the item or service purchased.

91 Acts, ch 226, §10 SF 476
Applicable to all campaign funds held in campaign accounts on or after July 1, 1991, 91 Acts, ch 226, §13 SF 476
NEW section

56.42 Transfer of campaign funds.

1. In addition to the uses permitted under section 56.41, a candidate's committee may transfer campaign funds in one or more of the following ways:

- a. Contributions to charitable organizations.
- b. Contributions to national, state, or local political party central committees, or other candidate's committees.
- c. Transfers to the treasurer of state for deposit in the general fund of the state.
- d. Return of contributions to contributors on a pro rata basis, except that any contributor who contributed five dollars or less may be excluded from the distribution.

2. If an unexpended balance of campaign funds remains when a candidate ceases to be a candidate or the candidate's committee dissolves, the unexpended balance shall be transferred pursuant to subsection 1.

3. A candidate or candidate's committee making a transfer of campaign funds pursuant to subsection 1 or 2 shall not place any requirements or conditions on the use of the campaign funds transferred.

4. A candidate or candidate's committee shall not transfer campaign funds except as provided in this section.

5. A candidate or candidate's committee shall not transfer campaign funds with the intent of circumventing the requirements of this section.

6. An individual or a political committee shall not knowingly make transfers or contributions to a candidate or candidate's committee for the purpose of transferring the funds to another candidate or candidate's committee to avoid the disclosure of the source of the funds pursuant to this chapter. A candidate or candidate's committee shall not knowingly accept transfers or contributions from an individual or political committee for the purpose of transferring funds to another candidate or candidate's committee as prohibited by this subsection. A candidate or candidate's committee shall not accept transfers or contributions which have been transferred to another candidate or candidate's committee as prohibited by

this subsection. The commission shall notify candidates of the prohibition of such transfers and contributions under this subsection.

91 Acts, ch 226, §11 SF 476
Applicable to all campaign funds held in campaign accounts on or after July 1, 1991, 91 Acts, ch 226, §13 SF 476
NEW section

56.43 Campaign property.

1. Equipment, supplies, or other materials purchased on or after July 1, 1991, with campaign funds are campaign property. Campaign property belongs to the candidate's committee and not to the candidate.

2. Upon dissolution of the candidate's committee, a report accounting for the disposition of all items of campaign property having a residual value of twenty-five dollars or more shall be filed with the commission. Each item of campaign property having a residual value of twenty-five dollars or more shall be disposed of by one of the following methods:

- a. Sale of the property at fair market value, in which case the proceeds shall be treated the same as other campaign funds.
- b. Donation of the property under one of the options for transferring campaign funds set forth in section 56.42.

91 Acts, ch 226, §12 SF 476
NEW section

56.44 and 56.45 Reserved.

OFFICEHOLDERS' ACCOUNTS

56.46 Certain accounts by officeholders prohibited.

A holder of public office shall not maintain an account, other than a campaign account, to receive contributions for the purpose of publishing and distributing newsletters or performing other constituent services related to the official duties of public office. This section applies whether or not the officeholder is a candidate.

91 Acts, ch 226, §14 SF 476
NEW section

CHAPTER 68B

CONFLICTS OF INTEREST OF PUBLIC OFFICERS AND EMPLOYEES

68B.4 When sales prohibited.

An official or employee of any regulatory agency shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations subject to the regulatory authority of the agen-

cy of which the person is an official or employee, except when the official or employee has met all of the following conditions:

1. The consent of the regulatory agency for which the person is an official or employee is ob-

tained and the person is not the official or employee with the authority to determine whether agency consent is to be given under this section.

2. The duties or functions performed by the official or employee for the regulatory agency are not related to the regulatory authority of the agency over the individual, association, or corporation, or the selling of goods or services by the official or employee to the individuals, associations, or corporations does not affect the official's or employee's duties or functions at the regulatory agency.

3. The selling of any goods or services by the official or employee to an individual, association, or corporation does not include advocacy on behalf of the individual, association, or corporation to the regula-

tory agency in which the person is an official or employee.

4. The selling of any goods or services by the official or employee to an individual, association, or corporation does not cause the official or employee to sell goods or services to the regulatory agency on behalf of the individual, association, or corporation.

The department of personnel shall adopt rules specifying the method by which employees may obtain agency consent under this section. Each regulatory agency shall adopt rules specifying the method by which officials may obtain agency consent under this section.

91 Acts, ch 79, §1 HF 384
Unnumbered paragraph 2 amended

CHAPTER 69

VACANCIES IN OFFICE — APPOINTIVE BOARDS

Vacancy in general assembly, see 91 Acts, ch 223, § 3 SF 546
as to districts applicable before January 1, 1993

69.2 What constitutes vacancy.

Every civil office shall be vacant if any of the following events occur:

1. A failure to elect at the proper election, or to appoint within the time fixed by law, unless the incumbent holds over.

2. A failure of the incumbent or holdover officer to qualify within the time prescribed by law.

3. The incumbent ceasing to be a resident of the state, district, county, township, city, or ward by or for which the incumbent was elected or appointed, or in which the duties of the office are to be exercised. This subsection shall not apply to appointed city officers.

4. The resignation or death of the incumbent, or of the officer-elect before qualifying.

5. The removal of the incumbent from, or forfeiture of, the office, or the decision of a competent tribunal declaring the office vacant.

6. The conviction of the incumbent of a felony, an aggravated misdemeanor, or of any public offense involving the violation of the incumbent's oath of office.

7. The board of supervisors declares a vacancy in an elected county office upon finding that the county officer has been physically absent from the county for sixty consecutive days except in the case of a medical emergency.

91 Acts, ch 12, §1 3 HF 73
Removal from office, see also ch 66
Unnumbered paragraph 1 amended
Subsection 6 amended
NEW subsection 7

69.13 Vacancies in certain offices.

1. *Senator in congress and elective state officers*
If a vacancy occurs in the office of senator in the Congress of the United States, lieutenant governor, secretary of state, auditor of state, treasurer of state, secretary of agriculture, or attorney general eighty-nine or more days before a general election, and the unexpired term in which the vacancy exists has more than seventy days to run after the date of that general election, the vacancy shall be filled for the balance of the unexpired term at that general election and the person elected to fill the vacancy shall assume office as soon as a certificate of election has been issued and the person has qualified.

2. *County officers.* If a vacancy occurs in the office of county supervisor or in any of the offices listed in section 39.17 seventy-four or more days before a general election, and the unexpired term in which the vacancy exists has more than seventy days to run after the date of that general election, the vacancy shall be filled for the balance of the unexpired term at that general election and the person elected to fill the vacancy shall assume office as soon as a certificate of election has been issued and the person has qualified.

If the unexpired term of office in which the vacancy occurs will expire within seventy days after the date of the next pending election, section 69.11 applies.

91 Acts, ch 129, §21 HF 420
Subsections 1 and 2 amended

CHAPTER 73

PREFERENCES

73.7 Bids and contracts for coal.

Before any user of coal designated in section 73.6, whose annual consumption of coal exceeds, in delivered value, the sum of three hundred dollars, purchases any coal, it shall make request for bids for the coal by advertising in a newspaper published in the county in which the purchaser has its principal office. The advertisement shall state the date, time and place the bids shall be received, which shall not be less than fifteen days after publication, and the advertisement shall contain the approximate quantity and description of coal to be purchased. The bids for the coal shall be opened in public at the time, date and place indicated in the advertisement and, unless the purchasing body determines that the general good of the state, including the best interests of the taxpayer and the employment of labor, the adaptability of the coal offered, or the efficiency and cost of operation of the purchaser's plant makes it advisable to do otherwise, the contract shall be let to the lowest responsible bidder. However, coal mined or produced in this state may be granted up to a five percent preference over coal mined or produced outside this state on the delivered cost per unit of heat produced. Any and all bids may be rejected; however, if all bids are rejected, then an advertisement for bids shall again be made. After a bid is accepted, a written contract shall be entered into and the successful bidder shall furnish a good and sufficient bond with qualified sureties for the faithful performance of the contract. Any contract for purchase of coal provided for in sections 73.6 to 73.9 may contain the provision that the purchaser may, in the event of an emergency, purchase coal elsewhere without advertising for bids in any year, for not more than ten percent of the purchaser's annual coal requirements.

Notwithstanding the provisions of this chapter or other statutes, a governing body of the state, in its sole discretion, is permitted to enter into negotiations with a supplier of coal produced within the state of Iowa in order to modify an existing contract for the purchase of coal. The governing body and the supplier may modify the contract in any manner mutually agreed upon.

91 Acts, ch 267, §603 HF 479
NEW unnumbered paragraph 2

73.17 Targeted small business procurement goals — preliminary procedures.

Quarterly the director of each agency and department of state government shall review the agency's or department's anticipated purchasing requirements. The directors shall notify the director of the

department of economic development of their anticipated purchases and recommended procurements with unit quantities and total costs for procurement contracts designated to satisfy the targeted small business procurement goal not later than August 15 of each fiscal year and quarterly thereafter. The directors may divide the procurements so designated into contract award units of economically feasible production runs to facilitate offers or bids from targeted small businesses. In designating procurements intended to satisfy the targeted small business procurement goal, the directors may vary the included procurements so that a variety of goods and services produced by different targeted small businesses may be procured each year. The director of the department of economic development, in conjunction with the director of the department of management, shall review the information submitted and may require modifications from the agencies and departments.

A community college or area education agency shall, on a quarterly basis, and a school district shall, on an annual basis, review the community college's, area education agency's, or school district's anticipated purchasing requirements. A community college, area education agency, or school district shall notify the department of education, which shall report to the department of economic development, of their anticipated purchases and recommended procurements with unit quantities and total costs for procurement contracts designated to satisfy the targeted small business procurement goal not later than August 15 of each fiscal year and quarterly thereafter, except that school districts shall report annually.

91 Acts, ch 267, §223 HF 479
NEW unnumbered paragraph 2

73.18 Notice of solicitation for bids — identification of targeted small businesses.

The director of each agency or department releasing a solicitation for bids or request for proposal under the targeted small business procurement goal program shall notify the director of the department of economic development prior to or upon release of the solicitation. A community college, area education agency, or school district shall notify the department of education which shall notify the department of economic development prior to or upon release of the solicitation. The director of the department of economic development shall notify the soliciting agency or department, or community college, area education agency, or school district, of any targeted small businesses which have been certified pursuant to section 10A.104, subsection 8, and which may be qualified to bid.

91 Acts, ch 267, §224 HF 479
Section amended

73.19 Negotiated price or bid contract.

In awarding a contract under the targeted small business procurement goal program, a director of an agency or department, or community college, area education agency, or school district, having purchasing authority may use either a negotiated price or bid contract procedure. A director of an agency or department, or community college, area education agency, or school district, using a negotiated contract shall consider any targeted small business en-

gaged in that business. The director of the department of economic development or the director of the department of management may assist in the negotiation of a contract price under this section. Surety bonds guaranteed by the United States small business administration are acceptable security for a construction award under this section.

91 Acts, ch 267, §225 HF 479
Section amended

CHAPTER 78

ADMINISTRATION OF OATHS

78.1 General authority.

The following officers are empowered to administer oaths and to take affirmations:

1. Justices of the supreme court and judges of the court of appeals and district courts, including district associate judges and judicial magistrates.
2. Official court reporters of district courts in taking depositions under appointment or by agreement of counsel.

3. The clerk and deputy clerks of the supreme court and the clerks of the district court and their designees.

4. Notaries public.
5. Certified shorthand reporters.

91 Acts, ch 116, §1 HF 534
Subsection 3 amended

CHAPTER 79

PUBLIC OFFICERS AND EMPLOYEES, FINANCIAL PROVISIONS

79.9 Charge for use of automobile by other than state officer or employee.

When a public officer or employee, other than a state officer or employee, is entitled to be paid for expenses in performing a public duty, a charge shall be made, allowed and paid for the use of an automobile, as determined by the local governing body, in an amount which may be the maximum allowable under federal internal revenue service rules per mile, notwithstanding established mileage requirements or depreciation allowances. A statutory provision stipulating necessary mileage, travel, or actual reimbursement to a local public officer or employee falls within the mileage reimbursement limitation specified in this section unless specifically provided otherwise. A political subdivision may authorize the use of private vehicles for the conduct of official business of the political subdivision at an annual amount in

lieu of actual and necessary travel expense reimbursement provided in this section. A peace officer, other than a state officer or employee as defined in section 801.4, who is required to use a private vehicle in the performance of official duties shall receive reimbursement for mileage expense at the rate specified in this section.

91 Acts, ch 267, §604 HF 479
Section amended

79.17 Additional payroll deductions.

1. For the purposes of purchasing insurance and at the request of two hundred fifty or more state officers or employees, the state officer in charge of the payroll system shall deduct from the wages or salaries of the state officers or employees an amount specified by each of the officers or employees for payment to any company authorized to do business in this state if the following conditions are met:

a. The request for the payroll deduction is made in writing to the officer in charge of the payroll system.

b. The pay period during which the deduction is made, the frequency, and the amount of the deduction are compatible with the payroll system.

c. The insurance coverage is not provided by the state.

2. The moneys deducted under this section shall be paid promptly to the company designated by the state officers or employees. The deduction may be

made even though the compensation paid to an officer or employee is reduced to an amount below the minimum prescribed by law. Payment to an officer or employee of compensation less the deduction shall constitute a full discharge of claims and demands for services rendered by the officer or employee during the period covered by the payment. The request for the deduction may be withdrawn at any time by filing a written notification of withdrawal with the state officer in charge of the payroll system.

91 Acts, ch 40, §1 SF 520
Section amended

CHAPTER 80

DEPARTMENT OF PUBLIC SAFETY

80.9 Duties of department.

It shall be the duty of the department of public safety to prevent crime, to detect and apprehend criminals and to enforce such other laws as are hereinafter specified. The members of the department of public safety, except clerical workers therein, when authorized by the commissioner of public safety shall have and exercise all the powers of any peace officer of the state.

1. They shall not exercise their general powers within the limits of any city, except:

a. When so ordered by the direction of the governor;

b. When request is made by the mayor of any city, with the approval of the commissioner of public safety;

c. When request is made by the sheriff or county attorney of any county with the approval of the commissioner;

d. While in the pursuit of law violators or in investigating law violations;

e. While making any inspection provided by this chapter, or any additional inspection ordered by the commissioner;

f. When engaged in the investigating and enforcing of fire and arson laws;

g. When engaged in the investigation and enforcement of laws relating to narcotic, counterfeit, stimulant, and depressant drugs.

When any member of the department shall be acting in co-operation with any other local peace officer, or county attorney in general criminal investigation work, or when acting on a special assignment by the commissioner, the member's jurisdiction shall be statewide.

However, the above limitations shall in no way be construed as a limitation as to their power as officers when a public offense is being committed in their presence.

2. In more particular, their duties shall be as follows:

a. To enforce all state laws;

b. To enforce all laws relating to traffic on the public highways of the state, including those relating to the safe and legal operation of passenger cars, motorcycles, motor trucks and buses; to see that proper safety rules are observed and to give first aid to the injured;

c. To investigate all fires; to apprehend persons suspected of arson; to enforce all safety measures in connection with the prevention of fires; and to disseminate fire-prevention education;

d. To collect and classify, and keep at all times available, complete information useful for the detection of crime, and the identification and apprehension of criminals. Such information shall be available for all peace officers within the state, under such regulations as the commissioner may prescribe;

e. To operate such radio broadcasting stations as may be necessary in order to disseminate information which will make possible the speedy apprehension of lawbreakers, as well as such other information as may be necessary in connection with the duties of this office.

f. Provide protection and security for persons and property on the grounds of the state capitol complex.

g. To assist persons who are responsible for the care of private and public land in identifying growing marijuana plants when the plants are reported to the department. The department shall also provide education to the persons regarding methods of eradicating the plants. The department shall adopt rules necessary to carry out this paragraph.

3. They may administer oaths, acknowledge signatures, and take voluntary testimony pursuant to their duties as provided by law.

4. It is the intent of the general assembly that the commissioner of public safety shall reassign the arson investigators from the division of criminal investigation and bureau of identification of the department of public safety to the state fire marshal's

office effective July 1, 1978 and the arson investigators shall be under the direct supervision of the state fire marshal.

91 Acts, ch 34, §1 SF 171
Subsection 2, paragraph g amended

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, 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. Minimum course of study requirements shall include a separate domestic abuse curriculum, which may include, but is not limited to, outside speakers from domestic abuse shelters and crime victim assistance organizations.

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. Minimum requirements shall mandate training devoted to the topic of domestic abuse. The council shall submit an annual report to the general assembly by January 15 of each year relating to the continuing education requirements devoted to the topic of domestic abuse, including the number of hours required, the substance of the classes offered, and other related matters.

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.

8. Minimum qualifications for instructors in law enforcement and jailer training schools.

91 Acts, ch 218, §2 SF 444, 91 Acts, ch 219, §1 SF 496
Subsections 1 and 2 amended

CHAPTER 85

WORKERS' COMPENSATION

Second injury fund task force, surcharge for fiscal years beginning July 1, 1990, and July 1, 1991, duties of treasurer of state, retroactive application, 91 Acts, ch 162, § 1-3 SF 502

85.61 Definitions.

In this and chapters 86 and 87, unless the context otherwise requires, the following definitions of terms shall prevail:

1. 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.

2. "Employer" includes and applies to a person, firm, association, or corporation, state, county, municipal corporation, school corporation, area education agency, township as an employer of volunteer fire fighters and basic or advanced emergency medical care providers only, benefited fire district, and the legal representatives of a deceased employer. "Employer" includes and applies to a rehabilitation facility approved for purchase-of-service contracts or for referrals by the department of human services or the department of education.

3. "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.

4. 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.

5. "Pay period" means that period of employment for which the employer customarily or regularly makes payments to employees for work performed or services rendered.

6. "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, 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.

7. 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.

Personal injuries sustained by basic emergency medical care providers, as defined in section 147.1, or by advanced emergency medical care providers as defined in section 147A.1, arise in the course of employment if the injuries are sustained at any time from the time the emergency medical care providers are summoned to duty until the time those duties have been fully discharged.

8. 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.

9. "Spensible weekly earnings" is that amount remaining after payroll taxes are deducted from gross weekly earnings.

10. "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.

11. “*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; an 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; an official elected or appointed by the state, or a county, school district, area education agency, municipal corporation, or city under any form of government; a member of the Iowa highway safety patrol; a conservation officer; and a proprietor or partner who elects to be covered pursuant to section 85.1A, except as specified in this chapter.

“*Worker*” or “*employee*” includes an inmate as defined in section 85.59 and a person described in section 85.60.

“*Worker*” or “*employee*” includes a basic emergency medical care provider as defined in section 147.1, or an advanced emergency medical care provider as defined in section 147A.1, only if an agreement is reached between the basic or advanced emergency medical care provider and the employer for whom the volunteer services are provided that workers’ compensation coverage under chapters 85, 85A, and 85B is to be provided by the employer. A basic or advanced emergency medical care provider who is a worker or employee under this paragraph is not a casual employee.

“*Worker*” or “*employee*” includes a real estate agent who does not provide the services of an independent contractor. For the purposes of this paragraph a real estate agent is an independent contractor if the real estate agent is licensed by the Iowa real estate commission as a salesperson and both of the following apply:

a. Seventy-five percent or more of the remuneration, whether or not paid in cash, for the services performed by the individual as a real estate salesperson is derived from one company and is directly related to sales or other output, including the performance of services, rather than to the number of hours worked.

b. The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed, and the contract provides that the individual will not be treated as an employee with respect to the services for state tax purposes.

12. The term “*worker*” or “*employee*” shall in-

clude 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.

13. 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. An owner-operator who, as an individual or partner, or shareholder of a corporate owner-operator, owns a vehicle licensed and registered as a truck, road tractor, or truck tractor by a governmental agency, is an independent contractor while performing services in the operation of the owner-operator’s vehicle if all of the following conditions are substantially present:

(1) The owner-operator is responsible for the maintenance of the vehicle.

(2) The owner-operator bears the principal burden of the vehicle’s operating costs, including fuel, repairs, supplies, collision insurance, and personal expenses for the operator while on the road.

(3) The owner-operator is responsible for supplying the necessary personnel to operate the vehicle, and the personnel are considered the owner-operator’s employees.

(4) The owner-operator’s compensation is based on factors related to the work performed, including a percentage of any schedule of rates or lawfully published tariff, and not on the basis of the hours or time expended.

(5) The owner-operator determines the details and means of performing the services, in conformance with regulatory requirements, operating procedures of the carrier, and specifications of the shipper.

(6) The owner-operator enters into a contract which specifies the relationship to be that of an independent contractor and not that of an employee.

d. Directors of a corporation who are not at the same time employees of the corporation; or directors, trustees, officers, or other managing officials of a nonprofit corporation or association who are not at the same time full-time employees of the nonprofit corporation or association.

e. Proprietors and partners who have not elected to be covered by the workers’ compensation law of this state pursuant to section 85.1A.

CHAPTER 87

COMPENSATION LIABILITY INSURANCE

87.1 Insurance of liability required.

Every employer subject to the provisions of this and chapters 85 and 86, unless relieved therefrom as hereinafter provided, shall insure the employer's liability thereunder in some corporation, association, or organization approved by the commissioner of insurance.

A motor carrier who contracts with an owner-operator who is acting as an independent contractor pursuant to section 85.61, subsection 13, shall not be required to insure the motor carrier's liability for the owner-operator. A motor carrier may procure compensation liability insurance coverage for these owner-operators, and may charge the owner-operator for the costs of the premiums. A motor carrier shall require the owner-operator to provide and maintain a certificate of workers' compensation insurance covering the owner-operator's employees. An owner-operator shall remain responsible for providing compensation liability insurance for the owner-operator's employees.

Every such employer shall exhibit, on demand of the industrial commissioner, evidence of the employer's compliance with this section; and if such employer refuses, or neglects to comply with this section, the employer shall be liable in case of injury to any worker in the employer's employ under the common law as modified by statute.

91 Acts, ch 209, §2 SF 550
Section amended

87.11 Relief from insurance — procedures upon employer's insolvency.

When an employer coming under this chapter furnishes satisfactory proofs to the insurance commissioner of such employer's solvency and financial ability to pay the compensation and benefits as by law provided and to make such payments to the parties when entitled thereto, or when such employer deposits with the insurance commissioner security satisfactory to the insurance commissioner and the industrial commissioner as guaranty for the payment of such compensation, such employer shall be relieved of the provisions of this chapter requiring insurance; but such employer shall, from time to time, furnish such additional proof of solvency and financial ability to pay as may be required by such insurance commissioner or industrial commissioner.

An employer seeking relief from the insurance requirements of this chapter shall pay to the insurance division of the department of commerce the following fees:

1. A fee of one hundred dollars, to be submitted annually along with an application for relief.

2. A fee of one hundred dollars for issuance of the certificate relieving the employer from the insurance requirements of this chapter.

3. A fee of fifty dollars, to be submitted with each filing required by the commissioner of insurance, including but not limited to the annual and quarterly financial statements, and material change statements.

If an employer becomes insolvent and a debtor under 11 U.S.C., on or after January 1, 1990, this paragraph applies. The commissioner of insurance may request of the industrial commissioner that all future payments of workers' compensation weekly benefits, medical expenses, or other payments pursuant to chapter 85, 85A, 85B, 86, or 87 be commuted to a present lump sum. The industrial commissioner shall fix the lump sum of probable future medical expenses and weekly compensation benefits, or other benefits payable pursuant to chapter 85, 85A, 85B, 86, or 87, capitalized at their present value upon the basis of interest at the rate provided in section 535.3 for court judgments and decrees. The commissioner of insurance shall be discharged from all further liability for the commuted workers' compensation claim upon payment of the present lump sum to either the claimant, or a licensed insurer for purchase of an annuity or other periodic payment plan for the benefit of the claimant.

The commissioner of insurance shall not be required to pay more for all claims of an insolvent self-insured employer than is available for payment of such claims from the security given under this section.

Notwithstanding contrary provisions of section 85.45, any future payment of medical expenses, weekly compensation benefits, or other payments by the commissioner of insurance from the security given under this section, pursuant to chapter 85, 85A, 85B, 86, or 87, shall be deemed an undue expense, hardship, or inconvenience upon the employer for purposes of a full commutation pursuant to section 85.45, subsection 2.

Financial statements provided to the commissioner pursuant to this section may be held as confidential, proprietary trade secrets, pursuant to section 22.7, subsection 3, upon the request of the employer, subject to rules adopted by the commissioner, and are not subject to disclosure or examination under chapter 22.

91 Acts, ch 160, §3, 4 SF 441
Insurance commissioner to adopt amendments to rules governing relief from insurance requirement, items to be included, 91 Acts, ch 160, §1 SF 441
NEW subsection 3
NEW unnumbered paragraphs 3-6

87.11A Examination required.

The commissioner may at any time examine or inquire into the affairs of any self-insured employer. A domestic self-insured employer, or a self-insured employer not subject to periodic examination in its state of origin, shall be examined at least once during each three-year period.

91 Acts, ch 160, §5 SF 441
NEW section

87.11B Obligation to assist an examination — oaths.

If a self-insured employer is being examined, the officers, employees, or agents of the employer, shall produce for inspection all books, documents, papers, and other information concerning the affairs of the employer and shall otherwise assist in such examination to the extent possible. The commissioner, or the commissioner's legally authorized representative in charge of the examination, may administer oaths and take testimony bearing upon the affairs of any employer under examination.

91 Acts, ch 160, §6 SF 441
NEW section

87.11C Self-insurance examiners.

The commissioner of insurance shall appoint one or more self-insurance examiners. An examiner while conducting an examination, possesses all the powers conferred upon the commissioner for such purposes. A self-insurance examiner is subject to the same powers and conditions as imposed under sections 507.4 through 507.7.

91 Acts, ch 160, §7 SF 441
NEW section

87.11D Payment of examination expenses by the self-insured employer.

The commissioner of insurance, upon the completion of an examination, or at such regular intervals prior to completion as the commissioner determines, shall prepare an account of the costs incurred in performing and preparing the report of such examinations which shall be charged to and paid by the self-insured employer examined, and upon failure or refusal of any self-insured employer to pay such a charge, the amount of the charge may be recovered in an action brought in the name of the state, and the commissioner may also revoke the employer's exemption under section 87.11. All fees collected in connection with an examination shall be paid into the insurance division revolving fund.*

91 Acts, ch 160, §8 SF 441

*Insurance division revolving fund apparently abolished by 91 Acts, ch 260, §1239, 1241, 1242, HF 173 see §505.7
NEW section

87.11E Penalties for filing false financial statements.

1. It is unlawful for any person to make or cause to be made, in any document filed with the commissioner of insurance under this chapter, any statement of material fact which is, at the time and in the light of circumstances under which it is made, false or misleading, or, in connection with such statement, to omit to state a material fact necessary in order to

make the statements made, in the light of the circumstances under which they are made, not misleading.

2. The following persons shall not commit any of the acts or omissions prohibited by subsection 3:

- a. An employer.
- b. A person administering a self-insurance program, in whole or in part, on behalf of an employer.
- c. A partner of the employer or administrator.
- d. An officer of the employer or administrator.
- e. A director of the employer or administrator.
- f. A person occupying a similar status or performing similar functions as persons described in paragraphs "a" through "e".
- g. A person directly or indirectly controlling the employer or administrator.

3. A person listed under subsection 2 shall not do any of the following:

- a. File an application for relief under section 87.11 which as of its effective date, or as of any date after filing in the case of an order denying relief, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.
- b. Willfully violate or willfully fail to comply with any provision of sections 87.11, 87.11A, and 87.11B, or any rule or order adopted or issued pursuant to such sections.

4. The commissioner of insurance may deny, suspend or revoke a certificate of relief issued pursuant to section 87.11, or may impose a civil penalty for a violation of this section.

5. A civil penalty levied under subsection 4 shall not exceed one thousand dollars per violation per person, and shall not exceed ten thousand dollars in a single proceeding against any one person. All civil penalties shall be deposited in the general fund of the state pursuant to section 505.7.

6. A person who willfully and knowingly violates this section, or a rule or order adopted or issued pursuant to this section, is guilty of a class "D" felony. The commissioner of insurance may refer such evidence as is available concerning violations of this section to the attorney general or the proper county attorney who may, with or without such reference, institute appropriate criminal proceedings under this section. This section does not limit the power of the state to punish a person for conduct which constitutes a crime under any other statute.

91 Acts, ch 160, §9 SF 441
NEW section

87.23 Compensation liability insurance not required.

A corporation, association, or organization approved by the commissioner of insurance to provide compensation liability insurance shall not require a motor carrier that contracts with an owner-operator who is acting as an independent contractor pursuant to section 85.61, subsection 13, to purchase compensation liability insurance for the employer's liability for the owner-operator or its employees.

91 Acts, ch 209, §3 SF 550
NEW section

CHAPTER 88

OCCUPATIONAL SAFETY AND HEALTH

88.14 Penalties.

1. *Willful violations.* Any employer who willfully or repeatedly violates the requirements of section 88.4, any standard, rule, or order adopted or issued pursuant to section 88.5, or regulations prescribed pursuant to this chapter, may be assessed a civil penalty of not less than five thousand dollars and not more than seventy thousand dollars for each violation.

2. *Serious violations.* Any employer who has received a citation for a violation of the requirements of section 88.4, of any standard, rule, or order adopted or issued pursuant to section 88.5, or of any regulations prescribed pursuant to this chapter, shall be assessed a civil penalty of up to seven thousand dollars for each such violation.

3. *Nonserious violations.* Any employer who has received a citation for a violation of the requirements of section 88.4, of any standard, rule or order promulgated pursuant to section 88.5 or of rules prescribed pursuant to this chapter and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to one thousand dollars for each such violation.

4. *Failure to correct.* Any employer who fails to correct a violation for which a citation has been issued under section 88.7, subsection 1, within the period permitted for its correction (which period shall not begin to run until the date of the final order of the appeal board in the case of any review proceeding under section 88.8 initiated by the employer in good faith and not solely for delay or avoidance of penalties), may be assessed a civil penalty of not more than one thousand dollars for each day during which such failure or violation continues.

5. *Willful violations causing death.* Any employer who willfully violates any standard, rule, or order promulgated pursuant to section 88.5, or of any regulations prescribed pursuant to this chapter, and that violation caused death to any employee, shall, upon conviction, be guilty of a serious misdemeanor; except that if the conviction is for a violation committed after a first conviction of such person, the person shall be guilty of an aggravated misdemeanor.

6. *Advance notice of inspections.* Any person who gives advance notice of any inspection to be conducted under this chapter, without authority

from the commissioner or the commissioner's designees, shall, upon conviction, be guilty of a serious misdemeanor.

7. *Filing false documents.* Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction, be guilty of a serious misdemeanor.

8. *Disclosure of confidential information.* Whoever violates the provisions of section 88.12 shall be guilty of a serious misdemeanor; and shall be removed from office or employment.

9. *Violation of posting requirements.* Any employer who violates any of the posting, reporting or record-keeping requirements as prescribed under the provisions of this chapter, shall be assessed a civil penalty of up to one thousand dollars for each violation.

10. *Assessment of penalties.* The appeal board shall have the authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

11. *Definition of serious violation.* For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

12. *Collection of penalties.* Civil penalties owed under this chapter shall be paid to the commissioner for deposit with the treasurer of state and shall accrue to the state and may be recovered in a civil action in the name of the state brought in the district court of the county where the violation is alleged to have occurred or where the employer has its principal office.

91 Acts, ch 136, §1 SF 503
Subsections 1 and 2 amended

CHAPTER 89

BOILERS AND UNFIRED STEAM PRESSURE VESSELS

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. The commissioner shall establish rules for the issuance and revocation of special inspector commissions. The rules are subject to the requirements of chapter 17A.

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 division of labor services, 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. The failure of a special inspector to inform the commissioner of violations shall not subject the commissioner to liability for any damages incurred.

91 Acts, ch 136, §2 SF 503
Subsection 4 amended

CHAPTER 90A

BOXING AND WRESTLING

90A.1 Definition.

As used in this chapter, “*boxing or wrestling match*” means a boxing, wrestling, or sparring contest or exhibition open to the public or a closed-circuit boxing or wrestling match for which admission for viewing in this state is charged, for which the principals or contestants are paid for their participation.

91 Acts, ch 137, §1 HF 152
Section amended

90A.4 License.

No boxing or wrestling match shall be held within this state except as provided in this chapter. The commissioner may issue, suspend, or revoke a license to conduct boxing and wrestling matches. Every license shall be subject to such rules as the commissioner may prescribe.

91 Acts, ch 137, §2 HF 152
Section amended

90A.6 Required conditions.

A boxing match shall be not more than fifteen rounds in length; and the contestants shall wear gloves weighing at least eight ounces during such contests. A person shall not take part in a boxing match unless the person has first passed a rigorous physical examination to determine the person’s fitness to engage in any such match. The examination shall be conducted by a regular practicing physician designated by the commissioner.

The commissioner may adopt the rules of a recognized national or world boxing organization which sanctions a boxing match in this state to regulate the match, if the organization’s rules provide protection to the boxers participating in the match which is equal to or greater than the protections provided by this chapter or by rules otherwise adopted pursuant to this chapter. As used in this paragraph, “*recog-*

nized national or world boxing organization" includes, but is not limited to, the international boxing federation, the world boxing association, and the world boxing council.

91 Acts, ch 137, §3 HF 152
Section amended

90A.7 Written report filed — tax — grants.

1. Every person conducting a boxing or wrestling match in this state shall, within twenty-four hours after such match, furnish to the commissioner a written report, duly verified, showing the number of tickets sold for such boxing or wrestling match, and the amount of gross proceeds of such boxing or wrestling match, and such other matters as the commissioner may prescribe; and shall also within the same time period pay to the treasurer of state a tax of five percent of its total gross receipts, after deducting state sales tax, from the sale of tickets of admission to such boxing or wrestling match.

2. Moneys collected pursuant to subsection 1 in excess of the amount of moneys needed to administer this chapter are appropriated and shall be used by the state commissioner of athletics to award grants to organizations which promote amateur boxing matches in this state.

3. The state commissioner of athletics shall

adopt rules pursuant to chapter 17A to establish procedures for the submission of applications for grants to be awarded pursuant to subsection 2, and for the awarding of grants pursuant to subsection 2.

4. An advisory board composed of three members of the golden gloves association of America, incorporated — Iowa branch, appointed by the association, and three members of the United States of America amateur boxing federation — Iowa branch, appointed by the federation, shall advise the state commissioner of athletics regarding the awarding of grants pursuant to subsection 2.

91 Acts, ch 137, §4 HF 152
Subsection 1 amended

90A.8 Bond required.

Before a license shall be granted to a person to conduct any boxing or wrestling match, the applicant shall execute and file with the athletic commissioner a bond in the sum of five thousand dollars, payable to the state of Iowa, which shall be conditioned upon the payment of the tax and penalties imposed by this chapter. Upon the filing and approval of such bond, the commissioner may issue to the applicant a license.

91 Acts, ch 137, §5 HF 152
Section amended

CHAPTER 91

DIVISION OF LABOR SERVICES

91.4 Duties and powers.

The duties of said commissioner shall be:

1. To safely keep all records, papers, documents, correspondence, and other property pertaining to or coming into the commissioner's hands by virtue of the office, and deliver the same to the commissioner's successor, except as otherwise provided.

2. To collect, assort, and systematize statistical details relating to all departments of labor in the state.

3. To issue from time to time bulletins containing information of importance to the industries of the state and to the safety of wage earners.

4. To conduct and to co-operate with other interested persons and organizations in conducting educational programs and projects on employment safety.

5. The director of the department of employment services, in consultation with the labor commissioner, shall, at the time provided by law, make an annual report to the governor setting forth in appropriate form the business and expense of the division of labor services for the preceding year, the

number of disputes or violations processed by the division and the disposition of the disputes or violations, and other matters pertaining to the division which are of public interest, together with recommendations for change or amendment of the laws in this chapter and chapters 88, 88A, 88B, 89, 89A, 89B, 90A, 91A, 91B, 92, 94, and 95, and in section 327F.37, and the recommendations, if any, shall be transmitted by the governor to the first general assembly in session after the report is filed.

6. The commissioner, with the assistance of the office of the attorney general if requested by the commissioner, may commence a civil action in any court of competent jurisdiction to enforce the statutes under the commissioner's jurisdiction.

7. The division of labor services may sell documents printed by the division at cost according to rules established by the labor commissioner pursuant to chapter 17A. Receipts from the sale shall be deposited to the credit of the division and may be used by the division for administrative expenses.

91 Acts, ch 136, §3 SF 503
NEW subsection 6 and former unnumbered paragraph 2 numbered as subsection 7

CHAPTER 91C

REGISTRATION OF CONSTRUCTION CONTRACTORS

91C.1 Definition — exemption.

1. As used in this chapter, unless the context otherwise requires, “contractor” means a person who engages in the business of construction, as the term “construction” is defined in section 345-3.82 (96), Iowa Administrative Code, for purposes of the Iowa employment security law. However, a person who earns less than one thousand dollars annually or who performs work or has work performed on the person’s own property is not a contractor for purposes of this chapter. The state, its boards, commissions, agencies, departments, and its political subdivisions including school districts and other special purpose districts, are not contractors for purposes of this chapter.

2. If a contractor’s registration application shows that the contractor is self-employed, does not pay more than one thousand dollars annually to employ other persons in the business, and does not work with or for other contractors in the same phases of construction, the contractor is exempt from the fee requirements under this chapter.

91 Acts, ch 136, §4 SF 503
Subsection 1 amended

91C.7 Contracts — contractor’s bond.

1. A contractor who is not registered with the labor commissioner as required by this chapter shall not be awarded a contract to perform work for the state or an agency of the state.

2. An out-of-state contractor, before commencing a contract in excess of five thousand dollars in value in Iowa, shall file a bond with the division of labor services of the department of employment services. The surety bond shall be executed by a surety company authorized to do business in this state, and the bond shall be continuous in nature until canceled by the surety with not less than thirty days’ written notice to the contractor and to the division of labor services of the department of employment services indicating the surety’s desire to cancel the bond. The surety company shall not be liable under the bond for any contract commenced after the cancellation of the bond. The bond shall be in the sum of the greater of the following:

- a. One thousand dollars.
- b. Five percent of the contract price.

An out-of-state contractor may file a blanket bond in an amount at least equal to fifty thousand dollars for the registration period established under section 91C.4 in lieu of filing an individual bond for each contract. The division of labor services of the department of employment services may increase the bond amount after a hearing.

3. Release of the bond shall be conditioned upon the payment of all taxes, including contributions due under the unemployment compensation insurance system, penalties, interest, and related fees, which may accrue to the state of Iowa. If at any time during the term of the bond, the department of revenue and finance or the department of employment services determines that the amount of the bond is not sufficient to cover the tax liabilities accruing to the state of Iowa, the labor commissioner shall require the bond to be increased by an amount the labor commissioner deems sufficient to cover the tax liabilities accrued and accruing.

4. The department of revenue and finance and the division of job service of the department of employment services shall adopt rules for the collection of the forfeiture. Notice shall be provided to the surety and to the contractor. Notice to the contractor shall be mailed to the contractor’s last known address and to the contractor’s registered agent for service of process, if any, within the state. The contractor or surety shall have the opportunity to apply to the director of revenue and finance for a hearing within thirty days after the giving of such notice. Upon the failure to timely request a hearing, the bond shall be forfeited. If, after the hearing upon timely request, the department of revenue and finance or the division of job service of the department of employment services finds that the contractor has failed to pay the total of all taxes payable, the department of revenue and finance or the department of employment services shall order the bond forfeited. The amount of the forfeiture shall be the amount of taxes payable or the amount of the bond, whichever is less. For purposes of this section “taxes payable” means all tax, penalties, interest, and fees that the department of revenue and finance has previously determined to be due to the state by assessment or in an appeal of an assessment, including contributions to the unemployment compensation insurance system.

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

6. The bond required by this section may be attached by the commissioner for collection of fees and penalties due to the division.

91 Acts, ch 136, §5 SF 503
Section amended

CHAPTER 92

CHILD LABOR

92.2 Over ten and under sixteen years of age.

A person over ten and under sixteen years of age cannot be employed, with or without compensation, in street occupations or migratory labor as defined in section 92.1, unless the person holds a work permit issued pursuant to this chapter and the school the person attends has certified that the person is regularly attending school and the potential employment will not interfere with the person's progress in school. A written agreement, as defined in section 92.11, subsection 1, shall not be required for the issuance of a work permit under this section.

1. Notwithstanding section 92.7, a person with a permit to engage in migratory labor shall only work between five a.m. and seven-thirty p.m. from Labor Day through June 1, and between five a.m. and nine p.m. for the remainder of the year.

2. Notwithstanding section 92.7, a person with a permit to engage in street occupations shall only work between four a.m. and seven-thirty p.m. when local public schools are in session and between four a.m. and eight-thirty p.m. for the remainder of the year.

The requirements of section 92.10 shall not apply to a person, firm, or corporation employing a person engaged in street occupations pursuant to this section.

91 Acts, ch 136, §6 SF 503
Section stricken and rewritten

92.7 Under sixteen — hours permitted.

A person under sixteen years of age shall not be

employed with or without compensation, except as provided in sections 92.2 and 92.3, before the hour of seven a.m. or after seven p.m., except during the period from June 1 through Labor Day when the hours may be extended to nine p.m. If such person is employed for a period of five hours or more each day, an intermission of not less than thirty minutes shall be given. Such a person shall not be employed for more than eight hours in one day, exclusive of intermission, and shall not be employed for more than forty hours in one week. The hours of work of persons under sixteen years of age employed outside school hours shall not exceed four in one day or twenty-eight in one week while school is in session.

91 Acts, ch 136, §7 SF 503
Section amended

92.10 Permit on file.

Except as provided in section 92.2, a person under sixteen years of age shall not be employed or permitted to work with or without compensation unless the person, firm, or corporation employing such person receives and keeps on file accessible to any officer charged with the enforcement of this chapter, a work permit issued as provided in this chapter, and keeps a complete list of the names and ages of all such persons under sixteen years of age employed.

Certificates of age shall be issued for persons sixteen and seventeen years of age and for all other persons eighteen and over upon request of the person's prospective employer.

91 Acts, ch 136, §8 SF 503
Unnumbered paragraph 1 amended

CHAPTER 93

ENERGY DEVELOPMENT AND CONSERVATION

93.11 Energy conservation trust established — receipts and disbursements.

1. *a.* The energy conservation trust is created within the state treasury. This state on behalf of itself, its citizens, and its political subdivisions accepts any moneys awarded or allocated to the state, its citizens, and its political subdivisions as a result of the federal court decisions and federal department of en-

ergy settlements resulting from alleged violations of federal petroleum pricing regulations and deposits the moneys in the energy conservation trust.

b. The energy conservation trust is established to provide for an orderly, efficient, and effective mechanism to make maximum use of moneys available to the state, in order to increase energy conservation efforts and thereby to save the citizens of this

state energy expenditures. The moneys in the funds in the trust shall be expended only upon appropriation by the general assembly and only for programs which will benefit citizens who may have suffered economic penalties resulting from the alleged petroleum overcharges.

c The moneys awarded or allocated from each court decision or settlement shall be placed in a separate fund in the energy conservation trust. Notwithstanding section 453.7, interest and earnings on investments from moneys in the trust shall be credited proportionately to the funds in the trust.

d Unless prohibited by the conditions applying to a settlement, the petroleum overcharge moneys in the energy conservation trust may be used for the payment of attorney fees and expenses incurred by the state to obtain the moneys and shall be paid by the director of revenue and finance from the available moneys in the trust subject to the approval of the attorney general.

e However, petroleum overcharge moneys received pursuant to claims filed on behalf of the state, its institutions, departments, agencies, or political subdivisions shall be deposited in the general fund of the state to be disbursed directly to the appropriate claimants in accordance with federal guidelines and subject to the approval of the attorney general.

f The moneys deposited in the energy research and development fund shall be used for research and development of selected projects to improve Iowa's energy independence by developing improved methods of energy efficiency, or by increased development and use of Iowa's renewable nonresource-depleting energy resources. The moneys credited to the fund under section 556.18 shall be used for energy conservation and alternative energy resource projects. The projects shall be selected by the director and administered by the department. Selection criteria for funded projects shall include consideration of indirect restitution to those persons in the state in the utility customer classes and the utility service territories affected by unclaimed utility refunds or deposits.

Notwithstanding the provisions of this section directing that moneys be deposited into the energy research and development fund, for the fiscal period beginning July 1, 1991, and ending June 30, 1993, all moneys shall be deposited into the general fund of the state. There is appropriated annually from the general fund of the state the sum of one hundred fifty thousand dollars to be used for the purposes of this section.

2 The treasurer of state shall be the custodian of the energy conservation trust and shall invest the moneys in the trust, in consultation with the energy fund disbursement council established in subsection 3 and the investment board of the Iowa public employees' retirement system, in accordance with the following guidelines:

a To maximize the rate of return on moneys in the trust while providing sufficient liquidity to make fund disbursements, including contingency disbursements

b To absolutely insure the trust against loss

c To use such investment tools as are necessary to achieve these purposes

3 An energy fund disbursement council is established. The council shall be composed of the governor or the governor's designee, the director of the department of management, who shall serve as the council's chairperson, the administrator of the division of community action agencies of the department of human rights, the administrator of the energy and geological resources division of the department of natural resources, and a designee of the director of the department of transportation, who is knowledgeable in the field of energy conservation. The council shall include as nonvoting members two members of the senate appointed by the president of the senate, after consultation with the majority leader and the minority leader of the senate, and two members of the house of representatives appointed by the speaker of the house. The legislative members shall be appointed upon the convening and for the period of each general assembly. Not more than one member from each house shall be of the same political party. The council shall be staffed by the energy and geological resources division of the department of natural resources. The attorney general shall provide legal assistance to the council.

The council shall

a Oversee the investment of moneys deposited in the energy conservation trust

b Make recommendations to the governor and the general assembly regarding annual appropriations from the energy conservation trust

c Work with the energy and geological resources division in adopting administrative rules necessary to administer expenditures from the trust, encourage applications for grants and loans, review and select proposals for the funding of competitive grants and loans from the energy conservation trust, and evaluate their comparative effectiveness

d Monitor expenditures from the trust

e Approve any grants or contracts awarded from the energy conservation trust in excess of five thousand dollars

f Prepare, in conjunction with the energy and geological resources division, an annual report to the governor and the general assembly regarding earnings of and expenditures from the energy conservation trust

4 The administrator of the energy and geological resources division of the department of natural resources shall be the administrator of the energy conservation trust. The administrator shall disburse moneys appropriated by the general assembly from the funds in the trust in accordance with the federal court orders, law and regulation, or settlement conditions applying to the moneys in that fund, and subject to the approval of the energy fund disbursement council if such approval is required. The council, after consultation with the attorney general, shall immediately approve the disbursement of moneys from the funds in the trust for projects which meet

the federal court orders, law and regulations, or settlement conditions which apply to that fund.

5. The following funds are established in the energy conservation trust:

- a. The Warner/Imperial fund.
- b. The Exxon fund.
- c. The Stripper Well fund.
- d. The Diamond Shamrock fund.
- e. The office of hearings and appeals second-stage settlement fund.
- f. The energy research and development fund.

6. The moneys in the fund in the energy conservation trust distributed to the state as a result of the 1985 federal court decision finding Exxon corporation in violation of federal petroleum pricing regulations shall be expended, to the extent possible, over a period of no more than six years and shall be disbursed for projects which meet the strict guidelines of the five existing federal energy conservation programs specified in Pub. L. No. 97-377, § 155, 96 Stat. 1830, 1919 (1982). The council shall approve the disbursement of petroleum overcharge moneys from the fund in the trust for other projects only if the project meets one or more of the following conditions:

- a. The projects meet the guidelines for allowable projects under a modification order entered by the federal court in the case involving Exxon corporation.
- b. The projects meet the guidelines for allowable projects under a directive order entered by the federal court in the case involving Exxon corporation.
- c. The projects meet the guidelines for allowable projects under the regulations adopted or written clarifications issued by the United States department of energy.

91 Acts, ch 253, §2-5 SF 508

See Code editor's note

Repeal effective July 1, 1992, see 86 Acts, ch 1249, §7

Subsection 1, paragraph d amended

Subsection 1, NEW paragraph f

Subsection 5, NEW paragraph f

Subsection 6 amended

93.13A Energy conservation measures identified and implemented.

The state, state agencies, political subdivisions of the state, school districts, area education agencies, and community colleges shall identify and implement, through energy audits and engineering analyses, all energy conservation measures identified for which financing is made available by the department to the entity. The energy conservation measure financings shall be supported through payments from energy savings.

The department shall not require a school district, community college, area education agency, city, or county to perform an engineering analysis if the school district, community college, area education agency, city, or county demonstrates to the department that the facility which is the subject of the proposed engineering analysis at issue is unlikely to be in use or operation in six years by the governmental entity currently using or occupying the facility.

91 Acts, ch 253, §6 SF 508

Section amended

93.14 Energy research and development fund. Repealed by 91 Acts, ch 253, § 26. SF 508
See § 93.11.

93.16 Additional funds.

The department may accept funds from state and local sources and shall take steps necessary to obtain federal funds allotted and appropriated for the purpose of the above described energy-related programs. Such funds shall be deposited in the energy research and development fund. Federal funds received under the provisions of this section are appropriated for the purposes set forth in the federal grants.

Notwithstanding the provisions of this section directing that funds accepted be deposited into the energy research and development fund, for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, all funds accepted shall be deposited into the general fund of the state and shall be appropriated for purposes of section 93.14.*

91 Acts, ch 260, §1204 HF 173

*Section 93.14 was repealed by 91 Acts, ch 253, §26 SF 508

Restrictions on use of moneys deposited in state general fund, see 91 Acts, ch 263, §38 SF 209

NEW unnumbered paragraph 2

93.19 Energy bank program.

The energy bank program is established by the department. The energy bank program consists of the following forms of assistance for the state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations:

1. Providing moneys from the petroleum overcharge fund for conducting energy audits for school districts under section 279.44, for conducting comprehensive engineering analyses for school districts and for conducting energy audits and comprehensive engineering analyses for state agencies, and political subdivisions of the state.

2. Providing loans, leases, and other methods of alternative financing from the energy loan fund established in section 93.20 and section 93.20A for the state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations to implement energy conservation measures.

3. Serving as a source of technical support for energy conservation management.

4. Providing assistance for obtaining insurance on the energy savings expected to be realized from the implementation of energy conservation measures.

5. Providing self-liquidating financing for the state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations pursuant to section 93.20A.

For the purpose of this section, section 93.20, and section 93.20A, "energy conservation measure" means construction, rehabilitation, acquisition, or modification of an installation in a facility or vehicle

which is intended to reduce energy consumption, or energy costs, or both, or allow the use of an alternative energy source, which may contain integral control and measurement devices. “*Nonprofit organization*” means an organization exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code.

91 Acts, ch 253, §7 SF 508
Section amended

93.20 Energy loan fund.

An energy loan fund is established in the office of the treasurer of state to be administered by the department.

1. The department may make loans to the state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations for implementation of energy conservation measures identified in a comprehensive engineering analysis. Loans shall not be made for energy conservation measures that require more than an average of six years for the state, state agency, political subdivision of the state, school district, area education agency, community college, or nonprofit organization as an entity to recoup the actual or projected cost of construction and acquisition of the improvements; and cost of the engineering plans and specifications. For the state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations to receive a loan from the fund, the department shall require completion of an energy management plan including an energy audit and a comprehensive engineering analysis. The department shall approve loans made under this section.

2. Cities and counties shall repay the loans from moneys in their debt service funds. Area education agencies shall repay the loans from any moneys available to them.

School districts and community colleges may enter into financing arrangements with the department or its duly authorized agents or representatives obligating the school district or community college to make payments on the loans beyond the current budget year of the school district or community college. Chapter 75 shall not be applicable. School districts shall repay the loans from moneys in either their general fund or schoolhouse fund. Community colleges shall repay the loans from their general fund. Other entities receiving loans under this section shall repay the loans from any moneys available to them.

3. The department may accept gifts, federal funds, state appropriations, and other moneys for deposit in the energy loan fund or may fund the energy loan fund in accordance with section 93.20A.

4. For the purpose of this section, “*loans*” means loans, leases, or alternative financing arrangements.

5. The state, state agencies, political subdivisions of the state, school districts, area education agencies, and community colleges shall design and

construct the most energy cost-effective facilities feasible and shall use the financing made available by the department to cover the incremental costs above minimum building code energy efficiency standards of purchasing energy efficient devices and materials unless other lower cost financing is available. As used in this section, “*facility*” means a structure that is heated or cooled by a mechanical or electrical system, or any system of physical operation that consumes energy to carry out a process.

6. The department shall not require the state, state agencies, political subdivisions of the state, school districts, area education agencies, and community colleges to implement a specific energy conservation measure identified in a comprehensive engineering analysis if the entity which prepared the analysis demonstrates to the department that the facility which is the subject of the energy conservation measure is unlikely to be used or operated for the full period of the expected payback of the energy conservation measure.

91 Acts, ch 253, §8 SF 508
Section amended

93.20A Self-liquidating financing.

1. The department of natural resources may enter into financing agreements with the state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, or nonprofit organizations in order to provide the financing to pay the costs of furnishing energy conservation measures. The provisions of section 93.20 defining eligible energy conservation measures and the method of repayment of the loans apply to financings under this section.

The financing agreement may contain provisions, including interest, term, and obligations to make payments on the financing agreement beyond the current budget year, as may be agreed upon between the department of natural resources and the state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, or nonprofit organizations.

2. For the purpose of funding its obligation to furnish moneys under the financing agreements, or to fund the energy loan fund created in section 93.20, the treasurer of state, with the assistance of the department of natural resources, or the treasurer of state’s duly authorized agents or representatives, may incur indebtedness or enter into master lease agreements or other financing arrangements to borrow to accomplish energy conservation measures, or the department of natural resources may enter into master lease agreements or other financing arrangements to permit the state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, or nonprofit organizations to borrow sufficient funds to accomplish the energy conservation measure. The obligations may be in such form, for such term, bearing such interest and containing such provisions as the department of natural resources, with the assistance of the

treasurer of state, deems necessary or appropriate. Funds remaining after the payment of all obligations have been redeemed shall be paid into the energy loan fund.

3. The state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations may enter into financing agreements and issue obligations necessary to carry out the provisions of the chapter. Chapter 75 shall not be applicable.

91 Acts, ch 253, §9 SF 508
Section amended

93.40 Statewide building energy efficiency rating system.

1. The director shall adopt rules, pursuant to chapter 17A, establishing a statewide building energy efficiency rating system. The rating system shall apply to all new and existing public, commercial, industrial, and residential buildings in the state and shall be established subject to the following schedule:

- a. Ratings for new residential buildings by July 1, 1992.
- b. Ratings for existing residential buildings by July 1, 1993.
- c. Ratings for new public buildings by July 1, 1994.
- d. Ratings for existing public buildings by July 1, 1995.
- e. Ratings for new commercial and industrial buildings by July 1, 1995.
- f. Ratings for existing commercial and industrial buildings by July 1, 1995.

The director shall adopt a minimum acceptable energy efficiency standard for each class of new buildings.

2. a. The energy efficiency rating shall be disclosed at the request of the prospective purchaser according to the terms of the offer to purchase.

b. The energy efficiency rating shall be disclosed to a prospective lessee whose rent does not include energy cost upon request.

c. The designer of a new residential or commercial building shall state in writing to the department that to the best of the person's knowledge, information, and belief, the new building design is in substantial compliance with the minimum energy efficiency standards established by rule of the department.

d. Concurrent with the disclosure of an energy efficiency rating pursuant to paragraphs "a" through "c", the prospective purchaser or lessee shall be provided with a copy of an information brochure prepared by the department which includes information relevant to that class of building, including, but not limited to:

- (1) How to analyze the building's energy efficiency rating.
- (2) Comparisons to statewide averages for new and existing construction of that class.
- (3) Notice to the prospective purchaser that the

seller must disclose a building's energy efficiency rating upon the prospective purchaser's request.

(4) Information concerning methods to improve a building's energy efficiency rating.

(5) A notice for residential buyers that qualifying income for mortgage loan purposes may be affected by the energy efficiency rating.

e. A new residential, commercial, or industrial building shall not be hooked up or connected to any provider of electricity, whether a regulated utility, rural electric cooperative, municipal utility, or otherwise; or natural gas, except liquid petroleum, unless the builder states in writing to the utility that to the best of the builder's knowledge, information, and belief, the building was built in accordance with the construction documents.

f. Each public building proposed for construction, renovation, or acquisition shall be rated pursuant to the energy efficiency rating system provided in subsection 1 prior to contracting for the construction, renovation, or acquisition. The public body proposing to contract for construction, renovation, or acquisition for a public building shall consider the energy efficiency ratings of alternatives when contracting.

3. The energy efficiency rating system adopted by the department shall provide a means of analyzing and comparing the relative energy efficiency of buildings upon sale or lease of new or existing residential, commercial, or industrial buildings. The system shall provide for rating each public building in existence to assist public officials in decision making with regard to capital improvements and public energy costs.

4. The director shall establish a voluntary working group of persons and interest groups interested in the energy efficiency rating system or energy efficiency, including, but not limited to such persons as electrical engineers, mechanical engineers, architects, and builders. The interest group shall advise the department in the development of the energy efficiency rating system and shall assist the department in implementation of the rating system by coordinating education programs for designers, builders, businesses, and other interested persons to assist compliance and to facilitate incorporation of the rating system into existing practices. The intent of the general assembly is to encourage the consideration of the energy efficiency rating system in the market, so as to provide market rewards for energy efficient buildings and those designing, building, or selling energy efficient buildings.

5. All public buildings shall be analyzed for energy efficiency using this rating system by July 1, 1996. The results of that analysis shall be submitted to the department by August 1, 1996. The department shall submit a report to the governor and general assembly by January 15, 1997, that analyzes the results of this evaluation of public buildings and includes recommendations. The results of the analysis of each building shall be submitted to the public agency or governmental subdivision which owns or operates that building as well.

6. The director shall make available energy efficiency practices information to be used by individuals involved in the design, construction, retrofitting, and maintenance of buildings for state and local governments.

7. For purposes of this section:

a. *“Builder”* means the prime contractor that hires and coordinates building subcontractors or if there is no prime, the contractor that completes more than fifty percent of the total construction work performed on the building. Construction work includes, but is not limited to, foundation, framing, wiring, plumbing, and finishing work.

b. *“Designer”* means the architect, engineer, landscape architect, builder, interior designer or other person who performs the actual design work or under whose direct supervision and responsible charge the construction documents are prepared.

c. *“Public building”* means a building owned or operated by the state, a state agency, or a governmental subdivision, including but not limited to a city, county, or school district.

8. The director may report an architect, professional engineer, or landscape architect to the appropriate examining board if the director believes the person has engaged in fraudulent conduct in connection with an energy efficiency rating for a building. The director may report a builder to the division of labor, bureau of contractor registration, if the director believes the builder has engaged in fraudulent conduct in connection with an energy efficiency rating for a building.

91 Acts, ch 97, §6 HF 198
Subsection 7, unnumbered paragraph 1 amended

93.41 Reserved.

93.42 Exit signs — standards.

The department shall adopt rules which require

the use of compact fluorescent bulbs in exit signs at the time of replacement, but no later than July 1, 2001. Prior to the adoption of rules, the department shall promote, through educational materials, the use of compact fluorescent bulbs or lighting of greater efficiency in exit signs.

91 Acts, ch 253, §10 SF 508
NEW section

93.43 Reserved.

93.44 Plumbing products efficiency standards — penalty.

1. The department shall adopt rules which prescribe water use standards for each product classified as a covered product under this section. The standards adopted shall be designed to achieve the maximum efficiency of water use which the department determines is technologically and economically feasible. The department shall consult with the state building code commissioner, the Iowa department of public health, and the plumbing manufacturers’ institute, and shall review all applicable provisions under chapter 103A and chapter 135 in establishing the standards.

2. A person who knowingly violates this section is subject to a civil penalty of not more than one hundred dollars for each violation. Local government subdivisions which enforce the standards adopted under this section may collect and utilize receipts from the penalties imposed for building code inspections and enforcement of this section.

3. For the purposes of this section, *“covered products”* means water closets, urinals, showerheads, laboratory faucets and replacement aerators, and kitchen faucets and replacement aerators.

91 Acts, ch 253, §11 SF 508
NEW section

CHAPTER 93A

MIDWEST ENERGY COMPACT

93A.1 Midwest energy compact.

The midwest energy compact is enacted into law and entered into with all other states which legally join in the compact in substantially the following form:

INTERSTATE COMPACT ON ENERGY
ARTICLE I — PURPOSE

It is the purpose of this compact to protect, preserve, and enhance:

a. The economic and general welfare of citizens

of the joining states by increasing energy efficiency and energy independence.

b. The economies and very existence of local communities in such states, the economies of which are dependent upon imported energy sources.

ARTICLE II — COMMISSION

a. Organization and management

1. There is hereby created an agency of the member states to be known as the interstate midwest en-

ergy commission, hereinafter called the commission. The commission shall consist of three residents of each member state who shall have a background in energy efficiency and who shall be appointed as follows. One member appointed by the governor, who shall serve at the pleasure of the governor, one senator appointed in the manner prescribed by the senate of the state, except that in Iowa the appointment shall be made by the president of the senate, after consultation with the majority leader and the minority leader of the senate, and except that two senators may be appointed by the governor of the state of Nebraska from the unicameral legislature of the state of Nebraska, and one member of the house of representatives appointed in the manner prescribed by the house of representatives of the state. The member first appointed by the governor shall serve for a term of one year and the senator and representative first appointed shall each serve for a term of two years. Thereafter all members appointed shall serve for two-year terms. The attorneys general of member states or assistants designated by the attorneys general shall be nonvoting members of the commission.

2 Each member shall be entitled to one vote. A member must be present to vote and no voting by proxy shall be permitted. The commission shall not act unless a majority of the voting members are present, and no action shall be binding unless approved by a majority of the total number of voting members present.

3 The commission shall be a body corporate of each member state and shall adopt an official seal to be used as it may provide.

4 The commission shall hold an annual meeting and other regular meetings as its bylaws may provide and special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular, and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

5 The commission shall elect annually, from among its voting members, a chairperson, a vice chairperson, and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and shall fix the duties and compensation of the director. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of those of its officers and employees as it may deem appropriate.

6 Irrespective of the civil service, personnel, or other merit system laws of any member state, the executive director shall appoint or discharge personnel as may be necessary for the performance of the functions of the commission and shall fix, with the approval of the commission, their duties and compensation. The commission bylaws shall provide for personnel policies and programs. The commission may establish and maintain, independently of or in conjunction with any one or more of the member

states, a suitable retirement system for its full time employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivors insurance provided that the commission takes steps as may be necessary pursuant to federal law to participate in the program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in additional programs of employee benefits as may be appropriate. The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental entity.

7 The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

8 The commission may establish one or more offices for the transacting of its business.

9 The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the member states.

10 The commission annually shall make to the governor and legislature of each member state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

b Committees

1 The commission may establish committees from its membership as its bylaws may provide for the carrying out of its functions.

ARTICLE III — POWERS AND DUTIES OF COMMISSION

a The commission shall conduct comprehensive and continuing studies and investigations of energy efficiency measures and their relationship to and effect upon the citizens and economies of the member states.

b The commission shall make recommendations for the correction of weaknesses and solutions to problems in present energy efficiency measures or the development of alternatives thereto, including the development, drafting, and recommendation of proposed state or federal legislation.

c The commission is hereby authorized to do all things necessary and incidental to the administration of its functions under this compact.

ARTICLE IV — FINANCE

a. The commission shall submit to the governor of each member state a budget of its estimated expenditures for the period required by the laws of that state for presentation to the legislature of that state.

b. The moneys necessary to finance the general operations of the commission not otherwise provided for in carrying forth its duties, responsibilities, and powers as stated herein shall be appropriated to the commission by the member states, when authorized by the respective legislatures. Appropriations by member states for the financing of the operations of the commission in the initial biennium of the compact shall be in the amount of fifty thousand dollars for each member state. Thereafter the total amount of appropriations requested shall be apportioned among the member states in the manner determined by the commission. Failure of a member state to provide its share of financing is cause for the state to lose its membership in the compact.

c. The commission shall not incur any obligations of any kind prior to the making of appropriations adequate to meet the same, nor shall the commission pledge the credit of any of the member states, except by and with the authority of the member state.

d. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public ac-

countant and the report of the audit shall be included in and become part of the annual report of the commission.

e. The accounts of the commission shall be open for inspection at any reasonable time.

ARTICLE V — ELIGIBLE PARTIES,
ENTRY INTO FORCE,
WITHDRAWAL, AND TERMINATION

a. Any state contiguous to Iowa may become a member of this compact.

b. This compact shall become effective initially when enacted into law by any five states and in additional states upon their enactment of the same into law.

c. Any member state may withdraw from this compact by enacting a statute repealing the compact, but such withdrawal shall not become effective until one year after the enactment of the repealing statute and the notification of the commission thereof by the governor of the withdrawing state. A withdrawing state shall be liable for any obligations which it incurred on account of its membership up to the effective date of withdrawal, and if the withdrawing state has specifically undertaken or committed itself to any performance of an obligation extending beyond the effective date of withdrawal, it shall remain liable to the extent of that obligation.

d. This compact shall terminate one year after the notification of withdrawal by the governor of any member state which reduces the total membership in the compact to less than five states.

91 Acts, ch 253, §12 SF 508
NEW section

CHAPTER 96

EMPLOYMENT SECURITY — JOB SERVICE DIVISION — UNEMPLOYMENT COMPENSATION

96.4 Required findings.

An unemployed individual shall be eligible to receive benefits with respect to any week only if the division of job service finds that:

1. The individual has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the division may prescribe. The provisions of this subsection shall be waived if the individual is deemed temporarily unemployed as defined in section 96.19, subsection 9, paragraph "c".

2. The individual has made a claim for benefits in accordance with the provisions of section 96.6, subsection 1.

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 9, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 9, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "i".

4. The individual has been paid wages for in-

sured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this subsection in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least two hundred fifty dollars, as a condition to receive benefits in the next benefit year.

5. Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.19, subsection 6, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the same basis of other service subject to this chapter, except that:

a. Benefits based on service in an instructional, research, or principal administrative capacity in an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such academic years or both such terms.

b. Benefits based on service in any other capacity for an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization, shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance

that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services for an educational institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

c. With respect to services for an educational institution in any capacity under paragraph "a" or "b", benefits shall not be paid to an individual for any week of unemployment which begins during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before such vacation period or holiday recess, and the individual has reasonable assurance that the individual will perform the services in the period immediately following such vacation period or holiday recess.

d. For purposes of this subsection, "educational service agency" means a governmental agency or government entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

6. a. An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the commissioner, nor shall the individual be denied benefits with respect to any week in which the individual is in training with the approval of the commissioner by reason of the application of the provision in subsection 3 of this section relating to availability for work, and an active search for work or the provision of section 96.5, subsection 3, relating to failure to apply for or a refusal to accept suitable work. However, an employer's account shall not be charged with benefits so paid.

b. An otherwise eligible individual shall not be denied benefits for a week because the individual is in training approved under 19 U.S.C. sec. 2296(a), as amended by section 2506 of the federal Omnibus Budget Reconciliation Act of 1981, because the individual leaves work which is not suitable employment to enter the approved training, or because of the application of subsection 3 of this section or section 96.5, subsection 3, or a federal unemployment insurance law administered by the division of job service relating to availability for work, active search for work, or refusal to accept work.

For purposes of this paragraph, "suitable employment" means work of a substantially equal or higher skill level than an individual's past adversely affected employment, as defined in 19 U.S.C. § 2319(l), if weekly wages for the work are not less than eighty percent of the individual's average weekly wage.

91 Acts, ch 45, §1, 2 HF 459

Subsection 3 amended

Subsection 6, paragraph b, unnumbered paragraph 2 amended

96.5 Causes for disqualification.

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 division of job service. But the individual shall not be disqualified if the division 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. The division 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 Reserved

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 division, 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 division, 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.

j The individual is unemployed as a result of the individual's employer selling or otherwise transferring a clearly segregable and identifiable part of the employer's business or enterprise to another employer which does not make an offer of suitable work to the individual as provided under subsection 3, however, if the individual does accept, and works in and is paid wages for, suitable work with the acquiring employer, the acquiring employer immediately becomes chargeable for the benefits paid which are based on the wages paid by the transferring employer.

2 *Discharge for misconduct* If the division of job service 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 estab-

lished, the division 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 division of job service finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the employment office or the division or to accept suitable work when offered that individual, or to return to customary self-employment, if any. The division 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 division on forms provided by the division, 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 division 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 division 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 division of job service 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 division 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 division of job service shall recover the excess amount of benefits paid by the division 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. When, in connection with a separation or lay-off of an individual, the individual's employer makes a payment or payments to the individual, or becomes obligated to make a 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 ten calendar days after notification of the filing of the individual's claim, designates by notice in writing to the division of job service the period to which the 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 in writing to the division not later than the beginning of the extension of the period, with the same effect as if the period of extension were included in the original designation. The amount of a payment or obligation to make payment, is 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 division of job service 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 division 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 division 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 at the time such services were performed, including an alien who is lawfully present in the United States as a result of the application of the provisions of 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.

91 Acts, ch 45, §3, 4 HF 459
Subsection 1, paragraph b stricken
Subsection 10 amended

96.6 Filing — determination — appeal.

1. *Filing.* Claims for benefits shall be made in accordance with such regulations as the division of job service may prescribe.

2. *Initial determination.* A representative designated by the commissioner shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5. However, the claimant has the initial burden to pro-

duce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "i", and subsection 10. Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with it. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid.

3. *Appeals.* Unless the appeal is withdrawn, an administrative law judge, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the representative. The hearing shall be conducted pursuant to the provisions of chapter 17A relating to hearings for contested cases. Before the hearing is scheduled, the parties shall be afforded the opportunity to choose either a telephone hearing or an in-person hearing. A request for an in-person hearing shall be approved unless the in-person hearing would be impractical because of the distance between the parties to the hearing. A telephone or in-person hearing shall not be scheduled before the seventh calendar day after the parties receive notice of the hearing. Reasonable requests for the postponement of a hearing shall be granted. The parties shall be duly notified of the administrative law judge's decision, together with the administrative law judge's reasons for the decision, which is the final decision of the division, unless within fifteen days after the date of notification or mailing of the decision, further appeal is initiated pursuant to this section.

Appeals from the initial determination shall be heard by an administrative law judge employed by the division of job service. An administrative law judge's decision may be appealed by any party to the employment appeal board created in section 10A.601. The decision of the appeal board is final agency action and an appeal of the decision shall be made directly to the district court.

4. *Effect of determination.* A finding of fact or law, judgment, conclusion, or final order made pursuant to this section by an employee or representative of the division, administrative law judge, or the employment appeal board, is binding only upon the parties to proceedings brought under this chapter, and is not binding upon any other proceedings or action involving the same facts brought by the same or related parties before the division of labor services, division of industrial services, other state agency, arbitrator, court, or judge of this state or the United States.

91 Acts, ch 43, §1 HF 306
NEW subsection 4

96.7 Employer contributions and reimbursements.

1. *Payment.* Contributions accrue and are payable, in accordance with rules adopted by the division, on all taxable wages paid by an employer for insured work.

2. *Contribution rates based on benefit experience.*

a. (1) The division shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, but shall be charged to the account of the next succeeding employer with whom the individual requalified for benefits as determined respectively under section 96.5, subsection 1, paragraph "g" and section 96.5, subsection 2, paragraph "a". However, the succeeding employer's account shall first be charged with benefits paid to the individual due to wage credits earned by the individual while employed by the succeeding employer. After exhausting those wage credits, the succeeding employer's account shall not be charged with ten weeks of benefits paid to the individual due to wage credits earned by the individual from a previous employer, but rather the unemployment compensation fund shall be charged. After exhausting the ten weeks of noncharging, the succeeding employer's account shall again be charged with the benefits paid.

An employer's account shall not be charged with benefits paid to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work, but shall be charged to the account of the next succeeding employer with whom the individual requalified for benefits as determined under section 96.5, subsection 3.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion

and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

(3) The amount of regular benefits charged against the account of an employer for a calendar quarter of the base period shall not exceed the amount of the individual's wage credits based on employment with the employer during that quarter. The amount of extended benefits charged against the account of an employer for a calendar quarter of the base period shall not exceed an additional fifty percent of the amount of the individual's wage credits based on employment with the employer during that quarter. However, the amount of extended benefits charged against the account of a governmental entity which is either a reimbursable or contributory employer, for a calendar quarter of the base period shall not exceed an additional one hundred percent of the amount of the individual's wage credits based on employment with the governmental entity during that quarter.

(4) The division shall adopt rules prescribing the manner in which benefits shall be charged against the accounts of several employers for which an individual performed employment during the same calendar quarter.

(5) This chapter shall not be construed to grant an employer or an individual in the employer's service, prior claim or right to the amount paid by the employer into the unemployment compensation fund either on the employer's own behalf or on behalf of the individual.

(6) Within forty days after the close of each calendar quarter, the division shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the division for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

b. If an enterprise or business, or a clearly segregable and identifiable part of an enterprise or business, for which contributions have been paid is sold or transferred to a subsequent employing unit, or if one or more employing units have been reorganized or merged into a single employing unit, and the successor employer, having qualified as an employer as defined in section 96.19, subsection 5, paragraph "b", continues to operate the enterprise or business, the

successor employer shall assume the position of the predecessor employer or employers with respect to the predecessors' payrolls, contributions, accounts, and contribution rates to the same extent as if no change had taken place in the ownership or control of the enterprise or business. However, the successor employer shall not assume the position of the predecessor employer or employers with respect to the predecessor employer's or employers' payrolls, contributions, accounts, and contribution rates which are attributable to that part of the enterprise or business transferred, unless the successor employer applies to the division within sixty days from the date of the partial transfer, and the succession is approved by the predecessor employer or employers and the division.

The predecessor employer, prior to entering into a contract with a successor employer relating to the sale or transfer of the enterprise or business, or a clearly segregable and identifiable part of the enterprise or business, shall disclose to the successor employer the predecessor employer's record of charges of benefits payments and any layoffs or incidences since the last record that would affect the experience record. A predecessor employer who fails to disclose or willfully discloses incorrect information to a successor employer regarding the predecessor employer's record of charges of benefits payments is liable to the successor employer for any actual damages and attorney fees incurred by the successor employer as a result of the predecessor employer's failure to disclose or disclosure of incorrect information. The division shall include notice of the requirement of disclosure in the division's quarterly notification given to each employer pursuant to paragraph "a", subparagraph (6).

The contribution rate to be assigned to the successor employer for the period beginning not earlier than the date of the succession and ending not later than the beginning of the next following rate year, shall be the contribution rate of the predecessor employer with respect to the period immediately preceding the date of the succession, provided the successor employer was not, prior to the succession, a subject employer, and only one predecessor employer, or only predecessor employers with identical rates, are involved. If the predecessor employers' rates are not identical and the successor employer is not a subject employer prior to the succession, the division shall assign the successor employer a rate for the remainder of the rate year by combining the experience of the predecessor employers. If the successor employer is a subject employer prior to the succession, the successor employer may elect to retain the employer's own rate for the remainder of the rate year, or the successor employer may apply to the division to have the employer's rate redetermined by combining the employer's experience with the experience of the predecessor employer or employers. However, if the successor employer is a subject employer prior to the succession and has had a partial transfer of the experience of the predecessor employer or employers approved, then the division shall recompute the successor employer's rate for the remainder of the rate year.

c. (1) A nonconstruction contributory employer newly subject to this chapter shall pay contributions at the rate specified in the twelfth benefit ratio rank but not less than one percent until the end of the calendar year in which the employer's account has been chargeable with benefits for twelve consecutive calendar quarters immediately preceding the computation date.

(2) A construction contributory employer, as defined under rules adopted by the division, which is newly subject to this chapter shall pay contributions at the rate specified in the twenty-first benefit ratio rank until the end of the calendar year in which the employer's account has been chargeable with benefits for twelve consecutive calendar quarters.

(3) Thereafter, the employer's contribution rate shall be determined in accordance with paragraph "d", except that the employer's average annual taxable payroll and benefit ratio may be computed, as determined by the division, for less than five periods of four consecutive calendar quarters immediately preceding the computation date.

d. The division shall determine the contribution rate table to be in effect for the rate year following the computation date, by determining the ratio of the current reserve fund ratio to the highest benefit cost ratio on the computation date. On or before the fifth day of September the division shall make available to employers the contribution rate table to be in effect for the next rate year.

(1) The current reserve fund ratio is computed by dividing the total funds available for payment of benefits, on the computation date, by the total wages paid in covered employment excluding reimbursable employment wages during the first four calendar quarters of the five calendar quarters immediately preceding the computation date.

(2) The highest benefit cost ratio is the highest of the resulting ratios computed by dividing the total benefits paid, excluding reimbursable benefits paid, during each consecutive twelve-month period, during the ten-year period ending on the computation date, by the total wages, excluding reimbursable employment wages, paid in the four calendar quarters ending nearest and prior to the last day of such twelve-month period.

If the current reserve fund ratio, divided by the highest benefit cost ratio:

Equals or exceeds	But is less than	The contribution rate table in effect shall be
—	0.3	1
0.3	0.5	2
0.5	0.7	3
0.7	0.85	4
0.85	1.0	5
1.0	1.15	6
1.15	1.30	7
1.30	—	8

“Benefit ratio” means a number computed to six decimal places on July 1 of each year obtained by dividing the average of all benefits charged to an employer during the five periods of four consecutive calendar quarters immediately preceding the computation date by the employer’s average annual taxable payroll.

Each employer qualified for an experience rating shall be assigned a contribution rate for each rate year that corresponds to the employer’s benefit ratio rank in the contribution rate table effective for the rate year from the following contribution rate tables. Each employer’s benefit ratio rank shall be computed by listing all the employers by increasing benefit

ratios, from the lowest benefit ratio to the highest benefit ratio and grouping the employers so listed into twenty-one separate ranks containing as nearly as possible four and seventy-six hundredths percent of the total taxable wages, excluding reimbursable employment wages, paid in covered employment during the four completed calendar quarters immediately preceding the computation date. If an employer’s taxable wages qualify the employer for two separate benefit ratio ranks the employer shall be afforded the benefit ratio rank assigned the lower contribution rate. Employers with identical benefit ratios shall be assigned to the same benefit ratio rank.

Benefit Ratio Rank	Approximate Cumulative Taxable Payroll Limit	Contribution Rate Tables							
		1	2	3	4	5	6	7	8
1	4.8%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2	9.5%	0.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0
3	14.3%	0.4	0.2	0.1	0.1	0.0	0.0	0.0	0.0
4	19.0%	0.7	0.4	0.3	0.2	0.1	0.0	0.0	0.0
5	23.8%	1.0	0.6	0.5	0.3	0.2	0.1	0.0	0.0
6	28.6%	1.3	0.8	0.7	0.4	0.3	0.2	0.1	0.0
7	33.3%	1.6	1.1	0.9	0.6	0.4	0.3	0.2	0.1
8	38.1%	1.9	1.4	1.1	0.8	0.5	0.4	0.3	0.2
9	42.8%	2.2	1.7	1.3	1.0	0.6	0.5	0.4	0.3
10	47.6%	2.5	2.0	1.5	1.2	0.7	0.6	0.5	0.4
11	52.4%	2.8	2.4	1.8	1.4	0.8	0.7	0.6	0.5
12	57.1%	3.1	2.8	2.1	1.6	0.9	0.8	0.7	0.6
13	61.9%	3.6	3.2	2.4	1.8	1.1	0.9	0.8	0.7
14	66.6%	4.1	3.6	2.9	2.2	1.4	1.0	0.9	0.8
15	71.4%	4.7	4.2	3.4	2.6	1.8	1.1	1.0	0.9
16	76.2%	5.4	4.8	4.2	3.3	2.5	1.6	1.1	1.0
17	80.9%	6.1	5.4	5.4	4.3	3.5	2.4	1.6	1.1
18	85.7%	7.0	6.7	6.3	5.4	5.4	3.9	2.5	1.3
19	90.4%	8.0	8.0	7.3	6.6	6.0	5.4	3.9	2.3
20	95.2%	8.5	8.5	8.5	7.8	7.2	6.4	5.4	3.8
21	100.0%	9.0	9.0	9.0	9.0	8.4	7.4	6.4	5.4

e. The division shall fix the contribution rate for each employer and notify the employer of the rate. An employer may appeal to the division for a revision of the contribution rate within thirty days from the date of the notice to the employer. After providing an opportunity for a hearing, the division may affirm, set aside, or modify its former determination and may grant the employer a new contribution rate. The division shall notify the employer of its decision by regular mail. Judicial review of action of the division may be sought pursuant to chapter 17A.

If an employer’s account has been charged with benefits as the result of a decision allowing benefits and the decision is reversed, the employer may ap-

peal, within thirty days from the date of the next contribution rate notice, for a recomputation of the rate. If a base period employer’s account has been charged with benefits paid to an employee at a time when the employee was employed by the base period employer in the same employment as in the base period, the employer may appeal, within thirty days from the date of the first notice of the employer’s contribution rate which is based on the charges, for a recomputation of the rate.

f. If an employer has not filed a contribution and payroll quarterly report, as required pursuant to section 96.11, subsection 7, for a calendar quarter which precedes the computation date and upon which the

employer's rate of contribution is computed, the employer's average annual taxable payroll shall be computed by considering the delinquent quarterly reports as containing zero taxable wages.

If a delinquent quarterly report is received by September 30 following the computation date the contribution rate shall be recomputed by using the taxable wages in all the appropriate quarterly reports on file to determine the average annual taxable payroll.

If a delinquent quarterly report is received after September 30 following the computation date the contribution rate shall not be recomputed, unless the rate is appealed in writing to the division under paragraph "e" and the delinquent quarterly report is also submitted not later than thirty days after the division notifies the employer of the rate under paragraph "e".

3. *Determination and assessment of contributions.*

a. As soon as practicable and in any event within two years after an employer has filed reports, as required pursuant to section 96.11, subsection 7, the division shall examine the reports and determine the correct amount of contributions due, and the amount so determined by the division shall be the contributions payable. If the contributions found due are greater than the amount paid, the division shall send a notice by certified mail to the employer with respect to the additional contributions and interest assessed. A lien shall attach as provided in section 96.14, subsection 3, if the assessment is not paid or appealed within thirty days of the date of the notice of assessment.

b. If the division discovers from the examination of the reports required pursuant to section 96.11, subsection 7 or in some other manner that wages, or any portion of wages, payable for employment, have not been listed in the reports, or that reports were not filed when due, or that reports have been filed showing contributions due but contributions in fact have not been paid, the division shall at any time within five years after the time the reports were due, determine the correct amount of contributions payable, together with interest and any applicable penalty as provided in this chapter. The division shall send a notice by certified mail to the employer of the amount assessed and a lien shall attach as provided in paragraph "a".

c. The certificate of the division to the effect that contributions have not been paid, that reports have not been filed, or that information has not been furnished as required under the provisions of this chapter, is prima facie evidence of the failure to pay contributions, file reports, or furnish information.

4. *Employer liability determination.* The division shall initially determine all questions relating to the liability of an employing unit or employer, including the amount of contribution, the contribution rate, and successorship. A copy of the initial determination shall be sent by regular mail to the last address, according to the records of the division, of each affected employing unit or employer.

The affected employing unit or employer may appeal in writing to the division from the initial determination. An appeal shall not be entertained for any reason by the division unless the appeal is filed with the division within thirty days from the date on which the initial determination is mailed. If an appeal is not so filed, the initial determination shall with the expiration of the appeal period become final and conclusive in all respects and for all purposes.

A hearing on an appeal shall be conducted according to rules adopted by the division. A copy of the decision of the administrative law judge shall be sent by regular mail to the last address, according to the records of the division, of each affected employing unit or employer.

The division's decision on the appeal shall be final and conclusive as to the liability of the employing unit or employer unless the employing unit or employer files an appeal for judicial review within thirty days after the date of mailing of the decision as provided in subsection 5.

5. *Judicial review.* Notwithstanding chapter 17A, petitions for judicial review may be filed in the district court of the county in which the employer resides, or in which the employer's principal place of business is located, or in the case of a nonresident not maintaining a place of business in this state either in a county in which the wages payable for employment were earned or paid or in Polk county, within thirty days after the date of the notice to the employer of the division's final determination as provided for in subsection 2, 3, or 4.

The petitioner shall file with the clerk of the district court a bond for the use of the respondent, with sureties approved by the clerk, with any penalty to be fixed and approved by the clerk. The bond shall not be less than fifty dollars and shall be conditioned on the petitioner's performance of the orders of the court. In all other respects, the judicial review shall be in accordance with chapter 17A.

6. *Jeopardy assessments.* If the division believes that the collection of contributions payable or benefits reimbursable will be jeopardized by delay, the division may immediately make an assessment of the estimated amount of contributions due or benefits reimbursable, together with interest and applicable penalty, and demand payment from the employer. If the payment is not made, the division may immediately file a lien against the employer which may be followed by the issuance of a distress warrant.

The division shall be permitted to accept a bond from the employer to satisfy collection until the amount of contributions due is determined. The bond shall be in an amount deemed necessary, but not more than double the amount of the contributions involved, with securities satisfactory to the division.

7. *Financing benefits paid to employees of governmental entities.*

a. A governmental entity which is an employer under this chapter shall pay benefits in a manner

provided for a reimbursable employer unless the governmental entity elects to make contributions as a contributory employer. The election shall be effective for a minimum of one calendar year and may be changed if an election is made to become a reimbursable employer prior to December 1 for a minimum of the following calendar year.

However, if on the effective date of the election the governmental entity has a negative balance in its contributory account, the governmental entity shall pay to the fund within a time period determined by the division the amount of the negative balance and shall immediately become liable to reimburse the unemployment compensation fund for benefits paid in lieu of contributions. Regular or extended benefits paid after the effective date of the election, including those based on wages paid while the governmental entity was a contributory employer, shall be billed to the governmental entity as a reimbursable employer.

b. A governmental entity electing to make contributions as a contributory employer, with at least eight consecutive calendar quarters immediately preceding the computation date throughout which the employer's account has been chargeable with benefits, shall be assigned a contribution rate under this paragraph. Contribution rates shall be assigned by listing all governmental contributory employers by decreasing percentages of excess from the highest positive percentage of excess to the highest negative percentage of excess. The employers so listed shall be grouped into seven separate percentage of excess ranks each containing as nearly as possible one-seventh of the total taxable wages of governmental entities eligible to be assigned a rate under this paragraph.

As used in this subsection, "percentage of excess" means a number computed to six decimal places on July 1 of each year obtained by dividing the excess of all contributions attributable to an employer over the sum of all benefits charged to an employer by the employer's average annual payroll. An employer's percentage of excess is a positive number when the total of all contributions paid to an employer's account for all past periods to and including those for the quarter immediately preceding the rate computation date exceeds the total benefits charged to such account for the same period. An employer's percentage of excess is a negative number when the total of all contributions paid to an employer's account for all past periods to and including those for the quarter immediately preceding the rate computation date is less than the total benefits charged to such account for the same period.

As used in this subsection, "average annual taxable payroll" means the average of the total amount of taxable wages paid by an employer for insured work during the three periods of four consecutive calendar quarters immediately preceding the computation date. However, for an employer which qualifies on any computation date for a computed rate on the basis of less than twelve consecutive calendar quarters of chargeability immediately preceding the

computation date, "average annual taxable payroll" means the average of the employer's total amount of taxable wages for the two periods of four consecutive calendar quarters immediately preceding the computation date.

The division shall annually calculate a base rate for each calendar year. The base rate is equal to the sum of the benefits charged to governmental contributory employers in the calendar year immediately preceding the computation date plus or minus the difference between the total benefits and contributions paid by governmental contributory employers since January 1, 1980, which sum is divided by the total taxable wages reported by governmental contributory employers during the calendar year immediately preceding the computation date, rounded to the next highest one-tenth of one percent. Excess contributions from the years 1978 and 1979 shall be used to offset benefits paid in any calendar year where total benefits exceed total contributions of governmental contributory employers. The contribution rate as a percentage of taxable wages of the employer shall be assigned as follows:

If the percentage of excess rank is:	The contribution rate shall be:	Approximate cumulative taxable payroll
1	Base Rate - 0.9	14.3
2	Base Rate - 0.6	28.6
3	Base Rate - 0.3	42.9
4	Base Rate	57.2
5	Base Rate + 0.3	71.5
6	Base Rate + 0.6	85.8
7	Base Rate + 0.9	100.0

If a governmental contributory employer is grouped into two separate percentage of excess ranks, the employer shall be assigned the lower contribution rate of the two percentage of excess ranks. Notwithstanding the provisions of this paragraph, a governmental contributory employer shall not be assigned a contribution rate less than one-tenth of one percent of taxable wages unless the employer has a positive percentage of excess greater than five percent.

Governmental entities electing to be contributory employers which are not eligible to be assigned a contribution rate under this paragraph shall be assigned the base rate as a contribution rate for the calendar year.

c. For the purposes of this subsection, "governmental reimbursable employer" means an employer which makes payments to the division for the unemployment compensation fund in an amount equal to the regular and extended benefits paid, which are based on wages paid for service in the employ of the employer. Benefits paid to an eligible individual shall be charged against the base period employers in the inverse chronological order in which the employment of the individual occurred. However, the amount of benefits charged against an employer for

a calendar quarter of the base period shall not exceed the amount of the individual's wage credits based upon employment with that employer during that quarter. At the end of each calendar quarter, the division shall bill each governmental reimbursable employer for benefits paid during that quarter. Payments by a governmental reimbursable employer shall be made in accordance with subsection 8, paragraph "b", subparagraphs (2) through (5).

d. A state agency, board, commission, or department, except a state board of regents' institution, shall, after approval of the billing for a governmental reimbursable employer as provided in subsection 8, paragraph "b", submit the billing to the director of revenue and finance. The director of revenue and finance shall pay the approved billing out of any funds in the state treasury not otherwise appropriated. A state agency, board, commission, or department shall reimburse the director of revenue and finance out of any revolving, special, trust, or federal fund from which all or a portion of the billing can be paid, for payments made by the director of revenue and finance on behalf of the agency, board, commission, or department.

e. If an enterprise or business of a reimbursable government entity is sold or otherwise transferred to a subsequent employing unit and the successor employing unit continues to operate the enterprise or business, the successor employing unit shall assume the position of the reimbursable government entity with respect to the reimbursable government entity's payroll and reimbursable benefits to the same extent as if no change in the ownership or control of the enterprise or business had occurred, whether or not the successor employer elected or elects, or was or is eligible to elect, to become a reimbursable employer with respect to the employer's payroll prior to the sale or transfer of the enterprise or business.

f. If a reimbursable instrumentality of the state or of a political subdivision is discontinued other than by sale or transfer to a subsequent employing unit as described in paragraph "e", the state or the political subdivision, respectively, shall reimburse the division of job service for benefits paid to former employees of the instrumentality after the instrumentality is discontinued.

8. *Financing benefits paid to employees of nonprofit organizations.*

a. A nonprofit organization which is, or becomes, subject to this chapter, shall pay contributions under subsections 1 and 2, unless the nonprofit organization elects, in accordance with this paragraph, to reimburse the unemployment compensation fund for benefits paid in an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, which are based on wages paid for service in the employ of the nonprofit organization during the effective period of the election.

(1) A nonprofit organization may elect to become a reimbursable employer for a period of not less than two calendar years by filing with the division a written notice of its election not later than

thirty days prior to the beginning of the calendar year for which the election is to be effective.

(2) A nonprofit organization which makes an election in accordance with subparagraph (1) shall continue to be a reimbursable employer until the nonprofit organization files with the division a written notice terminating its election not later than thirty days prior to the beginning of the calendar year for which the termination is to be effective.

(3) The division may for good cause extend the period within which a notice of election or termination of election must be filed and may permit an election or termination of election to be retroactive.

(4) The division, in accordance with rules, shall notify each nonprofit organization of any determination made by the division of the status of the nonprofit organization as an employer and of the effective date of any election or termination of election. A determination is subject to appeal and review in accordance with subsections 4 and 5.

b. Reimbursements for benefits paid in lieu of contributions shall be made in accordance with the following:

(1) At the end of each calendar quarter, the division shall bill each nonprofit organization which has elected to reimburse the unemployment compensation fund for benefits paid in an amount equal to the full amount of regular benefits and one-half of the amount of extended benefits paid during the quarter which are based on wages paid for service in the employ of the organization. Benefits paid to an individual shall be charged against the base period employers in the inverse chronological order in which the employment of the individual occurred. However, the amount of benefits charged against an employer for a calendar quarter of the base period shall not exceed the amount of the individual's wage credits based upon employment with that employer during that quarter.

(2) The nonprofit organization shall pay the bill not later than thirty days after the bill was mailed or otherwise delivered to the last known address of the nonprofit organization, unless the nonprofit organization has filed an application for redetermination in accordance with subparagraph (4).

(3) Reimbursements made by a nonprofit organization shall not be deducted, in whole or in part, from the wages of individuals in the employ of the nonprofit organization.

(4) The amount due specified in a bill from the division is conclusive unless, not later than fifteen days following the date the bill was mailed or otherwise delivered to the last known address of the nonprofit organization, the nonprofit organization files an application for redetermination with the division setting forth the grounds for the application. The division shall promptly review the amount due specified in the bill and shall issue a redetermination. The redetermination is conclusive on the nonprofit organization unless, not later than thirty days after the redetermination was mailed or otherwise delivered to the last known address of the nonprofit organiza-

tion, the nonprofit organization files an appeal to the district court pursuant to subsection 5.

(5) The provisions for collection of contributions under section 96.14 are applicable to reimbursements for benefits paid in lieu of contributions.

(6) If an enterprise or business of a reimbursable nonprofit organization is sold or otherwise transferred to a subsequent employing unit and the successor employing unit continues to operate the enterprise or business, the successor employing unit shall assume the position of the reimbursable nonprofit organization with respect to the nonprofit organization's payroll and reimbursable benefits to the same extent as if no change in the ownership or control of the enterprise or business had occurred, whether or not the successor employer elected or elects, or was or is eligible to elect, to become a reimbursable employer with respect to the employer's payroll prior to the sale or transfer of the enterprise or business.

9. Reserved.

10. *Group accounts.* Two or more nonprofit organizations or two or more governmental entities which have become reimbursable employers in accordance with subsection 7 or subsection 8, paragraph "a", may file a joint application to the division for the establishment of a group account for the purpose of sharing the cost of benefits paid which are attributable to service in the employ of the employers. The application shall identify and authorize a group representative to act as the group's agent for the purposes of this subsection. Upon approval of the application, the division shall establish a group account for the employers effective as of the beginning of the calendar quarter in which the division receives the application and shall notify the group's agent of the effective date of the account. The account shall remain in effect for not less than one year until terminated at the discretion of the division or upon application by the group. Upon establishment of the account, each employer member of the group shall be liable for benefit reimbursements in lieu of contributions with respect to each calendar quarter in an amount which bears the same ratio to the total benefits paid in the quarter which are attributable to service performed in the employ of all members of the group, as the total wages paid for service performed in the employ of the member in the quarter bear to the total wages paid for service performed in the employ of all members of the group in the quarter. The division shall adopt rules with respect to applications for establishment, maintenance, and termination of group accounts, for addition of new members to, and withdrawal of active members from group accounts, and for the determination of the amounts which are payable by members of the group and the time and manner of the payments.

11. *Temporary emergency surcharge.* If on the first day of the third month in any calendar quarter, the division has an outstanding balance of interest accrued on advance moneys received from the federal government for the payment of unemployment

compensation benefits, or is projected to have an outstanding balance of accruing federal interest for that calendar quarter, the division shall collect a uniform temporary emergency surcharge for that calendar quarter, retroactive to the beginning of that calendar quarter. The surcharge shall be a percentage of employer contribution rates and shall be set at a uniform percentage, for all employers subject to the surcharge, necessary to pay the interest accrued on the moneys advanced to the division by the federal government, and to pay any additional federal interest which will accrue for the remainder of that calendar quarter. The surcharge shall apply to all employers except governmental entities, nonprofit organizations, and employers assigned a zero contribution rate. The division shall adopt rules prescribing the manner in which the surcharge will be collected. Interest shall accrue on all unpaid surcharges under this subsection at the same rate as on regular contributions and shall be collectible in the same manner. The surcharge shall not affect the computation of regular contributions under this chapter.

A special fund to be known as the temporary emergency surcharge fund is created in the state treasury. The special fund is separate and distinct from the unemployment compensation fund. All contributions collected from the temporary emergency surcharge shall be deposited in the special fund. The special fund shall be used only to pay interest accruing on advance moneys received from the federal government for the payment of unemployment compensation benefits. Interest earned upon moneys in the special fund shall be deposited in and credited to the special fund.

If the division determines on June 1 that no outstanding balance of interest due has accrued on advanced moneys received from the federal government for the payment of unemployment compensation benefits, and that no outstanding balance is projected to accrue for the remainder of the calendar year, the division shall notify the treasurer of state of its determination. The treasurer of state shall immediately transfer all moneys, including accrued interest, in the temporary emergency surcharge fund to the unemployment compensation fund for the payment of benefits.

12. *Administrative contribution surcharge — fund.*

a. An employer other than a governmental entity or a nonprofit organization, subject to this chapter, shall pay an administrative contribution surcharge equal in amount to one-tenth of one percent of federal taxable wages, as defined in section 96.19, subsection 20, paragraph "b". The division shall recompute the amount as a percentage of taxable wages, as defined in section 96.19, subsection 20, and shall add the percentage surcharge to the employer's contribution rate determined under this section. The division shall adopt rules prescribing the manner in which the surcharge will be collected. Interest shall accrue on all unpaid surcharges under this subsection at the same rate as on regular contributions and shall be collectible in the same manner.

b. A special fund to be known as the administrative contribution surcharge fund is created in the state treasury. The fund is separate and distinct from the unemployment compensation fund. All contributions collected from the administrative contribution surcharge shall be deposited in the fund. Interest earned upon moneys in the fund shall be deposited in and credited to the fund.

c. Moneys in the fund shall be used by the division only upon appropriation by the general assembly and only for personnel and nonpersonnel costs of rural and satellite job service offices in population centers of less than twenty thousand or for the division-approved training fund funded in section 8, subsection 2, of 1988 Iowa Acts, chapter 1274.

d. This subsection is repealed July 1, 1994, and the repeal is applicable to contribution rates for calendar year 1995 and subsequent calendar years.

91 Acts, ch 45, §5 HF 459, 91 Acts, ch 268, §426 SF 529
See Code editor's note to §15 287
Subsection 9 stricken

96.8 Conditions and requirements.

1. *Period of coverage.* Any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be subject to this chapter during the whole of such calendar year.

2. *Voluntary termination.* Except as otherwise provided in subsection 3 of this section, an employing unit ceases to be an employer subject to this chapter, as of the first day of January of any year, if it files with the division of job service, prior to the fifteenth day of February of that year, a written application for termination of coverage, and the division finds that the employing unit did not meet any of the qualifying liability requirements as provided under section 96.19, subsection 5, in the preceding calendar year.

3. *Election by employer.*

a. An employing unit, not otherwise subject to this chapter, which files with the division of job service its written election to become an employer subject hereto for not less than two calendar years, shall with the written approval of such election by the division, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if prior to the fifteenth day of February of such year, it has filed with the division a written notice to that effect.

b. Any employing unit for which services that do not constitute employment as defined in this chapter are performed, may file with the division a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this chapter for not less than two calendar years. Upon the written approval of such election by the division, such services shall be deemed to constitute employment subject to this chapter from and after the date

stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if prior to the fifteenth day of February of such year such employing unit has filed with the division a written notice to that effect.

4. *Transfer or discontinuance of business.*

a. In any case in which the enterprise or business of a subject employer has been sold or otherwise transferred to a subsequent employing unit or reorganized or merged into a single employing unit under the provisions of section 96.7, subsection 2, paragraph "b", the account of the transferring employer shall terminate as of the date on which such transfer, reorganization or merger was completed.

b. In any case in which the enterprise or business of a subject employer has been discontinued otherwise than by sale or transfer to a subsequent employing unit and such employer has had no employment for a period of one year, the division of job service may, on its own motion, terminate said account.

5. *Liability of certain employers.* Employers who by election or determination of the division of job service are liable for payments in lieu of contributions shall not be relieved of any regular benefit charges or extended benefit charges, except for those charges which are determined to be incorrect because of an error by the division of job service.

91 Acts, ch 45, §6 HF 459
Subsection 5 amended

96.9 Control, management, and use.

1. *Establishment and control.* There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the division of job service exclusively for the purposes of this chapter. This fund shall consist of:

- a. All contributions collected under this chapter,
- b. Interest earned upon any moneys in the fund,
- c. Any property or securities acquired through the use of moneys belonging to the fund,
- d. All earnings of such property or securities, and
- e. All money credited to this state's account in the unemployment trust fund pursuant to section 903 of the Social Security Act [42 USC § 501 to 503, 1103 to 1105, 1321 to 1324]. All moneys in the unemployment compensation fund shall be mingled and undivided.

2. *Accounts and deposits.* The state treasurer shall be ex officio treasurer and custodian of the fund and shall administer such fund in accordance with the directions of the division of job service. The director of revenue and finance shall issue warrants upon the fund pursuant to the order of the division of job service and such warrants shall be paid from the fund by the treasurer. The treasurer shall maintain within the fund three separate accounts:

- a. A clearing account.
- b. An unemployment trust fund account.
- c. A benefit account. All moneys payable to the

unemployment compensation fund and all interest and penalties on delinquent contributions and reports shall, upon receipt thereof by the division, be forwarded to the treasurer who shall immediately deposit them in the clearing account, but the interest and penalties on delinquent contributions and reports shall not be deemed to be a part of the fund. Refunds of contributions payable pursuant to section 96.14 shall be paid by the treasurer from the clearing account upon warrants issued by the director of revenue and finance under the direction of the division of job service. After clearance thereof, all other moneys in the clearing account, except interest and penalties on delinquent contributions and reports, shall be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act as amended, any provisions of law in this state relating to the deposit, administration, release or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. Interest and penalties on delinquent contributions and reports collected from employers shall be transferred from the clearing account to the special employment security contingency fund. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund for the payment of benefits. Except as herein otherwise provided moneys in the clearing and benefit account may be deposited by the treasurer, under the direction of the division, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall give a separate bond conditioned upon the faithful performance of the treasurer's duties as custodian of the fund in an amount fixed by the governor and in form and manner prescribed by law. Premiums for said bond shall be paid from the administration fund.

Interest paid upon the moneys deposited with the secretary of the treasury of the United States shall be credited to the unemployment compensation fund.

3. *Withdrawals.* Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the division of job service, except that money credited to this state's account pursuant to section 903 of the Social Security Act may, subject to the conditions prescribed in subsection 4 of this section, be used for the payment of expenses incurred for the administration of this chapter. The division shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to the account of this state therein, as the division deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account, and shall disburse such moneys upon warrants

drawn by the director of revenue and finance pursuant to the order of the division of job service for the payment of benefits solely from such benefit account. Expenditures of such moneys from the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued by the director of revenue and finance for the payment of benefits and refunds shall bear the signature of the director of revenue and finance. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the division of job service, shall be redeposited with the secretary of the treasury of the United States, to the credit of this state's account in the unemployment trust fund, as provided in subsection 2 of this section.

4. *Money credited under section 903 of the Social Security Act.*

a. Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to section 903 of the Social Security Act may not be requisitioned from this state's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of this chapter. Such money may be requisitioned pursuant to subsection 3 of this section for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of this chapter but only pursuant to a specific appropriation by the legislature and only if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which (1) specifies the purposes for which such money is appropriated and the amounts appropriated therefor, (2) limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law, and (3) limits the amount which may be obligated during a twelve-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which the aggregate of the amounts transferred to the account of this state pursuant to section 903 of the Social Security Act exceeds the aggregate of the amounts used by this state pursuant to this chapter and charged against the amounts transferred to the account of this state during the same twelve-month period. For purposes of this subsection, amounts used by this state for administration shall be chargeable against transferred amounts at the exact time the obligation is entered into. The use of money appropriated under this subsection shall be accounted for in accordance with standards established by the United States secretary of labor.

b. Money requisitioned as provided herein for

the payment of expenses of administration shall be deposited in the employment security administration fund, but, until expended, shall remain a part of the unemployment compensation fund. The treasurer of state shall maintain a separate record of the deposit, obligation, expenditure and return of funds so deposited. Any money so deposited which either will not be obligated within the period specified by the appropriation law or remains unobligated at the end of the period, and any money which has been obligated within the period but will not be expended, shall be returned promptly to the account of this state in the unemployment trust fund.

5. *Administration expenses excluded.* Any amount credited to this state's account in the unemployment trust fund under section 903 of the Social Security Act which has been appropriated for expenses of administration pursuant to subsection 4 of this section, whether or not withdrawn from such account, shall not be deemed assets of the unemployment compensation fund for the purpose of computing contribution rates under section 96.7, subsection 3, of this chapter.

6. *Management of funds in the event of discontinuance of unemployment trust fund.* The provisions of subsections 1, 2, and 3 to the extent that they relate to the unemployment trust fund shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein, belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the commissioner, treasurer of state and governor, in accordance with the provisions of this chapter: Provided, that such moneys shall be invested in the following readily marketable classes of securities; such securities as are authorized by the laws of the state of Iowa for the investment of trust funds. The treasurer shall dispose of securities and other properties belonging to the unemployment compensation fund only under the direction of the commissioner, treasurer of state and governor.

7. *Transfer to railroad account.* Notwithstanding any requirements of the foregoing subsections of this section, the commission shall, prior to July 1, 1939, authorize and direct the secretary of the treasury of the United States to transfer from this state's account in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act as amended, to the railroad unemployment insurance account, established and maintained

pursuant to section 10 of the Railroad Unemployment Insurance Act*, an amount hereinafter referred to as the preliminary amount; and shall, prior to January 1, 1940, authorize and direct the secretary of the treasury of the United States to transfer from this state's account in said unemployment trust fund to said railroad unemployment insurance account an additional amount, hereinafter referred to as the liquidating amount. The social security board shall determine both such amounts after consultation with the commission and the railroad retirement board. The preliminary amount shall consist of that proportion of the balance in the unemployment compensation fund as of June 30, 1939, as the total amount of contributions collected from "employers" as the term "employer" is defined in section 1 "a" of the Railroad Unemployment Insurance Act, and credited to the unemployment compensation fund bears to all contributions theretofore collected under this chapter and credited to the unemployment compensation fund. The liquidating amount shall consist of the total amount of contributions collected from "employers" as the term "employer" is defined in section 1 "a" of the Railroad Unemployment Insurance Act pursuant to the provisions of this chapter during the period July 1, 1939, to December 31, 1939.

8. *Cancellation of warrants.* The director of revenue and finance, as of January 1, April 1, July 1, and October 1 of each year, shall stop payment on all warrants for the payment of benefits which have been outstanding and unredeemed by the state treasurer for six months or longer. Should the original warrants subsequently be presented for payment, warrants in lieu thereof shall be issued by the director of revenue and finance at the discretion of and certification by the division of job service.

⁹¹ Acts, ch 45, §7, 8 HF 459

*See 45 USC, ch 11

¹⁹⁹¹ amendments to subsection 4 effective October 1, 1991, 91 Acts, ch 45, §12 HF 459

Subsection 4, paragraph a amended

Subsection 4, paragraph b stricken and former paragraph c relettered as b

96.11 Duties, powers, rules — advisory council — privilege.

1. *Duties and powers of commissioner.* It shall be the duty of the commissioner to administer this chapter; and the commissioner 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 commissioner deems necessary or suitable to that end. Not later than the fifteenth day of December of each year, the commissioner 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 commissioner deems proper. Such report shall include a balance sheet of the moneys in the fund. Whenever the commissioner believes that a change in contribution or benefits rates will become necessary to protect the

solvency of the fund, the commissioner 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 division of job service 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 division to each employer without cost to the employer.

3. *Publications.* The commissioner shall cause to be printed for distribution to the public the text of this chapter, the division of job service's general rules, its annual reports to the governor, and any other material the commissioner deems relevant and suitable and shall furnish the same to any person upon application therefor.

The department shall prepare and distribute to the public as labor force data, only that data adjusted according to the current population survey and other nonlabor force statistics which the department determines are of interest to the public.

4. *Bonds.* The commissioner 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 division of job service.

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 commissioner at least quarterly to discuss problems relating to the administration of this chapter and may meet more often upon the call of the commissioner.

The advisory council annually shall elect a chairperson.

6. *Employment stabilization.* The commissioner with the advice and aid of the advisory council, and through the appropriate bureaus of the division, 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 dis-

tricts, 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, reports, and confidentiality.*

a. An employing unit shall keep true and accurate work records, containing information required by the division. The records shall be open to inspection and copying by an authorized representative of the division at any reasonable time and as often as necessary. An authorized representative of the division may require from an employing unit a sworn or unsworn report, with respect to individuals employed by the employing unit, which the division deems necessary for the effective administration of this chapter.

b. (1) The division shall hold confidential the information obtained from an employing unit or individual in the course of administering this chapter and the initial determination made by a representative of the division under section 96.6, subsection 2, as to the benefit rights of an individual. The division shall not disclose or open this information for public inspection in a manner that reveals the identity of the employing unit or the individual, except as provided in subparagraph (3) or paragraph "c".

(2) A report or statement, whether written or verbal, made by a person to a representative of the division or to another person administering this law is a privileged communication. A person is not liable for slander or libel on account of the report or statement unless the report or statement is made with malice.

(3) Information obtained from an employing unit or individual in the course of administering this chapter and an initial determination made by a representative of the division 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 division 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 division's possession which may affect a claim for benefits or a change in an employer's rating account shall be made available to the interested parties. The information may be used by the interested 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 division by rule prescribes, information obtained from an employing unit or individual in the course of administering this chapter and an initial determination made by a representative of the division under section 96.6, sub-

section 2, as to benefit rights of an individual may be made available for purposes consistent with the purposes of this chapter 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 internal revenue service of the United States department of the treasury.

(3) The Iowa department of revenue and finance.

(4) The social security administration of the United States department of health and human services.

(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 individuals.

(6) Colleges, universities, and public agencies of this state for use in connection with research of a public nature, provided the division does not reveal the identity of an employing unit or individual.

(7) An employee of the department, a member of the general assembly, or a member of the United States congress in connection with the employee's or member's official duties.

(8) A political subdivision, governmental entity, or nonprofit organization having an interest in the administration of job training programs established pursuant to the federal Job Training Partnership Act.

(9) The United States department of housing and urban development and representatives of a public housing agency.

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 the law of this or another state or federal law, or which is charged with a duty or responsibility under the program, and if the agency is required by law to impose safeguards for the confidentiality of information at least as effective as required under this subsection, then the division shall provide to the requesting agency, with respect to any named individual without regard to paragraph "g", any of the following information:

(1) Whether the individual is receiving or has received benefits, or has made an application for benefits under this chapter.

(2) The period, if any, for which benefits were payable and the weekly benefit amount.

(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) The individual's wage information.

e. The division may require an agency which is provided information under this subsection to reimburse the division for the costs of furnishing the information.

f. An employee of the division, an administrative law judge, or a member of the appeal board who violates this subsection is guilty, upon conviction, of a serious misdemeanor.

g. Information subject to the confidentiality of this subsection shall not be directly released to any authorized agency unless an attempt is made to provide written notification to the individual involved. Information released in accordance with criminal investigations by a law enforcement agency of this state, another state, or the federal government is exempt from this requirement.

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 division of job service 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 division of job service, 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 division 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 division of job service, 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 division of job service shall co-operate with the United States department of labor to the fullest extent consistent with the pro-

visions 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 division 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 division 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 division 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 division 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 division shall pay the division such compensation therefor as the division determines to be fair and reasonable.

12. *Destruction of records.* The division 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 division and are deemed by the commissioner 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 commissioner 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 division.

13. *Purging uncollectible overpayments.* Notwithstanding any other provision of this chapter, the division of job service shall review all outstanding overpayments of benefit payments annually. The division 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.

14. *Access to available jobs list.* The division of job service shall make available for consultation by the public, at each of the division's offices, a list of current job openings listed with the division, provided that the list shall comply with the confidentiality requirements of subsection 7, or those mandated by the federal government.

15. *Special contractor numbers.* For purposes of contractor registration under chapter 91C, the division of job service shall provide for the issuance of special contractor numbers to contractors for whom employer accounts are not required under this chapter. A contractor who is not in compliance with the requirements of this chapter shall not be issued a special contractor number.

16. *Reimbursement of setoff costs.* The division shall include in the amount set off in accordance with section 421.17, subsection 29 for the collection of an overpayment created pursuant to section 96.3, subsection 7, or section 96.16, subsection 4, an additional amount for the reimbursement of setoff costs incurred by the department of revenue and finance.

91 Acts, ch 45, §9 HF 459
NEW subsection 16

96.13 Control and use.

1. *Special fund.* There is hereby created in the state treasury a special fund to be known as the "Employment Security Administration Fund". All moneys which are deposited or paid into this fund are hereby appropriated and made available to the division of job service. All moneys in this fund, except money received pursuant to section 96.9, subsection 4, which are received from the federal government or any agency thereof or which are appropriated by the state for the purposes described in section 96.12 shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this chapter. This fund shall consist of all moneys appropriated by this state, and all moneys received from the United States, or any agency thereof, including the department of labor, the railroad retirement board, the United States employment service, established under the Wagner-Peyser Act, or from any other source for such purpose. Moneys received from the railroad retirement board, or any other agency, as compensation for services or facilities supplied to said board or agency shall be paid to the division, and the division shall allocate said moneys to the employment security administration fund. All moneys in this fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law

for special funds in the state treasury. Any balances in this fund shall not lapse at any time, but shall be continuously available to the division for expenditure consistent with this chapter. The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of the treasurer's duties in connection with the employment security administration fund in an amount and with such sureties as shall be fixed and approved by the governor. The premiums for such bond and the premiums for the bond given by the treasurer of the unemployment compensation fund under section 96.9, shall be paid from the moneys in the employment security administration fund. Notwithstanding any provision of this section, all money requisitioned and deposited in this fund pursuant to section 96.9, subsection 4, paragraph "b", shall remain part of the unemployment compensation fund and shall be used only in accordance with the conditions specified in section 96.9, subsection 4.

2. *Replenishment of lost funds.* If any moneys received after June 30, 1941, from the social security board under Title III of the Social Security Act, or any unencumbered balances in the unemployment compensation administration fund as of that date, or any moneys granted after that date to this state pursuant to the provisions of the Wagner-Peyser Act, or any moneys made available by this state or its political subdivisions and matched by such moneys granted to this state pursuant to the provisions of the Wagner-Peyser Act, are found by the social security board, because of any action or contingency, to have been lost or been expended for purposes other than or in amounts in excess of, those found necessary by the social security board for the proper administration of this chapter, it is the policy of this state that such moneys shall be replaced by moneys appropriated for such purpose from the general funds of this state to the unemployment compensation administration fund for expenditure as provided in subsection 1 of this section. Upon receipt of notice of such a finding by the social security board, the department shall promptly report the amount required for such replacement to the governor and the governor shall at the earliest opportunity, submit to the legislature a request for the appropriation of such amount. This subsection shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of Title III of the Social Security Act.

3. *Special employment security contingency fund.*

a. There is created in the state treasury a special fund to be known as the special employment security contingency fund. All interest, fines, and penalties, regardless of when they become payable, collected from employers under section 96.14 shall be paid into the fund. The moneys shall not be expended or available for expenditure in any manner which would permit their substitution for federal funds which would in the absence of the moneys be available to finance expenditures for the administration

of the employment security law. However, the moneys may be used as a revolving fund to cover expenditures for which federal funds have been duly requested but not yet received, subject to the charging of the expenditures against the funds when received. The moneys may be used for the payment of costs of administration which are found not to have been properly and validly chargeable against federal grants or other funds, received for or in the employment security administration fund. The moneys in the fund are specifically made available to replace, within a reasonable time, any moneys received by this state in the form of grants from the federal government for administrative expenses which because of any action or contingency have been expended for purposes other than, or in excess of, those necessary for the proper administration of the employment security law. All moneys in the fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for other special funds in the state treasury. Interest earned upon moneys in the fund shall be deposited in and credited to the fund.

The treasurer of state shall be the custodian of the fund and shall give a separate and additional bond conditioned upon the faithful performance of the treasurer's duties in connection with the fund in an amount and with sureties as shall be fixed and approved by the governor. The premium for the bond shall be paid from the moneys in the fund. All sums recovered on the bond for losses sustained by the fund shall be deposited in the fund. Refunds of interest and penalties shall be paid only from the fund.

Balances to the credit of the fund shall not lapse at any time but shall continuously be available to the division of job service for expenditures consistent with this subsection. Moneys remaining in the fund at the end of each fiscal year shall not revert to any fund and shall remain in the fund.

b. The division shall annually report to the joint regulatory and finance appropriations subcommittee on its plans for expenditures during the next state fiscal year from the special employment security contingency fund. The report shall describe the specific expenditures and explain why the expenditures are to be made from the fund and not from federal administrative funds.

c. The division may appear before the executive council and request funds to meet unanticipated emergencies.

91 Acts, ch 45, §10 HF 459

Exceptions to use of special employment security contingency fund in 1991
1992 fiscal year, 91 Acts, ch 268, §404 SF 529

Subsection 3, paragraph a, unnumbered paragraph 3 amended

96.14 Priority — refunds.

1. *Interest.* Any employer who shall fail to pay any contribution and at the time required by this chapter and the rules of the division of job service shall pay to the division in addition to such contribution, interest thereon at the rate of one percent per month and one-thirtieth of one percent for each day

or fraction thereof computed from the date upon which said contribution should have been paid.

2. *Penalties.* Any employer who shall fail to file a report of wages paid to each of the employer's employees for any period in the manner and within the time required by this chapter and the rules of the division of job service or any employer who the commission finds has filed an insufficient report and fails to file a sufficient report within thirty days after a written request from the division to do so shall pay a penalty to the division.

The penalty shall become effective with the first day the report is delinquent or, where a report is insufficient, with the thirty-first day following the written request for a sufficient report.

Penalty for failing to file a sufficient report shall be in addition to any penalty incurred for a delinquent report where the delinquent report is also insufficient.

The amount of the penalty for delinquent and insufficient reports shall be computed based on total wages in the period for which the report was due and shall be computed as follows:

Days Delinquent or Insufficient	Penalty Rate
1-60	0.1%
61-120	0.2%
121-180	0.3%
181-240	0.4%
241 or over	0.5%

A penalty shall not be less than ten dollars for the first delinquent report or the first insufficient report not made sufficient within thirty days after a request to do so. The penalty shall not be less than twenty-five dollars for the second delinquent or insufficient report, and not less than fifty dollars for each delinquent or insufficient report thereafter, until four consecutive calendar quarters of reports are timely and sufficiently filed. Interest, penalties, and cost shall be collected by the division in the same manner as provided by this chapter for contributions.

If the division finds that any employer has willfully failed to pay any contribution or part thereof when required by this chapter and the rules of the division, with intent to defraud the division, then such employer shall in addition to such contribution or part thereof, pay a contribution equal to fifty percent of the amount of such contribution or part thereof, as the case may be.

The division may cancel any interest or penalties if it is shown to the satisfaction of the division that the failure to pay a required contribution or to file a required report was not the result of negligence, fraud, or intentional disregard of the law or the rules of the division.

3. *Lien of contributions — collection.* Whenever any employer liable to pay contributions refuses or neglects to pay the same, the amount, including any interest, together with the costs that may accrue in addition thereto, shall be a lien in favor of the

state upon all property and rights to property, whether real or personal, belonging to said employer. An assessment of the unpaid contributions, interest and penalty shall be applied as provided in section 96.7, subsection 4, paragraphs "a" and "b" and the lien shall attach as of the date the assessment is mailed or personally served upon the employer. However, the division of job service may release any lien, when after diligent investigation and effort it determines that the amount due is not collectible.

In order to preserve the aforesaid lien against subsequent mortgagees, purchasers or judgment creditors, for value and without notice of the lien, on any property situated in a county, the division shall file with the recorder of the county, in which said property is located, a notice of said lien.

The county recorder of each county shall prepare and keep in the recorder's office a book to be known as "*index of unemployment contribution liens*", so ruled as to show in appropriate columns the following data, under the names of employers, arranged alphabetically:

- a. The name of the employer.
- b. The name "State of Iowa" as claimant.
- c. Time notice of lien was received.
- d. Date of notice.
- e. Amount of lien then due.
- f. When satisfied.

The recorder shall endorse on each notice of lien the day, hour, and minute when received and shall forthwith index said notice in said index book and shall forthwith record said lien in the manner provided for recording real estate mortgages, and the said lien shall be effective from the time of the indexing thereof.

The division shall pay a recording fee as provided in section 331.604, for the recording of the lien, or for its satisfaction.

Upon the payment of contributions as to which the division has filed notice with a county recorder, the division shall forthwith file with said recorder a satisfaction of said contributions and the recorder shall enter said satisfaction on the notice on file in the recorder's office and indicate said fact on the index aforesaid.

The division shall, substantially as provided in this chapter and chapter 626, proceed to collect all contributions as soon as practicable after they become delinquent, except that no property of the employer is exempt from payment of the contributions.

If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due may be collected by civil action in the name of the division and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the workers' compensation law of this state.

It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the division shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

The courts of this state shall recognize and enforce liabilities for unemployment contributions, penalties, interest and benefit overpayments imposed by other states which extend a like comity to this state. The division may sue in the courts of any other jurisdiction which extends such comity to collect unemployment contributions, penalties, interest and benefit overpayments due this state. The officials of other states which, by statute or otherwise, extend a like comity to this state may sue in the district court to collect for such contributions, penalties, interest and benefit overpayments. In any such case the commissioner, as agent for and on behalf of any other state, may institute and conduct such suit for such other state. Venue of such proceedings shall be the same as for actions to collect delinquent contributions, penalties, interest and benefit overpayments due under this chapter. A certificate by the secretary of any such state attesting the authority of such official to collect the contributions, penalties, interest and benefit overpayments, is conclusive evidence of such authority. The requesting state shall pay the court costs.

If a political subdivision or a political subdivision instrumentality becomes delinquent in the payment of contributions, any payments owed as a government employer, penalty, interest and costs for more than two calendar quarters, the amount of such delinquency shall be deducted from any further moneys due the employer by the state. Such deduction shall be made by the director of revenue and finance upon certification of the amount due. A copy of the certification will be mailed to the employer.

If an amount due from a governmental entity of this state remains due and unpaid for a period of one hundred twenty days after the due date, the commissioner shall take action as necessary to collect the amount and shall levy against any funds due the governmental entity from the state treasurer, director of revenue and finance, or any other official or agency of this state or against an account established by the entity in any bank. The official, agency or bank shall deduct the amount certified by the commissioner from any accounts or deposits or any funds due the delinquent governmental entity without regard to any prior claim and shall promptly forward the amount to the commissioner for the fund. However, the commissioner shall notify the delinquent entity of the commissioner's intent to file a levy by certified mail at least ten days prior to filing the levy on any funds due the entity from any state official or agency.

4. *Priorities under legal dissolutions or distributions.* In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated

insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages preferred as provided by statute. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section 64 "a" of that Act [11 U.S.C., § 104, "b", as amended].

5. *Refunds, compromises and settlements.* If the division of job service finds that an employer has paid contributions or interest on contributions, which have been erroneously paid or which have been paid solely due to benefits initially charged against but later removed from an employer's account, and the employer has filed an application for adjustment, the division shall make an adjustment, compromise, or settlement, and, at the employer's option, shall either refund the payments or treat the payments as voluntary contributions with no limitation on the payments' effects on the employer's contribution rate. Refunds so made shall be charged to the fund to which the collections have been credited, and shall be paid to the claimant without interest. A claim for refund shall be made within three years from the date of payment. For like cause, adjustments, compromises or refunds may be made by the division on its own initiative. If the division finds that the contribution that has been assessed against an employer is of doubtful collectibility or may not be collected in full, the division may institute a proceeding in the district court in the county in which the employer against which the tax is levied is located, requesting authority to compromise the contribution. Notice of the filing of an application shall be given to the interested parties as the court may prescribe. The court upon hearing may authorize the division to compromise and settle its claim for the contribution and shall fix the amount to be received by the division in full settlement of the claim and shall authorize the release of the division's lien for the contribution.

6. *Nonresident employing units.* Any employing unit which is a nonresident of the state of Iowa and for which services are performed in insured work within the state of Iowa and any resident employer for which such services are performed and who thereafter leaves the state of Iowa by having such services performed within the state of Iowa shall be deemed:

a. To agree that such employing unit shall be subject to the jurisdiction of the district court of the state of Iowa over all civil actions and proceedings against such employing unit for all purposes of this chapter, and

b. To appoint the secretary of state of this state as its lawful attorney upon whom may be served all original notices of suit and other legal processes pertaining to such actions and proceedings, and

c. To agree that any original notice of suit or any other legal process so served upon such nonresident

employing unit shall be of the same legal force and validity as if personally served on it in this state.

7. *Original notice — form.* The original notice of suit filed with the secretary of state shall be in form and substance the same as now provided in suits against residents of this state, except that the part of the notice pertaining to the return day shall be in substantially the following form:

And unless you appear and defend in the district court of Iowa in and for county at the courthouse in, Iowa, before noon of the sixtieth day following the filing of this notice with the secretary of state of this state, you will be adjudged in default, your default entered of record, and judgment rendered against you for the relief sought in plaintiff's petition.

8. *Manner of service.* Plaintiff in any such action shall cause the original notice of suit to be served as follows:

a. By filing a copy of said original notice of suit with said secretary of state, together with a fee of four dollars, and

b. By mailing to the defendant, and to each of the defendants if more than one, within ten days after said filing with the secretary of state, by restricted certified mail addressed to the defendant at the defendant's last known residence or place of abode, a notification of the said filing with the secretary of state.

9. *Notification to nonresident — form.* The notification, provided for in subsection 7, shall be in substantially the following form, to wit:

To (Here insert the name of each defendant and the defendant's residence or last known place of abode as definitely as known.)

You will take notice that an original notice of suit against you, a copy of which is hereto attached, was duly served upon you at Des Moines, Iowa, by filing a copy of said notice on the day of, 19....., with the secretary of state of the state of Iowa.

Dated at, Iowa, this day of, 19.....

.....
Plaintiff.
By
Attorney for Plaintiff.

10. *Optional notification.* In lieu of mailing said notification to the defendant in a foreign state, plaintiff may cause said notification to be personally served in the foreign state on the defendant by any adult person not a party to the suit, by delivering said notification to the defendant or by offering to make such delivery in case defendant refuses to accept delivery.

11. *Proof of service.* Proof of the filing of a copy of said original notice of suit with the secretary of state, and proof of the mailing or personal delivery of said notification to said nonresident shall be made

by affidavit of the party doing said acts. All affidavits of service shall be endorsed upon or attached to the originals of the papers to which they relate. All proofs of service, including the restricted certified mail return receipt, shall be forthwith filed with the clerk of the district court.

12. *Actual service within this state.* The foregoing provisions relative to service of original notice of suit on nonresidents shall not be deemed to prevent actual personal service in this state upon the nonresident in the time, manner, form, and under the conditions provided for service on residents.

13. *Venue of actions.* Actions against nonresidents as contemplated by this law may be brought in Polk county, or in the county in which such services were performed.

14. *Continuances.* The court in which such action is pending shall grant such continuances to a nonresident defendant as may be necessary to afford the defendant reasonable opportunity to defend said action.

15. *Duty of secretary of state.* The secretary of state shall keep a record of all notices of suit filed with the secretary, shall not permit said filed notices to be taken from the secretary's office except on an order of court, and shall, on request, and without fee, furnish any defendant with a certified copy of the notice in which the person is a defendant.

16. *Injunction upon nonpayment.* Any employer or employing unit refusing or failing to make and file required reports or to pay any contributions, interest or penalty under the provisions of this chapter, after ten days' written notice sent by the division of job service to the employer's or employing unit's last known address by certified mail, may be enjoined from operating any business in the state while in violation of this chapter upon the complaint of the division in the district court of a county in which the employer or employing unit has or had a place of business within the state, and any temporary injunction enjoining the continuance of such business may be granted without notice and without a bond being required from the division. Such injunction may enjoin any employer or employing unit from operating a business unit until the delinquent contributions, interest or penalties shall have been made and filed or paid; or the employer shall have furnished a good and sufficient bond conditioned upon the payment of such delinquencies in such an amount and containing such terms as may be determined by the court; or the employer has entered into a plan for the liquidation of such delinquencies as the court may approve, provided that such injunction may be reinstated upon the employer's failure to comply with the terms of said plan.

91 Acts, ch 45, §11 HF 459, 91 Acts, ch 191, §1 HF 687
1991 amendment to subsection 3, unnumbered paragraph 7, effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Subsection 2, unnumbered paragraph 5 amended
Subsection 3, unnumbered paragraph 7 amended

96.40 Voluntary shared work program.

1. An employer who wishes to participate in the shared work unemployment compensation program established under this section shall submit a written shared work plan in a form acceptable to the division for approval.

As a condition for approval by the division, a participating employer shall agree to furnish the division with reports relating to the operation of the shared work plan as requested by the division. The employer shall monitor and evaluate the operation of the established shared work plan as requested by the division and shall report the findings to the division.

2. The division may approve a shared work plan if all of the following conditions are met:

a. The employer has filed all reports required to be filed under this chapter for all past and current periods and has paid all contributions due for all past and current periods.

b. The plan certifies that the aggregate reduction in work hours is in lieu of temporary layoffs which would have affected at least ten percent of the employees in the affected unit or units to which the plan applies and which would have resulted in an equivalent reduction in work hours. "Affected unit" means a specified plant, department, shift, or other definable unit.

c. The employees in the affected unit are identified by name and social security number and consist of at least five individuals.

d. The shared work plan reduces the normal weekly hours of work for an employee in the affected unit by not less than twenty percent and not more than fifty percent with a corresponding reduction in wages. Only full-time employees who normally work between thirty-five and forty hours per week are eligible to participate.

e. The reduction in hours and corresponding reduction in wages must be applied equally to all of the full-time employees in the affected unit.

f. The plan provides that fringe benefits will continue to be provided to employees in affected units as though their workweeks had not been reduced.

g. The plan will not serve as a subsidy of seasonal employment during the off season, nor as a subsidy of temporary part-time or intermittent employment.

h. The employer certifies that the employer will not hire additional part-time or full-time employees for the affected work force while the program is in operation.

i. The duration of the shared work plan will not exceed twenty-six weeks. An employing unit is eligible for approval of only one plan during a twenty-four-month period.

j. The plan is approved in writing by the collective bargaining representative for each employee organization or union which has members in the affected unit.

3. The employer shall submit a shared work plan to the division for approval at least thirty days prior to the proposed implementation date.

4. The division may revoke approval of a shared work plan and terminate the plan if the division determines that the shared work plan is not being executed according to the terms and intent of the shared work unemployment compensation program, or if it is determined by the division that the approval of the shared work plan was based, in whole or in part, upon information contained in the plan which was either false or substantially misleading.

5. An individual who is otherwise entitled to receive regular unemployment compensation benefits under this chapter shall be eligible to receive shared work benefits with respect to any week in which the division finds all of the following:

a. The individual is employed as a member of an affected unit subject to a shared work plan that was approved before the week in question and is in effect for that week.

b. The individual is able to work, available for work, and works all available hours with the participating employer.

c. The individual's normal weekly hours of work have been reduced by at least twenty percent but not more than fifty percent, with a corresponding reduction in wages.

6. The division shall not deny shared work benefits for any week to an otherwise eligible individual by reason of the application of any provision of this chapter which relates to availability for work, active search for work, or refusal to apply for or accept work with an employer other than the participating employer under the plan.

7. The division shall pay an individual who is eligible for shared work benefits under this section a weekly shared work benefit amount equal to the individual's regular weekly benefit amount for a period of total unemployment, less any deductible amounts under this chapter except wages received from any employer, multiplied by the full percentage of reduction in the individual's hours as set forth in the employer's shared work plan. If the shared work benefit amount calculated under this subsection is not a multiple of one dollar, the division shall round the amount so calculated to the next lowest multiple of one dollar. An individual shall be ineligible for shared work benefits for any week in which the individual performs paid work for the participating employer in excess of the reduced hours established under the shared work plan.

8. An individual shall not be entitled to receive shared work benefits and regular unemployment compensation benefits in an aggregate amount which exceeds the maximum total amount of benefits payable to that individual in a benefit year as provided under section 96.3, subsection 5. Notwithstanding any other provisions of this chapter, an individual shall not be eligible to receive shared work benefits for more than twenty-six calendar weeks during the individual's benefit year.

9. Notwithstanding any other provisions of this chapter, all benefits paid under a shared work plan, which are chargeable to the participating employer

or any other base period employer of a participating employee, shall be charged to the account of the participating employer under the plan.

10. An individual who has received all of the shared work benefits and regular unemployment compensation benefits available in a benefit year shall be considered an exhaustee, as defined in sec-

tion 96.19, subsection 34, for purposes of the extended benefit program administered pursuant to section 96.29.

11. This section is repealed on February 28, 1995.

91 Acts, ch 197, §1 HF 589
NEW section

CHAPTER 97A

PUBLIC SAFETY PEACE OFFICERS' RETIREMENT, ACCIDENT AND DISABILITY SYSTEM

97A.4 Service creditable.

Service for fewer than six months of a year is not creditable as service. Service of six months or more of a year is equivalent to one year of service, but in no case shall more than one year of service be creditable for all service in one calendar year, nor shall the board of trustees allow credit as service for any period of more than one month duration during which the member was absent without pay.

Any member of the system who has been employed continuously prior to the passage of this chapter in the division of highway safety and uniformed force or the division of criminal investigation and bureau of identification in the department of public safety, or as a member of the Iowa highway safety patrol, or as a peace officer or a member of the uniformed force in any department or division whose functions were transferred to, merged, or consolidated in the department of public safety at the time such department was created, shall receive credit for such service in determining retirement and disability benefits provided for in this chapter. Arson investigators who have contributed to this system prior to July 1, 1978 shall receive credit for such service in determining retirement and disability benefits.

The board of trustees shall credit as service for a member of the system a previous period of service for which the member had withdrawn the member's accumulated contributions, as defined in section 97A.15.

90 Acts, ch 1240, §1 HF 2543

1990 amendment effective January 1, 1992, 90 Acts, ch 1240, §94 HF 2543
Unnumbered paragraph 1 amended

97A.6 Benefits.

1. *Service retirement benefit.* Retirement of a member on a service retirement allowance shall be made by the board of trustees as follows:

a. Any member in service may retire upon the member's written application to the board of trustees, setting forth at what time, not less than thirty

nor more than ninety days subsequent to the execution and filing therefor, the member desires to be retired, provided, that the said member at the time so specified for retirement shall have attained the age of fifty-five and shall have completed twenty-two years or more of creditable service, and notwithstanding that, during such period of notification, the member may have separated from the service.

b. Any member in service who has been a member of the retirement system four or more years and whose employment is terminated prior to the member's retirement, other than by death or disability, shall upon attaining retirement age, receive a service retirement allowance of four twenty-seconds of the retirement allowance the member would receive at retirement if the member's employment had not been terminated, and an additional one twenty-second of such retirement allowance for each additional year of service not exceeding twenty-two years of service. The amount of the retirement allowance shall be calculated in the manner provided in this paragraph using the average final compensation at the time of termination of employment.

2. *Allowance on service retirement.*

a. Upon retirement from service prior to July 1, 1990, a member shall receive a service retirement allowance which shall consist of a pension which equals fifty percent of the member's average final compensation.

b. Upon retirement from service on or after July 1, 1990, but before July 1, 1992, a member shall receive a service retirement allowance which shall consist of a pension which equals fifty-four percent of the member's average final compensation.

c. Commencing July 1, 1992, the board of trustees shall increase the percentage multiplier of the member's average final compensation by an additional two percent each July 1 until reaching sixty percent of the member's average final compensation.

d. Commencing July 1, 1990, if the member has completed more than twenty-two years of creditable

service, the service retirement allowance shall consist of a pension which equals the amount provided in paragraphs "b" and "c", plus an additional percentage as set forth below:

(1) For a member who terminates service, other than by death or disability, on or after July 1, 1990, but before July 1, 1991, and who does not withdraw the member's contributions pursuant to section 97A.16, upon the member's retirement there shall be added three-tenths percent of the member's average final compensation for each year of service over twenty-two years, excluding years of service after the member's fifty-fifth birthday. However, this subparagraph does not apply to more than eight additional years of service.

(2) For a member who terminates service, other than by death or disability, on or after July 1, 1991, and who does not withdraw the member's contributions pursuant to section 97A.16, upon the member's retirement there shall be added six-tenths percent of the member's average final compensation for each year of service over twenty-two years, excluding years of service after the member's fifty-fifth birthday. However, this subparagraph does not apply to more than eight additional years of service.

3. *Ordinary disability retirement benefit.* Upon the application of a member in service or of the commissioner of public safety, any member shall be retired by the board of trustees, not less than thirty and not more than ninety days next following the date of filing such application, on an ordinary disability retirement allowance, provided, that the medical board after a medical examination of such member shall certify that said member is mentally or physically incapacitated for further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

4. *Allowance on ordinary disability retirement.* Upon retirement for ordinary disability a member shall receive an ordinary disability retirement allowance which shall consist of a pension which shall equal fifty percent of the member's average final compensation except if the member has not had five or more years of membership service, the member shall receive a pension equal to one-fourth of the member's average final compensation.

5. *Accidental disability benefit.* Upon application of a member in service or of the commissioner of public safety, any member who has become totally and permanently incapacitated for duty as the natural and proximate result of an injury, disease or exposure occurring or aggravated while in the actual performance of duty at some definite time and place shall be retired by the board of trustees, provided, that the medical board shall certify that such member is mentally or physically incapacitated for further performance of duty, that such incapacity is likely to be permanent and that such member should be retired. Should a member in service become incapacitated for duty as a natural and proximate result of an injury, disease, or exposure incurred or aggravated while in the actual performance of duty at

some definite time or place, the member shall, upon being found to be temporarily incapacitated following an examination by the board of trustees, be entitled to receive the member's fixed pay and allowances until re-examined by the board and found to be fully recovered or permanently disabled. Disease under this section shall mean heart disease or any disease of the lungs or respiratory tract and shall be presumed to have been contracted while on active duty as a result of strain, exposure, or the inhalation of noxious fumes, poison, or gases.

6. *Retirement after accident.*

a. Upon retirement for accidental disability prior to July 1, 1990, a member shall receive an accidental disability retirement allowance which shall consist of a pension equal to sixty-six and two-thirds percent of the member's average final compensation.

b. Upon retirement for accidental disability on or after July 1, 1990, a member shall receive an accidental disability retirement allowance which shall consist of a pension equal to sixty percent of the member's average final compensation.

7. *Re-examination of beneficiaries retired on account of disability.* Once each year during the first five years following the retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the board of trustees may, and upon the member's application shall, require any disability beneficiary who has not yet attained age fifty-five to undergo a medical examination at a place designated by the medical board. Such examination shall be made by the medical board or in special cases, by an additional physician or physicians designated by such board. Should any disability beneficiary who has not attained the age of fifty-five refuse to submit to such medical examination, the beneficiary's allowance may be discontinued until the beneficiary's withdrawal of such refusal, and should the beneficiary's refusal continue for one year all rights in and to the beneficiary's pension may be revoked by the board of trustees.

a. Should any beneficiary for either ordinary or accidental disability, except a beneficiary who is fifty-five years of age or over and would have completed twenty-two years of service if the beneficiary had remained in active service, be engaged in a gainful occupation paying more than the difference between the member's retirement allowance and one and one-half times the current earnable compensation of an active member at the same position on the salary scale within the member's rank as the member held at retirement, then the amount of the retirement allowance shall be reduced to an amount which together with the amount earned by the member shall equal one and one-half times the amount of the current earnable compensation of an active member at the same position on the salary scale within the member's rank as the member held at retirement. Should the member's earning capacity be later changed, the amount of the retirement allowance may be further modified, provided, that the new retirement allowance shall not exceed the amount of

the retirement allowance originally granted adjusted by annual readjustments of pensions pursuant to subsection 15 of this section nor an amount which, when added to the amount earned by the beneficiary, equals one and one-half times the amount of the current earnable compensation of an active member at the same position on the salary scale within the member's rank as the member held at retirement. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which the member was retired at age fifty-five or greater, shall not again become a member of the retirement system and shall have the member's retirement allowance suspended while in active service. If the rank or position held by the retired member is subsequently abolished, adjustments to the allowable limit on the amount of income which can be earned in a gainful occupation shall be computed in the same manner as provided in subsection 15, paragraph "d," of this section for readjustment of pensions when a rank or position has been abolished.

A beneficiary retired under the provisions of this paragraph in order to be eligible for continued receipt of retirement benefits shall no later than May 15 of each year submit to the board of trustees a copy of the beneficiary's state income tax return for the preceding year.

Retroactive to July 1, 1976, the limitations on pay of a member engaged in a gainful occupation who is retired under accidental disability prescribed in this paragraph shall not apply to a member who retired before July 1, 1976.

b. Should a disability beneficiary under age fifty-five be restored to active service at a compensation not less than the disability beneficiary's average final compensation, the disability beneficiary's retirement allowance shall cease, the disability beneficiary shall again become a member and shall contribute thereafter at the same rate paid prior to disability, and former service on the basis of which the disability beneficiary's service was computed at the time of retirement shall be restored to full force and effect and upon subsequent retirement the disability beneficiary shall be credited with all service as a member, and also with the period of disability retirement.

c. The commissioner of public safety may, subject to approval of the medical board, assign any former member of the division of highway safety and uniformed force or the division of criminal investigation and bureau of identification or an arson investigator who is retired and drawing a pension for disability under the provisions of this chapter, to the performance of light duties in such division.

8. *Ordinary death benefit.*

a. Upon the receipt of proof of the death of a member in service, or a member not in service who has completed four or more years of service as provided in subsection 1, paragraph "b", there shall be paid to the person designated by the member to the board of trustees as the member's beneficiary if the member has had one or more years of membership service and no pension is payable under subsection

9, an amount equal to fifty percent of the compensation earned by the member during the year immediately preceding the member's death if the member is in service, or an amount equal to fifty percent of the compensation earned by the member during the member's last year of service if the member is not in service.

b. In lieu of the payment specified in paragraph "a," a beneficiary meeting the qualifications of paragraph "c" may elect to receive a monthly pension equal to one-twelfth of forty percent of the average final compensation of the member, but not less than an amount equal to twenty percent of the monthly earnable compensation paid to an active member having the rank of senior patrol officer of the Iowa highway safety patrol if the member was in service at the time of death. For a member not in service at the time of death, the pension shall be reduced as provided in subsection 1, paragraph "b".

For a member not in service at the time of death, the pension shall be paid commencing when the member would have attained the age of fifty-five except that if there is a child of the member, the pension shall be paid commencing with the member's death until the children reach the age of eighteen, or twenty-two if applicable. The pension shall resume commencing when the member would have attained the age of fifty-five.

For a member in service at the time of death, the pension shall be paid commencing with the member's death. In addition to the pension, there shall also be paid for each child of a member, a monthly pension equal to six percent of the monthly earnable compensation payable to an active member having the rank of senior patrol officer of the Iowa highway safety patrol.

For the purpose of this chapter, a senior patrol officer is a person who has completed ten years of service in the Iowa highway safety patrol.

Notwithstanding section 97A.6, subsection 8, Code 1985, effective July 1, 1990, for a member's surviving spouse who, prior to July 1, 1986, elected to receive pension benefits under this paragraph, the monthly pension benefit shall be equal to the higher of one-twelfth of forty percent of the average final compensation of the member, or the amount the surviving spouse was receiving on July 1, 1990.

c. The pension under paragraph "b" may be selected only by the following beneficiaries:

- (1) The spouse.
- (2) If there is no spouse, or if the spouse dies and there is a child of a member, then the guardian of the member's child or children, divided as the board of trustees determines, to continue as a joint and survivor pension until every child of the member dies or attains the age of eighteen, or twenty-two if applicable.
- (3) If there is no surviving spouse or child, then the member's dependent father or mother, or both, as the board of trustees determines, to continue until remarriage or death.

d. If there is no nomination of beneficiary, the

benefits provided in this subsection shall be paid to the member's estate

9 *Accidental death benefit* If, upon the receipt of evidence and proof that the death of a member was the natural and proximate result of an accident or exposure occurring at some definite time and place while the member was in the actual performance of duty, the board of trustees shall decide that death was so caused in the performance of duty there shall be paid, in lieu of the ordinary death benefit provided in subsection 8 of this section, to the member's estate or to such person having an insurable interest in the member's life as the member shall have nominated by written designation duly executed and filed with the board of trustees

a A pension equal to one half of the average final compensation of such member shall be paid to the surviving spouse, children or dependent parents as provided in paragraphs "c", "d", and "e" of subsection 8 of this section

b If there is no surviving spouse, child, or dependent parent surviving a deceased member, the death shall be treated as an ordinary death case and the benefit payable under subsection 8, paragraph "a" of this section, in lieu of the pension provided in paragraph "a" of this subsection, shall be paid to the member's estate

c In addition to the benefits for the surviving spouse enumerated in this subsection, there shall also be paid for each child of a member a monthly pension equal to six percent of the monthly earnable compensation payable to an active member having the rank of senior patrol officer of the Iowa highway safety patrol

10 *Optional allowance* With the provision that no optional selection shall be effective in case a beneficiary dies within thirty days after retirement, in which event such a beneficiary shall be considered as an active member at the time of death, until the first payment on account of any benefit becomes normally due, any beneficiary may elect to receive the beneficiary's benefit in a retirement allowance payable throughout life, or may elect to receive the actuarial equivalent at that time of the beneficiary's retirement allowance in a lesser retirement allowance payable throughout life with the provision that an amount in money not exceeding the amount of the beneficiary's accumulated contributions shall be immediately paid in cash to such member or some other benefit or benefits shall be paid either to the member or to such person or persons as the member shall nominate, provided such cash payment or other benefit or benefits, together with the lesser retirement allowance, shall be certified by the state commissioner of insurance to be of equivalent actuarial value to the member's retirement allowance and shall be approved by the board of trustees, provided, that a cash payment to such member or beneficiary at the time of retirement of an amount not exceeding fifty percent of the member's or beneficiary's accumulated contributions shall be made by the board of trustees upon said member's or beneficiary's election

11 *Pensions offset by compensation benefits* Any amounts which may be paid or payable by the state under the provisions of any workers' compensation or similar law to a member or to the dependents of a member on account of any disability or death, shall be offset against and payable in lieu of any benefits payable out of funds provided by the state under the provisions of this chapter on account of the same disability or death. In case the present value of the total commuted benefits under said workers' compensation or similar law is less than the pension reserve on the benefits otherwise payable from funds provided by the state under this chapter, then the present value of the commuted payments shall be deducted from the pension reserve and such benefits as may be provided by the pension reserve so reduced shall be payable under the provisions of this chapter

12 *Pension to surviving spouse and children of deceased pensioned members* In the event of the death of any member receiving a retirement allowance under the provisions of subsections 2, 4 or 6 of this section there shall be paid a pension

a To the member's surviving spouse, equal to one-half the amount received by the deceased beneficiary, but in no instance less than an amount equal to twenty percent of the monthly earnable compensation paid to an active member having the rank of senior patrol officer of the Iowa highway safety patrol, and in addition a monthly pension equal to the monthly pension payable under subsection 9, paragraph "c," of this section for each child under eighteen years of age or twenty-two years of age if applicable, or

b If the spouse dies either prior or subsequent to the death of the member, to the guardian of each surviving child, a monthly pension equal to the monthly pension payable under subsection 9, paragraph "c," of this section for the support of the child

13 *Judicial review of action of the board of trustees* Judicial review of any action of the board of trustees may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of the Iowa administrative procedure Act, the petition for judicial review must be filed within thirty days after the member receives written notice of the trustees' action. The board of trustees shall be represented by the attorney general. An appeal may be taken by the petitioner or the board of trustees to the supreme court of this state irrespective of the amount involved

14 *Pensions payable* Pensions payable under this section shall be adjusted as follows

a Effective July 1, 1980, and on each July 1 thereafter, the monthly pensions authorized in this section payable to retired members and to beneficiaries, except children of a deceased member, shall be adjusted as provided in this paragraph. An amount equal to the following percentages of the difference between the monthly earnable compensation payable to an active member of the department, of the same rank and position on the salary scale as was

held by the retired or deceased member at the time of the member's retirement or death, for July of the preceding year and the monthly earnable compensation payable to an active member of the department of the same rank and position on the salary scale for July of the year just beginning shall be added to the monthly pension of each retired member and each beneficiary as follows:

(1) Twenty-five percent for members receiving a service retirement allowance and for beneficiaries receiving a pension under subsection 9 of this section. However, effective July 1, 1990, for members who retired before that date, thirty percent shall be the applicable percentage for members and beneficiaries under this subparagraph.

(2) Twenty-five percent for members with five or more years of membership service who are receiving an ordinary disability retirement allowance. However, effective July 1, 1990, for members who retired before that date, thirty percent shall be the applicable percentage for members under this subparagraph.

(3) Twelve and one-half percent for members with less than five years of membership service who are receiving an ordinary disability retirement allowance, and for beneficiaries receiving a pension under subsection 8 of this section. However, effective July 1, 1990, for members who retired before that date, fifteen percent shall be the applicable percentage for members and beneficiaries under this subparagraph.

(4) Thirty-three and one-third percent for members receiving an accidental disability allowance.

The adjusted monthly pension shall not be less than the amount which was paid at the time of the member's retirement or death.

The amount added to the monthly pension of a surviving spouse receiving a pension under subsection 12, paragraph "a" of this section shall be equal to one-half the amount that would have been added to the monthly pension of the retired member.

As of the first of July of each year, the monthly pension payable to each surviving child under the

provisions of subsections 8, 9 and 12 of this section shall be adjusted to equal six percent of the monthly earnable compensation payable on that July 1 to an active member having the rank of senior patrol officer of the Iowa highway safety patrol.

b. All monthly pensions adjusted as provided in this subsection shall be payable beginning on July 1 of the year in which the adjustment is made and shall continue in effect until the next following July 1 at which time the monthly pensions shall again be adjusted in accordance with paragraph "a" of this subsection.

c. The adjustment of pensions required by this subsection shall recognize the retired or deceased member's position on the salary scale within the member's rank at the time of the member's retirement or death. In the event that the rank or position held by the retired or deceased member at the time of retirement or death is subsequently abolished, adjustments in the pensions of the member or of the member's spouse or children shall be computed by the board of trustees as though such rank or position had not been abolished and salary increases had been granted to such rank or position on the same basis as increases granted to other ranks and positions in the department.

d. A retired member eligible for benefits under the provisions of subsection 1 is not eligible for the annual readjustment of pensions provided in this subsection unless the member served twenty-two years and attained the age of fifty-five years prior to the member's termination of employment.

15. *Remarriage of surviving spouse.* Effective July 1, 1990, for a member who died prior to July 1, 1988, if the member's surviving spouse remarried prior to July 1, 1988, the remarriage does not make the spouse ineligible under subsection 8, paragraph "c", subparagraphs (1) and (2), to receive benefits under subsections 8, 9, 12, and 14.

91 Acts ch 41, §1 HF 5
1991 amendments to subsection 8, paragraph b, unnumbered paragraph 5, are retroactively applicable to July 1, 1990, and apply on and after that date,
91 Acts, ch 41, §4 HF 5

Subsection 8, paragraph b, unnumbered paragraph 5 amended

CHAPTER 97B

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

97B.8 Investment board.

A board is established to be known as the "Investment Board of the Iowa Public Employees' Retirement System", referred to in this chapter as the "board", whose duties are to establish policy for 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 establish an investment policy and goal statement which shall direct the investment activities of the department. The development of the investment policy and goal statement and its subsequent execution shall be performed cooperatively between the board and the department. In accordance with section 97B.3, the board shall recommend to the director a set of candidates for selection as the administrator.

The board consists of nine members. Six of the members shall be appointed by the governor. One member 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 three shall be members of the system, one of whom shall be an active member who is an employee of a school district, area education agency, or merged area, one of whom shall be an active member who is not an employee of a school district, area education agency, or merged area, and one of whom is a retired member of the system. The president of the senate, after consultation with the majority leader and the minority leader 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, after consultation with the majority leader and the minority leader 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 director of the department of personnel is an ex officio, nonvoting member of the board.

The members who are executives of a domestic life insurance company, a state or national bank, and a major industrial corporation, and the member who is a retired member of the system, shall be paid their actual expenses incurred in performance of their duties and shall receive a per diem as specified in section 7E.6 for each day of service not exceeding forty days per year. Legislative members shall be paid the per diem specified in section 2.10, subsection 6, 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 and the director of the department 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, vacations, 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.

91 Acts, ch 258, §28 HF 709

1991 amendment to paragraph 3 retroactively applicable to January 1, 1991,

91 Acts, ch 258, §73 HF 709

Unnumbered paragraph 3 amended

97B.50 Early retirement.

1. Except as otherwise provided in this section, a member, upon retirement prior to the normal retirement date, is entitled to receive a monthly retirement allowance determined in the same manner as provided for normal retirement in subsections 1, 4, and 5 of section 97B.49 reduced as follows:

a. For a member who is less than sixty-two years of age, by twenty-five hundredths of one percent per month for each month that the early retirement date precedes the normal retirement date.

b. For a member who is at least sixty-two years of age and who has not completed thirty years of membership service and prior service, by twenty-five hundredths of one percent per month for each month that the early retirement date precedes the normal retirement date.

2. a. A member who retires from the system due to disability and commences receiving disability benefits pursuant to the United States Social Security Act (42 U.S.C.), as amended to July 1, 1978, who has not reached the normal retirement date, shall receive full benefits under section 97B.49 and shall not have benefits reduced upon retirement as required under subsection 1 regardless of whether the member has completed thirty or more years of membership service. However, the benefits shall be suspended during any period in which the member returns to covered employment. This section takes effect July 1, 1990, for a member meeting the requirements of this paragraph who retired from the system at any time after July 4, 1953. Eligible members are entitled to the receipt of retroactive adjustment payments back to July 1, 1990.

b. A member who retires from the system due to disability and commences receiving disability benefits pursuant to the United States Railroad Retirement Act (45 U.S.C. § 231 et seq.) who is eligible for early retirement but has not reached the normal retirement date, shall receive full benefits under section 97B.49 and shall not have benefits reduced upon retirement as required under subsection 1 regardless of whether the member has completed thirty or more years of membership service. This section takes effect July 1, 1990, for a member meeting the requirements of this paragraph who retired from the system at any time since July 4, 1953. However, eligible members are entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month after July 1, 1990, in which written notice was submitted to the department.

Effective July 1, 1990, for members terminating on or after July 4, 1953, a member who terminates covered employment due to disability and commences receiving disability benefits pursuant to the United States Railroad Retirement Act (45 U.S.C. § 231 et seq.), who has not attained the age of fifty-five years, is eligible to receive benefits under section 97B.49, reduced by twenty-five hundredths of one percent for each month that the retirement date precedes the first day of the month in which the member attains

the age of fifty-five. However, the benefits shall be suspended during any period in which the member returns to covered employment. Eligible members are entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month after July 1, 1990, in which written notice was submitted to the department.

3. A member who is at least sixty-two years of age and less than sixty-five years of age, and who has completed thirty or more years of membership service and prior service, shall receive full benefits under section 97B.49 determined as if the member had attained sixty-five years of age.

4. A member eligible for a retirement allowance adjusted under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which written notice of retirement was submitted to the department.

91 Acts, ch 105, §1 SF 340
1991 amendment to subsection 2, paragraph a, retroactive to July 1, 1990,
91 Acts, ch 105, §2 SF 340
Subsection 2, paragraph a amended

97B.72 Members of general assembly — appropriation.

Persons who are members of the Seventy-first General Assembly or a succeeding general assembly who submit proof to the department of membership in the general assembly during any period beginning

July 4, 1953 may make contributions to the system for service equal to the accumulated contributions as defined in section 97B.41, subsection 12, which would have been made if the member of the general assembly had been a member of the system during the member's service in the general assembly. The proof of membership in the general assembly and payment of accumulated contributions shall be transmitted to the department. Persons eligible to receive retirement allowances under this section shall be eligible to commence receiving retirement allowances on January 14, 1985.

There is appropriated from moneys available to the general assembly under section 2.12 an amount sufficient to pay the contributions of the employer based on service of the members in an amount equal to the contributions which would have been made if the members of the general assembly who made employee contributions had been members of the system during their service in the general assembly plus two percent interest plus interest dividends for all completed calendar years and for any completed calendar year for which the interest dividend has not been declared and for completed months of partially completed calendar years at two percent interest plus the interest dividend rate calculated for the previous year, compounded annually, from the end of the calendar year in which contribution was made to the first day of the month of such date.

91 Acts, ch 267, §508 HF 479
Unnumbered paragraph 2 amended

CHAPTER 98

CIGARETTE AND TOBACCO TAXES

98.1 Definitions.

The following words, terms, and phrases, when used in this chapter, shall, for the purpose of this chapter, have the meanings respectively ascribed to them.

1. "*Attorney general*" shall mean the attorney general of the state or the attorney general's duly authorized assistants and employees.

2. "*Cigarette*" means any roll for smoking made wholly or in part of tobacco, or any substitute for tobacco, irrespective of size or shape and irrespective of tobacco or any substitute for tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material. Provided the definition herein shall not be construed to include cigars.

3. "*Cigarette vending machine*" means any self-service device offered for public use which, upon insertion of a coin, coins, paper currency, or by other means, dispenses cigarettes or tobacco products

without the necessity of replenishing the device between each vending operation.

4. "*Cigarette vendor*" means any person who by contract, agreement, or ownership takes responsibility for furnishing, installing, servicing, operating, or maintaining one or more cigarette vending machines for the purpose of selling cigarettes at retail.

5. "*Counterfeit stamp*" shall mean any stamp, label, print, indicium, or character which evidences, or purports to evidence the payment of any tax levied by this chapter, and which stamp, label, print, indicium, or character has not been printed, manufactured or made by authority of the director as hereinafter provided, and issued, sold or circulated by the department.

6. "*Department*" means the department of revenue and finance.

7. "*Director*" means the director of revenue and finance or the director's duly authorized assistants and employees.

8. "Distributing agent" shall mean and include every person in this state who acts as an agent of any manufacturer outside of the state by storing cigarettes received in interstate commerce from such manufacturer subject to distribution or delivery to distributors upon orders received by said manufacturer in interstate commerce and transmitted to such distributing agent for fulfillment from such place of storage.

9. "Distributing agent's permit" shall mean and include permits issued by the department to distributing agents.

10. "Distributor" shall mean and include every person in this state who manufactures or produces cigarettes or who ships, transports, or imports into this state or in any manner acquires or possesses cigarettes without stamps affixed for the purpose of making a "first sale" of the same within the state.

11. "Drop shipment" shall mean and include any delivery of cigarettes received by any person within this state when payment for such cigarettes is made to the shipper or seller by or through a person other than the consignee.

12. "First sale" shall mean and include the first sale or distribution of cigarettes in intrastate commerce, or the first use or consumption of cigarettes within this state.

13. "Individual packages of cigarettes" shall mean and include every package of cigarettes ordinarily sold at retail.

14. "Manufacturer" shall mean and include every person who ships cigarettes into this state from outside the state.

15. "Manufacturer's permit" shall mean and include permits issued by the department to a manufacturer.

16. "Person" shall mean and include every individual, firm, association, joint stock company, syndicate, copartnership, corporation, trustee, agency or receiver, or respective legal representative.

17. "Place of business" is construed to mean and include any place where cigarettes are sold or where cigarettes are stored within or without the state of Iowa by the holder of an Iowa permit or kept for the purpose of sale or consumption; or if sold from any vehicle or train, the vehicle or train on which or from which such cigarettes are sold shall constitute a place of business.

18. "Previously used stamp" shall mean and include any stamp which is used, sold, or possessed for the purpose of sale or use, to evidence the payment of the tax herein imposed on an individual package of cigarettes after said stamp has, anterior to such use, sale, or possession, been used on a previous or separate individual package of cigarettes to evidence the payment of tax as aforesaid.

19. "Retailer" shall mean and include every person in this state who shall sell, distribute, or offer for sale for consumption or possess for the purpose of sale for consumption, cigarettes irrespective of quantity or amount or the number of sales.

20. "Retail permit" shall mean and include permits issued to retailers.

21. "Stamps" means the stamp or stamps printed, manufactured or made by authority of the director and issued, sold or circulated by the department and by the use of which the tax levied is paid. It also means any impression, indicium, or character fixed upon packages of cigarettes by metered stamping machine or device which may be authorized by the director to the holder of state or manufacturers' permits and by the use of which the tax levied is paid.

22. "State permit" shall mean and include permits issued by the department to distributors, wholesalers, and retailers.

23. "Tobacco products" means cigars; little cigars as defined in section 98.42, subsection 16; cheroots; stogies; periques; granulated; plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; or refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but does not mean cigarettes.

24. "Wholesaler" shall mean and include every person other than a distributor or distributing agent who engages in the business of selling or distributing cigarettes within the state, for the purpose of resale.

91 Acts, ch 240, §1, 2 HF 232
Subsections renumbered to alphabetize
Subsection 3 amended
NEW subsection 23

98.2 Persons under legal age.

1. A person shall not sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person under eighteen years of age and a person under eighteen years of age shall not smoke, use, purchase, or attempt to purchase any tobacco, tobacco products, or cigarettes.

2. The Iowa department of public health, a county health department, a city health department, or a city may directly enforce this section in district court and initiate proceedings pursuant to section 98.22 before a permit-issuing authority against a permit holder violating this section.

3. Payment and distribution of court costs, fees, and fines in a prosecution initiated by a city or county shall be made as provided in chapter 602 for violation of a city or county ordinance.

91 Acts, ch 240, §3 HF 232
Section stricken and rewritten

98.3 Penalty.

A person who violates section 98.2 or 98.39 is guilty of a simple misdemeanor.

91 Acts, ch 240, §4 HF 232
Section amended

98.6 Tax imposed.

1. There is 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, eighteen mills on each such cigarette.

Class B. On cigarettes weighing more than three pounds per thousand, eighteen mills on each such cigarette.

2. 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.

3. 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.

91 Acts, ch 267, §509, 510 HF 479
1991 amendments effective June 1, 1991, 91 Acts, ch 267, §527 HF 479
Subsection 1 amended
Subsection 2 stricken and former subsections 3 and 4 renumbered as 2 and 3

98.7 Printing and custody of stamps.

The director of the department of general services shall have printed or manufactured, cigarette and little cigar tax stamps of such design, size, denomination, and type and in such quantities as may be determined by the director of revenue and finance. The stamps shall be so manufactured as to render them easy to be securely attached to each individual package of cigarettes and little cigars or cigarette papers. The cigarette and little cigar tax stamps shall be in the possession of and under the control of the director of revenue and finance and the director shall keep accurate records of all cigarette and little cigar tax stamps.

There is hereby appropriated out of any funds in the state treasury not otherwise appropriated sufficient funds to carry out the provisions of this section.

Appropriation limited for fiscal year beginning July 1, 1991, 91 Acts, ch 267, §507 HF 479
Footnote added, section not amended

98.22 Revocation — suspension — civil penalty.

1. If a person holding a permit issued by the department under this division, including a retailer permit for railway car, has willfully violated section 98.2, the department shall revoke the permit upon

notice and hearing. If the person violates any other provision of this division, or a rule adopted under this division, or is substantially delinquent in the payment of a tax administered by the department or the interest or penalty on the tax, or if the person is a corporation and if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax of the permit-holding corporation, or interest or penalty on the tax, administered by the department, the department may revoke the permit issued to the person, after giving the permit holder an opportunity to be heard upon ten days' written notice stating the reason for the contemplated revocation and the time and place at which the person may appear and be heard. The hearing before the department may be held at a site in the state as the department may direct. The notice shall be given by mailing a copy to the permit holder's place of business as it appears on the application for a permit. If, upon hearing, the department finds that the violation has occurred, the department may revoke the permit.

2. If a retailer or employee of a retailer has violated section 98.2, 98.36, subsection 6, or 98.39, the department or local authority, in addition to the other penalties fixed for such violations in this section, shall assess a penalty upon the same hearing and notice as prescribed in subsection 1 as follows:

a. For a first violation, the violator shall be assessed a civil penalty in the amount of three hundred dollars. Failure to pay the civil penalty as ordered under this subsection shall result in automatic suspension of the permit for a period of fourteen days.

b. For a second violation within a period of two years, the violator's permit shall be suspended for a period of thirty days.

c. For a third violation within a period of five years, the violator's permit shall be suspended for a period of sixty days.

d. For a fourth violation within a period of five years, the violator's permit shall be revoked.

3. If a permit is revoked a new permit shall not be issued to the permit holder for any place of business, or to any other person for the place of business at which the violation occurred, until one year has expired from the date of revocation, unless good cause to the contrary is shown to the issuing authority.

91 Acts, ch 240, §5 HF 232
Subsection 2 stricken and rewritten

98.36 Unlawful acts.

1. Except as otherwise provided in this division, it is unlawful for any person to have in the person's possession for sale, distribution, or use, or for any other purpose, in excess of forty cigarettes, or to sell, distribute, use, or present as a gift or prize cigarettes upon which a tax is required to be paid by this division, without having affixed to each individual package of cigarettes, the proper stamp evidencing the payment of the tax and the absence of the stamp on the individual package of cigarettes is notice to all

persons that the tax has not been paid and is prima-facie evidence of the nonpayment of the tax.

2. No person, other than a common carrier and a distributor's truck bearing the distributor's name and permit number in plain view on the outside of such truck, shall transport within this state cigarettes upon which a tax is required to be paid, without having stamps affixed to each individual package of said cigarettes; and no person shall fail or refuse, upon demand of agent of the department, or any peace officer to stop any vehicle transporting cigarettes for a full and complete inspection of the cargo carried.

3. No person shall use, sell, offer for sale, or possess for the purpose of use or sale, within this state, any previously used stamp or stamps, or attach any such previously used stamps to an individual package of cigarettes, nor shall any person purchase stamps from any person other than the department or sell stamps purchased from the department.

4. No person shall knowingly use, consume, or smoke, within this state, cigarettes upon which a tax is required to be paid, without said tax having been paid.

5. No person, unless the person be the holder of a permit, or the holder's representative, shall solicit the sale of cigarettes, provided that this section shall not prevent solicitation by a nonpermitholder for the sale of cigarettes to any state permitholder.

6. Any sales of cigarettes or tobacco products made through a cigarette vending machine are subject to rules and penalties relative to retail sales of cigarettes and tobacco products provided for in this chapter. No cigarettes shall be sold through any cigarette vending machine unless the cigarettes have been properly stamped or metered as provided by this division, and in case of violation of this provision, the permit of the dealer authorizing retail sales of cigarettes shall be canceled. Payment of the license fee as provided in section 98.13 authorizes a cigarette vendor to sell cigarettes or tobacco products through vending machines, provided that the following conditions are met: the machines are located in places where the machines are under the supervision of a person of legal age who is responsible for prevention of purchase by minors from the machines; the machines are equipped with a lock-out device under the control of a person of legal age who shall directly regulate the sale of items through the machines, and which shall include a mechanism to prevent the machines from functioning if the power source for the lock-out device fails or if the lock-out device is disabled, and a mechanism to ensure that only one pack of cigarettes or one tobacco product is dispensed at a time; and the location where the machines are placed is covered by a local retail permit. However, a lock-out device is not required for machines operated in the following locations, if the machines are not to be placed in a doorway or other area readily accessible to minors: a commercial establishment holding a class "C" liquor license or a class "B" beer permit under chapter 123, if the establish-

ment is not also licensed as a food service establishment under chapter 137B; a private facility not open to the public; or a workplace not open to the public. This section does not require a retail licensee to buy a cigarette vendor's permit if the retail licensee is in fact the owner of the cigarette vending machines and the machines are operated in the location described in the retail permit.

7. It shall be unlawful for a person other than a holder of a retail permit to sell cigarettes at retail. No state permit holder shall sell or distribute cigarettes at wholesale to any person in the state of Iowa who does not hold a permit authorizing the retail sale of cigarettes or who does not hold a state permit as a manufacturer, distributing agent, wholesaler, or distributor.

Violation of this section by the holder of a distributor's, wholesaler's or manufacturer's permit shall be grounds for the revocation of such permit.

91 Acts, ch 240, §6 HF 232
1991 amendment to subsection 6 not enforced until July 1, 1994, in relation to cigarette vending machines in operation on or before June 5, 1991, 91 Acts, ch 240, §11 HF 232
Subsection 6 amended

98.39 Tobacco product and cigarette samples — restrictions — administration.

1. A manufacturer, distributor, wholesaler, retailer, or distributing agent or agent thereof shall not give away cigarettes or tobacco products at any time in connection with the manufacturer's, distributor's, wholesaler's, retailer's, or distributing agent's business or for promotion of the business or product, except as provided in subsection 2.

2. a. A manufacturer, distributor, wholesaler, retailer, or distributing agent or agent thereof shall not give away any cigarettes or tobacco products to any person under eighteen years of age, or within five hundred feet of any playground, school, high school, or other facility when such facility is being used primarily by persons under age eighteen for recreational, educational, or other purposes.

b. Proof of age shall be required if a reasonable person could conclude on the basis of outward appearance that a prospective recipient of a sample may be under eighteen years of age.

c. Persons engaged in sampling shall secure stocks of samples in safe locations in order to avoid inadvertent distribution of samples contrary to the provisions of this section.

d. Sampling shall cease at a particular location when circumstances arise that make it apparent that sampling cannot continue in a manner consistent with the provisions of this section; however, sampling may resume at that location when such circumstances abate.

e. All cigarette samples shall be shipped to a distributor that has a permit to stamp cigarettes or little cigars with Iowa tax. The manufacturer shipping samples under this section shall send an affidavit to the director stating the quantity and to whom the samples were shipped. The distributor receiving the shipment shall send an affidavit to the director stat-

ing the quantity and from whom the samples were shipped. These affidavits shall be duly notarized and submitted to the director at time of shipment and receipt of the samples. The distributor shall pay the tax on samples by separate remittance along with the affidavit.

91 Acts, ch 240, §7 HF 232
Section stricken and rewritten

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 of tobacco products, at the rate of twenty-two 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 twenty-two 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.

91 Acts, ch 267, §511, 512 HF 479
1991 amendments effective June 1, 1991, 91 Acts, ch 267, §527 HF 479
Subsection 1, unnumbered paragraph 1 amended
Subsection 2, unnumbered paragraph 1 amended

98.51 through 98.55 Reserved.

DIVISION III

UNIFORM APPLICATION OF CHAPTER

98.56 Uniform application.

Enforcement of this chapter shall be implemented in an equitable manner throughout the state. For the purpose of equitable and uniform implementation, application, and enforcement of state and local laws and regulations, the provisions of this chapter shall supersede any local law or regulation which is inconsistent with or conflicts with the provisions of this chapter.

91 Acts, ch 240, §8 HF 232
NEW section

CHAPTER 99B

GAMES OF SKILL OR CHANCE, AND RAFFLES

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 contin-

gent 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 or merchandise prizes may be awarded in the game of bingo and, except as otherwise provided in this paragraph, shall not exceed one hundred dollars. Merchandise prizes may be awarded in the game of bingo, but 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 the maximum provided by this paragraph. A jackpot bingo game may be conducted once during any twenty-four hour period in which the prize may begin at not more than three hundred dollars in cash or actual retail value of merchandise prizes and may be increased by not more than one hundred dollars after each bingo occasion. However, the cost of play in a jackpot bingo game shall not be increased and the jackpot shall not amount to more than eight 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 and raffles. The value of a prize shall not exceed fifty dollars and merchandise prizes shall not be repurchased. If a prize consists of more than one item, unit, or part, the aggregate value of all items, units, or parts shall not exceed fifty dollars. However, one raffle may be conducted per calendar year at which prizes having a combined value not greater than twenty thousand dollars may be awarded. If the prize is merchandise, its value shall be determined by purchase price paid by the organization or donor.

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, both of the following are observed:

(1) No other gambling is engaged in at the same location, except that lottery tickets or shares issued by the lottery division of the department of revenue and finance may be sold pursuant to chapter 99E.

(2) 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)(7), 501(c)(8), 501(c)(10) or 501(c)(19) of the Internal Revenue Code, 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's 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.

p. A licensee shall keep records of all persons who serve as manager or cashier, or who are responsible for carrying out duties with respect to a bingo account. A licensee is subject to license revocation if

it knowingly permits a person to serve in one of these capacities if the person was a manager, cashier, or responsible for carrying out duties with respect to a bingo account for another licensee at the time of one or more violations leading to revocation of the other licensee's license, and if the license is still revoked at the time of the subsequent service.

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. Except for purposes of bingo, 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 of inspections and appeals 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 fifty dollars. However, upon submission of an application accompanied by a license fee of fif-

teen dollars, a person may be issued a limited license to conduct all games and raffles pursuant to this section at a specified location and during a specified period of fourteen consecutive calendar days. In addition, a qualified organization may be issued a limited license to conduct raffles pursuant to this section for a period of ninety days for a license fee of forty dollars or for a period of one hundred eighty days for a license fee of seventy-five dollars. A limited license shall not be issued more than once during any calendar year to the same person, or for the same location. For the purposes of this paragraph, a limited license is deemed to be issued on the first day of the period for which the license is issued.

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 does 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 per-

son 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.

91 Acts ch 175 §1 HF 298
Subsection 3 paragraph a amended

CHAPTER 99D

PARI-MUTUEL WAGERING

99D.5 Creation of state racing and gaming commission.

1. A state racing and gaming commission is created within the department of inspections and appeals consisting of five members who shall be appointed by the governor subject to confirmation by the senate, and who shall serve not to exceed a three-year term at the pleasure of the governor. The term of each member shall begin and end as provided in section 69.19.

2. A vacancy on the commission shall be filled as provided in section 2.32.

3. Not more than three members of the commis-

sion shall belong to the same political party and no two members of the commission shall reside, when appointed, in the same congressional district. A member of the commission shall not have a financial interest in a racetrack.

4. Commission members are each entitled to receive an annual salary of six thousand dollars. Members shall also be reimbursed for actual expenses incurred in the performance of their duties to a maximum of thirty thousand dollars per year for the commission. Each member shall post a bond in the amount of ten thousand dollars, with sureties to be approved by the governor, to guarantee the proper

handling and accounting of moneys and other properties required in the administration of this chapter. The premiums on the bonds shall be paid as other expenses of the commission.

5. A member or a holder of an official's license shall not knowingly:

a. Have a pecuniary, equitable, or other interest in or engage in a business or employment which would be a conflict of interest or interfere or conflict with the proper discharge of the duties of the commission including any of the following:

(1) A business which does business with a licensee.

(2) A business issued a concession operator's license.

b. Participate directly or indirectly as an owner, owner-trainer, trainer of a horse or dog, or jockey of a horse in a race meeting conducted in this state.

c. Place a wager on an entry in a race or on a gambling game operated on an excursion gambling boat.

A violation of this subsection is a serious misdemeanor. In addition, the individual may be subject to disciplinary actions pursuant to the commission rules.

6. A member, employee, or appointee of the commission, spouse of a member, employee, or appointee of the commission, or a family member related within the second degree of affinity or consanguinity to a member, employee, or appointee of the commission shall not do either of the following:

a. Hold an occupational license except an official's license.

b. Enter directly or indirectly into any business dealing, venture, or contract with an owner or lessee of a racetrack.

A member who knowingly approves of a violation of this subsection is guilty of a serious misdemeanor.

91 Acts, ch 266, §21 SF 548
Subsection 4 amended

99D.7 Powers.

The commission shall have full jurisdiction over and shall supervise all race meetings governed by this chapter. The commission shall have the following powers and shall adopt rules pursuant to chapter 17A to implement this chapter:

1. To investigate applicants and determine the eligibility of applicants for a license and to select among competing applicants for a license the applicant which best serves the interests of the citizens of Iowa.

2. To identify occupations within the racing industry which require licensing and adopt standards for licensing the occupations including establishing fees for the occupational licenses. The fees shall be paid to the commission and used as required in section 99D.17.

3. To adopt standards under which all race meetings shall be held and standards for the facilities within which the race meetings shall be held.

4. To regulate the purse structure for race meetings including establishing a minimum purse.

5. To cooperate with the department of agriculture and land stewardship to establish and operate, or contract for, a laboratory and related facilities to conduct saliva, urine, and other tests on animals that are to run or that have run in races governed by this chapter.

6. To establish and provide for the disposition of fees for the testing of animals sufficient to cover the costs of the tests and to purchase the necessary equipment for the testing.

7. To enter the office, racetrack, facilities, or other places of business of a licensee to determine compliance with this chapter.

8. To investigate alleged violations of this chapter or the commission rules, orders, or final decisions and to take appropriate disciplinary action against a licensee or a holder of an occupational license for the violation, or institute appropriate legal action for enforcement, or both. Decisions by the commission are final agency actions pursuant to chapter 17A.

9. To authorize stewards, starters, and other racing officials to impose fines or other sanctions upon a person violating a provision of this chapter or the commission rules, orders, or final orders, including authorization to expel a tout, bookmaker, or other person deemed to be undesirable from the racetrack facilities.

10. To require the removal of a racing official, an employee of a licensee, or a holder of an occupational license, or employee of a holder of an occupational license for a violation of this chapter or a commission rule or engaging in a fraudulent practice.

11. To prevent an animal from racing if the commission or commission employees with cause believe the animal or its owner, trainer, or an employee of the owner or trainer is in violation of this chapter or commission rules.

12. To withhold payment of a purse if the outcome of a race is disputed or until tests are performed on the animals to determine if they were illegally drugged.

13. To provide for immediate determination of the disposition of a challenge by a racing official or representative of the commission by establishing procedures for informal hearings before a panel of stewards at a racetrack.

14. To require a licensee to file an annual balance sheet and profit and loss statement pertaining to the licensee's racing activities in this state, together with a list of the stockholders or other persons having any beneficial interest in the racing activities of each licensee.

15. To issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, records and other pertinent documents in accordance with chapter 17A, and to administer oaths and affirmations to the witnesses, when, in the judgment of the racing and gaming commission, it is necessary to enforce this chapter or the commission rules.

16. To keep accurate and complete records of its proceedings and to certify the records as may be appropriate.

17. To require all licensees to use a computerized totalizator system for calculating odds and payouts from the pari-mutuel wagering pool and to establish standards to insure the security of the totalizator system.

18. To revoke or suspend licenses and impose fines not to exceed one thousand dollars.

19. To require licensees to indicate in their racing programs those horses to which the drugs lasix or phenylbutazone were administered within ten days before the race or to which the drugs are to be administered before the race. The program shall also indicate if it is the first, second, or third or subsequent time that a horse is racing with lasix, or if the horse has previously raced with lasix and the present race is the first race for the horse without lasix following its use.

20. Notwithstanding any contrary provision in this chapter, to provide for interstate combined wagering pools related to simulcasting horse or dog races and all related interstate pari-mutuel wagering activities.

21. To take any other action as may be reasonable or appropriate to enforce this chapter and the commission rules.

91 Acts, ch 166, §1 HF 651, 91 Acts, ch 260, §1205 HF 173
 Subsection 2 amended
 NEW subsection 20 and former subsection 20 renumbered as 21

99D.11 Pari-mutuel wagering — televising races — minors prohibited.

1. Except as permitted in this section, the licensee shall permit no form of wagering on the results of the races.

2. Licensees shall only permit the pari-mutuel or certificate method of wagering as defined in this section.

3. The licensee may receive wagers of money only from a person present in a licensed racing enclosure on a horse or dog in the race selected by the person making the wager to finish first in the race. The person wagering shall acquire an interest in the total money wagered on all horses or dogs in the race as first winners in proportion to the amount of money wagered by the person.

4. The licensee shall issue to each person wagering a certificate on which shall be shown the number of the race, the amount wagered, and the number or name of the horse or dog selected as first winner.

5. As each race is run the licensee shall deduct sixteen percent from the total sum wagered on all horses or dogs as first winners. The balance, after deducting breakage, shall be paid to the holders of certificates on the winning horse or dog in the proportion that the amount wagered by each certificate holder bears to the total amount wagered on all horses or dogs in the race as first winners. The licensee may pay a larger amount if approved by the commission. The licensee shall likewise receive other wagers on horses or dogs in places or combinations the commission may authorize. The method, procedure, and the authority and right of the licensee, as

well as the deduction allowed to the licensee, shall be as specified with respect to wagers upon horses or dogs selected to run first. However, the commission may authorize the licensee to deduct a higher percent of the total sum wagered not to exceed twenty percent on multiple or exotic wagering involving not more than two horses or dogs. For exotic wagering involving three or more horses or dogs, the commission may authorize a licensee to deduct an additional two percent from the total sum wagered on the exotic wagers. One percent of the exotic wagers on three or more horses or dogs shall be distributed as provided in section 99D.12.

6. *a.* All wagering shall be conducted within the racetrack enclosure where the licensed race is held, except as provided in paragraph “*b*”.

b. The commission may authorize the licensee to simultaneously telecast within the racetrack enclosure for purpose of pari-mutuel wagering a horse or dog race licensed by the racing authority of another state. It is the responsibility of each licensee to obtain the consent of appropriate racing officials in other states as required by the federal Interstate Horseracing Act of 1978, 15 U.S.C. § 3001-3007, to televise races for the purpose of conducting pari-mutuel wagering. A licensee may also obtain the permission of a person licensed by the commission to conduct horse or dog races in this state to televise races conducted by that person for the purpose of conducting pari-mutuel racing. However, arrangements made by a licensee to televise any race for the purpose of conducting pari-mutuel wagering are subject to the approval of the commission, and the commission shall select the races to be televised. The races selected by the commission shall be the same for all licensees approved by the commission to televise races for the purpose of conducting pari-mutuel wagering. The commission shall not authorize the simultaneous telecast or televising of and a licensee shall not simultaneously telecast or televise any horse or dog race for the purpose of conducting pari-mutuel wagering unless the simultaneous telecast or televising is done at the racetrack of a licensee that schedules no less than one hundred five performances of eight live races each day of the season. For purposes of the taxes imposed under this chapter, races televised by a licensee for purposes of pari-mutuel wagering shall be treated as if the races were held at the racetrack of the licensee.

7. A person under the age of eighteen years shall not make a pari-mutuel wager.

91 Acts, ch 166, §2, 3 HF 651
 Subsection 5 amended
 Subsection 6, paragraph b amended

99D.12 Breakage.

A licensee shall deduct the breakage from the pari-mutuel pool which shall be distributed to the breeders of Iowa-foaled horses and Iowa-whelped dogs in the manner described in section 99D.22. The remainder of the breakage shall be distributed as follows:

1. In horse races the breakage shall be retained by the licensee to supplement purses for races restricted to Iowa-foaled horses or to supplement purses won by Iowa-foaled horses by finishing first, second, third, or fourth in any other race. The purse supplements will be paid in proportion to the purse structure of the race.

2. In dog races the breakage shall be distributed as follows:

a. Seventy-three percent shall be retained by the licensee to supplement purses for races won by Iowa-whelped dogs as provided in section 99D.22.

b. Twenty-five percent shall be retained by the licensee and shall be put into a stake race for Iowa-whelped dogs. An amount equal to twelve percent of the winner's share shall be set aside and distributed to the breeder of the winning greyhound in accordance with section 99D.22 and the remainder shall be apportioned as purse moneys for the stake race. All dogs racing in the stake race must have run in at least twelve races during the current racing season at the track sponsoring the stake race to qualify to participate.

c. Two percent shall be deposited by the commission into a special fund to be known as the dog racing promotion fund. The commission each year shall approve a nonprofit organization to use moneys in the fund for research, education, and marketing of dog racing in the state, including public relations, and other promotional techniques. The nonprofit organization shall not engage in political activity. It shall be a condition of the allocation of funds that any organization receiving funds shall not expend the funds on political activity or on any attempt to influence legislation.

91 Acts, ch 166, §4 HF 651
Subsection 2, paragraph b amended

99D.13 Unclaimed winnings — appropriation.

1. Winnings provided in section 99D.11 not claimed by the person who placed the wager within sixty days of the close of the racing meet during which the wager was placed shall be forfeited.

2. Winnings from each racetrack forfeited under subsection 1 shall escheat to the state and to the extent appropriated by the general assembly shall be used by the department of agriculture and land stewardship to administer section 99D.22. The remainder shall be paid over to the commission to pay all or part of the cost of drug testing at the tracks. To the extent the remainder paid over to the commission, less the cost of drug testing, is from unclaimed winnings from harness racing meets, the remainder shall be used as provided in subsection 3. To the extent the remainder paid to the commission, less the cost of drug testing, is from unclaimed winnings from licensed dog tracks, the commission shall remit annually five thousand dollars, or an equal portion of that amount, to each licensed dog track to carry out the racing dog adoption program pursuant to

section 99D.27. To the extent the remainder paid over to the commission, less the cost of drug testing, is from unclaimed winnings from tracks licensed for dog or horse races, the commission, on an annual basis, shall remit one-third of the amount to the treasurer of the city in which the racetrack is located, one-third of the amount to the treasurer of the county in which the racetrack is located, and one-third of the amount to the racetrack from which it was forfeited. If the racetrack is not located in a city, then one-third shall be deposited as provided in chapter 556. The amount received by the racetrack under this subsection shall be used only for retiring the debt of the racetrack facilities and for capital improvements to the racetrack facilities.

3. One hundred twenty thousand dollars of winnings from wagers placed at harness racing meets forfeited under subsection 1 in a calendar year that escheat to the state and are paid over to the commission are appropriated to the racing commission for the fiscal year beginning in that calendar year to be used as follows:

a. Eighty percent of the amount appropriated shall be allocated to qualified harness racing tracks, to be used by the tracks to supplement the purses for those harness races in which only Iowa-bred or owned horses may run. However, beginning with the allocation of the appropriation made for the fiscal year beginning July 1, 1992, the races for which the purses are to be supplemented under this paragraph shall be those in which only Iowa-bred two-year and three-year olds may run. In addition, the races must be held under the control or jurisdiction of the Iowa state fair board, established under section 173.1, or of a society, as defined under section 174.1.

b. Twenty percent of the amount appropriated shall be allocated to qualified harness racing tracks, to be used by the tracks for maintenance of and improvements to the tracks. Races held at the tracks must be under the control or jurisdiction of the Iowa state fair board, established under section 173.1, or of a society, as defined under section 174.1.

c. For purposes of this subsection, "*qualified harness racing track*" means a harness racing track that has either held at least one harness race meet between July 1, 1985, and July 1, 1989, or after July 1, 1989, has applied to and been approved by the racing commission for the allocation of funds under this subsection. The racing commission shall approve an application if the harness racing track has held at least one harness race meet during the year preceding the year for which the track seeks funds under this subsection.

Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30 of the fiscal year for which the funds were appropriated shall not revert but shall be available for expenditure for the following fiscal year for the purposes of this subsection.

91 Acts, ch 166, §5 HF 651
Subsection 2 amended

99D.15 Pari-mutuel wagering taxes — rate — credit.

1. A tax of six percent is imposed on the gross sum wagered by the pari-mutuel method at each horse race meeting. The tax imposed by this subsection shall be paid by the licensee to the commission within ten days after the close of each horse race meeting and shall be distributed as follows:

a. If the racetrack is located in a city, five percent of the gross sum wagered shall be deposited with the commission. One-half of one percent of the gross sum wagered shall be remitted to the treasurer of the city in which the racetrack is located and shall be deposited in the general fund of the city. The remaining one-half of one percent of the gross sum wagered shall be remitted to the treasurer of the county in which the racetrack is located and shall be deposited in the general fund of the county.

b. If the racetrack is located in an unincorporated part of a county, five and one-half percent of the gross sum wagered shall be deposited with the commission. The remaining one-half of one percent of the gross sum wagered shall be remitted to the treasurer of the county in which the racetrack is located and shall be deposited in the general fund of the county.

2. A tax credit of up to five percent of the gross sum wagered per year shall be granted to licensees licensed for horse races and paid into a special fund for the purpose of retiring the annual debt on the cost of construction of the licensed facility. However, the tax credit is equal to six percent of the gross sum wagered in a year when the gross sum wagered is less than ninety million dollars. Any portion of the credit not used in a particular year shall be retained by the commission. A tax credit shall first be assessed against any share going to a city, then to the share going to a county, and then to the share going to the state.

3. a. A tax is imposed on the gross sum wagered by the pari-mutuel method at each track licensed for dog races. The tax imposed by this subsection shall be paid by the licensee to the commission within ten days after the close of the track's racing season. The rate of tax on each track is as follows:

(1) Six percent, if the gross sum wagered in the racing season is fifty-five million dollars or more.

(2) Five percent, if the gross sum wagered in the racing season is thirty million dollars or more but less than fifty-five million dollars.

(3) Four percent, if the gross sum wagered in the racing season is less than thirty million dollars.

b. The tax revenue shall be distributed as follows:

(1) If the racetrack is located in a city, one-half of one percent of the gross sum wagered shall be remitted to the treasurer of the city in which the racetrack is located and shall be deposited in the general fund of the city. One-half of one percent of the gross sum wagered shall be remitted to the treasurer of the county in which the racetrack is located and shall be deposited in the general fund of the county. The remaining amount shall be deposited with the commission.

(2) If the racetrack is located in an unincorporated part of a county, one-half of one percent of the gross sum wagered shall be remitted to the treasurer of the county in which the racetrack is located and shall be deposited in the general fund of the county. The remaining amount shall be deposited with the commission.

c. If the rate of tax imposed under paragraph "a" is six percent, five percent, or four percent, a licensee shall set aside for retiring any debt of the licensee, for capital improvement to the facilities of the licensee, for funding of possible future operating losses, or for charitable giving, the following amount:

(1) If the rate of tax paid by the track is six percent, one-sixth of the tax liability by the track during the racing season shall be set aside.*

(2) If the rate of tax paid by the licensee is five percent, one percent of the gross sum wagered in the racing season shall be set aside.

(3) If the rate of tax paid by the licensee is four percent, two percent of the gross sum wagered in the racing season shall be set aside.

91 Acts, ch 166, §6 HF 651, 91 Acts, ch 268, §427 SF 529

*1991 amendment to subsection 3, paragraph c, adding new subparagraph (1), effective January 1, 1993, 91 Acts, ch 166, §6, 8

See Code editor's note

Subsection 3, paragraph c amended

99D.17 Use of funds.

Funds received pursuant to sections 99D.14 and 99D.15 shall be deposited in the pari-mutuel regulation fund created in the racing and gaming commission. These funds shall first be used to the extent appropriated by the general assembly and as provided in section 99D.18.* The remainder shall be transferred to the treasurer of state to be deposited in the general fund of the state. The commission is subject to the budget requirements of chapter 8 and the applicable auditing requirements and procedures of chapter 11.

Notwithstanding the provisions of this section directing that funds received be deposited into the pari-mutuel regulation fund, for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, all funds received shall be deposited into the general fund of the state.

91 Acts, ch 260, §1206 HF 173

*Section 99D.18 repealed by 91 Acts, ch 260, §1250 HF 173, corrective legislation is pending

Restrictions on use of moneys deposited in state general fund, see 91 Acts, ch 263, §38 SF 209

NEW unnumbered paragraph 2

99D.18 Surplus funds — how used. Repealed by 91 Acts, ch 260, § 1250. HF 173

99D.24 Prohibited activities — penalty.

1. A person is guilty of an aggravated misdemeanor for doing any of the following:

a. Holding or conducting a race or race meeting where the pari-mutuel system of wagering is used or to be used without a license issued by the commission.

b. Holding or conducting a race or race meeting

where wagering is permitted other than in the manner specified by section 99D.11.

c. Committing any other corrupt or fraudulent practice as defined by the commission in relation to racing which affects or may affect the result of a race.

2. A person knowingly permitting a person under the age of eighteen years to make a pari-mutuel wager is guilty of a simple misdemeanor.

3. A person wagering or accepting a wager at any location outside the betting enclosure is subject to the penalties in section 725.7.

4. A person commits a class "D" felony and, in addition, shall be barred for life from racetracks under the jurisdiction of the commission, if the person does any of the following:

a. Offers, promises, or gives anything of value or benefit to a person who is connected with racing including, but not limited to, an officer or employee of a licensee, an owner of a horse, a jockey or driver, a trainer, or handler, pursuant to an agreement or arrangement or with the intent that the promise or thing of value or benefit will influence the actions of the person to whom the offer, promise, or gift was made in order to affect or attempt to affect the outcome of a race, or to influence official action of a member of the commission.

b. Solicits or knowingly accepts or receives a promise of anything of value or benefit while the person is connected with racing including, but not limited to, an officer or employee of a licensee, an owner

of a horse, a jockey or driver, a trainer, or handler, pursuant to an understanding or arrangement or with the intent that the promise or thing of value or benefit will influence the actions of the person to affect or attempt to affect the outcome of a race, or to influence official action of a member of the commission.

5. A person commits a class "D" felony and the commission shall suspend or revoke a license held by the person if the person:

a. Uses, possesses, or conspires to use or possess a device other than the ordinary whip or spur for the purpose of stimulating or depressing a horse or dog during a race or workout.

b. Sponges a horse's or dog's nostrils or windpipe or uses any method, injurious or otherwise, for the purpose of stimulating or depressing a horse or dog or affecting its speed in a race or a workout.

6. A person commits a serious misdemeanor if the person has in the person's possession within the confines of a racetrack, stable, shed, building or grounds, or within the confines of a stable, shed, building or grounds where a horse or dog is kept which is eligible to race over a racetrack licensed under this chapter, an appliance other than the ordinary whip or spur which can be used for the purpose of stimulating or depressing a horse or dog or affecting its speed at any time.

91 Acts, ch 195, §1 HF 353
Subsection 5, paragraph a amended

CHAPTER 99E

IOWA LOTTERY ACT

99E.10 Allocation and appropriation of funds generated — CLEAN 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, at least fifty percent of the projected annual revenue, after deduction of the amount of the sales tax, 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. Notwithstanding section 8.33, moneys deposited in the fund that remain unencumbered and unobligated on June 30 in any fiscal year, shall not revert to the general fund but shall remain available for

the purposes designated in subparagraph (1). Moneys in the fund shall be administered as follows:

(1) In each fiscal year the first seven hundred fifty thousand dollars of the moneys available in the fund shall be administered by the director 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.

(2) For the fiscal year beginning July 1, 1990, after the first seven hundred fifty thousand dollars available in the fund is administered and made available for use pursuant to subparagraph (1), the next two hundred seventy-five thousand dollars of the moneys available in the fund shall be administered by the director of human services and used for juvenile justice expenditures pursuant to section 232.141, subsection 4.

Notwithstanding the provisions of this lettered paragraph, directing that a portion of gross lottery revenues be deposited into the gamblers assistance fund or the provisions of section 99F.11 directing that a portion of the adjusted gross receipts under chapter 99F be deposited into the gamblers assistance fund, for the fiscal period beginning July 1, 1991, and ending June 30, 1993, moneys that were to be deposited into the gamblers assistance fund pursuant to this lettered paragraph and section 99F.11, subsection 3, shall be deposited into the general fund of the state.

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 expenses for marketing, educational, and informational material shall not exceed four percent of the lottery revenue.

The committing the lottery to environment, agriculture, and natural resources fund, also to be known as the CLEAN fund, is created in the office of the treasurer of state. Lottery revenue remaining after expenses are determined shall be transferred to the CLEAN fund on a monthly basis. Revenues generated during the last month of the fiscal year which are transferred to the CLEAN fund during the following fiscal year shall be considered revenues transferred during the previous fiscal year for purposes of the allotments made to and appropriations made from the separate accounts in the CLEAN fund for that previous fiscal year. However, upon the request of the director 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 monthly transfer to the CLEAN fund, the director 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 CLEAN fund in the same manner as other lottery revenue. Money in the CLEAN fund shall be deposited in interest bearing accounts in fi-

ancial 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 CLEAN fund and shall be retained in the fund unless appropriated by the general assembly.

2. The director of management shall not include lottery revenues in the director's fiscal year revenue estimates. Moneys in the CLEAN fund shall not be considered a part of the Iowa economic emergency fund.

91 Acts, ch 267, §138 HF 479

Exceptions for 1991-1992 fiscal year, revenue transfers, reimbursements to general fund, see 91 Acts, ch 271, §1, 2 SF 549

Subsection 1, paragraph a, NEW unnumbered paragraph 2

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 monthly that portion of the fund that is transferred to the CLEAN fund under section 99E.10 and shall cause that portion to be transferred to the CLEAN fund of the state. The commissioner shall certify before the twentieth of each month that portion of the fund resulting from the previous month's sales to be transferred to the CLEAN fund.

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.

Exceptions for 1991-1992 fiscal year, revenue transfers, reimbursements to general fund, see 91 Acts, ch 271, §2 SF 549

Footnote added, section not amended

99E.32 Appropriations — 1987, 1988, 1989, and 1990 fiscal years.

1. The treasurer of state shall, for the fiscal years beginning July 1, 1986, July 1, 1987, July 1, 1988, and July 1, 1989, make allotments of the moneys within the Iowa plan fund for economic development created in section 99E.10 to separate accounts within that fund as follows:

a. In the fiscal year beginning July 1, 1986 the first three million four hundred thirty-eight thousand dollars, in the fiscal year beginning July 1, 1987 the first six million six hundred seventy-five thousand dollars, in the fiscal year beginning July 1, 1988 the first four million six hundred twenty-five thousand dollars and in the fiscal year beginning July 1, 1989 the first four million four hundred thirty-five thousand dollars to the jobs now capitals account.

b. For the fiscal years beginning July 1, 1986, July 1, 1987, July 1, 1988, and July 1, 1989, after the allotment in paragraph "a", ten million dollars, ten million dollars, four million six hundred fifty thousand dollars, and four million six hundred fifty thousand dollars respectively, to the community economic betterment account; for the fiscal years beginning July 1, 1986, July 1, 1987, July 1, 1988, and July 1, 1989, eight million five hundred fifty thousand dollars, eight million three hundred seventy-five thousand dollars, nineteen million eight thousand dollars, and twenty-eight million eight hundred four thousand dollars, respectively, to the jobs now account; and for the fiscal years beginning July 1, 1986, July 1, 1987, July 1, 1988, and July 1, 1989, twelve million five hundred thousand dollars, seven million four hundred thousand dollars, seven million dollars, and seven million seven hundred twenty-one thousand dollars, respectively, to the education and agriculture research and development account.

c. After the allotments have been made under paragraphs "a" and "b" in each of the fiscal years, the excess is allotted equally to the community economic betterment account and to the surplus account.

d. Notwithstanding paragraph "c", after the allotments have been made for the fiscal years beginning July 1, 1988, and July 1, 1989, under paragraphs "a" and "b", the total excess is allotted to the surplus account. Of the amount allotted for the fiscal year beginning July 1, 1989, the sum of five hundred ninety-six thousand dollars shall be transferred prior to July 1, 1991, to the general fund of the state.

2. a. There are appropriated moneys in the community economic betterment account for each of the fiscal years beginning July 1, 1986, July 1, 1987, July 1, 1988, and July 1, 1989 to the Iowa department of economic development to be used for the following purposes in the amounts, or so much thereof as may be necessary, as provided in section 99E.33:

- (1) Principal buy-down program to reduce the principal of a business loan.
- (2) Interest buy-down program to reduce the interest on a business loan.
- (3) Loans to aid in economic development.
- (4) Site development or infrastructure costs directly related to a project resulting in new employment.
- (5) Road construction projects.
- (6) Funds for guaranteeing business loans by local development corporations as described in section 28.29.
- (7) Grants to economic development projects, as defined in section 99E.10, subsection 2, if at least

fifty percent of the total cost of the project is paid from sources other than the Iowa plan fund. If a project involves purchase or improvement of real property, a grant may be made only if the property is located in the state of Iowa.

(8) For the fiscal years beginning on July 1, 1986 and July 1, 1987 the department shall establish a pilot program entitled the new business opportunity program to provide financial and technical assistance to emerging businesses and industries that expand and diversify the state's economic base. Assistance may be in any form authorized under the community economic betterment account and the department may allocate for each of those fiscal years up to one million dollars of the account's funds for the pilot program.

(9) Notwithstanding any other provision, the moneys allocated to the community economic betterment account beginning July 1, 1988, are appropriated to the department of economic development to be used only for the purposes of providing financial assistance for small business gap financing, new business opportunities, new product and entrepreneurial development, and comprehensive management assistance in the amounts, or so much thereof as may be necessary, as provided in section 99E.33. These purposes may be accomplished by providing the following types of assistance:

- (a) Principal buy-down program to reduce the principal of a business loan.
- (b) Interest buy-down program to reduce the interest of a business loan.
- (c) Loans to aid in economic development.
- (d) Grants to aid in economic development projects as defined in section 99E.10, subsection 2, if at least fifty percent of the total cost of the project is paid from sources other than the Iowa plan fund. If a project involves purchase or improvement of real property, a grant may be made only if the property is located in the state of Iowa.
- (e) Loan guarantees for business loans made by commercial lenders.
- (f) Equity-like investments.
- (g) Comprehensive management assistance. The conditions, criteria, and limitations specified in section 99E.31, subsection 2, apply to providing of moneys under this paragraph.

The department shall document the actual job creation and retention effects of all businesses receiving financial assistance from the account in the context of the businesses' employer contribution and payroll reports.

The department shall require businesses which receive assistance from the account to submit historical copies of the reports with the application for funds, require businesses to submit the reports after the award on a timely basis, and require businesses to estimate the expected job creation and retention effects for the twelve-month and twenty-four month period after the award in terms of the number of employees and total wages as displayed in the payroll reports. The department shall develop definitions

for the terms "job creation" and "job retention" to measure and identify the actual number of permanent, full-time positions which the businesses actually created or retained and can be documented by comparison of the payroll reports during the twenty-four month period after the award.

b. The conditions, criteria, and limitations specified in section 99E.31, subsection 2, apply to the providing of moneys under this subsection. In addition to such conditions, criteria, and limitations, for applications submitted after July 1, 1988, the following factors and requirements shall be considered or applied:

(1) The impact of the proposed project on other businesses in competition with the business being considered for assistance. The department shall make a good faith effort to identify existing Iowa businesses within an industry in competition with the business being considered for assistance. The department shall make a good faith effort to determine the probability that the proposed financial assistance will displace employees of the existing businesses. In determining the impact on businesses in competition with the business being considered for assistance, jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created.

(2) The economic impact to the state of the proposed project. In measuring the economic impact the department shall award more points for the following:

(a) A project which has a greater consistency with the state strategic plan.

(b) A business with a greater percentage of sales out-of-state or of import substitution.

(c) A business with a higher proportion of in-state suppliers.

(d) A project which would provide greater diversification of the state economy.

(e) A business with fewer in-state competitors.

(f) A potential for future job growth.

(g) A project which is not a retail operation.

(3) The quality of jobs to be provided. Jobs that have a higher wage scale, have a lower turnover rate, are full-time, or are career-type positions are considered higher in quality. Businesses that have wage scales substantially below that of existing Iowa businesses in that area should be rated as providing the lowest quality of jobs and should therefore be given the lowest ranking for providing such assistance.

(4) If the business has a record of violations of the law over a period of time that tends to show a consistent pattern, the business shall be given the lowest ranking for providing assistance. The department shall make a good faith effort to compile this information.

(5) If a business has, within three years of application for assistance, acquired or merged with an Iowa corporation or company, the business shall make a good faith effort to hire the workers of the merged or acquired company.

(6) To be eligible for assistance a business shall

provide for a preference for hiring residents of the state or the economic development area, except for out-of-state employees offered a transfer to Iowa or the economic development area.

(7) All known required environmental permits must be granted and regulations met before moneys are released.

3. There are appropriated moneys in the jobs now account for each of the fiscal years beginning July 1, 1986, July 1, 1987, July 1, 1988, and July 1, 1989, to the following funds, agencies, boards or commissions in the amounts, or so much thereof as may be necessary, as provided in section 99E.33 to be used for the following purposes:

a. To the department of natural resources the sum of eight million dollars for the fiscal year beginning July 1, 1989, for deposit in an Iowa resources enhancement and protection fund and allocated pursuant to section 455A.19.

b. To the Iowa product development fund for the purposes provided in section 28.89. For the fiscal year beginning July 1, 1987, the amount appropriated is one million five hundred thousand dollars. For the fiscal year beginning July 1, 1988, the amount appropriated is one million two hundred fifty thousand dollars. For the fiscal year beginning July 1, 1989, the amount appropriated is one million five hundred thousand dollars.

c. For the fiscal years beginning July 1, 1986, and July 1, 1987, to the department of cultural affairs, and for the fiscal years beginning July 1, 1988, and July 1, 1989, to the arts division of the department of cultural affairs, for the purposes designated in section 99E.31, subsection 3, paragraph "d". For the fiscal year beginning July 1, 1987, the amount appropriated is six hundred seventy-five thousand dollars. For the fiscal year beginning July 1, 1988, the amount appropriated is six hundred fifty thousand dollars of which forty thousand dollars shall be allocated to the John L. Lewis commission for the John L. Lewis museum in Lucas, Iowa, seventy thousand dollars for the Iowa town square project, seventy thousand dollars for the artist endowment program, and twelve thousand dollars is to be directed to the secretary of state for the restoration and display of the Iowa state constitution. For the fiscal year beginning July 1, 1989, the amount appropriated is six hundred fifty thousand dollars.

d. To the Iowa department of economic development for the purposes designated in section 99E.31, subsection 3, paragraph "e". For the fiscal year beginning July 1, 1986, the amount appropriated is two million six hundred thousand dollars. For the fiscal year beginning July 1, 1987, the amount appropriated is two million fifty thousand dollars. For the fiscal year beginning July 1, 1988, the amount appropriated is one million nine hundred eight thousand dollars. For the fiscal year beginning July 1, 1989, the amount appropriated is three million three hundred ninety-three thousand dollars to be used for the purposes and in the amounts as follows:

(1) Satellite centers under section 28.101, one

million one hundred twenty-five thousand dollars of which fifty thousand dollars shall be used by the department to hire a rural development coordinator; forty-five thousand dollars for an informational referral center; and ninety-five thousand dollars for model rural development projects. For the fiscal year beginning July 1, 1988, the amount appropriated is nine hundred thirty-five thousand dollars. Of the amount appropriated in the fiscal year beginning July 1, 1988, only, thirty thousand dollars shall be awarded to each of the fifteen regional coordinating councils for annual salaries, support, and maintenance of the satellite centers and up to one hundred fifty thousand dollars may be used for supplemental grants to the satellite centers. Criteria for awarding the grants include the performance of the satellite center and the need for the supplemental funding. The department shall award at least four supplemental grants, but in no case shall the maximum supplemental grant exceed fifteen thousand dollars. For the fiscal year beginning July 1, 1989, the amount appropriated is one million five hundred forty-five thousand dollars. Of the amount appropriated for the fiscal year beginning July 1, 1989, the department may employ three full-time equivalent positions for community outreach programs.

(2) Federal procurement offices, one hundred thousand dollars. For the fiscal year beginning July 1, 1988, the amount appropriated is one hundred thousand dollars. For the fiscal year beginning July 1, 1989, the amount appropriated is eighty thousand dollars.

(3) Iowa main street program, two hundred seventy-five thousand dollars. For the fiscal year beginning July 1, 1988, the amount appropriated is three hundred ninety-three thousand dollars. For the fiscal year beginning July 1, 1989, the amount appropriated is three hundred forty-three thousand dollars.

(4) Technical assistance for businesses for purposes of the federal small business innovation research grants program, two hundred fifty thousand dollars of which fifty thousand dollars shall be expended to develop and operate a small business information center. For the fiscal year beginning July 1, 1988, no amount is appropriated. For the fiscal year beginning July 1, 1989, the amount appropriated is one hundred thousand dollars.

(5) Business incubators, three hundred thousand dollars. The funds shall be used to provide for operations of existing incubators and for the establishment of at least one new incubator in the fiscal year. The department will award grants to community colleges and local communities on an annual basis. In awarding the grants, the department shall consider the incubator's plan to become self-sufficient from the need for further grants within three years of its start-up. Future grants shall be contingent upon how the incubator is succeeding in becoming self-sufficient. The local community or college is required to match the state's grant on a dollar-for-dollar basis. For the fiscal year beginning July 1, 1988, the

amount appropriated is two hundred fifty thousand dollars. For the fiscal year beginning July 1, 1989, the amount appropriated is two hundred fifty thousand dollars.

(6) Rural incubators or technical assistance centers, one hundred fifty thousand dollars is appropriated for the fiscal year beginning July 1, 1988. The funds shall be used for incubators or technical assistance centers located in communities with a population of less than ten thousand. The department will award grants to universities, community colleges, and local communities on an annual basis. In awarding the grants, the department shall consider the incubator's or center's plan to become self-sufficient from the need for further grants within three years of its start-up. Future grants shall be contingent upon how the incubator or center is succeeding in becoming self-sufficient. The local community, university, or college is required to provide a twenty-five percent match of the state's grant. For the fiscal year beginning July 1, 1989, the amount appropriated is six hundred thousand dollars.

(7) For rural development programs, the sum of eighty thousand dollars is appropriated for the fiscal year beginning July 1, 1988. For the fiscal year beginning July 1, 1989, the amount appropriated is one hundred seventy-five thousand dollars.

(8) For council of governments assistance, the sum of three hundred thousand dollars is appropriated for the fiscal year beginning July 1, 1989. The funds shall be used to provide technical assistance to the political subdivisions of the state and to coordinate the delivery of local services of the council of governments.

e. For the fiscal year beginning July 1, 1986 only, the sum of two hundred thousand dollars for the targeted small business loan guarantee program established pursuant to section 220.111.

f. For the fiscal years beginning July 1, 1986 and July 1, 1987 only, to the Iowa conservation corps account the sum of one million dollars and seven hundred fifty thousand dollars, respectively. Of the funds appropriated under this paragraph, five hundred thousand dollars shall be used for a summer jobs program for young adults, as a part of the Iowa youth corps and designed to provide part-time public service employment to work on conservation-oriented projects.

g. For the fiscal years beginning July 1, 1988, and July 1, 1989, only to the Iowa department of economic development, eight hundred thousand dollars for purposes of administration of the Iowa conservation corps, established in section 15.225. Of the amount appropriated for the fiscal year beginning July 1, 1988, one hundred thousand dollars shall be used for minority youth employment. Moneys not used for minority youth employment are available for use for the purposes of the Iowa conservation corps.

h. For the fiscal years beginning July 1, 1987 and July 1, 1988, to the advance account of the area school job training fund established in section 280C.6, one million dollars and seven hundred fifty

thousand dollars, respectively. If 1988 Iowa Acts, chapter 1131, is enacted, the amount appropriated for the fiscal year beginning July 1, 1988, shall be to the revolving loan account of the area school job training fund.

i. For the fiscal year beginning July 1, 1987, to the department of agriculture and land stewardship the sum of three hundred thousand dollars for developing pilot public/private partnerships to assist Iowa producers of agricultural products in the promotion, marketing, and selling of agricultural products to local and regional markets. For the fiscal year beginning July 1, 1988, the amount appropriated is one hundred fifty thousand dollars. For the fiscal year beginning July 1, 1989, the amount appropriated is four hundred fifty thousand dollars which is to be used for funding of existing partnerships or for starting new ones.

j. For the fiscal year beginning July 1, 1987 only, to the department of agriculture and land stewardship the sum of one hundred thousand dollars, or so much as is necessary, to provide a grant to the organizers from the 1988 world ag expo in the Amana colonies.

k. For the fiscal year beginning July 1, 1988, there is appropriated to the department of economic development for labor management councils the sum of one hundred thousand dollars. For the fiscal year beginning July 1, 1989, there is appropriated to the department of economic development for labor management councils the sum of two hundred thousand dollars.

l. For the fiscal years beginning July 1, 1988, and July 1, 1989, to the Iowa department of economic development the sum of seven hundred thousand dollars and seven hundred thousand dollars, respectively, for the establishment of welcome centers as provided in sections 15.271 and 15.272. The funds appropriated shall be used for implementation of the recommendations of the statewide long-range plan for developing and operating welcome centers through the state. Of the amount appropriated for the fiscal year beginning July 1, 1989, twenty-five thousand dollars, or so much as is necessary, is appropriated to the department of agriculture and land stewardship to provide a grant to the heartland heritage center project for the development of living history farms near Des Moines. As a condition of the grant, the department of agriculture and land stewardship shall have representation on all boards dealing with the planning, development, design, and administration of the living history farms development.

m. (1) For the fiscal years beginning July 1, 1988, and July 1, 1989, to the department of agriculture and land stewardship the sum of one hundred thousand dollars and two hundred fifty thousand dollars, respectively, to fund pilot lamb and wool management education projects approved by the department at area schools selected as project sites. The selection of an area school as a project site shall be based upon the evaluation and recommendations

of an advisory committee created by the department and composed of persons actively engaged in lamb and wool production, persons representing the agricultural experiment station of the Iowa state university of science and technology, and persons expert in postsecondary education. The committee shall conduct an evaluation of area schools applying to be selected as pilot project sites. The committee in formulating its recommendations shall assign a weight to and consider the following criteria:

(a) The area school's relevant and available educational facilities.

(b) The number of persons interested in beginning or expanding lamb and wool production in the area school's merged area.

(c) The current number of sheep in the area school's merged area.

(d) The increase in the number of sheep in the area school's merged area.

(e) The creation or expansion of lamb and wool production facilities in the area school's merged area.

(f) The size and number of lamb and wool producer groups in the area school's merged area, and the degree to which such groups promote lamb and wool production in the area.

(g) The qualifications of the person selected by the area school to direct the project, and the qualifications of persons selected by the area school to instruct producers participating in the project.

The committee shall be staffed by employees of the department as appointed by the director of the department. The evaluation and recommendations shall be submitted to the director not later than December 30, 1988, or December 30, 1989, as applicable.

(2) An area school selected to be a pilot project site is entitled to regular disbursements of funds by the department to establish the project, and for salaries, support, maintenance, and other operational purposes according to a schedule which shall be established by the department. An area school shall not have less than thirty producers participating in the project, on or after December 30, 1990, or December 30, 1991, as applicable. If after that time, less than thirty producers participate in a project when the department is disbursing scheduled funds to the area school, the amount of funds to the school shall be reduced proportionately according to the number of producers participating in the project. The amount withheld shall be added equally to the amount disbursed to area schools having thirty or more producers participating in their respective projects. Only producers are eligible to participate in a project. The department may establish additional requirements for participation in the project, including a fee which shall be charged for producers participating in the project. A producer shall be charged the fee notwithstanding any other fee paid to the area school.

(3) For purposes of the projects, "producer" means a person actively engaged or seeking to become actively engaged in lamb or wool production.

n For the fiscal year beginning July 1, 1988, the sum of nine million three hundred thousand dollars as follows:

(1) Four million six hundred fifty thousand dollars to the Iowa finance authority for the revolving fund for the community and rural development loan program established under 1988 Iowa Acts, chapter 1217.

(2) Four million six hundred fifty thousand dollars to the business development finance corporation assistance fund established under 1988 Iowa Acts, chapter 1207.

(3) Up to one million dollars of the moneys allocated under subparagraph (1) and up to three million dollars of the moneys allocated under subparagraph (2) which are not used or dedicated may be transferred to and used for purposes of the community economic betterment account, as determined by the department of economic development with one-half of the amount to be transferred on October 1, 1988, and one-half of the amount to be transferred on January 15, 1989. For the fiscal year beginning July 1, 1989, the sum of two million six hundred fifty thousand dollars is appropriated to the business development finance corporation assistance fund established under section 28.148.

o For the fiscal year beginning July 1, 1988, to the department of economic development the sum of fifty thousand dollars for a local economic development pilot project for an area encompassing the cities and rural areas making up the area community commonwealth where the cities are represented on the board of directors of a nonprofit corporation set up for the purpose of aiding in the economic development of the area. In order for the area to receive moneys under this paragraph, the area shall be formed under an agreement entered into pursuant to chapter 28E for the sole purpose of providing for economic development projects for the area provided the agreement identifies an entity to receive the funds under this paragraph and all parties to the agreement shall be located within the same regional economic delivery area created pursuant to section 28.101. The moneys available to the chapter 28E area shall be used only for economic development initiatives as defined in section 99E.10, subsection 2. However, as used in this paragraph, economic development initiatives do not include the employment of professional staff or consultants. The chapter 28E area shall file an economic development plan with the department of economic development before application is made to receive funds under this paragraph. The area receiving funds under this paragraph shall submit an annual financial report within sixty days following the close of its fiscal year to the regional coordinating council created pursuant to section 28.101 of the region in which the area is located.

p For the fiscal year beginning July 1, 1988, to the division of soil conservation within the department of agriculture and land stewardship for deposit in the water protection fund created in 1988 Iowa

Acts, chapter 1189, section 5, the sum of five hundred thousand dollars for purposes of the fund.

q For the fiscal years beginning July 1, 1988, and July 1, 1989, to the department of education the sum of seven hundred fifty thousand dollars and seven hundred fifty thousand dollars, respectively, for the purposes and under the conditions specified in section 99E.31, subsection 5, paragraph "c"

r For the fiscal year beginning July 1, 1989, to the Iowa state university of science and technology for funding the small business development centers the sum of one million three hundred thousand dollars.

s For the fiscal year beginning July 1, 1989, to the Iowa finance authority, the sum of one million three hundred ninety-five thousand dollars for the housing trust fund as specified in section 220.100 to be used for purposes of section 220.100, subsection 2, paragraphs "b" and "c"

t For the fiscal year beginning July 1, 1989, to the Iowa finance authority, the sum of one hundred thousand dollars for the operations, construction, or repairs of homeless assistance shelters.

u (1) For the fiscal year beginning July 1, 1989, to the Iowa finance authority, the sum of two million dollars for the housing assistance program to provide mortgage and finance assistance to individuals for the purchase or acquisition of homes. Of this amount one hundred thousand dollars shall be used to finance the purchase or acquisition, in communities with a population of less than five thousand, of modular homes, as defined in section 135D.1, and manufactured homes as defined in 42 U.S.C. § 5403.

(2) Funds provided under subparagraph (1) shall not be restricted to first-time home buyers but shall be for lower income and very low income families as defined in section 220.1. The assistance provided shall include at least one of the following kinds and may include others whether listed or not:

- (a) Closing costs assistance.
- (b) Down payment assistance.
- (c) Home maintenance and repair assistance.
- (d) Loan processing assistance through a loan

endorser review contractor who would act on behalf of the authority in assisting lenders in processing loans that will qualify for government insurance or guarantee or for financing under the authority's mortgage revenue bond program.

- (e) Mortgage insurance program.

Not more than fifty percent of the assistance provided by the authority shall be provided under subparagraph subdivisions (d) and (e).

(3) Assistance provided under subparagraph (1) shall be limited to mortgages under thirty-five thousand dollars, except in those areas of the state where the median price of homes exceeds the state average. In providing the assistance, the authority shall require substantial seller participation of not less than two percent of the mortgage amount, which participation includes, but is not limited to, home ownership maintenance funding, down payment assistance, payment of closing costs, or rehabilitation costs.

v. For the fiscal year beginning July 1, 1989, to the arts division of the department of cultural affairs, the sum of one hundred twenty thousand dollars for the town square program.

w. For the fiscal year beginning July 1, 1989, to the arts division of the department of cultural affairs, the sum of one hundred thousand dollars for the artists endowment program.

x. For the fiscal year beginning July 1, 1989, to the department of cultural affairs, the sum of two hundred seventy thousand dollars for the preservation, exhibition, or development of historic resources by the department.

y. For the fiscal year beginning July 1, 1989, to the department of economic development for the sister state program the sum of eighty thousand dollars. Funds appropriated for the sister state program shall be matched to the extent possible by private sources. The department shall secure the necessary private participation from groups and organizations most appropriate for this program.

z. For the fiscal year beginning July 1, 1989, to the department of economic development the sum of two hundred ninety-six thousand dollars for a rural main street program for communities with a population under five thousand.

aa. For the fiscal year beginning July 1, 1989, to the department of economic development, the sum of four hundred thousand dollars for a rural enterprise fund for seed money for local community development organizations established for an area for the purpose of providing for economic and business development projects. The availability of the seed money, and the type of projects are similar to those envisioned in paragraph "o" of this subsection.

ab. For the fiscal year beginning July 1, 1989, the sum of two million dollars to the department of economic development to establish a retraining program for existing Iowa businesses and employees to upgrade and modernize the skills of the employees.

ac. To the revolving loan account of the area school job training fund established under section 280C.6, the sum of one million dollars for the fiscal year beginning July 1, 1989.

ad. For the fiscal year beginning July 1, 1989, to the department of economic development, the sum of one hundred fifty thousand dollars for a productivity enhancement program which will focus on transferring state-of-the-art manufacturing techniques to rural manufacturers.

ae. To the department of human services the sum of two hundred fifty thousand dollars, or so much thereof as is necessary, for grants of financial aid, made pursuant to section 232.142, subsection 3, for purposes of establishing, improving, operating, and maintaining approved county and multicounty juvenile detention homes. The department shall encourage the recipients of the grants to serve the needs of juveniles in multicounty areas.

4. There are appropriated moneys in the education and agriculture research and development account for each of the fiscal years beginning July 1,

1986, July 1, 1987, July 1, 1988, and July 1, 1989, to the following funds, agencies, boards or commissions in the amounts, or so much thereof as may be necessary, as provided in section 99E.33 to be used for the following purposes:

a. To the Iowa college aid commission for the forgivable loan program established in sections 261.71 to 261.73. For the fiscal year beginning July 1, 1986, the amount appropriated is seven hundred fifty thousand dollars. Notwithstanding subsection 7, any moneys not expended under this paragraph by June 30, 1987 shall not be used for purposes of this paragraph but shall be transferred and used for the purposes described in paragraph "c" for the fiscal year beginning July 1, 1987. For the fiscal years beginning July 1, 1987, July 1, 1988, and July 1, 1989, no amount is appropriated.

b. To the Iowa department of economic development for the purposes and under the conditions specified in section 99E.31, subsection 4, paragraph "a".

(1) For the fiscal year beginning July 1, 1986, the amount appropriated is ten million seven hundred fifty thousand dollars.

(2) For the fiscal year beginning July 1, 1987, the amount appropriated is seven million dollars of which five hundred thousand dollars shall be allocated to the Iowa State University of science and technology for the national center for food and industrial agricultural product development; and two hundred fifty thousand dollars shall be allocated to the University of Northern Iowa for the decision-making science institute.

(3) For the fiscal year beginning July 1, 1988, the amount appropriated is seven million dollars of which two hundred fifty thousand dollars shall be allocated to the University of Northern Iowa for the decision-making science institute; one hundred thousand dollars shall be allocated to the department of economic development for an economic development training program at the school of business at the University of Northern Iowa which shall use these funds in consultation with the department, the university, and the Iowa professional developers; forty thousand dollars shall be allocated to the state library within the department of cultural affairs to establish a patent depository library for the purpose of making university patents accessible to the public and private sectors by purchasing the twenty-year backfile of patents and to train existing staff to work with users of the library; and three hundred sixty thousand dollars shall be allocated and used to establish a university and private industry research and development consortium at each of the state board of regents universities under chapter 262B. Of the three hundred sixty thousand dollars, one hundred twenty thousand dollars is allocated to each of the consortiums with eighty-five thousand dollars being appropriated to the department of economic development for providing staff and support to the marketing for the consortiums and thirty-five thousand dollars is allocated to each of the offices of vice presi-

dent for research at the three board of regents institutions. Of the money allocated under this paragraph to the Iowa State University of science and technology for the fiscal year beginning July 1, 1988, two hundred thousand dollars shall be used to support collaborative research with the United States department of agriculture to improve reproductive performance and disease resistance in swine. After the first five million dollars appropriated for the fiscal year beginning July 1, 1988, has been allocated, the next one million dollars shall be allocated for proposals described in section 99E 31, subsection 4, paragraph "a", subparagraph (1) and the next one million dollars shall be allocated for applied research projects described in section 99E 31, subsection 4, paragraph "a", subparagraph (3) of which one hundred fifty thousand dollars shall be used for the water resource research institute under paragraph "e". The department may use any unexpended funds from the appropriation made under this paragraph for the fiscal year beginning July 1, 1987, as a prepayment of the allocations made for the fiscal year beginning July 1, 1988, for the decision-making science institute and the economic development leadership program, which prepayment shall be repaid as the fiscal year beginning July 1, 1988, allocation to such institute or program becomes available.

(4) (a) For the fiscal year beginning July 1, 1989, the amount appropriated is six million four hundred thousand dollars. Of the amount appropriated for the fiscal year beginning July 1, 1989, forty thousand dollars shall be allocated to the state library within the department of cultural affairs for purposes of the patent depository library and three hundred thousand dollars shall be allocated and used to operate the university and private industry research and development consortium at each of the state board of regents universities established under chapter 262B. Of the three hundred thousand dollars, one hundred thousand dollars is allocated to each of the consortiums. The department of economic development and the consortiums shall coordinate activities relating to purposes of chapter 262B. Of the amount appropriated in this subparagraph, five hundred thousand dollars is allocated to the University of Northern Iowa for the decision-making science institute, two hundred thousand dollars is allocated to the department of economic development for an economic development training program at the school of business at the University of Northern Iowa which shall use these funds in consultation with the department, the university, and the professional developers of Iowa and which shall use one hundred thousand dollars of the funds for the development, with the involvement of the public and private sector, of a curriculum on international trade, one hundred thousand dollars is allocated to the decision-making science institute for the emerging business opportunities analysis, six hundred fifty thousand dollars is allocated to the international network on trade fund of the INTERNET foundation, established in chapter 18B, which shall transfer four hundred thousand

dollars of its allocation to the Wallace technology transfer foundation of Iowa established in section 28 152, sixty thousand dollars for grants under subparagraph subdivision (c), and three hundred thousand dollars, to be allocated equally, for support of the Iowa technology innovation centers at the University of Iowa and the Iowa State University of science and technology and the applied technology program at the University of Northern Iowa.

(b) Notwithstanding section 99E 31, subsection 4, paragraph "a", for the fiscal year beginning July 1, 1989, the department of economic development shall waive the matching funds requirement for programs under this subparagraph except for the Iowa State University of science and technology biotechnology research and development program, the technology innovation centers, and the applied technology program.

(c) For the fiscal year beginning July 1, 1989, the department of economic development shall provide a grant of thirty thousand dollars to each agricultural marketing resources cooperative that has qualified for a loan from the community economic betterment account under subsection 2 to insure the adequate capitalization of each cooperative.

c To the Iowa college aid commission for the purposes and under the conditions specified in section 99E 31, subsection 4, paragraph "b". For the fiscal years beginning July 1, 1987, and July 1, 1988, no amount is appropriated. However, the funds transferred under paragraph "a" are available for use under this paragraph for the fiscal years beginning July 1, 1987, and July 1, 1988. For the fiscal years beginning July 1, 1988, and July 1, 1989, no amount is appropriated.

d For the fiscal year beginning July 1, 1987 only to the Iowa peace institute, the sum of two hundred fifty thousand dollars for salaries, support, and maintenance provided, and to the extent that, the appropriations are matched dollar for dollar by the Iowa peace institute. The peace institute shall not use any of the state funds for the construction or purchase of real property. For the fiscal year beginning July 1, 1988, the unobligated moneys left in the Iowa plan fund as a result of the appropriation made for the fiscal year beginning July 1, 1985, pursuant to section 99E 31, subsection 5, paragraphs "e" and "g", are appropriated for use under this paragraph. However, if the amount appropriated exceeds two hundred fifty thousand dollars the excess shall be reallocated under the account.

e For the fiscal years beginning July 1, 1987 and July 1, 1989 to the Iowa State University of science and technology, the sum of one hundred fifty thousand dollars for each fiscal year for allocation to the Iowa State University water resource research institute for a subsurface water and nutrient management system. This research shall concentrate its efforts on providing optimum soil water table level throughout the growing season, reduction of nitrates in Iowa's surface and subsurface waters, reduction of Iowa's dependency on subsurface water for irriga-

tion, and increasing productivity of selected Iowa soils for selected crops. The Iowa State University water resource research institute shall administer the research funds and report to the general assembly by February 1 of each year, on the program's progress and results.

f For the fiscal year beginning July 1, 1989, to the department of economic development, the sum of two hundred twenty-one thousand dollars for the University of Iowa and two hundred fifty thousand dollars for the Iowa State University of science and technology for the operation and maintenance of the university related research parks.

g For the fiscal year beginning July 1, 1989, to the Iowa cooperative extension service in agriculture and home economics at the Iowa State University of science and technology, the sum of three hundred thousand dollars to begin a three-year intensive effort of technology transfer for the livestock industry.

h For the fiscal year beginning July 1, 1989, to the department of economic development the sum of five hundred thousand dollars for the energy-related activities of the amorphous semiconductor project at Iowa State University of science and technology.

5 a There is appropriated from the allotment made to the jobs now capitals account under subsection 1 for each of the fiscal years beginning July 1, 1986, and July 1, 1987, to the department of education the sum of one million dollars for the purposes and under the conditions specified in section 99E 31, subsection 5, paragraph "c".

b There is appropriated from the allotment made to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1986 to the department of public safety for the acquisition and interface with a fingerprint computer the sum of four hundred thousand dollars. There is established an automated fingerprint identification system (AFIS) computer committee. This committee shall have the authority to prepare and implement guidelines, rules, and regulations pertaining to the placement, use, and access to the AFIS computer and any remote terminal designed to interface with the main computer located at the department of public safety. The AFIS committee will be chosen for two-year terms with four sheriffs chosen by the Iowa state sheriffs and deputies association and four chiefs of police chosen by the Iowa police executive forum. The commissioner of public safety, or the designee, will be chairperson of the AFIS committee.

After the initial committee is selected effective July 1, 1986, new members will serve staggered terms of two years. Beginning July 1, 1988, the Iowa state sheriffs and deputies association and the Iowa police executive forum will each choose two new members, who will make up the nine member AFIS committee. Thereafter, the staggered terms will take effect between the sheriffs' representatives and the police chiefs' representatives. Nothing herein shall limit the number of terms any one person may serve.

For the fiscal year beginning July 1, 1988, there is appropriated to the department of public safety the

sum of two hundred fifty thousand dollars for the automated fingerprint identification system. For the fiscal year beginning July 1, 1989, there is appropriated to the department of public safety the sum of four hundred ten thousand dollars for four remote automated fingerprint identification system (AFIS) terminals.

c There is appropriated from the allotment made to the jobs now capitals account under subsection 1 for the fiscal years beginning July 1, 1986, July 1, 1987, and July 1, 1988, to the Iowa State University of science and technology for funding for the small business development centers the sum of seven hundred thousand dollars, eight hundred twenty-five thousand dollars, and eight hundred twenty-five thousand dollars, respectively.

d There is appropriated from the allotment made to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1986 to the Iowa State University of science and technology the sum of one hundred thousand dollars for allocation to the center for industrial research and service for the hazardous waste research program.

e There is appropriated from the allotment made to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1986 to the department of human services the sum of three hundred fifty thousand dollars for the purchase of computer equipment for establishing a child support recovery central clearinghouse.

f There is appropriated from the allotment made to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1986 to the department of justice the sum of three hundred twenty-five thousand dollars for office automation and related personnel costs. The moneys appropriated under this paragraph which have not been expended by the end of the fiscal year shall not revert under section 8 33 or any other provision of law.

g There is appropriated from the allotment made to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1986 to the department of public defense for the architect, engineering, equipment and construction of the armory in Mason City the sum of four hundred thirty eight thousand dollars.

h There is appropriated from the allotment made to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1986 to the legislative council for the use of the world trade advisory committee the sum of one hundred twenty-five thousand dollars, or so much thereof as is necessary, to pay expenses of the members of the committee and other expenses approved by the committee. Notwithstanding subsection 7, any moneys not expended under this paragraph by June 30, 1987 shall be transferred for the fiscal year beginning July 1, 1987 to the department of economic development for a labor management council for which the department may contract out.

i There is appropriated from the allotment to the jobs now capitals account under subsection 1 for

the fiscal year beginning July 1, 1987 to the Iowa department of economic development the sum of two million dollars for the establishment of welcome centers as provided in sections 15 271 and 15 272 Of the amounts appropriated, sixty thousand dollars shall be used for the establishment of rural centers to be located in or near communities with populations of five thousand or less Not more than twenty thousand dollars shall be expended for each center The local communities are required to equally match state funds Welcome centers and rural centers that have received moneys from the department under this paragraph are required to promote the region in which they are located and the state as a whole

j There is appropriated from the allotment to the jobs now capitals account under subsection 1 for construction, equipment, renovation, and other costs associated with buildings in the capitol complex the sum of two million seven hundred fifty thousand dollars for each of the fiscal years beginning July 1, 1987, and July 1, 1988, to the department of general services Of the total funds appropriated, seven hundred fifty thousand dollars shall be utilized to pay costs of equipping the new historical building and the costs of moving exhibits into that building, and the remaining funds shall be used for renovation and remodeling of buildings in the capitol complex Notwithstanding the amount otherwise appropriated and the purpose for which appropriated under this paragraph, for the fiscal year beginning July 1, 1988, there is appropriated one million five hundred thousand dollars to the department of general services for construction, equipment, renovation, and other costs associated with buildings in the capitol complex, of which two hundred thousand dollars is allocated for Terrace Hill, one hundred twenty-five thousand is allocated for planning and construction of a parking garage, five hundred thousand is allocated for the planning for legislative office space, and up to ten thousand dollars shall be used for the purchase of POW/MIA flags to be flown on all public buildings of public bodies that apply for the flags

k There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1987 to the department of public defense for the purpose of the armory in Algona the sum of fifty thousand dollars

l There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1987 to the department of public defense for the purpose of the armory in Denison the sum of fifty thousand dollars

m There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1988, to the department of public defense the sum of fifty thousand dollars for the planning for the construction of armories

n There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1988, to the Iowa department of economic development the sum of seven

hundred ninety-three thousand dollars for contracting exclusively for advertising for in-state and out-of-state tourism, tourism marketing, and tourism promotion programs for electronic media and printed materials

The department shall develop public-private partnerships with Iowa businesses in the tourism industry, Iowa tour groups, Iowa tourism organizations, and political subdivisions in this state to assist in the development of advertising efforts and to the fullest extent possible, match on a dollar-for-dollar basis, contributions from other sources to fund the advertising contracts

The amount appropriated under this lettered paragraph is in addition to any amounts appropriated under 1988 Iowa Acts, chapter 1273

o There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1988, to the Iowa department of economic development the sum of one million two hundred seven thousand dollars for contracting exclusively for marketing and advertising contracts for out-of-state national marketing programs for electronic media and printed materials

The department shall develop public-private partnerships with Iowa businesses, Iowa business organizations, Iowa chambers of commerce, and political subdivisions in this state, to assist in the development of the marketing efforts and to the fullest extent possible, match on a dollar-for-dollar basis, contributions from other sources to fund the marketing contracts

The amount appropriated under this lettered paragraph is in addition to any amounts appropriated under 1988 Iowa Acts, chapter 1273

p There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1989, to the Iowa state fair board the sum of five hundred thousand dollars to provide facilities to house booths, displays, and other promotional activities for local tourism groups and organizations

q There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1989, to the department of cultural affairs the sum of one million dollars to be deposited in the historical resource revolving fund to be used for the historical resource development program under section 303 16

r There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1989, to the American Gothic House trust account the sum of one hundred thousand dollars for the acquisition and maintenance of Gothic House in Eldon

s There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1989, to the Iowa department of public health the sum of two hundred fifty thousand dollars to finance research in the area of electromagnohydrodynamics ventricular assist devices of the Iowa center for applied sciences, a

nonprofit corporation established under the laws of Iowa. The department of public health may enter into an agreement with the Iowa product development corporation to provide technical assistance and oversight for this project.

t. (1) There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1989, to a special fund to be created in the office of the treasurer of state the sum of one million five hundred thousand dollars to be used for the acquisition of emergency medical services equipment as provided in this paragraph.

(2) The moneys in the special fund created pursuant to subparagraph (1) shall be allocated to each county based upon the apportionment of funds as follows:

(a) Fifty percent of the funds is apportioned based upon the area of a county to the total area of all counties.

(b) Twenty-five percent of the funds is apportioned based upon the population of the county to the total population of all counties.

(c) Twenty-five percent of the funds is apportioned based upon the rural population of the county to the total rural population of all counties.

(3) Each county EMS association shall propose a plan for spending the county's allocation and submit the plan to the regional EMS council for its review and comment. The regional EMS council shall review the plan and shall approve, modify, or deny it. If a request is denied the county EMS association may submit a new proposal. Upon approval of the regional EMS council, the treasurer of state shall remit the amount approved to each county treasurer. Each county treasurer shall disburse the funds to the award recipients. Each one dollar awarded to a county shall require a one-dollar match by the county or EMS provider. The Iowa department of public health shall provide assistance to the regional EMS council in reviewing the proposals and shall assist the office of the treasurer of state in implementing this paragraph.

(4) For purposes of this paragraph, unless the context otherwise requires:

(a) "Area", "county EMS association", "EMS provider", "regional EMS council", and "rural population" mean the same as defined in 641 IAC, ch. 130.

(b) "Emergency medical services equipment" means defibrillators, nondisposable essential ambulance equipment, as defined by the American college of surgeons, communications pagers, radios, and base repeaters. "Emergency medical services equipment" does not include ambulances, automotive parts, or buildings.

(5) Notwithstanding section 8.33 or any other provision of law, funds appropriated by this paragraph which are unobligated or unencumbered on June 30, 1989, shall not revert to any fund but shall remain in the special account until fully awarded to the appropriate counties.

u. There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1989, to the Iowa department of transportation the sum of one hundred twenty-five thousand dollars, with eighty percent of the appropriation being credited to the city of Ventura and twenty percent of the appropriation being credited to the city of Clear Lake, for the completion of the road improvement connecting East Lake drive and North Shore drive.

v. (1) There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1989, to the department of human rights the sum of five hundred thousand dollars for the community-based recreational and educational grant program.

(2) Of the amount appropriated under subparagraph (1), four hundred thousand dollars shall be used as follows:

(a) To provide state funds to encourage and supplement recreational and educational activities for low-income youth grades K-12 by filling existing gaps and permitting expansion in the current system of community-based recreational and educational programs; establishing a comprehensive network of services that are continuous and year-round that focus on recreation and personal development education for low-income youth grades K-12; and providing recreational/educational programs for youth from families with incomes no more than twenty percent above the state poverty level.

(b) To be eligible for state funds under this subparagraph the applicant must be a nonprofit organization whose mission includes providing services for low-income youth grades K-12; the activities must be those not currently offered by the organization, or if currently offered is demonstrably underfunded; and the activities must be free of charge to all youth who meet the income requirements. A nominal fee, at cost, may be assessed to youth who do not meet the stated income requirements. Grants will be awarded based on the organization's demonstrated ability to provide organized recreational or educational programs or a combination of both.

(c) Eligible activities include, but are not limited to, the following:

(i) Recreation: arts and crafts, such as pottery, sewing, painting; swimming teams; bowling leagues; tumbling/gymnastics; and volleyball, softball, basketball, and tennis.

(ii) Education: drama clubs; dance lessons/troupes; music lessons, such as piano, voice; computer literacy; cultural enrichment reading; creative writing; and employment skills.

(3) Of the amount appropriated under subparagraph (1), one hundred thousand dollars shall be used for exemplary social and community-organized projects whose services are primarily targeted to minority populations in the state.

w. There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1989, to the Terrace

Hill commission the sum of fifty thousand dollars for landscaping, painting, equipment, repairs, renovations and furnishings at Terrace Hill.

6. If the moneys to be allotted in a fiscal year to the community economic betterment account, jobs now account or education and agriculture research and development account is less than the amount specified for that fiscal year in subsection 1, paragraph "b" the moneys appropriated for that fiscal year to the funds, agencies, boards or commissions for the purposes specified in subsection 2, 3 or 4, as applicable, shall be reduced by the same percentage decrease in the appropriate allotment.

7. The moneys appropriated in subsections 2, 3, 4 and 5 shall remain in the appropriate account of the Iowa plan fund until such time as the agency, board, commission, or overseer of the fund to which moneys are appropriated has made a request to the treasurer for use of moneys appropriated to it and the amount needed for that use. Notwithstanding section 8.33, moneys remaining of the appropriations made for a fiscal year from any of the accounts within the Iowa plan fund on June 30 of that fiscal year, shall not revert to any fund but shall remain in that account to be used for the purposes for which they were appropriated and the moneys remaining in that account shall not be considered in making the allotments for the next fiscal year.

8. The agency, board, commission, or overseer of the fund to which moneys are appropriated under this section shall make every effort to maximize the impact of these moneys through government and private matching funds.

9. There is appropriated to the agencies named for the fiscal year beginning July 1, 1988, and ending June 30, 1989, the remaining moneys in the surplus account after repayment to the permanent school fund in accordance with section 280C.8, to be used for the purposes designated:

a. To the Iowa State University of science and technology for biodegradable plastics research, the sum of three hundred ninety-eight thousand dollars. As a condition, limitation, and qualification of the appropriation made in this paragraph, one-third of the funds appropriated in this paragraph shall be used for researching the health and environmental impacts of biodegradable plastics.

b. To the State University of Iowa for biodegradable plastics research, the sum of one hundred eighty-three thousand dollars.

c. To the University of Northern Iowa for polymer and elastomer recycling research, the sum of one hundred thirty-one thousand dollars.

d. To the department of agriculture and land stewardship for development of biodegradable plastics standards, the sum of seventy-five thousand dollars.

e. To the department of natural resources for the purposes of holding toxic waste cleanup days during the fall of 1989, the sum of four hundred thousand dollars.

To the extent practical, the department shall hold

at least one of the toxic cleanup days in each state congressional district.

f. To the department of public safety or successor drug enforcement agency for promoting, equipping, and staffing a "Drug Tip Hotline", the sum of fifty thousand dollars.

Notwithstanding section 8.39, funds appropriated under this paragraph are not subject to transfer.

g. To the department of public safety for not more than the following full-time equivalent positions for the purpose of enforcing 1989 Iowa Acts, chapter 67: the sum of three hundred thousand dollars for sixteen FTEs.

h. To the state racing and gaming commission for not more than the following full-time equivalent positions for regulation activities required pursuant to 1989 Iowa Acts, chapter 67: the sum of one hundred thousand dollars for four and twenty-five hundredths FTEs.

10. There is appropriated from the surplus account to the designated agency or office for the fiscal year beginning July 1, 1989, and ending June 30, 1990, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

a. To the Terrace Hill commission, the sum of thirty thousand dollars for maintenance and repair at Terrace Hill and for .5 FTEs.

b. To the Terrace Hill commission, the sum of five thousand dollars for landscaping at Terrace Hill.

c. To the department of public defense, the sum of five hundred thousand dollars for construction of a STARC armory at Camp Dodge to house national guard units and to use the basement area to continue state government activities which include the state alternate emergency operations center, the Iowa communications network primary "HUB", and associated disaster service divisions required to maintain continuity of state government.

91 Acts, ch 260, §1003 HF 173

1991 amendment to subsection 1, paragraph d, retroactive to July 1, 1990, 91 Acts, ch 260, §1009 HF 173

Subsection 1, paragraph d amended

99E.34 Appropriations — ten fiscal years.

1. The treasurer of state shall, for each fiscal year of the fiscal period beginning July 1, 1990, and ending June 30, 2000, make allotments of the moneys within the CLEAN fund created in section 99E.10 to separate accounts within that fund as follows:

a. For each fiscal year, sixty-two and five-tenths percent to the Iowa resources enhancement and protection fund created in section 455A.18 and which amount is appropriated for the purposes of that fund. However, the total amount allotted under this paragraph in the fiscal year beginning July 1, 1990, shall not exceed twenty million dollars and in each of the following fiscal years shall not exceed twenty-five million dollars.

b. For each fiscal year, six percent to the soil conservation account. However, the total amount allotted under this paragraph in the fiscal year beginning July 1, 1990, shall not exceed two million four hundred thousand dollars.

2. For each fiscal year of the fiscal period, moneys in the soil conservation account are appropriated to the department of agriculture and land stewardship to be allocated as follows:

a. Sixty-two and four-tenths percent to the soil conservation division of the department of agriculture and land stewardship to provide state soil and water conservation cost-sharing funds pursuant to sections 467A.42 through 467A.75.

b. Eighteen and eight-tenths percent to the water protection fund created in section 467F.4, to be used for filter strips and waterways projects. The governing body of each soil and water conservation district shall identify those critical areas within the district where permanent grass and buffer zones would mitigate the effects of concentrated runoff on surface water quality. The governing body shall notify the landowners of those critical areas and provide the landowners with recommendations to establish these permanent grass and buffer zones, including any erosion control structures that may be appropriate, to mitigate the effects of concentrated runoff on surface water quality. In providing this notification and these recommendations, the governing body shall also inform the landowners that the establishment of these zones along with any erosion control structures may be eligible for financial assistance under the incentive programs within the water protection fund pursuant to section 467F.4 and may also

qualify for cost-sharing funds pursuant to section 467A.48.

c. Eighteen and eight-tenths percent to the soil conservation division of the department of agriculture and land stewardship for reforestation programs.

3. The moneys appropriated in subsection 1, paragraph "a", and subsection 2 shall remain in the appropriate account of the CLEAN fund until such time as the agency, entity, or fund to which moneys are appropriated has made a request to the treasurer for use of moneys appropriated to it and the amount needed for that use. Notwithstanding section 8.33, moneys remaining of the appropriations made for a fiscal year from any of the accounts within the CLEAN fund on June 30 of that fiscal year, shall not revert to any fund but shall remain in that account to be used for the purposes for which they were appropriated and the moneys remaining in that account shall not be considered in making the allotments for the next fiscal year.

4. The agency, entity, or fund to which moneys are appropriated under this section shall to the extent feasible make every effort to maximize the impact of these moneys through matching government and private funds unless otherwise provided by law.

91 Acts, ch 260, §1004 HF 173

Exceptions for 1991 1992 fiscal year, revenue transfers, reimbursements to general fund, see 91 Acts, ch 271, §2 SF 549
Subsection 1, paragraphs a and b amended

CHAPTER 99F

EXCURSION BOAT GAMBLING

99F.4 Powers.

The commission shall have full jurisdiction over and shall supervise all gambling operations governed by this chapter. The commission shall have the following powers and shall adopt rules pursuant to chapter 17A to implement this chapter:

1. To investigate applicants and determine the eligibility of applicants for a license and to select among competing applicants for a license the applicant which best serves the interests of the citizens of Iowa.

2. To license qualified sponsoring organizations, to license the operators of excursion gambling boats, to identify occupations within the excursion gambling boat operations which require licensing, and to adopt standards for licensing the occupations including establishing fees for the occupational licenses and licenses for qualified sponsoring organizations. The fees shall be paid to the commission and deposited in a special account of the general fund of

the state. All revenue received by the commission from license fees and admission fees shall be deposited in the special account in the general fund of the state.

Notwithstanding the provisions of this subsection and sections 99F.10 and 99F.17 directing that all license and admission fees be paid to the commission or be deposited into a special account, for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, all fees shall be deposited into the general fund of the state.

3. To adopt standards under which all excursion gambling boat operations shall be held and standards for the facilities within which the gambling operations are to be held. The commission may authorize the operation of gambling games on an excursion gambling boat which is also licensed to sell or serve alcoholic beverages, wine, or beer as defined in section 123.3.

4. To regulate the wagering structure for gam-

bling excursions including providing a maximum wager of five dollars per hand or play and maximum loss of two hundred dollars per individual player per gambling excursion.

5. To enter the office, excursion gambling boat, facilities, or other places of business of a licensee to determine compliance with this chapter.

6. To investigate alleged violations of this chapter or the commission rules, orders, or final decisions and to take appropriate disciplinary action against a licensee or a holder of an occupational license for a violation, or institute appropriate legal action for enforcement, or both.

7. To require a licensee, an employee of a licensee or holder of an occupational license to remove a person violating a provision of this chapter or the commission rules, orders, or final orders, or other person deemed to be undesirable, from the excursion gambling boat facilities.

8. To require the removal of a licensee, an employee of a licensee, or a holder of an occupational license for a violation of this chapter or a commission rule or engaging in a fraudulent practice.

9. To require a licensee to file an annual balance sheet and profit and loss statement pertaining to the licensee's gambling activities in this state, together with a list of the stockholders or other persons having any beneficial interest in the gambling activities of each licensee.

10. To issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, records, and other pertinent documents in accordance with chapter 17A, and to administer oaths and affirmations to the witnesses, when, in the judgment of the commission, it is necessary to enforce this chapter or the commission rules.

11. To keep accurate and complete records of its proceedings and to certify the records as may be appropriate.

12. To assess a fine and revoke or suspend licenses.

13. To take any other action as may be reasonable or appropriate to enforce this chapter and the commission rules.

14. To require all licensees of gambling game operations to utilize a cashless wagering system whereby all players' money is converted to tokens, electronic cards, or chips which only can be used for wagering on the excursion gambling boat.

15. To determine the payouts from the gambling games authorized under this chapter. In making the determination of payouts, the commission shall consider factors that provide gambling and entertainment opportunities which are beneficial to the gambling licensees and the general public.

16. To set the payout rate for all slot machines.

17. To define the duration of an excursion which shall be at least three hours during the excursion season. For the off season, the commission shall adopt rules limiting times of admission to excursion gambling boats consistent with maximum loss per player per gambling excursion specified in subsection 4.

18. To provide for the continuous videotaping of all gambling activities on an excursion boat. The videotaping shall be performed under guidelines set by rule of the division of criminal investigation and the rules may require that all or part of the original tapes be submitted to the division on a timely schedule.

19. To provide for adequate security aboard each excursion gambling boat.

20. To provide that gambling games shall be conducted only during the same hours when alcoholic beverages are lawfully sold or dispensed as provided in section 123.49.

21. To establish minimum charges for admission to excursion gambling boats and regulate the number of free admissions.

22. Drug testing, as permitted by section 730.5, shall be required periodically, not less than every sixty days, of persons employed as captains, pilots, or physical operators of excursion gambling boats under the provisions of this chapter.

91 Acts, ch 260, §1207 HF 173

Restrictions on use of moneys deposited in state general fund, see 91 Acts, ch 263, §38 SF 209

Subsection 2, NEW unnumbered paragraph 2

99F.9 Wagering — minors prohibited.

1. Except as permitted in this section, the licensee shall permit no form of wagering on gambling games.

2. Licensees shall only allow a maximum wager of five dollars per hand or play and a maximum loss of two hundred dollars per person during each gambling excursion. However, the commission may adopt rules allowing additional wagers consistent with generally accepted wagering options in the games of twenty-one and dice.

3. The licensee may receive wagers only from a person present on a licensed excursion gambling boat.

4. The licensee shall exchange the money of each wagerer for tokens, chips, or other forms of credit to be wagered on the gambling games. The licensee shall exchange the gambling tokens, chips, or other forms of wagering credit for money at the request of the wagerer.

5. Wagering shall not be conducted with money or other negotiable currency.

6. A person under the age of eighteen years shall not make a wager on an excursion gambling boat and shall not be allowed in the area of the excursion boat where gambling is being conducted.

7. A licensee shall not conduct gambling games while the excursion gambling boat is docked unless it is temporarily docked for embarking or disembarking passengers, crew or supplies during the course of an excursion cruise, for mechanical problems, adverse weather, or other conditions adversely affecting safe navigation, during the duration of the problem or condition, or as authorized by the commission during off season.

91 Acts, ch 144, §1 SF 110

Subsection 6 amended

99F.10 Admission fee — tax — local fees.

1. A qualified sponsoring organization conducting gambling games on an excursion gambling boat licensed under section 99F.7 shall pay the tax imposed by section 99F.11.

2. An excursion boat licensee shall pay to the commission an admission fee for each person embarking on an excursion gambling boat with a ticket of admission. The admission fee shall be set by the commission.

a. If tickets are issued which are good for more than one excursion, the admission fee shall be paid for each person using the ticket on each excursion that the ticket is used.

b. If free passes or complimentary admission tickets are issued, the licensee shall pay the same fee upon these passes or complimentary tickets as if they were sold at the regular and usual admission rate.

c. However, the excursion boat licensee may issue fee-free passes to actual and necessary officials and employees of the licensee or other persons actually working on the excursion gambling boat.

d. The issuance of fee-free passes is subject to the rules of the commission, and a list of all persons to whom the fee-free passes are issued shall be filed with the commission.

3. In addition to the admission fee charged under subsection 2 and subject to approval of excursion gambling boat docking by the voters, a city may adopt, by ordinance, an admission fee not exceeding fifty cents for each person embarking on an excursion gambling boat docked within the city or a county may adopt, by ordinance, an admission fee not exceeding fifty cents for each person embarking on an excursion gambling boat docked outside the boundaries of a city. The admission revenue received by a city or a county shall be credited to the city general fund or county general fund as applicable.

4. In determining the license fees and state admission fees to be charged as provided under section 99F.4 and this section, the commission shall use the amount appropriated to the commission plus the cost of auditing excursion gambling boat activities as the basis for determining the amount of revenue to be raised from the license fees and admission fees.

5. No other license tax, permit tax, occupation tax, excursion fee, or taxes on fees shall be levied, assessed, or collected from a licensee by the state or by a political subdivision, except as provided in this chapter.

6. No other excise tax shall be levied, assessed, or collected from the licensee relating to gambling excursions or admission charges by the state or by a political subdivision, except as provided in this chapter.

91 Acts, ch 267, §605 HF 479
See §99F 4, subsection 2, and related footnote
Subsection 4 amended

99F.11 Wagering tax — rate — allocations.

A tax is imposed on the adjusted gross receipts re-

ceived annually from gambling games authorized under this chapter at the rate of five percent on the first one million dollars of adjusted gross receipts, at the rate of ten percent on the next two million dollars of adjusted gross receipts, and at the rate of twenty percent on any amount of adjusted gross receipts over three million dollars. The taxes imposed by this section shall be paid by the licensee to the treasurer of state within ten days after the close of the day when the wagers were made and shall be distributed as follows:

1. If the gambling excursion originated at a dock located in a city, one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the city in which the dock is located and shall be deposited in the general fund of the city. Another one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the county in which the dock is located and shall be deposited in the general fund of the county.

2. If the gambling excursion originated at a dock located in a part of the county outside a city, one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the county in which the dock is located and shall be deposited in the general fund of the county. Another one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the Iowa city nearest to where the dock is located and shall be deposited in the general fund of the city.

3. Three percent of the adjusted gross receipts shall be deposited in the gamblers assistance fund specified in section 99E.10, subsection 1, paragraph "a".

4. The remaining amount of the adjusted gross receipts tax shall be credited to the general fund of the state.

Exception to subsection 3 for fiscal period beginning July 1, 1991, and ending June 30, 1993, 91 Acts, ch 267, §138 HF 479
Footnote added, section not amended

99F.13 Annual audit of licensee operations.

Within ninety days after the end of the licensee's fiscal year, the licensee shall transmit to the commission an audit of the financial transactions and condition of the licensee's total operations. All audits shall be conducted by certified public accountants registered or licensed in the state of Iowa under chapter 116.

91 Acts, ch 166, §7 HF 651
Section amended

99F.15 Prohibited activities — penalties.

1. A person is guilty of an aggravated misdemeanor for any of the following:

a. Operating a gambling excursion where wagering is used or to be used without a license issued by the commission.

b. Operating a gambling excursion where wagering is permitted other than in the manner specified by section 99F.9.

c. Acting, or employing a person to act, as a skill or decoy to encourage participation in a gambling game.

2. A person knowingly permitting a person under the age of eighteen years to make a wager is guilty of a simple misdemeanor.

3. A person wagering or accepting a wager at any location outside the excursion gambling boat is in violation of section 725.7.

4. A person commits a class "D" felony and, in addition, shall be barred for life from excursion gambling boats under the jurisdiction of the commission, if the person does any of the following:

a. Offers, promises, or gives anything of value or benefit to a person who is connected with an excursion gambling boat operator including, but not limited to, an officer or employee of a licensee or holder of an occupational license pursuant to an agreement or arrangement or with the intent that the promise or thing of value or benefit will influence the actions of the person to whom the offer, promise, or gift was made in order to affect or attempt to affect the outcome of a gambling game, or to influence official action of a member of the commission.

b. Solicits or knowingly accepts or receives a promise of anything of value or benefit while the person is connected with an excursion gambling boat including, but not limited to, an officer or employee of a licensee, or holder of an occupational license, pursuant to an understanding or arrangement or with the intent that the promise or thing of value or benefit will influence the actions of the person to affect or attempt to affect the outcome of a gambling game, or to influence official action of a member of the commission.

c. Uses a device to assist in any of the following:

- (1) In projecting the outcome of the game.
- (2) In keeping track of the cards played.
- (3) In analyzing the probability of the occurrence of an event relating to the gambling game.
- (4) In analyzing the strategy for playing or betting to be used in the game except as permitted by the commission.

d. Cheats at a gambling game.

e. Manufactures, sells, or distributes any cards, chips, dice, game or device which is intended to be used to violate any provision of this chapter.

f. Instructs a person in cheating or in the use of a device for that purpose with the knowledge or intent that the information or use conveyed may be employed to violate any provision of the chapter.

g. Alters or misrepresents the outcome of a gambling game on which wagers have been made after the outcome is made sure but before it is revealed to the players.

h. Places a bet after acquiring knowledge, not available to all players, of the outcome of the gambling game which is the subject of the bet or to aid a person in acquiring the knowledge for the purpose of placing a bet contingent on that outcome.

i. Claims, collects, or takes, or attempts to claim, collect, or take, money or anything of value in or from the gambling games, with intent to defraud, without having made a wager contingent on winning a gambling game, or claims, collects, or takes an

amount of money or thing of value of greater value than the amount won.

j. Knowingly entices or induces a person to go to any place where a gambling game is being conducted or operated in violation of the provisions of this chapter with the intent that the other person plays or participates in that gambling game.

k. Uses counterfeit chips or tokens in a gambling game.

l. Knowingly uses, other than chips, tokens, coin, or other methods or credit approved by the commission, legal tender of the United States of America, or uses coin not of the denomination as the coin intended to be used in the gambling games.

m. Has in the person's possession any device intended to be used to violate a provision of this chapter.

n. Has in the person's possession, except a gambling licensee or employee of a gambling licensee acting in furtherance of the employee's employment, any key or device designed for the purpose of opening, entering, or affecting the operation of a gambling game, drop box, or an electronic or mechanical device connected with the gambling game or for removing coins, tokens, chips or other contents of a gambling game.

5. The possession of more than one of the devices described in subsection 4, paragraphs "c", "e", "m", or "n", permits a rebuttable inference that the possessor intended to use the devices for cheating.

6. Except for wagers on gambling games or exchanges for money as provided in section 99F.9, subsection 4, a licensee who exchanges tokens, chips, or other forms of credit to be used on gambling games for anything of value commits a simple misdemeanor.

91 Acts, ch 144, §2 SF 110
Subsection 2 amended

99F.16 Forfeiture of property.

1. Anything of value, including all traceable proceeds including but not limited to real and personal property, moneys, negotiable instruments, securities, and conveyances, is subject to forfeiture to the state of Iowa if the item was used for any of the following:

a. In exchange for a bribe intended to affect the outcome of a gambling game.

b. In exchange for or to facilitate a violation of this chapter.

2. All moneys, coin, and currency found in close proximity of wagers, or of records of wagers are presumed forfeited. The burden of proof is upon the claimant of the property to rebut this presumption.

3. Subsections 1 and 2 do not apply if the act or omission which would give rise to the forfeiture was committed or omitted without the owner's knowledge or consent.

4. Upon receipt of forfeited property, the county attorney or attorney general shall permit an owner or lienholder of record having a nonforfeitable property interest in the property the opportunity to pur-

chase the property interest forfeited. If the owner or lienholder does not exercise the option under this subsection within thirty days the option is terminated, unless the time for exercising the option is extended by the county attorney or attorney general.

5. A person having a valid, recorded lien or property interest in forfeited property, which has not been purchased pursuant to subsection 4, 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 con-

ducted 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 property becomes forfeitable.

6. This section does not preclude a civil suit by an owner of an interest in forfeited property against the party who, by criminal use, caused the property to become forfeited to the state.

91 Acts, ch 167, §1 HF 679
NEW subsections 4, 5 and 6

CHAPTER 100

STATE FIRE MARSHAL

100.18 Smoke detectors.

1. As used in this section:

a. "Dormitory" means a residential building or portion of a building at an educational institution which houses students in rooms not individually equipped with cooking facilities.

b. "Multiple-unit residential building" means a residential building, an apartment house, or a portion of a building or an apartment house with two or more units, hotel, motel, dormitory, or rooming house.

c. "Smoke detector" means a device which detects visible or invisible particles of combustion and which incorporates control equipment and an alarm-sounding unit operated from a power supply either in the unit or obtained at the point of installation.

2. *a.* Except as provided in subsection 3, multiple-unit residential buildings and single-family dwellings the construction of which is begun on or after July 1, 1991, shall include the installation of smoke detectors in compliance with the rules established by the state fire marshal under subsection 4.

b. The rules shall require the installation of smoke detectors in existing single-family rental units and multiple-unit residential buildings. Existing single-family dwelling units shall be equipped with approved smoke detectors. A person who files for a homestead credit pursuant to chapter 425 shall certify that the single-family dwelling unit for which the credit is filed has a smoke detector installed in compliance with this section, or that one will be installed within thirty days of the date the filing for the credit is made. The state fire marshal shall adopt rules and establish appropriate procedures for the distribution and filing of such certificates with the state fire marshal.

c. An owner or an owner's agent of a multiple-

unit residential building or single-family dwelling shall supply light-emitting smoke detectors, upon request, for a tenant with a hearing impairment.

3. This section does not require the installation of smoke detectors in multiple-unit residential buildings which, on July 1, 1981, are equipped with heat detection devices or a sprinkler system with alarms approved by the state fire marshal.

This section does not require the installation of smoke detectors in hotels, motels, and dormitories equipped with an automatic smoke detection system approved by the state fire marshal.

4. The state fire marshal shall enforce the requirements of subsection 2 and may implement a program of inspections to monitor compliance with the provisions of that subsection. Upon inspection, the state fire marshal shall issue a written notice to the owner or manager of a multiple-unit residential building or single-family dwelling informing the owner or manager of compliance or noncompliance with this section. The state fire marshal may contract with any political subdivision without fee assessed to either the state fire marshal or the political subdivision, for the performance of the inspection and notification responsibilities. The inspections authorized under this section are limited to the placement, repair, and operability of smoke detectors. Any broader inspection authority is not derived from this section. The state fire marshal shall adopt rules under chapter 17A as necessary to enforce this section including rules concerning the placement of smoke detectors and the use of acceptable smoke detectors. The smoke detectors shall display a label or other identification issued by an approved testing agency or another label specifically approved by the state fire marshal.

5. The inspection of a building or notification of

compliance or noncompliance under this section is not the basis for a legal cause of action against the political subdivision, state fire marshal, the fire marshal's subordinates, chiefs of local fire departments, building inspectors, or other fire, building, or safety officials due to a failure to discover a latent defect in the course of the inspection.

6. If a smoke detector is found to be inoperable the owner or manager of the multiple-unit residential building or single-family dwelling shall correct the situation within fourteen days after written notification to the owner or manager by the tenant, guest, roomer, state fire marshal, fire marshal's subordinates, chiefs of local fire departments, building inspectors, or other fire, building, or safety officials. If the owner or manager of a multiple-unit residential building fails to correct the situation within the fourteen days the tenant, guest, or roomer may cause the smoke detector to be repaired or purchase and install a smoke detector required under this section

and may deduct the repair cost or purchase price from the next rental payment or payments made by the tenant, guest, or roomer. However, a lessor or owner may require a lessee, tenant, guest, or roomer who has a residency of longer than thirty days to provide the battery for a battery operated smoke detector.

7. No person may render inoperable a smoke detector, which is required to be installed by this section, by tampering.

8. A person who violates a provision of this section or a rule adopted pursuant to this section is guilty of a simple misdemeanor.

91 Acts, ch 64, §1-6 SF 383
 Subsection 1, paragraph b amended
 Subsection 2 stricken and rewritten
 Former subsection 3 stricken and former subsections 4-9 renumbered as 3-8
 Subsections 4 and 6 amended
 Subsection 8, unnumbered paragraph 2 stricken

100.34 Fee for fires reported. Repealed by 91 Acts, ch 268, § 519. SF 529

CHAPTER 101

FLAMMABLE LIQUIDS AND LIQUEFIED PETROLEUM GASES

101.28 Fees for certification inspections of underground storage tanks.

The state fire marshal, the state fire marshal's designee, or a local fire marshal, authorized to conduct underground storage tank certification inspections under section 455G.11, subsection 6, shall charge the person requesting a certification inspection a fee to recover the costs of authorized training, inspection,

and inspection program administration subject to rules adopted by the state fire marshal. The fees generated by inspections conducted by the state fire marshal or an employee of the state fire marshal's office shall be deposited into the general fund of the state.

91 Acts, ch 268, §509 SF 529
 Section amended

CHAPTER 103A

STATE BUILDING CODE

103A.5 Commissioner — duties.

The commissioner shall:

1. Employ the necessary staff and assistants, within the limit of available funds, to assist in carrying out the provisions of this chapter.
2. Appoint necessary consultants and advisors to assist the commissioner in carrying out the provisions of this chapter.
3. Study the operation of the state building code, local building regulations, and other laws relating to

the construction of buildings or structures to ascertain their effects upon the cost of building construction and the effectiveness of their provisions for health, safety, and welfare.

4. Do all things necessary or desirable to further and effectuate the general purposes and specific objectives of this chapter.

5. Administer and enforce chapters 104A and 104B.

91 Acts, ch 97, §7 HF 198
 Subsection 5 amended

CHAPTER 106

WATER NAVIGATION REGULATIONS

106.35 Special certificate for manufacturer or dealer.

A manufacturer or dealer owning, storing, repairing, or altering any vessel required to be registered under the provisions of this chapter may operate the same for purposes of transporting, testing, demonstrating, or selling the same without registering each such vessel, provided that any such vessel displays thereon a special certificate issued to such owner as provided in this chapter. This special certificate may not be used for any vessel offered for hire or for any work or service vessels owned by a manufacturer or dealer.

91 Acts, ch 57, §1 HF 288
Section amended

106.78 Fees — surcharge — duplicates.

1. a. The county recorder shall charge a five dollar fee to issue a certificate of title, a transfer of title, a duplicate, or a corrected certificate of title.

b. In addition to the fee required under paragraph "a", and sections 106.82 and 106.84, a surcharge of five dollars shall be required.

2. If a certificate of title is lost, stolen, mutilated, destroyed, or becomes illegible, the first lienholder

or, if there is none, the owner named in the certificate, as shown by the county recorder's records, shall within thirty days obtain a duplicate by applying to the county recorder. The applicant shall furnish information the department requires concerning the original certificate and the circumstances of its loss, mutilation, or destruction. Mutilated or illegible certificates shall be returned to the department with the application for a duplicate.

3. The duplicate certificate of title shall be marked plainly "duplicate" across its face, and mailed or delivered to the applicant.

4. If a lost or stolen original certificate of title for which a duplicate has been issued is recovered, the original shall be surrendered promptly to the department for cancellation.

5. The funds collected under subsection 1, paragraph "a" shall be placed in the general fund of the county and used for the expenses of the county conservation board if one exists in that county. Of each surcharge collected as required under subsection 1, paragraph "b", the county recorder shall remit five dollars to the office of treasurer of state for deposit in the general fund of the state.

91 Acts, ch 267, §606 HF 479
Subsections 1 and 5 amended

CHAPTER 107

REGULATION AND FUNDING — DEPARTMENT OF NATURAL RESOURCES

107.23 General duties.

The department shall protect, propagate, increase, and preserve the wild mammals, fish, birds, reptiles, and amphibians of the state and enforce by proper actions and proceedings the laws, rules, and regulations relating to them. The department shall collect, classify, and preserve all statistics, data, and information as in its opinion tend to promote the objects of this chapter, conduct research in improved conservation methods, and disseminate information to residents and nonresidents of Iowa in conservation matters.

91 Acts, ch 268, §224 SF 529
Duties relating to pricing policies and encouragement of woodlands, 91 Acts, ch 268, §216 SF 529
Section amended

107.24 Specific powers.

The department is hereby authorized and empowered to:

1. Expend, as authorized by the general assembly under section 107.19, any and all moneys accruing to the fish and game protection fund from any and all sources in carrying out the purposes of this chapter; any Act, or Acts, not consistent with this provision are hereby repealed so far as they may apply to the fish and game protection fund.

2. Acquire by purchase, condemnation, lease, agreement, gift and devise lands or waters suitable for the purposes hereinafter enumerated, and rights of way thereto, and to maintain the same for the following purposes, to wit:

a. Public hunting, fishing, and trapping grounds and waters to provide areas in which any person may hunt, fish, or trap in accordance with the law and the rules of the department;

b. Fish hatcheries, fish nurseries, game farms, and wild mammal, fish, bird, reptile, and amphibian refuges.

3. Extend and consolidate lands or waters suitable for the above purposes by exchange for other lands or waters and to purchase, erect and maintain buildings necessary to the work of the department.

4. Capture, propagate, buy, sell, or exchange any species of wild mammal, fish, bird, reptile, and amphibian needed for stocking the lands or waters of the state, and to feed, provide for, and care for them.

5. The department is hereby authorized to adopt and enforce such departmental rules governing procedure as may be necessary to carry out the provisions of this chapter; also to carry out any other laws the enforcement of which is vested in the department.

6. The department is hereby further authorized to adopt, publish and enforce such administrative orders as are authorized in section 109.38.

7. Pay the salaries, wages, compensation, traveling and other necessary expenses of the commissioners, director, officers and other employees of the department, and to expend money for necessary supplies and equipment, and to make such other expenditures as may be necessary for the carrying into effect the purposes of this chapter.

8. Control by shooting or trapping any wild mammal, fish, bird, reptile, and amphibian for the purpose of preventing the destruction of or damage to private or public property, but shall not go upon private property for that purpose without the consent of the owner or occupant.

9. Provide for the protection against fire and other destructive agencies on state and privately owned forests, parks, wildlife areas, and other property under its jurisdiction, and co-operate with federal and other state agencies in protection programs approved by the department, and with the consent of the owner, on privately owned areas.

10. Provide conservation employees, when on duty, suitable uniforms, equipment, arms, and supplies.

11. Establish a program governing the harvesting and sale of American ginseng subject to the convention on international trade in endangered species of wild fauna and flora and adopt rules providing for the time and conditions for the harvesting of the ginseng, the registration of dealers and exporters, the records kept by dealers and exporters, and the certification of legal taking. The time for harvesting of wild ginseng shall not begin before September 15 or extend beyond November 1.

12. Adopt rules authorizing officers and employees of the department who are peace officers to issue warning citations for violations of chapters 106 through 112 and chapter 321G.

91 Acts, ch 78, §1 HF 373
NEW subsection 12

107.33A Watershed priority.

The commission shall each year establish a priority list of watersheds which are of highest importance based on soil loss to be used for the allocation of moneys set aside in annual appropriations from the general fund to the department of agriculture and land stewardship for permanent soil conservation practices under chapter 467A on watersheds above publicly owned lakes. Chapter 17A does not apply to this section.

91 Acts, ch 268, §225 SF 529
NEW section

CHAPTER 108

SPECIAL PROVISIONS — DEPARTMENT OF NATURAL RESOURCES

108.13 Protection of wetlands.

1. A person shall not drain a protected wetland without first obtaining a permit from the department.

2. The department shall not issue a permit to drain a protected wetland except under one of the following conditions:

a. The protected wetland is replaced by the applicant with a wetland of equal or greater value as determined by the department.

b. The protected wetland does not meet the criteria for continued designation as a protected wetland.

3. This section does not prevent a landowner from utilizing the bed of a protected wetland for pasture or cropland if there is no construction of dikes, ditches, tile lines, or buildings and the agricultural use does not result in drainage.

91 Acts, ch 172, §1 SF 429
Subsection 3 amended

CHAPTER 108B

MISSOURI RIVER PRESERVATION AND LAND USE AUTHORITY

108B.1 Legislative findings.

The general assembly finds that the Missouri river is an important natural resource to the state of Iowa and that the creation of comprehensive plans which lead to the purchase, development, and preservation of land adjacent to the Missouri river will provide recreational and economic benefits to the state and to the counties and cities which border on the river. The general assembly further finds that current planning and purchase efforts relating to development of Missouri riverfront property have fallen short of the goal of developing a comprehensive plan for the recreational development of the Missouri river and that the creation of an authority which has the mission of engaging in these efforts will have a greater likelihood of reaching the desired goal.

91 Acts, ch 246, §1 HF 610
NEW section

108B.2 Missouri river preservation and land use authority created — duties.

1. A Missouri river preservation and land use authority is created to engage in comprehensive planning for and the development and implementation of strategies designed to preserve and restore the natural beauty of the land adjacent to and the water of the Missouri river through state land acquisition. Planning and implementation activities shall be coordinated with plans and implementation activities of the department of natural resources for lands owned or acquired by the department. The authority shall be composed of a representative from each of the county conservation boards of the counties which border on the Missouri river, an elected official selected by the county board of supervisors of each of the counties which border on the Missouri river, six at-large public members, and four ex officio members. The board of supervisors of the counties which border on the Missouri river shall each appoint one of the at-large public members, who shall possess a demonstrated interest in or knowledge about natural resource conservation and protection and one of whom shall also be actively engaged in the business of farming. Interest or knowledge of an at-large member may be demonstrated by membership in an association or other organization which is involved in conservation, environmental protection, or related activities. The ex officio members of the authority shall be composed of a representative from the natural resource commission of the department of natural resources, a representative from the state department of transportation, a representative from the department of cultural affairs, and a representa-

tive from the office of attorney general. Members of the authority shall serve two-year terms. Members who are also members of a county conservation board or board of supervisors shall be reimbursed only for actual expenses incurred while performing duties of the authority. At-large members shall be reimbursed for actual expenses and shall receive a per diem as specified in section 7E.6 for their performance of duties for the authority.

2. The mission of the authority is to research, develop comprehensive plans, and implement strategies which emphasize the creation of multipurpose recreational areas that foster and accent the natural characteristics of the Missouri river and which provide for environmentally sound land and water use practices for land adjacent to the Missouri river; to designate and prioritize for purchase parcels of land which are located in areas critical for the environmental health of the Missouri river waterway; to develop plans for and to acquire parcels of land to establish a public greenbelt along the banks of the Missouri river; to develop plans for public recreational use of lands adjacent to the Missouri river, including but not limited to a public bicycle trail; and to cooperate with county and city authorities, and federal and state authorities in order to fulfill the mission of the authority.

3. The authority shall develop plans and proposals and conduct public hearings relating to the conservation, preservation, and acquisition of land adjacent to the Missouri river. In developing plans and proposals the authority shall consult with any person or organization which has interests that would be affected by the acquisition and development of Missouri river property in accordance with the mission of the authority, including but not limited to utility companies, municipalities, agricultural organizations, the corps of engineers, rural water districts, soil and water conservation districts, private water suppliers, business and industry organizations, drainage and levee district associations, benefited recreational lake districts, and any soil conservation organizations. The authority shall include a copy of any plans and proposals and shall document the results and findings of those hearings in a report or series of reports. The authority shall submit an initial report, including an outline for a proposed ten-year plan and strategies for the attainment of the goals of this section, to the general assembly by the first day of the legislative session which commences in 1993. As part of the authority's planning and coordinating effort, the authority shall consult, at least annually, with the Iowa boundary commis-

sion and shall send copies of the minutes of all meetings of the authority to the commission. Within one year of July 1, 1991, the authority shall meet with the Iowa boundary commission. Meetings with the Iowa boundary commission shall be held at a time and a place agreed to between the commission and the authority.

4. The authority shall administer the Missouri river preservation and land use fund, under section 108B.3, and shall deposit and expend moneys in the fund for the development of plans for, development of, and purchase of lands adjacent to the Missouri river and for annual payment of property taxes on any land purchased. The county treasurer shall certify the amount of taxes due to the authority. The assessed value of the property held by the authority shall be that value determined under section 427.1, subsection 31, and the authority may protest the assessed value in the manner provided by law for any property owner to protest an assessment. For purposes of chapter 257, the assessed value of any property which was acquired by the authority shall be included in the valuation base of the school district and the payments made by the authority shall be considered as property tax revenues and not as miscellaneous income. The expenditure of funds may include, but is not limited to, use of moneys from the Missouri river preservation and land use fund to match funds from state, federal, and private resources.

5. The title to all property purchased by the authority shall be taken in the name of the state, but no land shall be acquired through condemnation proceedings and all purchases shall be from willing sellers. The authority may transfer jurisdiction over any lands the authority acquires to the department of natural resources, or may enter into agreements with the department or the appropriate county conservation board, for the management of the lands. All lands purchased shall be for public use, and not for private commercial purposes, but the authority may permit the expenditure of private funds for the

improvement of land or water adjacent to or purchased by the authority. All surveys and plats of lands purchased by the authority shall be filed in the manner provided in section 111.22. Land purchased by the authority shall be managed and policed in the manner provided under agreements between the authority and the agency responsible for management of the property, except that, subject to the restrictions contained in chapter 455B, the authority shall not be required to obtain the prior permission of the natural resource commission when using private funds to establish land or water recreational areas, and any property purchased by the authority shall not be sold without the prior notification and consent of the authority.

91 Acts, ch 246, §2 HF 610
NEW section

108B.3 Missouri river preservation and land use fund.

A Missouri river preservation and land use fund is established in the office of treasurer of state, to be administered by and subject to the use of the Missouri river preservation and land use authority for the purposes established in section 108B.2. The Missouri river preservation and land use authority may accept gifts, grants, bequests, other moneys including but not limited to state or federal moneys, and in-kind contributions for deposit in the fund for the use of the authority to carry out the authority's mission. Gifts, grants, and bequests from public and private sources, state and federal moneys, and other moneys received by the authority shall be deposited in the fund and any interest earned on the fund shall be credited to the fund to be used for the purposes specified in section 108B.2. Notwithstanding section 8.33, any unexpended or unencumbered moneys remaining in the fund at the end of a fiscal year shall not revert to the general fund, but shall remain available for expenditure by the authority in succeeding fiscal years.

91 Acts, ch 246, §3 HF 610
NEW section

CHAPTER 109

WILDLIFE CONSERVATION

109.54 Shooting rifle, shotgun, pistol, or revolver over water or highway.

1. A person shall not shoot any rifle on or over any of the public waters or public highways of the state or any railroad right-of-way.

2. A person shall not shoot a shotgun with a slug load, pistol, or revolver on or over a public roadway as defined in section 321.1, subsection 50.

3. This section does not apply to any peace officers or military personnel in the performance of their official duties.

91 Acts, ch 234, §1 HF 109
Section amended

109.60 Raising game — rulemaking authority.

A person shall not raise or sell game or fur-bearing animals of the kinds protected by this chapter, except rock doves and pigeons, without first procuring a game breeder's license as provided by law. The commission may adopt rules which ensure that all game birds, game animals, and fur-bearing animals handled and confined by licensed game breeders are provided with humane care and treatment. A violation of a rule adopted by the commission is a cause for license revocation. This section does not apply to governmental zoos and exhibits.

91 Acts ch 237 §1 HF 703
1991 amendment effective December 15 1991 91 Acts ch 237 §6 HF 703
Section amended

109.95 License — reciprocity.

A license shall be required of each fur dealer and each employee, agent, or representative of a fur dealer except when the employee, agent, or representative is operating solely on the premises of a licensed fur dealer. A fur dealer shall conduct business only at the location specified on the dealer's license, at an established fur auction, at the nonadvertised residence of a licensed fur harvester, or at the place of business specified on the license of any fur dealer. A nonresident licensed fur dealer may purchase location permits to operate at locations other than at the location specified on the fur dealer's license. A resident licensed fur dealer may obtain location permits without fee. Each location permit shall be valid only

for the one location specified on the location permit and shall entitle the fur dealer and employee, agent, or representative of the licensed fur dealer to operate at that location. The commission shall, upon application and the payment of the required license fee, if any, furnish the proper license and location permits to the dealer.

A resident of another state shall pay the fee provided by statute for the nonresident fur dealer's license unless that state has a reciprocity agreement with this state. The reciprocity agreement must provide that each state will charge nonresidents from the other state the same fee for the nonresident fur dealer's license and the fee under the agreement must be less than the statutory fee of this state for nonresidents and higher than the statutory fee of this state for residents.

91 Acts ch 237 §2 HF 703
1991 amendment to unnumbered paragraph 1 effective December 15 1991
91 Acts ch 237 §6 HF 703
Unnumbered paragraph 1 amended

109.125 Intentional obstruction of lawful activities prohibited — penalty.

1 A person shall not intentionally obstruct the participation of another person in the lawful activity of hunting, fishing, or trapping. This subsection shall not prohibit a landowner or lessee from exercising the landowner's or lessee's lawful rights.

2 A person violating this section is guilty of a simple misdemeanor.

91 Acts ch 234 §2 HF 109
NEW section

CHAPTER 109B

COMMERCIAL FISHING

109B.2 Definitions.

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

1 "Boundary waters" means the waters of the Mississippi, Missouri, and Big Sioux rivers.

2 "Commercial fisher" means a person who is licensed to take and sell fish from waters of the state.

3 "Commercial fishing" means taking, attempting to take, or transporting of fish for the purpose of selling, bartering, exchanging, offering, or exposing for sale.

4 "Commercial gear" means the capturing equipment used by commercial fishers, commercial turtle fishers, and commercial mussel fishers.

5 "Commercial mussel fisher" means a person who is licensed to take and sell freshwater mussels from waters of the state. A resident commercial mus-

sel license holder must have resided in this state for one year preceding the person's application for a commercial mussel fishing license.

6 "Commercial mussel fishing" means taking, attempting to take, or transporting of freshwater mussels for the purpose of selling, bartering, exchanging, offering, or exposing for sale.

7 "Commercial species" means species of fish, turtles, and freshwater mussels which may be lawfully taken and sold by commercial fishers, commercial turtle fishers, and commercial mussel fishers, as established by rule by the commission.

8 "Commercial turtle fisher" means a person who is licensed to take and sell turtles from the waters of the state.

9 "Commercial turtle fishing" means taking, attempting to take, or transporting of turtles for the

purpose of selling, bartering, exchanging, offering, or exposing for sale.

10. "Constant attendance" means the presence of a commercial fisher or a designated operator whenever commercial gear is in use.

11. "Director" means the director of the department of natural resources, and the director's duly authorized assistants, deputies, or agents.

12. "Game fish" means all species and size categories of fish not included as "commercial species" or minnows.

13. "Inland waters of the state" means all public waters of the state excluding the boundary waters of the Mississippi, Big Sioux, and Missouri rivers.

14. "Licensed commercial gear" means any commercial gear that is licensed as provided in this chapter and that, when in use, has attached the proper tags as provided by this chapter.

15. "Nonresident or alien" means a person who does not qualify as a resident of the state of Iowa either because of a bona fide residence in another state or because of citizenship of a country other than the United States. However, "alien" does not include a person who has applied for naturalization papers.

16. "Resident" means a person who is legally subject to motor vehicle registration and driver's license laws of this state, or who is qualified to vote in an election of this state.

17. "Waters of the state" means all of the waters under the jurisdiction of the state.

91 Acts, ch 170, §1 SF 205
Residency requirement established in subsection 5 by 91 Acts, ch 170, §1, applies to licenses applied for on or after May 14, 1991, 91 Acts, ch 170, §8, 9 SF 205
Subsection 5 amended

109B.4 Commercial licenses and gear tags.

1. A person shall not use or operate commercial gear unless at least one individual at the site where the commercial gear is being operated possesses an appropriate valid commercial license, or a designated operator's license. A license is valid from the date of issue to January 10 of the succeeding calendar year.

2. A commercial fisher may designate a person as a designated operator to lift and to fish with any licensed commercial fishing gear owned by the commercial fisher. A commercial fisher shall not have more than five designated operators. A designated operator's license shall be assigned to not more than three operators during a year and a designated operator's license shall be valid for use only by an operator who possesses the license and has signed the license. The signature of any preceding designated operator who possessed the license shall be crossed out. A designated operator shall not lift or fish any commercial fishing gear without possessing a designated operator's license which is signed by the operator. A designated operator's license which is not signed by the operator in possession of the license is forfeited to the state.

3. A boundary water annual sport trotline license permits the licensee to use a maximum of four trotlines with two hundred hooks in the aggregate. All boundary water sport trotlines shall be tagged with the name and address of the licensee on a metal tag affixed above the waterline.

4. Commercial fishers and turtle fishers shall purchase gear tags from the commission to be affixed to each piece of gear in use. Notwithstanding the fee rates for gear tags of subsection 7, the minimum fee for a gear tag is five dollars. All tags are valid for ten years from the date of issue. In addition to the gear tags, all gear shall be tagged with a metal tag showing the name and address of the licensee and whether the gear is fish or turtle gear.

5. All numbered fish gear tags are interchangeable among the different types of commercial fishing gear.

6. Annual license fees are as follows:

a. Commercial fishing, resident	\$ 200.00
b. Commercial fishing, nonresident ...	\$ 400.00
c. Designated operator, resident	\$ 50.00
d. Designated operator, nonresident ..	\$ 100.00
e. Commercial turtle, resident	\$ 50.00
f. Commercial turtle, nonresident	\$ 100.00
g. Commercial mussel fisher, resident	\$ 100.00
h. Commercial mussel buyer, resident	\$1,000.00
i. Commercial mussel buyer, nonresident	\$5,000.00
j. Boundary water sport trotline, resident	\$ 10.00
k. Boundary water sport trotline, nonresident	\$ 20.00
l. Commercial mussel fisher, nonresident	\$2,500.00
m. Commercial mussel helper, resident	\$ 50.00
n. Commercial mussel helper, nonresident	\$ 200.00

7. Commercial fish gear tags are required on the following units of commercial fishing gear at the listed fee:

a. Seine, resident, one gear tag for each 100 feet or fraction thereof	\$ 1.00
b. Seine, nonresident, one gear tag for each 100 feet or fraction thereof	\$ 2.00
c. Trammel net, resident, one gear tag for each 100 feet or fraction thereof	\$ 1.00
d. Trammel net, nonresident, one gear tag for each 100 feet or fraction thereof	\$ 2.00
e. Gill net, resident, one gear tag for each 100 feet or fraction thereof	\$ 1.00
f. Gill net, nonresident, one gear tag for each 100 feet or fraction thereof	\$ 2.00
g. Entrapment nets, resident, one gear tag per net	\$ 1.00
h. Entrapment nets, nonresident, one gear tag per net	\$ 2.00

- i Commercial trotline, resident, one gear tag for each 50 hooks or less \$ 1 00
- j Commercial trotline, nonresident, one gear tag for each 50 hooks or less \$ 2 00
- 8 Turtle trap gear tags are not interchangeable with other commercial gear Turtle trap gear tag fees are as follows
 - a Commercial turtle trap, resident, one gear tag per trap \$ 1 00
 - b Commercial turtle trap, nonresident, one gear tag per trap \$ 2 00

91 Acts ch 170 §2 3 SF 205
 Fees established in subsection 6 paragraphs g h i l m and n by 91 Acts ch 170 §2 and 3 apply to licenses applied for on or after May 14 1991 91 Acts ch 170 §8 9 SF 205
 Subsection 6 paragraphs g h and i amended and NEW paragraphs l m and n

109B.12 Freshwater mussels.

- 1 A person shall not take, possess, or sell freshwater mussels from the waters of the state without an appropriate license
 - a A sport fishing license entitles a person to take and possess a maximum of twenty pounds of mussels or shells daily The possession limit for each licensee is twenty pounds of live mussels or shells Sale of mussels or shells is not permitted with a sport fishing license
 - b A commercial mussel license is required to take more than twenty pounds of mussels or shells daily, or possess more than twenty pounds of mussels or shells The holder of a commercial mussel license may sell mussels or shells
 - c A commercial mussel buyer license is required to buy mussels or shells
 - d A commercial mussel helper license is required to assist commercial mussel fishers in the possessing, processing, or transporting of commer

cial freshwater mussels The taking or sale of mussels or shells is not permitted with a commercial mussel helper license

- 2 A person may take all species of freshwater mussels, or their parts, except where otherwise prohibited by rules of the commission
- 3 The method of taking freshwater mussels shall only be by hand, by diving, or by crowfoot bar, a device designed to catch mussels by inserting hooks between the shells, or by other means designated by rules of the commission A crowfoot bar shall not exceed twenty feet in length and a licensee shall not fish more than three bars

91 Acts ch 170 §4 SF 205
 Subsection 1 paragraph d stricken and rewritten

109B.13 Reciprocity for commercial fishing and commercial turtle fishing.

- 1 Reciprocal commercial fishing and commercial turtle fishing privileges are contingent upon a grant of similar privileges by the appropriate state to residents of this state
- 2 The commission may negotiate commercial reciprocity agreements with other states

91 Acts ch 170 §5 6 SF 205
 Subsection 1 amended
 Subsection 3 stricken

109B.14 Reports required.

All commercial fishers, commercial turtle fishers, commercial mussel fishers, and commercial mussel buyers shall submit a monthly report supplying all information requested on forms furnished by the commission Reports must be received by the commission no later than the fifteenth day of the following month

91 Acts ch 170 §7 SF 205
 Section amended

CHAPTER 110

FISHING AND HUNTING LICENSES, CONTRABAND, AND GUNS

110.1 Licenses — fees.

Except as otherwise provided in this chapter, no person shall fish, trap, hunt, pursue, catch, kill or take in any manner, or use or have possession of, or sell or transport all or any portion of any wild animal, bird, game or fish, the protection and regulation of which is desirable for the conservation of the resources of the state, without first procuring a license or certificate so to do and the payment of a fee as follows

- 1 Fishing licenses
 - a Legal residents except as otherwise provided \$ 10 50
 - b Nonresident license \$ 22 50
 - c Seven-day license for residents and nonresidents \$ 8 50
 - d Trout stamp \$ 10 00
- 2 Hunting licenses
 - a Legal residents except as otherwise provided \$ 12 50
 - b Deer hunting license for residents \$ 25 00

- c. Wild turkey hunting license for residents \$ 22.00
- d. Nonresidents hunting license \$ 60.50
- e. Deer hunting license for nonresidents \$110.00
- f. Wild turkey hunting license for nonresidents \$ 55.00
- 3. Hunting and fishing combined licenses:
Legal residents except as otherwise provided \$ 23.50
- 4. Hunting, fishing, and fur harvesting combined licenses:
Annual fur, fish and game license for residents \$ 37.50
- 5. Fur harvesters, dealers and game breeders licenses:
a. Fur harvester license for legal residents sixteen years of age or older \$ 20.50
- b. Fur harvester license for legal residents under sixteen years of age \$ 5.50
- c. Fur harvester license for nonresidents \$175.50
- d. Fur dealers license for residents \$225.00
- e. Fur dealers license for nonresidents \$500.00
- f. Game breeders license \$ 15.00
- g. Location permit for nonresident fur dealers \$ 55.00
- 6. Other licenses:
a. Scientific collector's license \$ 5.00
- b. Private fish hatcheries \$ 15.00
- c. Bait dealer's license for residents ... \$ 30.00
- d. Bait dealer's license for nonresidents \$ 60.00
- e. Taxidermy license \$ 15.00
- f. Falconry license \$ 20.00
- g. Nongame support certificate \$ 5.00
- h. Special wildlife habitat stamp \$ 5.00

91 Acts, ch 237, §3 HF 703
 Fees established by 1991 amendments effective December 15, 1991, for 1992 license year and subsequent license years, exceptions for deer hunting and wild turkey hunting license fees (effective July 1, 1991) and for falconry license (3 year term as provided by commission), validity of lifetime licenses issued before January 1, 1992, 91 Acts, ch 237, §6 HF 703
 Subsections 1-6 stricken and rewritten

110.24 When license not required — special licenses.

1. Owners or tenants of land, and their juvenile children, may hunt, fish or trap upon such lands and may shoot by lawful means 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 hunting license to hunt wild turkey on a game breeding and shooting preserve licensed under chapter 110A.

2. Upon written application, the department shall issue annually a deer or wild turkey hunting license, or both, to the owner of a farm unit or a member of the family of the farm owner and to the tenant or a member of the family of the tenant.

3. 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.

4. An owner of a farm unit or a member of the owner's family who resides with the owner and a tenant or a member of the tenant's family who resides with the tenant, who do not reside on the farm unit but who are actively engaged in farming the farm unit, are also eligible for a free deer license and a wild turkey license as provided in this section. The licenses are valid for hunting on the farm unit only. This paragraph applies to Iowa residents actively engaged in the operation of the farm units.

5. The application required for the deer or wild turkey hunting license shall be on forms furnished by the commission and shall be without fee.

6. Deer and wild turkey hunting licenses issued under this section are subject to all other provisions of the laws and regulations pertaining to the taking of deer and wild turkey. The deer license and turkey license shall be the equivalent of the least restrictive license issued under section 109.38.

7. As used in this section a "farm unit" is all the parcels of land, not necessarily contiguous, which are operated as a unit for agricultural purposes and which are under the lawful control of the landowner or tenant, and a "tenant" is a person, other than the landowner or landowner's family, who resides on the farm unit and is actively engaged in the operation of the farm unit.

8. 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.

9. 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 an administrator 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 from a duty station located outside of this state, and a legal resident of the state of Iowa, be required to have a license to hunt or fish in this state. The military personnel shall carry their leave papers while hunting or fishing and, if a deer or wild turkey is taken, shall immediately contact a state conservation officer to obtain an appropriate tag to transport the animal. No license shall be required of residents of county care facilities or any person who is receiving old-age assistance under chapter 249.

10. A resident of the state under sixteen years of age is not required to have a hunting 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 minor's parent or guardian,

if the person accompanying the minor possesses a valid hunting license; however, there must be one licensed adult accompanying each person under sixteen years of age. The minor must have a deer hunting license to hunt deer and a wild turkey hunting license to hunt wild turkey.

11. 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.

12. 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.

13. 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.

14. A lessee of a camping space at a campground may fish on a private lake or pond on the premises of the campground without a license if the lease confers an exclusive right to fish in common with the rights of the owner and other lessees.

15. The department may issue a permit, subject to conditions established by the department, which authorizes patients of a substance abuse facility, residents of health care facilities licensed under chapter 135C, and persons cared for in juvenile shelter care homes as provided for in chapter 232 to fish without a license as a supervised group.

16. Upon payment of the fee of thirty dollars for a lifetime hunting and fishing combined license, the department shall issue a hunting and fishing combined license to a veteran who was disabled during the period of a veteran's service listed in this subsection or who was a prisoner of war during that veteran's military service. The department shall prepare an application to be used by a person requesting a hunting and fishing combined license under this subsection. The veterans affairs division of the department of public defense shall assist the department in verifying the status or claims of applicants under this subsection. As used in this subsection, "veteran" means a person who is a resident of Iowa and who served in the armed forces of the United States of America at any time during World War I between the dates of April 6, 1917, and July 2, 1921, World War II between the dates of December 7, 1941, and December 31, 1946, the Korean conflict between the dates of June 27, 1950, and January 31, 1955, the Vietnam conflict between August 5, 1964, and May 7, 1975, or the Persian Gulf conflict between August 2, 1990, and the date the president or the congress of the United States declares a permanent cessation of hostilities, all dates inclusive, and "disabled"

means entitled to compensation under the United States Code, Title 38, chapter 11.

17. The department shall issue without charge a special annual fishing or combined hunting and fishing license to residents of this state who are permanently disabled and whose income falls below the federal poverty guidelines as published by the United States department of health and human services or residents of this state who are sixty-five years of age or older and whose income falls below the federal poverty guidelines as published by the United States department of health and human services. The commission shall provide for, by rule, an application to be used by an applicant requesting a permanent disabled status or age status. The commission shall require proof of age, income, and proof of permanent disability.

91 Acts, ch 237, §4, 5 HF 703
1991 amendment to subsection 16 and subsection 17 effective December 15, 1991; 91 Acts, ch 237, §6 HF 703
Subsection 16 amended
NEW subsection 17

110.27 Hunter safety and ethics education program — license requirement.

1. A person born after January 1, 1967, shall not obtain a hunting license unless the person has satisfactorily completed a hunter safety and ethics education course approved by the commission. 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 department 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 department 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 department 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 department.

5. An officer of the department or a certified instructor may issue a certificate to a person who has not completed the hunter safety and ethics education course but meets the criteria established by the commission.

6. A public or private school or organization approved by the department may co-operate with the department 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. A hunting license obtained by a person who was born after January 1, 1967, but has not satisfactorily completed the hunter safety and ethics education course or has not met the requirements established by the commission, shall be revoked.

8. The commission shall adopt rules in accordance with chapter 17A as necessary to carry out the administration of this section.

9. The initial hunter safety certificate shall be issued without cost. A duplicate certificate shall be issued at a cost of three dollars.

10. A person under eighteen years of age who is required to exhibit a valid hunting license, shall also exhibit a valid certificate of completion from a state approved hunter safety and ethics education course upon request of an officer of the department. A failure to carry or refusal to exhibit the certificate of completion as provided in this subsection is a violation of this chapter. A violator is guilty of a simple misdemeanor as provided in section 110.42.

91 Acts, ch 235, §1,2 HF 233
Subsections 1-7 amended
NEW subsection 10

CHAPTER 111

PUBLIC LANDS AND WATERS

111.42 Use of firearms, explosives, weapons, and fireworks prohibited — exceptions.

1. The use by the public of firearms, explosives, and weapons of all kinds is prohibited in all state parks and preserves, except preserves or portions of preserves designated as hunting areas by the state advisory board on preserves upon the request of the commission. However, any person may use a bow and arrow with attached bow fishing reel and ninety-pound minimum line attached to the arrow to take rough fish under rules and regulations prescribed by the commission.

2. The use of fireworks, as defined in section 727.2, in state parks and preserves is prohibited except as authorized by a permit issued by the department. The commission shall establish, by rule adopted pursuant to chapter 17A, a fireworks permit system which authorizes the issuance of a limited number of permits to qualified persons to use or display fireworks in selected state parks and preserves. A person violating this subsection is guilty of a serious misdemeanor. The court may order restitution for damages caused by the violation which may include, but is not limited to, community service. The court may also require that the violator provide proof of restitution.

91 Acts, ch 101, §1 SF 134
Section amended

111.78 Method not exclusive.

This division shall not be the exclusive method for establishing a water recreational area and shall not

be construed to prohibit the establishment of public recreational areas by the Missouri river preservation and land use authority under chapter 108B.

91 Acts, ch 246, §4 HF 610
Section amended

111.79 Public outdoor recreation and resources fund.

1. Fifty percent of the funds credited to the public outdoor recreation and resources fund shall be expended on land acquisition and capital improvements in carrying out the provisions of this chapter. Acquisition projects, both fee-simple and less-than-fee, from willing sellers, may be for purposes of establishment or expansion of state parks, public hunting areas, natural areas, public fishing areas, water access sites, trail corridors, and other acquisition projects that are in accord with this chapter. Notwithstanding the exemption provided by section 427.1, land acquired under this subsection is subject to the full consolidated levy of property taxes which shall be paid from revenues available to be expended under this subsection. Capital improvements may be either new developments or rehabilitative in nature. Lake and watershed restoration projects are eligible for funding under this subsection. Not more than fifty percent of the revenues available to be expended under this subsection may be used by the commission to enter into agreements with county conservation boards and county boards of supervisors in those counties without conservation boards to carry out the purposes of this subsection. The agreement

shall not provide for the payment by the commission of more than seventy-five percent of the cost of the project and the agreement shall specify that the county conservation board or county board of supervisors, whichever is applicable, shall provide funds for the remaining cost of the project covered by the agreement. Revenues available to be expended under this subsection may be used for the matching of federal funds.

2. Forty-five percent of the funds credited to the public outdoor recreation and resources fund shall be expended on the state recreation tourism grant program. This program shall provide matching grants to cities and unincorporated communities for purposes of developing or improving recreational projects or tourist attractions. A city or unincorporated community may submit an application to the commission for a matching grant, except that an unincorporated community shall submit the application through the county board of supervisors. Applications shall be reviewed by the advisory council for the public outdoor recreation and resources fund. The advisory council shall submit recommendations to the commission regarding possible recipients and grant amounts. Grants made to an unincorporated community shall be paid to the county board of supervisors to be used for the project of the unincorporated

community. The amount of the grant shall not exceed fifty percent of the cost of the development or improvement to be made and the application must demonstrate that the city or unincorporated community will provide the required matching funds.

3. Five percent of the funds credited to the public outdoor recreation and resources fund shall be expended on advertising which shall promote the use of recreational facilities and tourist attractions in the state. The commission shall enter into an agreement with the Iowa department of economic development for the expenditure of these funds for this purpose.

4. Notwithstanding any other provision of law, for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, funds that direct that moneys to be credited to or deposited in the public outdoor recreation and resources fund shall be credited to or deposited to the general fund of the state and appropriations made for purposes of this section shall not be deposited into the public outdoor recreation and resources fund but shall be allocated as provided in this section.

91 Acts, ch 260, §1212 HF 173
Restrictions on use of moneys deposited in state general fund, see 91 Acts, ch 263, §38 SF 209
NEW subsection 4

CHAPTER 116

PUBLIC ACCOUNTANTS

116.2 Definitions.

As used in this chapter unless the context otherwise requires: "Accounting practitioner" means a person licensed by the board as provided in this chapter, who does not hold a certificate as a certified public accountant under this chapter, and who offers to perform or performs for the public, and for compensation, any of the following services:

1. The recording of financial transactions in books of record.
2. The making of adjustments of such transactions in books of record.
3. The making of trial balances from books of record.
4. Internal verification and analysis of books or accounts of original entry.
5. The preparation of financial statements, schedules, or reports.
6. The devising and installing of systems or methods of bookkeeping, internal controls of financial data, or the recording of financial data.

Nothing contained in this definition or elsewhere

in this chapter shall be construed to permit an accounting practitioner to give an opinion attesting to the reliability of any representation embracing financial information as defined in section 116.25, subsections 8 and 9. Any transmittal letters and titles to financial statements included in reports prepared by accounting practitioners shall be labeled as unaudited.

91 Acts, ch 97, §8 HF 198
Unnumbered paragraph 1 amended

116.3 Accountancy examining board created — funds — reports — rules.

1. An accountancy examining board is created within the professional licensing and regulation division of the department of commerce. The board consists of eight members, five of whom shall be certified public accountants, one of whom shall be a licensed accounting practitioner, and two of whom shall not be certified public accountants or licensed accounting practitioners and shall represent the general public. A certified or licensed member shall be

actively engaged in practice as a certified public accountant or accounting practitioner and shall have been so engaged for five years preceding appointment, the last two of which shall have been in Iowa. Professional associations or societies composed of certified public accountants or licensed accounting practitioners may recommend the names of potential board members to the governor. However, the governor is not bound by the recommendations. A board member shall not be required to be a member of any professional association or society composed of certified public accountants or licensed accounting practitioners. Members shall be appointed by the governor to staggered terms, subject to confirmation by the senate.

As used in this chapter, "board" means the accountancy examining board established by this section. Upon the expiration of each term, a successor shall be appointed for a term of three years beginning and ending as provided in section 69.19. Members shall serve a maximum of three terms or nine years, whichever is less. Vacancies occurring in the membership of the board for any cause shall be filled in the same manner as original appointments are made by the governor, for the unexpired term and subject to senate confirmation. The public members of the board shall be allowed to participate in administrative, clerical, or ministerial functions incident to giving the examination, but shall not determine the content of the examination or determine the correctness of the answers.

A member of the board whose term has expired shall continue to serve until the member's successor is appointed and qualified.

The governor shall remove from the board any member whose certificate as a certified public accountant has been revoked or suspended.

2. The board shall elect annually a chairperson, a secretary, and a treasurer from its members.

The board shall meet as often as deemed necessary, but shall hold at least one meeting per year at the location of the board's principal office.

The board may adopt regulations for the orderly conduct of its affairs and for the administration of this chapter.

A majority of the members of the board shall constitute a quorum for the transaction of business.

The board shall keep records of its proceedings, and in any proceeding in court arising out of or founded upon any provision of this chapter, copies of its records certified as correct shall be admissible in evidence to prove the contents of the records.

The administrator of the professional licensing and regulation division of the department of commerce shall hire and provide for staff to assist the board with implementing this chapter.

A member of the board is entitled to be reimbursed for actual expenses incurred in the discharge of official duties. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

3. All fees and other moneys received by the

board, pursuant to this chapter, shall be paid monthly to the treasurer of state for deposit in the professional licensing revolving fund.

The board shall make a biennial report to the governor of its proceedings, with an account of all moneys received and disbursed, a list of the names of certified public accountants and accounting practitioners whose certificates, permits to practice, or licenses have been revoked or suspended, and other information as it deems proper or the governor requests.

4. The board may adopt rules of professional conduct appropriate to establishing and maintaining high standards of integrity and dignity in the practice as a certified public accountant or accounting practitioner. Rules shall be adopted relating to the following matters:

a. The propriety of opinions on financial statements by a certified public accountant who is not independent.

b. Actions discreditable to the practice as a certified public accountant or accounting practitioner.

c. The professional confidences between a certified public accountant or accounting practitioner and a client.

d. Contingent fees.

e. Technical competence and the expression of opinions on financial statements.

f. The failure to disclose a material fact known to the certified public accountant or accounting practitioner.

g. Material misstatement known to the certified public accountant or accounting practitioner.

h. Negligent conduct in an examination or in making a report on an examination.

i. Failure to direct attention to any material departure from generally accepted accounting principles.

5. A certified public accountant or accounting practitioner shall not commit and shall not permit associates or persons who are under the accountant's or practitioner's supervision to commit any of the following acts:

a. Pay a commission, brokerage, or other participation in the fees or profits of professional work directly or indirectly to the laity.

b. Directly or indirectly accept commission, brokerage, or other participation in the fees, charges, or profits of work recommended or turned over to the laity as incident to services for clients.

c. Permit others to carry out on behalf of the accountant or practitioner, either with or without compensation, acts which, if carried out by the accountant or practitioner, would place that person in violation of rules of the board adopted pursuant to this chapter.

6. The board shall establish rules relative to the conduct of practice as a certified public accountant and accounting practitioner in respect to the enumerated items in subsections 4 and 5, but this direction is not a limitation upon the rights of the board to make and adopt any rules relating to the conduct

of certified public accountants or accounting practitioners which are not specifically enumerated in this chapter.

7. The board may issue further rules and regulations, including but not limited to rules of professional conduct, pertaining to corporations practicing public accounting, which it deems consistent with or required by the public welfare. The board may prescribe rules governing the style, name, and title of corporations and governing the affiliation of corporations with other organizations.

Regulations adopted by the board shall not be in conflict with the Iowa Professional Corporation Act, provided in chapter 496C.

91 Acts, ch 97, §9 HF 198
See §546 10, subsection 6, and related footnote
Subsections 3, 4, 5 and 6 amended

116.6 Peer review required.

1. *Definitions.* As used in this section:

a. *"Applicant"* means an entity holding a permit to practice as a corporation or partnership of certified public accountants issued pursuant to section 116.20, subsection 3, or a person certified as a public accountant pursuant to section 116.5 who practices as a sole proprietorship.

b. *"Peer review"* means peer or quality review.

c. *"Peer review records"* means all files, reports, and other information relating to the professional competence of an applicant in the possession of a peer review team, or information concerning the peer review developed by a peer review team in the possession of an applicant.

d. *"Peer review team"* means persons or organizations participating in the peer review function required by this section, but does not include the board.

2. *Duties of the board.* The board shall adopt rules requiring peer review pursuant to this section. The board shall adopt rules specifying standards for peer review teams and providing that each reviewing team member shall be independent of the applicant being reviewed.

3. *Peer review required for renewal.*

a. As of January 1, 1994, as a condition of renewal of an applicant's permit, an applicant shall submit evidence of completion of a peer review conducted to determine the degree of the applicant's compliance with generally accepted accounting principles, generally accepted auditing standards, and other similarly recognized authoritative technical standards. Peer review shall occur every three years. Costs of the peer review shall be paid by the applicant.

b. An applicant's completion of a peer review program endorsed or supported by the American institute of certified public accountants, or other substantially similar review, shall satisfy the requirements of this section.

4. *Waiver of peer review requirement.* An applicant, at the time of renewal, may request in writing upon forms provided by the board, a waiver from the requirements of this section. The board may

grant a waiver if one or more of the following conditions are met:

a. The applicant does not engage in, and does not intend to engage in during the following year, financial reporting areas of practice, including but not limited to financial audits, compilations, and reviews. An applicant granted a waiver pursuant to this paragraph shall immediately notify the board if the applicant engages in such practice, and shall be subject to peer review.

b. For reasons of health.

c. Due to military service.

d. In instances of hardship.

e. For other good cause as determined by the board.

5. *Confidentiality of peer review records.*

a. Peer review records are privileged and confidential, are not subject to discovery, subpoena, or other means of legal compulsion. Peer review records are not admissible in evidence in a judicial, arbitration, or administrative proceeding. Information or documents discoverable from sources other than a peer review team do not become nondiscoverable from other sources because they are made available to or are in the possession of a peer review team. Information or documents publicly available from the American institute of certified public accountants relating to quality or peer review are not privileged or confidential under this subsection.

b. A person or organization participating in the peer review process shall not testify as to the findings, recommendations, evaluations, or opinions of a peer review team in any judicial, arbitration, or administrative proceeding.

6. *Liability.*

a. A person shall not be liable as a result of acts, omissions, or decisions made in connection with the person's service on a peer review team, unless the act, omission, or decision is made with actual malice.

b. A person shall not be liable as a result of providing information to a peer review team, or for disclosure of privileged matter to a peer review team.

91 Acts, ch 18, §1 SF 151
NEW section

116.8 Examination required.

An applicant not qualified under section 116.7 shall be granted a license if the applicant passes a written examination prescribed by the board, and:

1. If the applicant has had two or more years actual experience in practice as an accounting practitioner as an employee of a certified public accountant or an accounting practitioner, or

2. If the applicant was employed for at least twenty-four months prior to July 1, 1975 by the United States government, by this state, or by a political subdivision of this state in an accounting or auditing position for which an examination in accounting knowledge or qualifying education or experience in practice as an accounting practitioner was required. The applicant shall submit to the board an official copy of the job description and educational

or experience qualifications required, or an affidavit of the immediate superior of the applicant attesting to the applicant's accounting or auditing duties. Any evidence which indicates that the applicant has performed only clerical or bookkeeping work shall not be deemed sufficient for the purposes of this subsection, or

3. If the applicant submits evidence satisfactory to the board that applicant is a graduate of a four-year college or university accredited by the north central accreditation association or other regional accreditation association having equivalent standards, with a major in accounting, or that the applicant is a graduate in accountancy from a business or correspondence school accredited by the accrediting commission for business schools or the accrediting commission of the national home study council.

4. If the applicant submits evidence of at least five years continuous experience engaged in performing any of the services delineated in section 116.2 on a full-time basis.

91 Acts, ch 17, §1 SF 111, 91 Acts, ch 97, §10 HF 198
 Subsection 1 amended
 NEW subsection 4

116.15 Staff to collect fees — deposit.

Staff may be employed to collect and account for all fees and pay them to the treasurer of state for deposit as provided by law. The board shall set the fees for examination as a certified public accountant, and for examination as an accounting practitioner, based upon the annual cost of administering the examinations. The fees for registration and renewal of a certificate and permit as a certified public accountant, registration of a foreign public accountant, and licensure and renewal as an accounting practitioner, shall be based upon the administrative costs of sustaining the board which shall include, but are not limited to, the costs for:

1. Per diem, expenses, and travel for board members.
2. Office supplies and equipment.
3. Staff assistance.

91 Acts, ch 97, §11 HF 198
 Unnumbered paragraph 1 amended

116.19 Registration of office.

Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant, or partnership or corporation of certified public accountants, or by an accounting practitioner or partnership of accounting practitioners, or by a person registered under section 116.17, shall be registered annually under this chapter with the board, but no fee shall be charged for the registration.

Each such office shall be under the direct supervision of a resident manager who may be either a principal, shareholder, or a staff employee holding a current permit under section 116.20. The title or designation "certified public accountant" or the abbreviation "CPA" or "accounting practitioner" or the abbreviation "AP" shall not be used in connection

with an office unless the resident manager is the holder of a certificate as a certified public accountant under section 116.5, or a license as an accounting practitioner issued under section 116.7 or 116.8, and a permit issued under section 116.20, both of which are in full force and effect.

A resident manager may serve at one office only.

The board shall by regulation prescribe the procedure to be followed in effecting such registration.

91 Acts, ch 97, §12 HF 198
 Unnumbered paragraph 1 amended

116.20 Permit to practice.

1. The certificate of certified public accountant granted by the board under section 116.5 and the license to practice as an accounting practitioner under section 116.7 or 116.8 shall be renewed as determined by the board. There shall be a renewal fee, in the amount to be determined from time to time by the board. The board shall give notice by restricted certified mail, return receipt requested, to the holder of a certificate or license who has failed to renew it. If the holder fails to renew the certificate or license within thirty days of receipt of the notice, the certificate or license lapses and is void.

2. In addition to the certificates and licenses, permits to engage in the practice of public accounting in this state shall be issued by the board to holders of the certificate of certified public accountant and to holders of a license to practice as an accounting practitioner in force and effect as specified in subsection 1, upon payment of the fees, as follows:

a. Persons holding the certificate of certified public accountant on July 1, 1975, and who have had three years' continuous practical accounting experience as a staff accountant, or three years' continuous employment as a field examiner under a revenue agent-in-charge of the income tax bureau of the treasury department of the United States, or as a field examiner in the office of the auditor of state, department of management, department of revenue and finance, or the insurance division of the department of commerce, of this state, or a bank examiner employed by the banking division of the department of commerce of this state pursuant to section 524.208 shall be issued permits by the board.

b. Persons holding the certificate of certified public accountant under the provisions of section 116.5 who are high school graduates and who have had three years' continuous experience under the direct supervision of a certified public accountant holding a current permit to practice, which experience must include a significant amount of accounting work involving third-party reliance on the financial statements, shall be issued permits by the board. The experience required in section 116.5, subsection 2, shall be counted as the experience required in this paragraph.

c. Persons holding the certificate of certified public accountant under the provisions of section 116.5 who have a baccalaureate degree conferred by a college or university recognized by the board with

a concentration in accounting, or what the board determines to be substantially the equivalent of an accounting concentration including related courses in other areas of business administration, and who have had at least two years of experience in the practice of public accounting, such experience being acceptable to the board, shall be issued permits by the board.

d. Persons holding the certificate of certified public accountant under the provisions of section 116.5 who have a baccalaureate degree conferred by a college or university recognized by the board and not less than thirty semester credit hours additional study, the total educational program to include an accounting concentration or its equivalent and such related subjects as the board determines to be appropriate, and who have had at least one year of experience in the practice of public accounting such experience being acceptable to the board, shall be issued permits by the board.

e. All offices of a holder of a certificate of certified public accountant shall be maintained and registered as required under section 116.19.

3. Permits to engage in the practice of public accounting in this state shall also be issued by the board to persons, partnerships, and corporations registered under sections 116.17 and 116.18 if all offices of the registrant are maintained and registered as required under section 116.19.

4. There shall be a permit fee in an amount to be determined by the board, payable by certified public accountants and accounting practitioners engaged in practice in this state. A fee shall not be charged for the renewal of a partnership or corporation permit to practice. All permits shall expire as determined by the board.

5. A person, firm, or corporation shall not practice as a certified public accountant or accounting practitioner without a permit.

6. The board shall prescribe continuing education requirements for all certified public accountants and accounting practitioners holding permits and all other certified public accountants and accounting practitioners working under permits to engage in the practice of public accounting in this state and compliance by certified public accountants and accounting practitioners shall be a condition precedent to the renewal of a permit to practice under this section.

7. A person who fails to renew the person's permit to practice as a certified public accountant by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty.

91 Acts, ch 97, §13-15 HF 198
Subsection 1 amended
Subsection 2, paragraph a amended
Subsections 3, 4, and 5 amended

116.21 Causes for revocation, suspension, or refusal to renew.

After notice and hearing as provided in section

116.23, the board may revoke or may suspend for a period not to exceed two years, a certificate issued under section 116.5 or a license issued under section 116.7 or 116.8, or may revoke, suspend, or refuse to renew a permit issued under section 116.20, or may censure the holder of a permit, for any one or any combination of the following causes:

1. The certificate, permit, or license shall be permanently revoked if fraud or deceit was used in obtaining a certificate as a certified public accountant or a license as an accounting practitioner, or in obtaining a permit to practice public accounting under this chapter.

2. Dishonesty, fraud, or gross negligence in the practice of public accounting.

3. Violation of any of the provisions of section 116.25.

4. Violation of a rule of professional conduct promulgated by the board under the authority granted by this chapter.

5. Conviction of a felony under the laws of any state or of the United States.

6. Engaging in any activity prohibited under section 116.3 or permitting persons associated with the holder who are under the holder's supervision to do so.

7. Conviction of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States.

8. Cancellation, revocation, suspension, or refusal to renew the authority to practice as a certified public accountant or an accounting practitioner by any other state, for any cause other than failure to pay appropriate fees in the other state.

9. Suspension or revocation of the right to practice before any state or federal agency.

10. Conduct discreditable to the public accounting profession.

91 Acts, ch 97, §16 HF 198
Unnumbered paragraph 1, and subsections 1 and 8 amended

116.23 Notice and hearing.

1. The board may initiate proceedings under this chapter either on its own motion or on the complaint of any person. Before scheduling a hearing under this section, the board may request the department of inspections and appeals to conduct an investigation into the charges to be addressed at the board hearing. The department of inspections and appeals shall report its findings to the board.

2. A written notice stating the nature of the charge or charges against the accused and the time and place of the hearing before the board on such charges shall be served on the accused not less than thirty days prior to the date of hearing either personally or by mailing a copy by registered mail to the last known address of the accused.

3. If, after having been served with the notice of hearing, the accused fails to appear at the hearing and defend, the board may proceed to hear evidence against the accused and may enter such order as is justified by the evidence, which order shall be final

unless the accused petitions for its review as provided in this section. However, within thirty days from the date of any order, upon a showing of good cause for failing to appear and defend, the board may reopen the proceedings and may permit the accused to submit evidence in defense.

4. At any hearing the accused may appear in person and by counsel, produce evidence and witnesses on behalf of the accused, cross-examine witnesses, and examine evidence which is produced against the accused. A corporation may be represented before the board by counsel, or by a shareholder who is a certified public accountant or accounting practitioner of this state in good standing. The accused is entitled, on application to the board, to the issuance of subpoenas to compel the attendance of witnesses on behalf of the accused.

5. Any member of the board may issue subpoenas to compel the attendance of witnesses and the production of documents, and may administer oaths, take testimony, hear proofs and receive exhibits in evidence in connection with or upon hearing under this chapter.

In case of disobedience to a subpoena the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence.

6. The board shall not be bound by technical rules of evidence.

7. A stenographic record of the hearings shall be kept and a transcript thereof filed with the board.

8. At all hearings, the attorney general of this state, or one of the attorney general's assistants designated by the attorney general, or such other legal counsel as may be employed, shall appear and represent the board.

9. The decision of the board shall be by majority vote of its members.

10. Anyone adversely affected by an order of the board may obtain a review of that order by filing a written petition for review with the district court within thirty days after the entry of the order. The petition shall state the grounds upon which the review is asked and shall pray that the order of the board be modified or set aside in whole or in part. A copy of the petition shall be immediately served upon any member of the board and the board shall then certify and file in the court a transcript of the record upon which the order complained of was entered.

The case shall then be tried de novo on the record made before the board without the introduction of new or additional evidence but the parties shall be permitted to file briefs as in an ordinary case at law.

The court may affirm, modify or set aside the board's order in whole or in part, or may remand the case to the board for further evidence, and may, in its discretion, stay the effect of the board's order pending its determination of the case.

The court's decision shall have the force and effect of a decree in equity.

91 Acts, ch 97, §17 HF 198
Subsection 4 amended

116.25 Use of title.

1. No person shall assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant, unless the person has received and holds a valid certificate as a certified public accountant under section 116.5. However, a foreign accountant who has registered under the provisions of section 116.17 may use the title under which the foreign accountant is generally known in the foreign accountant's country, followed by the name of the country from which the foreign accountant received the certificate, license, or degree.

2. No partnership or corporation shall assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the partnership or corporation is composed of certified public accountants unless the partnership or corporation is registered as a partnership of certified public accountants under section 116.18, holds a current permit issued under section 116.20, and all offices of such partnership or corporation in this state for the practice of public accounting are maintained and are registered as required under section 116.19.

3. A person shall not assume or use the title or designation "public accountant" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a public accountant, unless the person has received a certificate as a certified public accountant under section 116.5.

4. A partnership or corporation shall not assume or use the title or designation "public accountant" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the partnership or corporation is composed of certified public accountants, unless the partnership or corporation is registered as a partnership or corporation of certified public accountants under section 116.18.

5. No person shall assume or use the title or designation "accounting practitioner" or the abbreviation "AP" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a licensed accounting practitioner, unless the person has received and holds a license as an accounting practitioner issued under either section 116.7 or 116.8.

6. No partnership or corporation shall assume or use the title or designation "accounting practitioner" or the abbreviation "AP" or any other title, designation, words, letters, abbreviation, sign, card, or device, tending to indicate that the partnership or corporation is composed of licensed accounting practitioners unless the partnership or corporation under section 116.18 holds a permit issued under section 116.20, and all offices of the partnership or corporation in this state are maintained and are registered as required under section 116.19.

7. No person, partnership, or corporation shall assume or use the title or designation “certified accountant”, “chartered accountant”, “enrolled accountant”, “licensed accountant”, “registered accountant”, or any other title or designation likely to be confused with “certified public accountant” or “public accountant” or any of the abbreviations “CA”, “PA”, “EA”, “RA”, or “LA”, or similar abbreviations, likely to be confused with “CPA”. However, a foreign accountant registered under section 116.17 may use the title under which the foreign accountant is generally known in the foreign accountant’s country, followed by the name of the country from which the foreign accountant received the certificate, license, or degree. Nothing in this subsection shall prohibit the use of the title or designation “accountant” by persons other than those holding a current permit issued under section 116.20.

8. No person shall sign or affix the person’s name or any trade or assumed name used by the person in the person’s profession or business, to any opinion attesting to the reliability of any representation in regard to any person or organization embracing either financial information or facts respecting compliance with conditions established by law or contract, including but not limited to statutes, ordinances, regulations, grants, loans and appropriations, unless the person holds a current permit issued under section 116.20, and all of the person’s offices in this state for the practice of public accounting are maintained and registered under section 116.19. However, the provisions of this subsection shall not prohibit any officer, employee, partner or principal of any organization from affixing the person’s signature to any statement or report in reference to the financial affairs of said organization with any wording designating the position, title, or office which the person holds in the organization, nor shall the provisions of this subsection prohibit any act of a public official or public employee in the performance of the person’s duties.

9. No person shall sign or affix a partnership or corporation name to any opinion attesting to the reliability of any representation in regard to any person or organization embracing financial information or facts respecting compliance with conditions established by law or contract, including but not limited to statutes, ordinances, regulations, grants, loans and appropriations, unless the partnership or corporation holds a current permit issued under section 116.20 and all of its offices in this state for the prac-

tice of certified public accounting are maintained and registered as required under section 116.19.

10. A person shall not assume or use the title or designation “certified public accountant” or “public accountant” in conjunction with names indicating or implying that there is a partnership or corporation or in conjunction with the designation “and company”, “and co.”, or a similar designation, if in any such case, there is in fact no bona fide partnership or corporation registered under section 116.18; however, a sole proprietor or partnership lawfully using such a title or designation on July 1, 1975, may continue to do so if the sole proprietor or partnership otherwise complies with the provisions of this chapter.

91 Acts, ch 97, §18 HF 198
Subsections 3, 4 and 10 amended

116.26 Employees of accountants.

This chapter does not prohibit any person not a certified public accountant or accounting practitioner from serving as an employee of, or an assistant to, a certified public accountant or accounting practitioner, or partnership or corporation composed of certified public accountants or accounting practitioners, holding a permit to practice issued under section 116.20, or a foreign accountant registered under section 116.17; however, the employee or assistant shall not issue any accounting or financial statement over the employee’s or assistant’s name.

91 Acts, ch 97, §19 HF 198
Section amended

116.31 Ownership or transfer of records.

All statements, records, schedules, working papers, and memoranda made by a certified public accountant or accounting practitioner incident to or in the course of professional service to clients by the accountant, except reports submitted by a certified public accountant or accounting practitioner to a client, remain the property of the accountant in the absence of an express agreement between the accountant and the client to the contrary.

No such statement, record, schedule, working paper, or memoranda, shall be sold, transferred or bequeathed, without the consent of the client or the client’s personal representative or assignee, to anyone other than one or more surviving partners or new partners of the accountant or to the accountant’s corporation.

91 Acts, ch 97, §20 HF 198
Unnumbered paragraph 1 amended

CHAPTER 117

REAL ESTATE BROKERS AND SALESPERSONS

117.47 Insurance requirement.

1. The real estate commission shall adopt rules requiring as a condition of licensure that all real estate licensees, except those who hold inactive licenses, carry errors and omissions insurance covering all activities contemplated under this chapter. The rules shall provide for administration of the insurance requirements of this section within the multiyear licensing structure required by section 117.28. However, the rules shall require licensees to submit evidence of compliance with this section at least annually and shall provide for review and determination of compliance on an annual basis.

2. The commission shall contract with an insurance provider for a group policy under which coverage is available to all licensees. The contract shall be solicited by competitive, sealed bid.

3. The group policy shall be made available to all licensees and shall not include any right on the part of the insurance provider to cancel coverage for a licensee.

4. A licensee shall have the option of obtaining insurance independently, if the coverage contained in an independently obtained policy complies with the minimum requirements adopted by rule of the commission.

5. The commission shall determine the terms and conditions of coverage required by subsection 1, including but not limited to the minimum limits of coverage, the permissible deductible, and the permissible exceptions.

6. Each licensee shall be notified of the required terms and conditions of coverage for the annual poli-

cy at least thirty days prior to the license renewal date or the anniversary of the license renewal date. A certificate of coverage, showing compliance with the required terms and conditions of coverage, must be filed with the commission by the license renewal date or the anniversary of the license renewal date by each licensee who elects not to participate in the group insurance program administered by the commission.

91 Acts, ch 97, §21 HF 198
Subsection 2 amended

117.54 Real estate education fund.

The Iowa real estate education fund is created as a financial assurance mechanism to assist in the establishment and maintenance of a real estate education program at the university of northern Iowa and to assist the real estate commission in providing an education director. The fund is created as a separate fund in the state treasury, and any funds remaining in the fund at the end of each fiscal year shall not revert to the general fund, but shall remain in the Iowa real estate education fund. Seventy percent of the moneys in the fund shall be distributed and are appropriated to the board of regents for the purpose of establishing and maintaining a real estate education program at the university of northern Iowa. Thirty percent of the moneys in the fund shall be distributed and are appropriated to the professional licensing and regulation division of the department of commerce for the purpose of hiring and compensating a real estate education director.

91 Acts, ch 260, §1213 HF 173
Section amended

CHAPTER 123

IOWA ALCOHOLIC BEVERAGE CONTROL ACT

123.30 Liquor control licenses — classes.

1. 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, are of good moral character as defined by this chapter. As a condition for issuance of a liquor control license or wine or beer permit, 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, members of the department of public safety, representatives of the department of inspections and appeals, certified police officers, and any official county health officer to enter upon areas of the premises where alcoholic beverages are stored, served, or sold, without a warrant during business hours of the licensee or permit-

tee to inspect for violations of this chapter or ordinances and regulations that cities and boards of supervisors may adopt. However, a subpoena issued under section 421.17 or a warrant is required for inspection of private records, a private business office, or attached living quarters. Persons who are not certified peace officers shall limit the scope of their inspections of licensed premises to the regulatory authority under which the inspection is conducted. All persons who enter upon a licensed premise to conduct an inspection shall present appropriate identification to the owner of the establishment or the person who appears to be in charge of the establishment prior to commencing an inspection; however, this provision does not apply to undercover criminal investigations conducted by peace officers. As a further condition for the issuance of a class "E" liquor control license, the applicant shall post a bond in a sum of not less than five thousand nor more than fifteen thousand dollars as determined on a sliding scale established by the division; however, a bond shall not be required if all purchases of alcoholic liquor from the division by the licensee are made by cash payment or by means that ensure that the division will receive full payment in advance of delivery of the alcoholic liquor.

A class "E" liquor control license may be issued to a city council for premises located within the limits of the city if there are no class "E" liquor control licenses operating within the limits of the city and no other applications for a class "E" license for premises located within the limits of the city at the time the city council's application is filed. If a class "E" liquor control license is subsequently issued to a private person for premises located within the limits of the city, the city council shall surrender its license to the division within one year of the date that the class "E" liquor control licensee begins operating, liquidate any remaining assets connected with the liquor store, and cease operating the liquor store.

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 administrator 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 class "E" liquor control licensees only, wine from class "A" wine permittees or class "B" wine permittees who also hold class "E" liquor control licenses only, 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 class

"E" liquor control licensees only, wine from class "A" wine permittees or class "B" wine permittees who also hold class "E" liquor control licenses only, 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 class "E" liquor control licensees only, wine from class "A" wine permittees or class "B" wine permittees who also hold class "E" liquor control licenses only, 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 class "A" wine permittees or class "B" wine permittees who also hold class "E" liquor control licenses 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. However, if a watercraft is an excursion gambling boat licensed under chapter 99F, the owner shall obtain a separate class "D" liquor control license for each excursion gambling boat operating in the waters of this state.

e. *Class "E"*. A class "E" liquor control license may be issued and shall authorize the holder to purchase alcoholic liquor from the division only and to sell the alcoholic liquor to patrons for consumption off the licensed premises and to other liquor control licensees. A class "E" license shall not be issued to premises at which gasoline is sold. A holder of a class "E" liquor control license may hold other retail liquor control licenses or retail wine or beer permits, but the premises licensed under a class "E" liquor control license shall be separate from other licensed premises, though the separate premises may have a common entrance. However, the holder of a class "E" liquor control license may also hold a class "B" wine

or class "C" beer permit or both for the premises licensed under a class "E" liquor control license

The division may issue a class "E" liquor control license for premises covered by a liquor control license or wine or beer permit for on premise consumption, if the premises are in a county having a population under nine thousand five hundred in which no other class "E" liquor control license has been issued by the division, and no other application for a class "E" license has been made within the previous twelve consecutive months

91 Acts ch 203 §1 SF 273

Subsection 3 paragraphs a b and c amended

123.32 Action by local authorities and division on applications for liquor control licenses and wine and beer permits.

1 *Filing of application* An application for a class "A", class "B", class "C", or class "E" 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 necessary fee and bond, if required, 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 necessary fee and bond, if required, shall be filed with the division, 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 necessary fee and bond, if required, to the division. 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 *Licensed premises for local events* A local authority may define, by motion of the local authority, licensed premises which shall be used by holders of liquor control licenses, beer permits, and wine permits at festivals, fairs, or celebrations which are sponsored or authorized by the local authority. The licensed premises defined by motion of the local authority shall be used by the holders of five day or fourteen-day liquor control licenses, or five-day or fourteen-day beer permits only

4 *Action by administrator* Upon receipt of an

application having been disapproved by the local authority, the administrator shall disapprove the application, so notify the applicant by certified mail, and return the fee and any bond to the applicant. Upon receipt of an application having been approved by the local authority, the division shall make such investigation as the administrator deems necessary and may require the applicant to appear to 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. The administrator may appoint a member of the division or may request the department of inspections and appeals to receive the testimony under oath and evidence. If the application is approved by the administrator, the license or permit applied for shall be issued. If the application is disapproved by the administrator, the applicant and the appropriate local authority shall be so notified by certified mail, and the fee and any bond returned to the applicant.

5 *Appeal to hearing board* Any applicant for a liquor control license, wine permit, or beer permit may appeal from the administrator's disapproval of an application for a license or permit to the division 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 administrator'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.

6 *Judicial review* Judicial review of the action of the division 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 administrator 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.

91 Acts ch 97 §22 HF 198
Subsection 3 amended

123.34 Expiration — seasonal, five-day, 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 adminis-

trator shall give sixty days' written notice of the expiration to each licensee or permittee. However, the administrator 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 or beer permits as provided in subsection 2. No refund shall be made for seasonal licenses or permits or for fourteen-day liquor licenses or beer permits. No seasonal license or permit shall be renewed except after a period of two months.

2. The administrator may issue fourteen-day class "A", class "B", class "C", and class "D" liquor control licenses 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 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 or beer permit.

4. The administrator may issue five-day class "A", class "B", class "C", and class "D" liquor control licenses and five-day class "B" beer permits. A five-day license or permit is valid for five consecutive days, but the holder shall not sell alcoholic beverages on Sunday in the five-day period unless the holder qualifies for and obtains the privilege to sell on Sunday pursuant to sections 123.36 and 123.134.

5. The fee for the five-day liquor control license or beer permit is one-eighth of the annual fee for that class of license or permit. The fee for the privilege to sell on a Sunday in the five-day period is ten percent of the price of the five-day liquor control license or beer permit.

91 Acts, ch 97, §23 HF 198
Subsection 3 amended

123.36 Liquor fees — Sunday sales.

The following fees shall be paid to the division 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 or more than a total of fifty-two days in a year, 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 or more than a total of fifty-two days in a year.

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. However, if a hotel or motel is located in an unincorporated town, for purposes of this subsection the unincorporated town shall be treated as if it is a city.

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 is the nearest, the license fee which is the largest shall prevail. However, if a commercial establishment is located in an unincorporated town, for purposes of this subsection the unincorporated town shall be treated as if it is a city.

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 division 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 estab-

lishment holding a liquor control license, subject to section 123.49, subsection 2, paragraph “b”, may apply for and receive permission to 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 eight a.m. on Sunday and two a.m. on the following Monday. A class “D” liquor control licensee may apply for and receive permission to sell and dispense alcoholic beverages to patrons for consumption on the premises only between the hours of eight a.m. on Sunday and two a.m. on the following Monday. 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.

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 is the nearest, the license fee which is the largest shall prevail. However, if a commercial establishment is located in an unincorporated town, for purposes of this subsection the unincorporated town shall be treated as if it is a city.

8. The division shall credit all fees to the beer and liquor control fund. The division 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 or class “E” licenses, covering premises located within the local authority’s jurisdiction. The division 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 and those fees collected for each class “E” liquor control license shall be credited to the beer and liquor control fund.

9. Class “E” liquor control license, a sum of not less than seven hundred and fifty dollars, and not more than seven thousand five hundred dollars as determined on a sliding scale as established by the division taking into account the factors of square footage of the licensed premises, the location of the licensed premises, and the population of the area of

the location of the licensed premises. Notwithstanding subsection 6, the holder of a class “E” liquor control license may sell alcoholic liquor for consumption off the licensed premises on Sunday subject to section 123.49, subsection 2, paragraph “b”.

10. There is imposed a surcharge on the fee for each class “A”, “B”, or “C” liquor control license equal to thirty percent of the scheduled license fee. The surcharges collected under this subsection shall be deposited in the beer and liquor control fund, and notwithstanding subsection 8, no portion of the surcharges collected under this subsection shall be remitted to the local authority.

91 Acts, ch 245, §1 HF 391
Subsection 6 amended

123.45 Limitations on business interests.

Except as provided in section 123.6, a commission member or division 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, representative, broker, employee, or agent of such a 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, nor hold a retail liquor control license or retail wine or beer permit. However, a person engaged in the wholesaling of beer or wine may sell only disposable glassware, which is constructed of paper, paper laminated, or plastic materials and designed primarily for personal consumption on a one-time usage basis, to retailers for use within the premises of licensed establishments, for an amount which is greater than or equal to an amount which represents the greater of either the amount paid for the disposable glassware by the supplier or the amount paid for the disposable glassware by the wholesaler. Also, 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 a person is the holder of a class “A” beer

permit, may be granted not more than one class "B" beer permit as defined in section 123.124 for that purpose. A licensee or permittee who permits or assents to or is a party in any way to a violation or infringement of this section is guilty of a violation of this section.

91 Acts, ch 24, §1 SF 284
Unnumbered paragraph 2 amended

123.49 Miscellaneous prohibitions.

1. A person shall not sell, dispense, or give to an intoxicated person, or one simulating intoxication, any alcoholic liquor, wine, or beer.

a. A person other than a person required to hold a license or permit under this chapter who dispenses or gives an alcoholic beverage, wine, or beer in violation of this subsection is not civilly liable to an injured person or the estate of a person for injuries inflicted on that person as a result of intoxication by the consumer of the alcoholic beverage, wine, or beer.

b. The general assembly declares that this subsection shall be interpreted so that the holding of *Clark v. Mincks*, 364 N.W.2d. 226 (Iowa 1985) is abrogated in favor of prior judicial interpretation finding the consumption of alcoholic beverages, wine, or beer rather than the serving of alcoholic beverages, wine, or beer as the proximate cause of injury inflicted upon another by an intoxicated person.

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, 99D, 99E, or 99F, 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 eight a.m. on Sunday and two a.m. on the following Monday.

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 division, 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 eight a.m. on Sunday and two a.m. on the following Monday.

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 or-

ganization has an auxiliary organization open to persons of the other sex.

91 Acts ch 245 §2 3 HF 391
Subsection 2 paragraphs b and k amended

123.134 Beer fees — Sunday sales.

1. The annual permit fee for a class “A” or special class “A” permit is two hundred fifty dollars.

2. The annual permit fee for a class “B” permit shall be graduated according to population as follows:

a For premises located within the corporate limits of cities with a population of ten thousand and over, three hundred dollars.

b For premises located within the corporate limits of cities with a population of at least fifteen hundred but less than ten thousand, two hundred dollars.

c For premises located within the corporate limits of cities with a population of under fifteen hundred, one hundred dollars.

d For premises located outside the corporate limits of any city, a sum equal to that charged in the incorporated city located nearest the premises to be operated under the permit, and in case there is doubt as to which of two or more differing corporate limits is the nearest, the permit fee which is the largest shall prevail. However, if the premises are located in an unincorporated town, for purposes of this subsection the unincorporated town shall be treated as if it is a city.

3. The annual permit fee for a class “C” permit shall be graduated on the basis of the amount of interior floor space which comprises the retail sales area of the premises covered by the permit, as follows:

a Up to one thousand five hundred square feet, the sum of seventy-five dollars.

b Over one thousand five hundred square feet and up to two thousand square feet, the sum of one hundred dollars.

c Over two thousand and up to five thousand square feet, the sum of two hundred dollars.

d Over five thousand square feet, the sum of three hundred dollars.

4. The annual permit fee for a special class “B” permit, issued under section 123.133, shall be one hundred dollars, and three dollars for each duplicate permit, which fees shall be paid to the division. The division shall issue duplicates of such permits from time to time as applied for by each such company.

5. Any club, hotel, motel, or commercial establishment holding a class “B” beer permit, subject to the provisions of section 123.49, subsection 2, paragraph “b”, may apply for and receive permission to sell and dispense beer to patrons on Sunday for consumption on or off the premises between the hours of eight a.m. on Sunday and two a.m. on the following Monday. Any class “C” beer permittee may sell beer for consumption off the premises between the hours of eight a.m. on Sunday and two a.m. on the following Monday. For the privilege of selling beer on Sunday the beer permit fees of the applicant shall

be increased by twenty percent of the regular fees prescribed for the permit pursuant to this section and the privilege shall be noted on the beer permit.

91 Acts ch 245 §4 HF 391
Subsection 5 amended

123.150 Sunday sales before New Year’s 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 alcoholic liquor, wine, or beer to patrons for consumption on the premises between the hours of eight a.m. on Sunday and two a.m. on Monday when that Monday is New Year’s Day and beer for consumption off the premises between the hours of eight a.m. on Sunday and two a.m. on the following Monday when that Sunday is the day before New Year’s Day. The liquor control license fee or beer permit fee of licensees and permittees permitted to sell or dispense liquor, wine, or beer on a Sunday when that Sunday is the day before New Year’s Day shall not be increased because of this privilege.

The special privileges granted in this section are in force only during the specified times provided in this section.

91 Acts ch 245 §5 HF 391
Unnumbered paragraph 1 amended

123.173 Wine permits — classes — authority.

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. All class “A” premises shall be located within the state. A class “B” wine permit allows the holder to sell wine at retail for consumption off the premises. A class “B” wine permittee who also holds a class “E” liquor control license may sell wine to class “A”, class “B”, and class “C” liquor control licensees for resale for consumption on the premises. A class “B” wine permittee who also holds a class “E” liquor control license may sell wine to class “A”, class “B”, and class “C” liquor control licensees in quantities of less than one case of any wine brand but not more than one such sale shall be made to the same liquor control licensee in a twenty-four hour period. A class “B” wine permittee shall not sell wine to other class “B” wine permittees.

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 premises of the class “B” wine permittee.

Except as specifically permitted by the division upon good cause shown, delivery or transfer of wine from an unlicensed premises to a licensed "B" wine permittee's premises, or from one licensed "B" wine permittee's premises to another licensed "B" wine permittee's premises, even if there is common ownership of all of the premises by one class "B" wine permittee, is prohibited. A class "B" wine permittee who also holds a class "E" liquor control license shall keep and maintain records for each sale of wine to liquor control licensees showing the name of the establishment to which wine was sold, the date of sale, and the brands and number of bottles sold to the liquor control licensee.

When a class "B" wine permittee who also holds a class "E" liquor control license sells wine to a class "A", class "B", or class "C" liquor control licensee, the liquor control licensee shall sign a report attesting to

the purchase. The class "B" wine permittee who also holds a class "E" liquor control license shall submit to the division, on forms supplied by the division, not later than the tenth of each month a report stating each sale of wine to class "A", class "B", and class "C" liquor control licensees during the preceding month, the date of each sale, and the brands and numbers of bottles with each sale. A class "B" permittee who holds a class "E" liquor control license may sell to class "A", class "B", or class "C" liquor control licensees only if the licensed premises of the liquor control licensee is located within the geographic territory of the class "A" wine permittee from which the wine was originally purchased by the class "B" wine permittee.

91 Acts, ch 203, §2, 3 SF 273
Unnumbered paragraphs 2 and 3 amended
NEW unnumbered paragraph 4

CHAPTER 125

CHEMICAL SUBSTANCE ABUSE

125.14A Personnel of a licensed program admitting juveniles.

1. If a person is being considered for licensure under this chapter, or for employment involving direct responsibility for a child or with access to a child when the child is alone, by a program admitting juveniles subject to licensure under this chapter, or if a person will reside in a facility utilized by such a program, and if the person has been convicted of a crime or has a record of founded child abuse, the department of human services and the program for an employee of the program shall perform an evaluation to determine whether the crime or founded child abuse warrants prohibition of licensure, employment, or residence in the facility. The department shall conduct criminal and child abuse record checks in this state and may conduct these checks in other states. The evaluation shall be performed in accordance with procedures adopted for this purpose by the department of human services.

2. If the department of human services determines that a person has committed a crime or has a record of founded child abuse and is licensed, employed by a program licensed under this chapter, or resides in a licensed facility the department shall notify the program that an evaluation will be conducted to determine whether prohibition of the person's licensure, employment, or residence is warranted.

3. In an evaluation, the department of human services and the program for an employee of the program shall consider the nature and seriousness of the

crime or founded child abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child abuse, the circumstances under which the crime or founded child abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded child abuse again, and the number of crimes or founded child abuses committed by the person involved. The department of human services may permit a person who is evaluated to be licensed, employed, or to reside, or to continue to be licensed, employed, or to reside in a program, if the person complies with the department's conditions relating to the person's licensure, employment, or residence, which may include completion of additional training. For an employee of a licensee, these conditional requirements shall be developed with the licensee. The department of human services has final authority in determining whether prohibition of the person's licensure, employment, or residence is warranted and in developing any conditional requirements under this subsection.

4. If the department of human services determines that the person has committed a crime or has a record of founded child abuse which warrants prohibition of licensure, employment, or residence, the person shall not be licensed under this chapter to operate a program admitting juveniles and shall not be employed by a program or reside in a facility admitting juveniles licensed under this chapter.

91 Acts, ch 138, §1 HF 296
Applicability of 1991 amendments to subsections 1 and 3, 91 Acts, ch 138, §10 HF 296
Subsections 1 and 3 amended

125.77 Service of notice.

Upon the filing of an application for involuntary commitment, the clerk shall docket the case and immediately notify a district court judge, a district associate judge, or magistrate who is admitted to the practice of law in this state, who shall review the application and accompanying documentation. The clerk shall send copies of the application and supporting documentation, together with the notice informing the respondent of the procedures required by this division, to the sheriff, for immediate service upon the respondent. If the respondent is taken into custody under section 125.81, service of the application, documentation, and notice upon the respondent shall be made at the time the respondent is taken into custody.

91 Acts, ch 108, §1 SF 453
Section amended

125.81 Immediate custody.

If a person filing an application requests that a respondent be taken into immediate custody, and the court upon reviewing the application and accompanying documentation, finds probable cause to believe that the respondent is a chronic substance abuser who is likely to injure the person or other persons if allowed to remain at liberty, the court may enter a written order directing that the respondent be taken into immediate custody by the sheriff, and be detained until the commitment hearing, which shall be held no more than five days after the date of the order, except that if the fifth day after the date of the order is a Saturday, Sunday, or a holiday, the hearing may be held on the next business day. The court may order the respondent detained for the period of time until the hearing is held, and no longer except as provided in section 125.88, in accordance with subsection 1 if possible, and if not, then in accordance with subsection 2 or, only if neither of these alternatives is available in accordance with subsection 3. Detention may be:

1. In the custody of a relative, friend, or other suitable person who is willing and able to accept responsibility for supervision of the respondent, with reasonable restrictions as the court may order including but not limited to restrictions on or a prohibition of any expenditure, encumbrance, or disposition of the respondent's funds or property.

2. In a suitable hospital, the chief medical officer of which shall be informed of the reasons why immediate custody has been ordered. The hospital may provide treatment which is necessary to preserve the respondent's life, or to appropriately control the respondent's behavior which is likely to result in physical injury to the person or to others if allowed to continue, and other treatment as deemed appropriate by the chief medical officer.

3. In a facility in the community which is suitably equipped and staffed for the purpose, provided that detention in a jail or other facility intended for confinement of those accused or convicted of a crime shall not be ordered, except in cases of actual emer-

gency if no other secure resource is accessible, and then only for a period of not more than twenty-four hours and under close supervision.

The respondent's attorney may be allowed by the court to present evidence and arguments before the court's determination under this section. If such an opportunity is not provided at that time, respondent's attorney shall be allowed to present evidence and arguments after the issuance of the court's order of confinement and while the respondent is confined.

91 Acts, ch 108, §2 SF 453
Unnumbered paragraph 1, and subsection 1 amended

125.82 Commitment hearing.

1. At a commitment hearing, evidence in support of the contentions made in the application shall be presented by the applicant, or by an attorney for the applicant, or by the county attorney if the county attorney is the applicant. During the hearing the applicant and the respondent shall be afforded an opportunity to testify and to present and cross-examine witnesses, and the court may receive the testimony of other interested persons. If the respondent is present at the hearing, as provided in subsection 3, and has been medicated within twelve hours, or a longer period of time as the court may designate, prior to the beginning of the hearing or a session of the hearing, the court shall be informed of that fact and of the probable effects of the medication upon convening of the hearing.

2. A person not necessary for the conduct of the hearing shall be excluded, except that the court may admit a person having a legitimate interest in the hearing. Upon motion of the applicant, the court may exclude the respondent from the hearing during the testimony of a witness if the court determines that the witness' testimony is likely to cause the respondent severe emotional trauma.

3. The person who filed the application and a physician or professional who has examined the respondent in connection with the commitment hearing shall be present at the hearing, unless prior to the hearing the court for good cause finds that their presence is not necessary. The respondent shall be present at the hearing unless prior to the hearing the respondent's attorney stipulates in writing that the attorney has conversed with the respondent, and that in the attorney's judgment the respondent cannot make a meaningful contribution to the hearing, or that the respondent has waived the right to be present, and the basis for the attorney's conclusions. A stipulation to the respondent's absence shall be reviewed by the court before the hearing, and may be rejected if it appears that insufficient grounds are stated or that the respondent's interests would not be served by the respondent's absence.

4. The respondent's welfare is paramount, and the hearing shall be tried as a civil matter and conducted in as informal a manner as is consistent with orderly procedure. Discovery as permitted under the Iowa rules of civil procedure is available to the respondent. The court shall receive all relevant and

material evidence, but the court is not bound by the rules of evidence. A presumption in favor of the respondent exists, and the burden of evidence and support of the contentions made in the application shall be upon the person who filed the application. If upon completion of the hearing the court finds that the contention that the respondent is a chronic substance abuser has not been sustained by clear and convincing evidence, the court shall deny the application and terminate the proceeding.

5. If the respondent is not taken into custody

under section 125.81, but the court finds good cause to believe that the respondent is about to depart from the jurisdiction of the court, the court may order limited detention of the respondent as authorized in section 125.81, as is necessary to ensure that the respondent will not depart from the jurisdiction of the court without the court's approval until the proceeding relative to the respondent has been concluded.

91 Acts, ch 108, §3 SF 453
Subsections 1, 2 and 3 amended

CHAPTER 135

IOWA DEPARTMENT OF PUBLIC HEALTH

Homemaker-home health aide program, 91 Acts, ch 268, § 305 SF 529

135.11 Duties of department.

The director of public health shall be the head of the "Iowa Department of Public Health", which shall:

1. Exercise general supervision over the public health, promote public hygiene and sanitation, prevent substance abuse and unless otherwise provided, enforce the laws relating to the same.

2. Conduct campaigns for the education of the people in hygiene and sanitation.

3. Issue monthly health bulletins containing fundamental health principles and other health data deemed of public interest.

4. Make investigations and surveys in respect to the causes of disease and epidemics, and the effect of locality, employment, and living conditions upon the public health. For this purpose the department may use the services of the experts connected with the state hygienic laboratory at the state University of Iowa.

5. Establish, publish, and enforce a code of rules governing the installation of plumbing in cities and amend the same when deemed necessary.

6. Exercise general supervision over the administration of the housing law and give aid to the local authorities in the enforcement of the same, and it shall institute in the name of the state such legal proceedings as may be necessary in the enforcement of said law.

7. Establish stations throughout the state for the distribution of antitoxins and vaccines to physicians, druggists, and other persons, at cost. All antitoxin and vaccine thus distributed shall be labeled "Iowa Department of Public Health."

8. Exercise general supervision over the admin-

istration and enforcement of the venereal disease law, chapter 140.

9. Exercise sole jurisdiction over the disposal and transportation of the dead bodies of human beings and prescribe the methods to be used in preparing such bodies for disposal and transportation.

10. Exercise general supervision over the administration and enforcement of the vital statistics law, chapter 144.

11. Enforce the law relative to the "Practice of Certain Professions Affecting the Public Health," Title VIII.

12. Establish and maintain such divisions in the department as are necessary for the proper enforcement of the laws administered by it, including a division of contagious and infectious diseases, a division of venereal diseases, a division of housing, a division of sanitary engineering, and a division of vital statistics, but the various services of the department shall be so consolidated as to eliminate unnecessary personnel and make possible the carrying on of the functions of the department under the most economical methods.

13. Establish, publish, and enforce rules not inconsistent with law for the enforcement of the provisions of this title and chapter 125 and for the enforcement of the various laws, the administration and supervision of which are imposed upon the department.

14. Establish standards for, issue permits, and exercise control over the distribution of venereal disease prophylactics distributed by methods not under the direct supervision of a physician licensed under chapter 148, 150 or 150A, or a pharmacist licensed under chapter 147. Any person selling, offering for

sale, or giving away any venereal disease prophylactics in violation of the standards established by the department shall be fined not exceeding five hundred dollars, and the department shall revoke their permit.

15. Administer the statewide public health nursing and homemaker-home health aide programs by approving grants of state funds to the local boards of health and the county boards of supervisors and by providing guidelines for the approval of the grants and allocation of the state funds.

16. Establish, publish, and enforce rules not inconsistent with the law as necessary to obtain from persons licensed or regulated by the department the data required pursuant to section 145.3 by the state health data commission.

17. Administer chapters 125, 136A, 136C, 139, 140, 142, 144, and 147A.

18. Issue an annual report to the governor as provided in section 7E.3, subsection 4.

19. Administer the statewide maternal and child health program and the crippled children's program by conducting mobile and regional child health specialty clinics and conducting other activities to improve the health of low-income women and children and to promote the welfare of children with actual or potential handicapping conditions and chronic illnesses in accordance with the requirements of Title V of the federal Social Security Act. The department shall provide technical assistance to encourage the coordination and collaboration of state agencies in developing outreach centers which provide publicly supported services for pregnant women, infants, and children. The department shall also, through cooperation and collaborative agreements with the department of human services and the mobile and regional child health specialty clinics, establish common intake proceedings for maternal and child health services. The department shall work in cooperation with the legislative fiscal bureau in monitoring the effectiveness of the maternal and child health centers, including the provision of transportation for patient appointments and the keeping of scheduled appointments.

20. Establish, publish, and enforce rules requiring prompt reporting of methemoglobinemia, pesticide poisoning, and the reportable poisonings and illnesses established pursuant to section 139.35.

21. Collect and maintain reports of pesticide poisonings and other poisonings, illnesses, or injuries caused by selected chemical or physical agents, including methemoglobinemia and pesticide and fertilizer hypersensitivity; and compile and publish, annually, a statewide and county-by-county profile based on the reports.

22. Adopt rules which require personnel of a licensed hospice, of a homemaker-home health aide provider agency which receives state homemaker-home health aide funds, or of an agency which provides respite care services and receives funds to complete a minimum of two hours of training concerning acquired immune deficiency syndrome-related con-

ditions through a program approved by the department. The rules shall require that new employees complete the training within six months of initial employment and existing employees complete the training on or before January 1, 1989.

23. Adopt rules which require all emergency medical services personnel, firefighters, and law enforcement personnel to complete a minimum of two hours of training concerning acquired immune deficiency syndrome-related conditions and the prevention of human immunodeficiency virus infection.

91 Acts, ch 258, §29 HF 709
Subsection 18 amended

135.11A Professional licensure division — other licensing boards — expenses — fees.

There shall be a professional licensure division within the department of public health. Each board of examiners specified under chapter 147 or under the administrative authority of the department, except the state board of nursing, state board of medical examiners, state board of dental examiners, and state board of pharmacy examiners, shall receive administrative and clerical support from the division and may not employ its own support staff for administrative and clerical duties.

The professional licensure division and the licensing boards may expend additional funds, if those additional expenditures are directly the cause of actual examination and exceed funds budgeted for examinations. Before the division or a licensing board expends or encumbers an amount in excess of the funds budgeted for examinations, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the department of management shall determine that the examination expenses exceed the funds budgeted by the general assembly to the division or board and the division or board does not have other funds from which examination expenses can be paid. Upon approval of the department of management the division or licensing board may expend and encumber funds for excess examination expenses. The amounts necessary to fund the excess examination expenses shall be collected as fees from additional examination applicants and shall be treated as repayment receipts as defined in section 8.2.

91 Acts, ch 268, §306 SF 529
NEW unnumbered paragraph 2

135.23 Licensure of blood collection, blood processing, or plasmapheresis centers. Repealed by 90 Acts, ch 1174, § 2, effective July 1, 1991.

135.61 Definitions.

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

1. "Affected persons" means, with respect to an application for a certificate of need:

a. The person submitting the application.

b. Consumers who would be served by the new institutional health service proposed in the application.

c Each institutional health facility or health maintenance organization which is located in the geographic area which would appropriately be served by the new institutional health service proposed in the application. The appropriate geographic service area of each institutional health facility or health maintenance organization shall be determined on a uniform basis in accordance with criteria established in rules adopted by the department.

d Each institutional health facility or health maintenance organization which, prior to receipt of the application by the department, has formally indicated to the department pursuant to this division an intent to furnish in the future institutional health services similar to the new institutional health service proposed in the application.

e Any other person designated as an affected person by rules of the department.

f Any payer or third-party payer for health services.

2 "Birth center" means birth center as defined in section 135G 2.

3 "Consumer" means any individual whose occupation is other than health services, who has no fiduciary obligation to an institutional health facility, health maintenance organization or other facility primarily engaged in delivery of services provided by persons in health service occupations, and who has no material financial interest in the providing of any health services.

4 "Council" means the state health facilities council established by this division.

5 "Department" means the Iowa department of public health.

6 "Develop", when used in connection with health services, means to undertake those activities which on their completion will result in the offer of a new institutional health service or the incurring of a financial obligation in relation to the offering of such a service.

7 "Director" means the director of public health, or the director's designee.

8 "Financial reporting" means reporting by which hospitals and health care facilities shall respectively record their revenues, expenses, other income, other outlays, assets and liabilities, and units of services.

9 "Health care facility" means health care facility as defined in section 135C 1.

10 "Health care provider" means a person licensed or certified under chapter 147, 148, 148A, 148C, 149, 150, 150A, 151, 152, 153, 154, 154B, or 155A to provide in this state professional health care service to an individual during that individual's medical care, treatment or confinement.

11 "Health maintenance organization" means health maintenance organization as defined in section 514B 1, subsection 3.

12 "Health services" means clinically related diagnostic, curative, or rehabilitative services, and includes alcoholism, drug abuse, and mental health services.

13 "Hospital" means hospital as defined in section 135B 1, subsection 1.

14 "Institutional health facility" means any of the following, without regard to whether the facilities referred to are publicly or privately owned or are organized for profit or not or whether the facilities are part of or sponsored by a health maintenance organization:

a A hospital.

b A health care facility.

c A kidney disease treatment center, including any freestanding hemodialysis unit but not including any home hemodialysis unit.

d An organized outpatient health facility.

e An outpatient surgical facility.

f A community mental health facility.

g A birth center.

15 "Institutional health service" means any health service furnished in or through institutional health facilities or health maintenance organizations, including mobile health services.

16 "Mobile health service" means equipment used to provide a health service that can be transported from one delivery site to another.

17 "Modernization" means the alteration, repair, remodeling, replacement or renovation of existing buildings or of the equipment previously installed therein, or both.

18 "New institutional health service" or "changed institutional health service" means any of the following:

a The construction, development or other establishment of a new institutional health facility regardless of ownership.

b Relocation of an institutional health facility.

c Any capital expenditure, lease, or donation by or on behalf of an institutional health facility in excess of eight hundred thousand dollars within a twelve-month period.

d A permanent change in the bed capacity, as determined by the department, of an institutional health facility. For purposes of this paragraph, a change is permanent if it is intended to be effective for one year or more.

e Any expenditure in excess of three hundred thousand dollars by or on behalf of an institutional health facility for health services which are or will be offered in or through an institutional health facility at a specific time but which were not offered on a regular basis in or through that institutional health facility within the twelve month period prior to that time.

f The deletion of one or more health services, previously offered on a regular basis by an institutional health facility or health maintenance organization or the relocation of one or more health services from one physical facility to another.

g Any acquisition by or on behalf of a health care provider or a group of health care providers of any piece of replacement equipment with a value in excess of four hundred thousand dollars, whether acquired by purchase, lease, or donation.

h. Any acquisition by or on behalf of a health care provider or group of health care providers of any piece of equipment with a value in excess of three hundred thousand dollars, whether acquired by purchase, lease, or donation, which results in the offering or development of a health service not previously provided. A mobile service provided on a contract basis is not considered to have been previously provided by a health care provider or group of health care providers.

i. Any acquisition by or on behalf of an institutional health facility or a health maintenance organization of any piece of replacement equipment with a value in excess of four hundred thousand dollars, whether acquired by purchase, lease, or donation.

j. Any acquisition by or on behalf of an institutional health facility or health maintenance organization of any piece of equipment with a value in excess of three hundred thousand dollars, whether acquired by purchase, lease, or donation, which results in the offering or development of a health service not previously provided. A mobile service provided on a contract basis is not considered to have been previously provided by an institutional health facility.

k. Any air transportation system for transportation of patients or medical personnel.

l. Any mobile health service with a value in excess of three hundred thousand dollars.

m. Any of the following:

- (1) Cardiac catheterization service.
- (2) Open heart surgical service.
- (3) Organ transplantation service.

19. *“Offer”*, when used in connection with health services, means that an institutional health facility, health maintenance organization, health care provider, or group of health care providers holds itself out as capable of providing, or as having the means to provide, specified health services.

20. *“Organized outpatient health facility”* means a facility, not part of a hospital, organized and operated to provide health care to noninstitutionalized and nonhomebound persons on an outpatient basis; it does not include private offices or clinics of individual physicians, dentists or other practitioners, or groups of practitioners, who are health care providers.

21. *“Outpatient surgical facility”* means a facility which as its primary function provides, through an organized medical staff and on an outpatient basis to patients who are generally ambulatory, surgical procedures not ordinarily performed in a private physician’s office, but not requiring twenty-four hour hospitalization, and which is neither a part of a hospital nor the private office of a health care provider who there engages in the lawful practice of surgery. *“Outpatient surgical facility”* includes a facility certified or seeking certification as an ambulatory surgical center, under the federal Medicare program or under the medical assistance program established pursuant to chapter 249A.

22. *“Technologically innovative equipment”*

means equipment potentially useful for diagnostic or therapeutic purposes which introduces new technology in the diagnosis or treatment of disease, the usefulness of which is not well enough established to permit a specific plan of need to be developed for the state.

91 Acts, ch 225, §1 HF 668

Section amended and subsections renumbered to alphabetize

135.62 Department to administer division — health facilities council established — appointments — powers and duties.

1. This division shall be administered by the department. The director shall employ or cause to be employed the necessary persons to discharge the duties imposed on the department by this division.

2. There is established a state health facilities council consisting of five persons appointed by the governor. The council shall be within the department for administrative and budgetary purposes.

a. Qualifications. The members of the council shall be chosen so that the council as a whole is broadly representative of various geographical areas of the state, and no more than three of its members are affiliated with the same political party. Each council member shall be a person who has demonstrated by prior activities an informed concern for the planning and delivery of health services. No member of the council, nor any spouse of a member, shall during the time that member is serving on the council:

(1) Be a health care provider nor be otherwise directly or indirectly engaged in the delivery of health care services nor have a material financial interest in the providing or delivery of health services; nor

(2) Serve as a member of any board or other policymaking or advisory body of an institutional health facility, a health maintenance organization, or any health or hospital insurer.

b. Appointments. Terms of council members shall be six years, beginning and ending as provided in section 69.19. A member shall be appointed in each odd-numbered year to succeed each member whose term expires in that year. Vacancies shall be filled by the governor for the balance of the unexpired term. Each appointment to the council is subject to confirmation by the senate. A council member is ineligible for appointment to a second consecutive term, unless first appointed to an unexpired term of three years or less.

The governor shall designate one of the council members as chairperson. That designation may be changed not later than July 1 of any odd-numbered year, effective on the date of the organizational meeting held in that year under paragraph *“c”* of this subsection.

c. Meetings. The council shall hold an organizational meeting in July of each odd-numbered year, or as soon thereafter as the new appointee or appointees are confirmed and have qualified. Other meetings shall be held at least once each month, and may be held more frequently if necessary to enable the

council to expeditiously discharge its duties. Meeting dates shall be set upon adjournment or by call of the chairperson upon five days' notice to the other members. Each member of the council shall receive a per diem as specified in section 7E.6 and reimbursement for actual expenses while engaged in official duties.

d. Duties. The council shall:

(1) Make the final decision, as required by section 135.69, with respect to each application for a certificate of need accepted by the department.

(2) Determine and adopt such policies as are authorized by law and are deemed necessary to the efficient discharge of its duties under this division.

(3) Have authority to direct staff personnel of the department assigned to conduct formal or summary reviews of applications for certificates of need.

(4) Advise and counsel with the director concerning the provisions of this division, and the policies and procedures adopted by the department pursuant to this division.

(5) Review and approve, prior to promulgation, all rules adopted by the department under this division.

91 Acts, ch 225, §2, 3 HF 668

Subsection 2, paragraph a, subparagraph (2) amended

Subsection 2, paragraph b, unnumbered paragraph 3 stricken

135.63 Certificate of need required — exclusions.

1. A new institutional health service or changed institutional health service shall not be offered or developed in this state without prior application to the department for and receipt of a certificate of need, pursuant to this division. The application shall be made upon forms furnished or prescribed by the department and shall contain such information as the department may require under this division. The application shall be accompanied by a fee equivalent to two-tenths of one percent of the anticipated cost of the project, as determined under rules promulgated by the department. The fee shall be remitted by the department to the treasurer of state, who shall place it in the general fund of the state. If an application is voluntarily withdrawn within thirty calendar days after submission, seventy-five percent of the application fee shall be refunded; if the application is voluntarily withdrawn more than thirty but within sixty days after submission, fifty percent of the application fee shall be refunded; if the application is withdrawn voluntarily more than sixty days after submission, twenty-five percent of the application fee shall be refunded. Notwithstanding the required payment of an application fee under this subsection, an applicant for a new institutional health service or a changed institutional health service offered or developed by an intermediate care facility for the mentally retarded or an intermediate care facility for the mentally ill as defined pursuant to section 135C.1 is exempt from payment of the application fee.

2. This division shall not be construed to augment, limit, contravene, or repeal in any manner any other statute of this state which may authorize or re-

late to licensure, regulation, supervision, or control of, nor to be applicable to:

a. Private offices and private clinics of an individual physician, dentist or other practitioner or group of health care providers, except as provided by section 135.61, subsection 18, paragraphs "g" and "h", and subsections 20 and 21.

b. Dispensaries and first aid stations, located within schools, businesses or industrial establishments, which are maintained solely for the use of students or employees of those establishments and which do not contain inpatient or resident beds that are customarily occupied by the same individual for more than twenty-four consecutive hours.

c. Establishments such as motels, hotels, and boarding houses which provide medical, nursing personnel, and other health related services as an incident to their primary business or function.

d. The remedial care or treatment of residents or patients in any home or institution conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination.

e. A health maintenance organization or combination of health maintenance organizations or an institutional health facility controlled directly or indirectly by a health maintenance organization or combination of health maintenance organizations, except when the health maintenance organization or combination of health maintenance organizations does any of the following:

(1) Constructs, develops, renovates, relocates, or otherwise establishes an institutional health facility.

(2) Acquires major medical equipment as provided by section 135.61, subsection 18, paragraphs "i" and "j".

f. A residential care facility, as defined in section 135C.1, including a residential care facility for the mentally retarded, notwithstanding any provision in this division to the contrary.

g. A reduction in bed capacity of an institutional health facility, notwithstanding any provision in this division to the contrary, if all of the following conditions exist:

(1) The institutional health facility reports to the department the number and type of beds reduced on a form prescribed by the department at least thirty days before the reduction. In the case of a health care facility, the new bed total must be consistent with the number of licensed beds at the facility. In the case of a hospital, the number of beds must be consistent with bed totals reported to the department of inspections and appeals for purposes of licensure and certification.

(2) The institutional health facility reports the new bed total on its next annual report to the department.

If these conditions are not met, the institutional health facility is subject to review as a "new institutional health service" or "changed institutional health service" under section 135.61, subsection 18,

paragraph "d", and subject to sanctions under section 135.73. If the institutional health facility reestablishes the deleted beds at a later time, review as a "new institutional health service" or "changed institutional health service" is required pursuant to section 135.61, subsection 18, paragraph "d".

h. The deletion of one or more health services, previously offered on a regular basis by an institutional health facility or health maintenance organization, notwithstanding any provision of this division to the contrary, if all of the following conditions exist:

(1) The institutional health facility or health maintenance organization reports to the department the deletion of the service or services at least thirty days before the deletion on a form prescribed by the department.

(2) The institutional health facility or health maintenance organization reports the deletion of the service or services on its next annual report to the department.

If these conditions are not met, the institutional health facility or health maintenance organization is subject to review as a "new institutional health service" or "changed institutional health service" under section 135.61, subsection 18, paragraph "f", and subject to sanctions under section 135.73.

If the institutional health facility or health maintenance organization reestablishes the deleted service or services at a later time, review as a "new institutional health service" or "changed institutional health service" may be required pursuant to section 135.61, subsection 18.

3. This division shall not be construed to be applicable to a health care facility operated by and for the exclusive use of members of a religious order, which does not admit more than two individuals to the facility from the general public, and which was in operation prior to July 1, 1986. However, this division is applicable to such a facility if the facility is involved in the offering or developing of a new or changed institutional health service on or after July 1, 1986.

91 Acts, ch 225, §4 HF 668
Subsections 1 and 2 amended

135.64 Criteria for evaluation of applications.

1. In determining whether a certificate of need shall be issued, the department and council shall consider the following:

a. The contribution of the proposed institutional health service in meeting the needs of the medically underserved, including persons in rural areas, low-income persons, racial and ethnic minorities, handicapped persons, and the elderly, as well as the extent to which medically underserved residents in the applicant's service area are likely to have access to the proposed institutional health service.

b. The relationship of the proposed institutional health services to the long-range development plan, if any, of the person providing or proposing the services.

c. The need of the population served or to be served by the proposed institutional health services for those services.

d. The distance, convenience, cost of transportation, and accessibility to health services for persons who live outside metropolitan areas.

e. The availability of alternative, less costly or more effective methods of providing the proposed institutional health services.

f. The immediate and long-term financial feasibility of the proposal presented in the application, as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the new institutional health service.

g. The relationship of the proposed institutional health services to the existing health care system of the area in which those services are proposed to be provided.

h. The appropriate and efficient use or prospective use of the proposed institutional health service, and of any existing similar services, including but not limited to a consideration of the capacity of the sponsor's facility to provide the proposed service, and possible sharing or co-operative arrangements among existing facilities and providers.

i. The availability of resources, including (but not limited to) health care providers, management personnel, and funds for capital and operating needs, to provide the proposed institutional health services and the possible alternative uses of those resources to provide other health services.

j. The appropriate and nondiscriminatory utilization of existing and available health care providers. Where both allopathic and osteopathic institutional health services exist, each application shall be considered in light of the availability and utilization of both allopathic and osteopathic facilities and services in order to protect the freedom of choice of consumers and health care providers.

k. The relationship, including the organizational relationship, of the proposed institutional health services to ancillary or support services.

l. Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the immediate geographic area in which the entities are located, which entities may include but are not limited to medical and other health professional schools, multidisciplinary clinics, and specialty centers.

m. The special needs and circumstances of health maintenance organizations.

n. The special needs and circumstances of biomedical and behavioral research projects designed to meet a national need and for which local conditions offer special advantages.

o. The impact of relocation of an institutional health facility or health maintenance organization on other institutional health facilities or health maintenance organizations and on the needs of the population to be served, or which was previously served, or both.

p In the case of a construction project, the costs and methods of the proposed construction and the probable impact of the proposed construction project on total health care costs

q In the case of a proposal for the addition of beds to a health care facility, the consistency of the proposed addition with the plans of other agencies of this state responsible for provision and financing of long-term care services, including home health services

r The recommendations of staff personnel of the department assigned to the area of certificate of need, concerning the application, if requested by the council

2 In addition to the findings required with respect to any of the criteria listed in subsection 1 of this section, the council shall grant a certificate of need for a new institutional health service or changed institutional health service only if it finds in writing, on the basis of data submitted to it by the department, that

a Less costly, more efficient or more appropriate alternatives to the proposed institutional health service are not available and the development of such alternatives is not practicable,

b Any existing facilities providing institutional health services similar to those proposed are being used in an appropriate and efficient manner,

c In the case of new construction, alternatives including but not limited to modernization or sharing arrangements have been considered and have been implemented to the maximum extent practicable,

d Patients will experience serious problems in obtaining care of the type which will be furnished by the proposed new institutional health service or changed institutional health service, in the absence of that proposed new service

3 In the evaluation of applications for certificates of need submitted by university hospital at Iowa City, the unique features of that institution relating to statewide tertiary health care, health science education, and clinical research shall be given due consideration. Further, in administering this division, the unique capacity of university hospitals for the evaluation of technologically innovative equipment and other new health services shall be utilized

91 Acts ch 225 §5 HF 668
Subsection 1 paragraphs a and 1 q amended and NEW paragraph r

135.65 Letter of intent to precede application — review and comment.

1 Before applying for a certificate of need, the sponsor of a proposed new institutional health service or changed institutional health service shall submit to the department a letter of intent to offer or develop a service requiring a certificate of need. The letter shall be submitted as soon as possible after initiation of the applicant's planning process, and in any case not less than sixty days before applying for a certificate of need and before substantial expendi-

tures to offer or develop the service are made. The letter shall include a brief description of the proposed new or changed service, its location, and its estimated cost.

2 Upon request of the sponsor of the proposed new or changed service, the department shall make a preliminary review of the letter for the purpose of informing the sponsor of the project of any factors which may appear likely to result in denial of a certificate of need, based on the criteria for evaluation of applications in section 135.64. A comment by the department under this section shall not constitute a final decision.

91 Acts ch 225 §6 HF 668
Subsection 1 amended

135.66 Procedure upon receipt of application — public notification.

1 Within fifteen business days after receipt of an application for a certificate of need, the department shall examine the application for form and completeness and accept or reject it. An application shall be rejected only if it fails to provide all information required by the department pursuant to section 135.63, subsection 1. The department shall promptly return to the applicant any rejected application, with an explanation of the reasons for its rejection.

2 Upon acceptance of an application for a certificate of need, the department shall promptly undertake to notify all affected persons in writing that formal review of the application has been initiated. Notification to those affected persons who are consumers or third-party payers or other payers for health services may be provided by distribution of the pertinent information to the news media.

3 Each application accepted by the department shall be formally reviewed for the purpose of furnishing to the council the information necessary to enable it to determine whether or not to grant the certificate of need. A formal review shall consist at a minimum of the following steps:

a Evaluation of the application against the criteria specified in section 135.64

b A public hearing on the application, to be held prior to completion of the evaluation required by paragraph "a", shall be conducted by the council.

4 When a hearing is to be held pursuant to subsection 3, paragraph "b", the department shall give at least ten days' notice of the time and place of the hearing. At the hearing, any affected person or that person's designated representative shall have the opportunity to present testimony.

91 Acts ch 225 §7 HF 668
Subsections 2, 3 and 4 amended

135.67 Summary review procedure.

The department may waive the letter of intent procedures prescribed by section 135.65 and substitute a summary review procedure, which shall be established by rules of the department, when it accepts an application for a certificate of need for a project which meets any of the criteria in subsections 1 through 5.

1. A project which is limited to repair or replacement of a facility or equipment damaged or destroyed by a disaster, and which will not expand the facility nor increase the services provided beyond the level existing prior to the disaster.

2. A project necessary to enable the facility or service to achieve or maintain compliance with federal, state or other appropriate licensing, certification or safety requirements.

3. A project which will not change the existing bed capacity of the applicant's facility or service, as determined by the department, by more than ten percent or ten beds, whichever is less, over a two-year period.

4. A project the total cost of which will not exceed one hundred fifty thousand dollars.

5. Any other project for which the applicant proposes and the department agrees to summary review.

The department's decision to disallow a summary review shall be binding upon the applicant.

91 Acts, ch 225, §8-10 HF 668
Unnumbered paragraph 1 amended
Subsection 5 amended
NEW unnumbered paragraph 2

135.69 Council to make final decision.

The department shall complete its formal review of the application within ninety days after acceptance of the application, except as otherwise provided by section 135.72, subsection 4. Upon completion of the formal review, the council shall approve or deny the application. The council shall issue written findings stating the basis for its decision on the application, and the department shall send copies of the council's decision and the written findings supporting the decision to the applicant and to any other person who so requests.

Failure by the council to issue a written decision on an application for a certificate of need within the time required by this section shall constitute denial of and final administrative action on the application.

91 Acts, ch 225, §11 HF 668
Section amended

135.70 Appeal of certificate of need decisions.

The council's decision on an application for certificate of need, when announced pursuant to section 135.69, is a final decision. Any dissatisfied party who is an affected person with respect to the application, and who participated or sought unsuccessfully to participate in the formal review procedure prescribed by section 135.66, may request a rehearing in accordance with chapter 17A and rules of the department. If a rehearing is not requested or an affected party remains dissatisfied after the request for rehearing, an appeal may be taken in the manner provided by chapter 17A. Notwithstanding the Iowa administrative procedure Act, chapter 17A, a request for rehearing is not required, prior to appeal under section 17A.19.

91 Acts, ch 225, §12 HF 668
Section stricken and rewritten

135.72 Authority to adopt rules.

The department shall adopt, with approval of the council, such administrative rules as are necessary to enable it to implement this division. These rules shall include:

1. Additional procedures and criteria for review of applications for certificates of need.

2. Uniform procedures for variations in application of criteria specified by section 135.64 for use in formal review of applications for certificates of need, when such variations are appropriate to the purpose of a particular review or to the type of institutional health service proposed in the application being reviewed.

3. Uniform procedures for summary reviews conducted under section 135.67.

4. Criteria for determining when it is not feasible to complete formal review of an application for a certificate of need within the time limits specified in section 135.69. The rules adopted under this subsection shall include criteria for determining whether an application proposes introduction of technologically innovative equipment, and if so, procedures to be followed in reviewing the application. However, a rule adopted under this subsection shall not permit a deferral of more than sixty days beyond the time when a decision is required under section 135.69, unless both the applicant and the department agree to a longer deferment.

91 Acts, ch 225, §13 HF 668
Subsection 4 amended

135.73 Sanctions.

1. Any party constructing a new institutional health facility or an addition to or renovation of an existing institutional health facility without first obtaining a certificate of need or, in the case of a mobile health service, ascertaining that the mobile health service has received certificate of need approval, as required by this division, shall be denied licensure or change of licensure by the appropriate responsible licensing agency of this state.

2. A party violating this division shall be subject to penalties in accordance with this section. The department shall adopt rules setting forth the violations by classification, the criteria for the classification of any violation not listed, and procedures for implementing this subsection.

a. A class I violation is one in which a party offers a new institutional health service or changed institutional health service modernization or acquisition without review and approval by the council. A party in violation is subject to a penalty of three hundred dollars for each day of a class I violation. The department may seek injunctive relief which shall include restraining the commission or continuance of an act which would violate the provisions of this paragraph. Notice and opportunity to be heard shall be provided to a party pursuant to Iowa rule of civil procedure 326 and contested case procedures in accordance with chapter 17A. The department may reduce, alter, or waive a penalty upon the party show-

ing good faith compliance with the department's request to immediately cease and desist from conduct in violation of this section.

b. A class II violation is one in which a party violates the terms or provisions of an approved application. The department may seek injunctive relief which shall include restraining the commission or continuance of or abating or eliminating an act which would violate the provisions of this subsection. Notice and opportunity to be heard shall be provided to a party pursuant to Iowa rule of civil procedure 326 and contested case procedures in accordance with chapter 17A. The department may reduce, alter, or waive a penalty upon the party showing good faith compliance with the department's request to immediately cease and desist from conduct in violation of this section. A class II violation shall be abated or eliminated within a stated period of time determined by the department and specified by the department in writing. The period of time may be modified by the department for good cause shown. A party in violation may be subject to a penalty of five hundred dollars for each day of a class II violation.

3. Notwithstanding any other sanction imposed pursuant to this section, a party offering or developing any new institutional health service or changed institutional health service without first obtaining a certificate of need as required by this division may be temporarily or permanently restrained from doing so by any court of competent jurisdiction in

any action brought by the state, any of its political subdivisions, or any other interested person.

4. The sanctions provided by this section are in addition to, and not in lieu of, any penalty prescribed by law for the acts against which these sanctions are invoked.

91 Acts, ch 225, §14 HF 668
Section amended

135.80 Restriction on application. Repealed by 91 Acts, ch 225, § 15. HF 668

135.82 Review forms. Repealed by 91 Acts, ch 225, § 15. HF 668

135.103 Grant program.

The department shall implement a lead abatement grant program which provides matching funds to local boards of health or cities for the program after standards and requirements for the local program are developed. The state shall provide funds to approved programs on the basis of three dollars for each one dollar designated by the local board of health or city for the program for the first two years of a program, and funds on the basis of one dollar for each one dollar designated by the local board of health or city for the program for the third and subsequent years of the program if such funding is determined necessary by the department for such subsequent years.

91 Acts, ch 268, §307 SF 529
Section amended

CHAPTER 135B

LICENSURE AND REGULATION OF HOSPITALS

135B.7 Rules and enforcement.

The department, with the advice and approval of the hospital licensing board and approval of the state board of health, shall adopt rules setting out the standards for the different types of hospitals to be licensed under this chapter. The department shall enforce the rules. 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, osteopathic surgeons, or dentists licensed under chapter 148, 149, 150, 150A, or 153,

solely by reason of the license held by the practitioner or solely by reason of the school or institution in which the practitioner received medical schooling or postgraduate training if the medical schooling or postgraduate training was accredited by an organization recognized by the council on postsecondary accreditation or an accrediting group recognized by the United States department of education.

The department shall adopt rules requiring hospitals to establish and implement protocols for responding to the needs of patients who are victims of domestic abuse, as defined in section 236.2.

91 Acts, ch 218, §3 SF 444
See Code editor's note
NEW unnumbered paragraph 3

135B.12 Confidentiality.

The department's final findings or the final survey findings of the joint commission on the accreditation

of health care organizations or the American osteopathic association with respect to compliance by a hospital with requirements for licensing or accreditation shall be made available to the public in a readily available form and place. Other information relating to a hospital obtained by the department which does not constitute the department's findings from an inspection of the hospital or the final survey findings of the joint commission on the accreditation of health care organizations or the American osteo-

pathic association shall not be made available to the public, except in proceedings involving the denial, suspension, or revocation of a license under this chapter. The name of a person who files a complaint with the department shall remain 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 or agents involved in the investigation of the complaint.

91 Acts, ch 107, §2 SF 412
Section amended

CHAPTER 135C

HEALTH CARE FACILITIES

135C.2 Purpose — rules — special classifications — protection and advocacy agency.

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 residential care facility category, a special classification for residential facilities intended to serve mentally ill individuals. The department may also establish by administrative rule special classifications within the residential care facility, intermediate care facility for the mentally ill, intermediate care facility for the mentally retarded, or 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 special 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 special classification.

The rules adopted for intermediate care facilities for the mentally retarded shall be consistent with, but no more restrictive than, the federal standards for intermediate care facilities for the mentally retarded established pursuant to the federal Social Security Act, § 1905(c)(d), as codified in 42 U.S.C. § 1396d, in effect on January 1, 1989. However, in order to be licensed the state fire marshal must certify to the department an intermediate care facility for the mentally retarded as meeting the applicable provisions of either the health care occupancies chapter or the residential board and care chapter of the life safety code of the national fire protection association, 1985 edition. The department shall adopt additional rules for intermediate care facilities for the mentally retarded pursuant to section 135C.14, subsection 8.

Notwithstanding the limitations set out in this subsection regarding rules for intermediate care facilities for the mentally retarded, the department shall consider the federal interpretive guidelines issued by the federal health care financing administration when interpreting the department's rules for intermediate care facilities for the mentally retarded. This use of the guidelines is not subject to the rule-making provisions of sections 17A.4 and 17A.5, but the guidelines shall be published in the Iowa administrative bulletin and the Iowa administrative code.

4. The protection and advocacy agency designated in the state, under Pub. L. No. 98-527, the Developmental Disabilities Act of 1984, Pub. L. No. 99-319, the Protection and Advocacy for Mentally Ill Individuals Act of 1986, and Pub. L. No. 100-146, the federal Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987, is recog-

nized as an agency legally authorized and constituted to ensure the implementation of the purposes of this chapter for populations under its authority and in the manner designated by Pub. L. No. 98-527, Pub. L. No. 99-319, and Pub. L. No. 100-146 and in the assurances of the governor of the state.

5. The department shall establish a special classification within the residential care facility category in order to foster the development of residential care facilities which serve persons with mental retardation, chronic mental illness, or a developmental disability, as defined under section 225C.26, and which contain five or fewer residents. A facility within the special classification established pursuant to this subsection is exempt from the requirements of section 135.63. The department shall adopt rules which are consistent with rules previously developed for the waiver demonstration project pursuant to 1986 Iowa Acts, chapter 1246, section 206, and which include all of the following provisions:

a. A facility provider under the special classification must comply with rules adopted by the department for the special classification. However, a facility provider which has been accredited by the accreditation council for services to persons with mental retardation and other developmental disabilities shall be deemed to be in compliance with the rules adopted by the department.

b. A facility must be located in an area zoned for single or multiple-family housing or in an unincorporated area and must be constructed in compliance with applicable local housing codes and the rules adopted for the special classification by the state fire marshal in accordance with the concept of the least restrictive environment for the facility residents. The rules adopted by the state fire marshal for the special classification shall be no more restrictive than the rules adopted by the state fire marshal for demonstration waiver project facilities pursuant to 1986 Iowa Acts, chapter 1246, section 206, subsection 2. Local housing codes shall not be more restrictive than the rules adopted for the special classification by the state fire marshal and the state building code requirements for single or multiple-family housing.

c. Facility provider plans for the facility's accessibility to residents must be in place.

d. A written plan must be in place which documents that a facility meets the needs of the facility's residents pursuant to individual program plans developed according to age appropriate and least restrictive program requirements.

e. A written plan must be in place which documents that a facility's residents have reasonable access to employment or employment-related training, education, generic community resources, and integrated opportunities to promote interaction with the community.

f. A committee of not more than nine members must be established to provide monitoring of the special classification and the rules and procedures adopted regarding the special classification. The rec-

ommendations of the committee are subject to the approval of the director. The committee shall include but is not limited to representatives designated by each of the following:

(1) The association for retarded citizens of Iowa.
(2) The Iowa association of rehabilitation and residential facilities.

(3) The governor's planning council for developmental disabilities.

(4) The mental health and mental retardation commission.

(5) The alliance for the mentally ill of Iowa.

(6) The Iowa state association of counties.

(7) The state fire marshal.

g. The facilities licensed under this subsection shall be eligible for funding utilized by other licensed residential care facilities for the mentally retarded, or licensed residential care facilities for the mentally ill, including but not limited to funding under or from the federal social services block grant, the state supplementary assistance program, state mental health and mental retardation services funds, and county funding provisions.

91 Acts, ch 267, §139 HF 479

Subsection 5, paragraph b amended

135C.5 Limitations on use.

Another business or activity shall not be carried on in a health care facility, or in the same physical structure with a health care facility, unless such business or activity is under the control of and is directly related to and incidental to the operation of the health care facility or unless the business or activity is approved by the department and the state fire marshal. A business or activity which is operated within the limitations of this section shall not interfere in any manner with the use of the facility by the residents or the services provided to the residents, and shall not be disturbing to them. The department and the state fire marshal, in accordance with chapter 17A, shall adopt rules which establish criteria for approval of a business or activity to be carried on in a health care facility or in the same physical structure with a health care facility.

91 Acts, ch 241, §1 HF 285

Section amended

135C.30 Operation of facility under receivership.

When so authorized by section 135C.11, subsection 2, or section 135C.12, subsection 1, the director may file a verified application in the district court of the county where a health care facility licensed under this chapter is located, requesting that an individual nominated by the director be appointed as receiver for the facility with responsibility to bring the operation and condition of the facility into conformity with this chapter and the rules or minimum standards promulgated under this chapter.

1. The court shall expeditiously hold a hearing on the application, at which the director shall present evidence in support of the application. The li-

censee against whose facility the petition is filed may also present evidence, and both parties may subpoena witnesses. The court may appoint a receiver for the health care facility in advance of the hearing if the director's verified application states that an emergency exists which presents an imminent danger of resultant death or physical harm to the residents of the facility. If the licensee against whose facility the receivership petition is filed informs the court at or before the time set for the hearing that the licensee does not object to the application, the court shall waive the hearing and at once appoint a receiver for the facility.

2. The court, on the basis of the verified application and evidence presented at the hearing, may order the facility placed under receivership, and if so ordered, the court shall direct either that the receiver assume the duties of administrator of the health care facility or that the receiver supervise the facility's administrator in conducting the day-to-day business of the facility. The receiver shall be empowered to control the facility's financial resources and to apply its revenues as the receiver deems necessary to the operation of the facility in compliance with this chapter and the rules or minimum standards promulgated under this chapter, but shall be accountable to the court for management of the facility's financial resources.

3. A receivership established under this section may be terminated by the district court which established it, after a hearing upon an application for termination. The application may be filed:

a Jointly by the receiver and the current licensee of the health care facility which is in receivership, stating that the deficiencies in the operation, maintenance or other circumstances which were the grounds for establishment of the receivership have been corrected and that there are reasonable grounds to believe that the facility will be operated in compliance with this chapter and the rules or minimum standards promulgated under this chapter.

b By the current licensee of the facility, alleging that termination of the receivership is merited for the reasons set forth in paragraph "a" of this subsection, but that the receiver has declined to join in the petition for termination of the receivership.

c By the receiver, stating that all residents of the facility have been relocated elsewhere and that there are reasonable grounds to believe it will not be feasible to again operate the facility on a sound financial basis and in compliance with this chapter and the rules or minimum standards promulgated under this chapter, and asking that the court approve surrender of the facility's license to the department and subsequent return of control of the facility's premises to the owners of the premises.

4. Payment of the expenses of a receivership established under this section is the responsibility of the facility for which the receiver is appointed, unless the court directs otherwise. The expenses include, but are not limited to:

a Salary of the receiver.

b Expenses incurred by the facility for the continuing care of the residents of the facility.

c Expenses incurred by the facility for the maintenance of buildings and grounds of the facility.

d Expenses incurred by the facility in the ordinary course of business, such as employees' salaries and accounts payable.

The receiver is not personally liable for the expenses of the facility during the receivership. The receiver is an employee of the state as defined in section 25A.2, subsection 3, only for the purpose of defending a claim filed against the receiver. Chapter 25A applies to all suits filed against the receiver.

5. This section does not:

a Preclude the sale or lease of a health care facility, and the transfer or assignment of the facility's license in the manner prescribed by section 135C.8, while the facility is in receivership, provided these actions are not taken without approval of the receiver.

b Affect the civil or criminal liability of the licensee of the facility placed in receivership, for any acts or omissions of the licensee which occurred before the receiver was appointed.

91 Acts, ch 107 §3 SF 412
Subsection 4 paragraph d 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 advocate as defined in section 249D.4, subsection 15, a complaint of an alleged violation of applicable requirements of this chapter or the rules adopted pursuant to this chapter. A person alleging abuse or neglect of a resident with a developmental disability or with mental illness may also file a complaint with the protection and advocacy agency designated pursuant to section 135B.9 or section 135C.2. A copy of a complaint filed with the care review committee or the long-term care resident's advocate 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 the inspection. The name of the person who files a complaint with the department, care review committee, or the long-term care resident's advocate 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.

91 Acts ch 107 §4 SF 412
Unnumbered paragraph 2 stricken

135C.38 Inspections upon complaints.

1. *a* Upon receipt of a complaint made in accordance with section 135C.37, the department or care review committee shall make a preliminary review of the complaint. Unless the department or committee

concludes that the complaint is intended to harass a facility or a licensee or is without reasonable basis, it shall within twenty working days of receipt of the complaint make or cause to be made an on-site inspection of the health care facility which is the subject of the complaint.

b. The complaint investigation shall include, at a minimum, an interview with the complainant, the alleged perpetrator, and the victim of the alleged violation, if the victim is able to communicate, if the complainant, alleged perpetrator, or victim is identifiable, and if the complainant, alleged perpetrator, or victim is available. Additionally, witnesses who have knowledge of facts related to the complaint shall be interviewed, if identifiable and available. The names of witnesses may be obtained from the complainant or the victim. The files of the facility may be reviewed to ascertain the names of staff persons on duty at the time relevant to the complaint. The department shall apply a preponderance of the evidence standard in determining whether or not a complaint is substantiated. For the purposes of this subsection, “*a preponderance of the evidence standard*” means that the evidence, considered and compared with the evidence opposed to it, produces the belief in a reasonable mind that the allegations are more likely true than not true. “*A preponderance of the evidence standard*” does not require that the investigator personally witnessed the alleged violation.

c. The department may refer to the care review committee of a facility any complaint received by the department regarding that facility, for initial evaluation and appropriate action by the committee.

2. a. The complainant shall be promptly informed of the result of any action taken by the department or committee in the matter. The complainant shall also be notified of the name, address, and telephone number of the designated protection and advocacy agency if the alleged violation involves a facility with one or more residents with developmental disabilities or mental illness.

b. Upon conclusion of the investigation, the department shall notify the complainant of the results. The notification shall include a statement of the factual findings as determined by the investigator, the statutory or regulatory provisions alleged to have been violated, and a summary of the reasons for which the complaint was or was not substantiated.

c. The department shall mail the notification to the complainant without charge. Upon the request of the complainant, the department shall mail to the

complainant, without charge, a copy of the most recent final findings regarding compliance with licensing requirements by the facility against which the complaint was filed.

d. A person who is dissatisfied with any aspect of the department’s handling of the complaint may contact the long-term care resident’s advocate, established pursuant to section 249D.42, or may contact the protection and advocacy agency designated pursuant to section 135C.2 if the complaint relates to a resident with a developmental disability or a mental illness.

3. An inspection made pursuant to a complaint filed under section 135C.37 need not be limited to the matter or matters complained of; however, the inspection shall not be a general inspection unless the complaint inspection coincides with a scheduled general inspection. Upon arrival at the facility to be inspected, the inspector shall show identification to the person in charge of the facility and state that an inspection is to be made, before beginning the inspection. Upon request of either the complainant or the department or committee, the complainant or the complainant’s representative or both may be allowed the privilege of accompanying the inspector during any on-site inspection made pursuant to this section. The inspector may cancel the privilege at any time if the inspector determines that the privacy of any resident of the facility to be inspected would otherwise be violated. The dignity of the resident shall be given first priority by the inspector and others.

4. If upon an inspection of a facility by its care review committee, pursuant to this section, the committee advises the department of any circumstance believed to constitute a violation of this chapter or of any rule adopted pursuant to it, the committee shall similarly advise the facility at the same time. If the facility’s licensee or administrator disagrees with the conclusion of the committee regarding the supposed violation, an informal conference may be requested and if requested shall be arranged by the department as provided in section 135C.42 before a citation is issued. If the department thereafter issues a citation pursuant to the committee’s finding, the facility shall not be entitled to a second informal conference on the same violation and the citation shall be considered affirmed. The facility cited may proceed under section 135C.43 if it so desires.

91 Acts, ch 107, §5, 6 SF 412

Subsection 1 stricken and rewritten

NEW subsection 2 and former subsections 2 and 3 renumbered as 3 and 4

CHAPTER 135D

MOBILE HOMES AND PARKS

135D.22 Annual tax — credit.

The owner of each mobile home shall pay to the county treasurer an annual tax. However, when the owner is any educational institution and the mobile home is used solely for student housing or when the owner is the state of Iowa or a subdivision thereof, the owner shall be exempt from the tax. The annual tax shall be computed as follows:

1. Multiply the number of square feet of floor space each mobile home contains when parked and in use by twenty cents. In computing floor space, the exterior measurements of the mobile home shall be used as shown on the certificate of registration and title, but not including any area occupied by a hitching device.

2. *a.* If the owner of the mobile home is an Iowa resident, was totally disabled, as defined in section 425.17, subsection 11 on or before December 31 of the base year, is a surviving spouse having attained the age of fifty-five years on or before December 31, 1988 or has attained the age of sixty-five years on or before December 31 of the base year and has an income when included with that of a spouse which is less than six thousand dollars per year, the annual tax shall not be imposed on the mobile home. If the income is six thousand dollars or more but less than fourteen thousand dollars, the annual tax shall be computed as follows:

If the Household Income is:	Annual Tax Per Square Foot:
\$ 6,000 — 6,999.99	3.0 cents
7,000 — 7,999.99	6.0
8,000 — 9,999.99	10.0
10,000 — 11,999.99	13.0
12,000 — 13,999.99	15.0

b. If the owner of the mobile home is an Iowa resident, has attained the age of eighteen years on or before December 31 of the base year but has not attained the age or disability status described in paragraph “*a*”, and has an income when included with that of a spouse which is less than fourteen thousand dollars, the annual tax shall be computed as follows:

If the Household Income is:	Annual Tax Per Square Foot:
\$ 0 — 5,999.99	10.0 cents
6,000 — 6,999.99	11.6
7,000 — 7,999.99	13.0
8,000 — 9,999.99	15.0
10,000 — 11,999.99	16.7
12,000 — 13,999.99	17.6

Notwithstanding the effective date provision in 1990 Iowa Acts, chapter 1250, section 21, this lettered paragraph is effective for mobile home tax claims filed on or after January 1, 1993, and any claims filed under this lettered paragraph before that date shall not be allowed.

For purposes of this subsection “*income*” means income as defined in section 425.17, subsection 7, and “*base year*” means the calendar year preceding the year in which the claim for a reduced rate of tax is filed. The mobile home reduced rate of tax shall only be allowed on the mobile home in which the claimant is residing at the time in which the claim for a reduced rate of tax is filed.

3. The amount thus computed shall be the annual tax for all mobile homes, except as follows:

a. For the sixth through ninth years after the year of manufacture the annual tax is ninety percent of the tax computed according to subsection 1 or 2 of this section, whichever is applicable.

b. For all mobile homes ten or more years after the year of manufacture the annual tax is eighty percent of the tax computed according to subsection 1 or 2 of this section, whichever is applicable.

4. The tax shall be figured to the nearest even whole dollar.

5. A claim for credit for mobile home tax due shall not be paid or allowed unless the claim is actually filed with the county treasurer between January 1 and June 1, both dates inclusive, immediately preceding the fiscal year during which the mobile home taxes are due and, with the exception of a claim 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, contains an affidavit of the claimant’s intent to occupy the mobile home for six months or more during the fiscal year beginning in the calendar year in which the claim is filed. The county treasurer shall submit the claim to the director of revenue and finance on or before August 1 each year.

The forms for filing the claim shall be provided by the department of revenue and finance. The forms shall require information as determined by the department.

In case of sickness, absence, or other disability of the claimant or if, in the judgment of the director of revenue and finance, good cause exists and the claimant requests an extension, the director may extend the time for filing a claim for credit or reimbursement. However, any further time granted shall not extend beyond December 31 of the year in which the claim was required to be filed. Claims filed as a

result of this paragraph shall be filed with the director who shall provide for the reimbursement of the claim to the claimant.

The director of revenue and finance shall certify the amount due to each county, which amount shall be the dollar amount which will not be collected due to the granting of the reduced tax rate under subsection 2.

The amounts due each county shall be paid by the department of revenue and finance on December 15 of each year, drawn upon warrants payable to the respective county treasurers. The county treasurer in each county shall apportion the payment in accordance with section 135D.25.

There is appropriated annually from the general fund of the state to the department of revenue and finance an amount sufficient to carry out this subsection.

91 Acts, ch 267, §513 HF 479
1991 amendment to paragraph b of subsection 2 retroactive to January 1,
1991, 91 Acts, ch 267, §529 HF 479
Subsection 2, paragraph b, NEW unnumbered paragraph 2

135D.24 Collection of tax.

1. The annual tax is due and payable to the county treasurer on or after July 1 in each fiscal year and is collectible in the same manner and at the same time as ordinary taxes as provided in sections 445.36, 445.37, and 445.39. Interest at the rate prescribed by law shall accrue on unpaid taxes. Both installments of taxes may be paid at one time. The September installment represents a tax period beginning July 1 and ending December 31. The March installment represents a tax period beginning January 1 and ending June 30. A mobile home, coming into this state from outside the state, put in use from a dealer's inventory, or put in use at any time after July 1 or January 1, is subject to the taxes prorated for the remaining unexpired months of the tax period, but the purchaser is not required to pay the tax at the time of purchase. Interest attaches the following April 1 for taxes prorated on or after October 1. Interest attaches the following October 1 for taxes prorated on or after April 1. If the taxes are not paid, the county treasurer shall send a statement of delinquent taxes as part of the notice of tax sale as provided in section 446.9. The owner of a mobile home who sells the mobile home between July 1 and December 31 and obtains a tax clearance statement is responsible only for the September tax payment and is not required to pay taxes for subsequent tax periods. If the owner of a mobile home sells the mobile home, obtains a tax clearance statement, and obtains a replacement mobile home, the owner shall not pay taxes under this chapter for the newly acquired mobile home for the same tax period that the owner has paid taxes on the mobile home sold. Interest for delinquent taxes shall be calculated to the nearest whole dollar. In calculating interest each fraction of a month shall be counted as an entire month.

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 owner shall notify monthly 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 owner 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 except a judgment obtained in an action to dispose of an abandoned mobile home under section 562C.8. 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 annual 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 by the owner or the owner's assignee, 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 is not required for a mobile home in a manufacturer's or dealer's stock which is not used as a place for human habitation. A tax clearance form is not required to move an abandoned mobile home. A tax clearance form is not required in eviction cases provided the mobile home park owner or manager advises the county treasurer that the tenant is being evicted. 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 in a method prescribed by the department of transportation.

7. a. As an alternative to the semiannual or annual payment of taxes, the county treasurer may accept partial payments of current year mobile home taxes. A minimum payment amount shall be established by the treasurer. The treasurer shall transfer amounts from each taxpayer's account to be applied to each semiannual tax installment prior to the delinquency dates specified in section 445.37 and the amounts collected shall be apportioned by the tenth of the month following transfer. If, prior to the due

date of each semiannual installment, the account balance is insufficient to fully satisfy the installment, the treasurer shall transfer and apply the entire account balance, leaving an unpaid balance of the installment. Interest shall attach on the unpaid balance in accordance with section 445.39. Unless funds sufficient to fully satisfy the delinquency are received, the treasurer shall collect the unpaid balance as provided in chapter 446. Any remaining balance in a taxpayer's account in excess of the amount needed to fully satisfy an installment shall remain in the account to be applied toward the next semiannual installment. Any interest income derived from the account shall be deposited in the county's general fund to cover administrative costs. The county treasurer shall send a notice with the tax statement or by separate mail to each taxpayer stating that, upon request to the treasurer, the taxpayer may make partial payments of current year mobile home taxes.

b. Partial payment of taxes which are delinquent may be made to the county treasurer. A minimum payment amount shall be established by the treasurer. The minimum payment must be equal to or exceed the interest, fees, and costs attributed to the oldest delinquent installment of the tax and shall be apportioned in accordance with section 445.57. If the payment does not include the whole of any installment of the delinquent tax, the unpaid tax shall continue to accrue interest pursuant to section 445.39. Partial payment shall not be permitted if the property has been sold for taxes under chapter 446 and under any circumstances shall not constitute an extension of the time period for a sale under chapter 446.

8. Current year taxes may be paid at any time regardless of any outstanding prior year delinquent taxes.

91 Acts, ch 191, §2, 3 HF 687
 Subsection 8 and 1991 amendments to subsections 1 and 7 effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
 Subsections 1 and 7 amended
 NEW subsection 8

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, in which latter case the lien notation on the certificate of title shall suffice to preserve the lienholder's security in the mobile home separate from any interest in the land.

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 setting forth the method of compliance.

a. If compliance with subsection 1, paragraph "c", has been accomplished by the secured party accepting the tender of a mortgage, the assessor shall collect the mobile home vehicle title and enter the property upon the tax rolls.

b. If compliance with subsection 1, paragraph "c", has been accomplished by the secured party consenting to the conversion without accepting a mortgage, the secured party shall retain the mobile home vehicle title and the assessor shall note the conversion on the assessor's records and enter the property upon the tax rolls. So long as a security interest is noted on the certificate of title, the title to the mobile home will not be merged with title to the land, and the sale or foreclosure of an interest in the land shall not affect title to the mobile home or any security interest in the mobile home.

91 Acts, ch 191, §4, 5 HF 687
 1991 amendments to subsection 1, paragraph c, and subsection 2, paragraph b, effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
 Subsection 1, paragraph c amended
 Subsection 2, paragraph b amended

CHAPTER 135G

BIRTH CENTERS

135G.4 Licensure — issuance, renewal, denial, suspension, revocation — fees.

1. *a.* The department shall not issue a birth center license to any applicant until:

(1) The department has ascertained that the staff and equipment of the birth center are adequate to provide the care and services required of a birth center.

(2) The birth center has been inspected by the state fire marshal or a deputy appointed by the fire marshal for that purpose, who may be a member of a municipal fire department, and the department has received either a certificate of compliance or a provisional certificate of compliance by the birth center with the fire hazard and fire safety rules and standards of the department as promulgated by the fire marshal. The state fire marshal shall adopt rules relating to fire hazard and fire safety standards pursuant to chapter 17A which shall not exceed the provision of smoke alarms, fire extinguishers, sprinkler systems, and fire escape routes and necessary rules which parallel state or local building code rules.

The rules and standards promulgated by the fire marshal shall be substantially in keeping with the latest generally recognized safety criteria for the birth centers covered, of which the applicable criteria recommended and published from time to time by the national fire protection association shall be *prima facie* evidence.

The state fire marshal or the fire marshal's deputy may issue successive provisional certificates of compliance for periods of one year each to a birth center which is in substantial compliance with the applicable fire-hazard and fire-safety rules and standards, upon satisfactory evidence of an intent, in good faith, by the owner or operator of the birth center to correct the deficiencies noted upon inspection within a reasonable period of time as determined by the state fire marshal or the fire marshal's deputy. Renewal of a provisional certificate shall be based on a showing of substantial progress in eliminating deficiencies noted upon the last previous inspection of the birth center without the appearance of additional deficiencies other than those arising from changes in the fire hazard and fire safety rules, regulations and standards which have occurred since the last previous inspection, except that substantial progress toward achievement of a good faith intent by the

owner or operator to replace the entire facility within a reasonable period of time, as determined by the state fire marshal or the fire marshal's deputy, may be accepted as a showing of substantial progress in eliminating deficiencies, for the purposes of this section.

b. A provisional license may be issued to any birth center that is in substantial compliance with this chapter and with the rules adopted by the department. A provisional license may be granted for a period of no more than one year from the effective date of rules adopted by the department, shall expire automatically at the end of its term, and shall not be renewed.

c. A license, unless sooner suspended or revoked, automatically expires one year from its date of issuance and is renewable upon application for renewal and payment of the fee prescribed, provided the applicant and the birth center meet the requirements established under this chapter and by rules adopted by the department. A complete application for renewal of a license shall be made ninety days prior to expiration of the license on forms provided by the department.

2. An application for a license, or renewal thereof, shall be made to the department upon forms provided by the department and shall contain information the department may require.

3. Each application for a birth center license or renewal of a license shall be accompanied by a license fee. The fee amount shall be equivalent to the fee amount established for a hospital in accordance with section 135B.4. The fees shall be deposited in the general fund of the state.

4. Each license is valid only for the person or governmental unit to whom or which the license is issued and is not subject to sale, assignment, or other transfer, voluntary, or involuntary; and is not valid for any premises other than those for which the license was originally issued.

5. Each license shall be posted in a conspicuous place on the licensed premises.

6. The department may deny, suspend, or revoke a license when the department finds that there has been a substantial failure to comply with the requirements established under this chapter or by administrative rule.

CHAPTER 135H

PSYCHIATRIC MEDICAL INSTITUTIONS FOR CHILDREN

135H.7 Personnel.

1. A person shall not be allowed to provide services in a psychiatric institution if the person has a disease which is transmissible to other persons through required contact in the workplace, which presents a significant risk of infecting other persons, which presents a substantial possibility of harming other persons, or for which no reasonable accommodation can eliminate the risk of infecting other persons.

2. *a.* If a person is being considered for licensure under this chapter, or for employment involving direct responsibility for a child or with access to a child when the child is alone, by a licensed psychiatric institution, or if a person will reside in a facility utilized by a licensee, and if the person has been convicted of a crime or has a record of founded child abuse, the department of human services and the licensee for an employee of the licensee shall perform an evaluation to determine whether the crime or founded child abuse warrants prohibition of licensure, employment, or residence in the facility. The department shall conduct criminal and child abuse record checks in this state and may conduct these checks in other states. The evaluation shall be performed in accordance with procedures adopted for this purpose by the department of human services.

b. If the department of human services determines that a person has committed a crime or has a record of founded child abuse and is licensed, employed by a psychiatric institution licensed under this chapter, or resides in a licensed facility the department shall notify the program that an evaluation will be conducted to determine whether prohibition of the person's licensure, employment, or residence is warranted.

c. In an evaluation, the department of human services and the licensee for an employee of the licensee shall consider the nature and seriousness of the crime or founded child abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child abuse, the circumstances under which the crime or founded child abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded child abuse again, and the number of crimes or founded child abuses committed by the person involved. The department may permit a person who is evaluated to be licensed, employed, or to reside, or to continue to be licensed, employed, or to reside in a licensed facility, if the person complies with the department's conditions relating to the person's licensure, employment, or residence, which may include completion of additional training. For an employee of a licensee, these conditional requirements shall be developed with the licensee. The department of human services has final authority in determining whether prohibition of the person's licensure, employment, or residence is warranted and in developing any conditional requirements under this paragraph.

3. If the department of human services determines that the person has committed a crime or has a record of founded child abuse which warrants prohibition of licensure, employment, or residence, the person shall not be licensed under this chapter to operate a psychiatric institution and shall not be employed by a psychiatric institution or reside in a facility licensed under this chapter.

91 Acts, ch 138, §2 HF 296

Applicability of 1991 amendments to subsection 2, paragraphs a and c, 91 Acts, ch 138, §10 HF 296

Subsection 2, paragraphs a and c amended

CHAPTER 135I

SWIMMING POOLS AND SPAS

135I.1 Definitions.

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

1. "Department" means the Iowa department of public health.
2. "Local board of health" means a county, city, or district board of health as defined in section 137.2.
3. "Spa" means a bathing facility such as a hot tub or whirlpool designed for recreational or therapeutic use. However, "spa" does not include a facility used under direct supervision of qualified medical personnel.

4. "Swimming pool" means an artificial basin and its appurtenances, either constructed or operated for swimming, wading, or diving, and includes a swimming pool, wading pool, waterslide, or associated bathhouse. "Swimming pool" does not include a decorative fountain which does not serve primarily as a wading or swimming pool and the drain of which fountain is not connected to any type of suction device for removing or recirculating the water.

91 Acts, ch 75, §1 HF 91
Subsection 4 amended

CHAPTER 136

STATE BOARD OF HEALTH

136.10 Publication of proceedings.

Upon request of the board the department shall incorporate the proceedings of the board, or any part of the proceedings, in its annual report to the gover-

nor, and those proceedings shall then be published as a part of the official report of the department.

91 Acts, ch 258, §30 HF 709
Section amended

CHAPTER 137A

FOOD ESTABLISHMENTS

137A.9 Suspension or revocation of licenses.

The department may suspend or revoke a license issued to a person under this chapter if any of the following occurs:

1. The person's food establishment does not conform to a provision of this chapter or a rule adopted pursuant to this chapter.
2. The person violates a provision of this chapter or a rule adopted pursuant to this chapter.
3. The person conducts an activity constituting a criminal offense in the food establishment and is convicted of a serious misdemeanor or a more serious offense as a result.

91 Acts, ch 107, §7 SF 412
Section stricken and rewritten

137A.12 Regular inspections.

The department shall provide for the inspection of each food establishment in the state in accordance with the standards of the retail food store sanitation code. The inspector may enter the food establishment at any reasonable hour to make the inspection. The management shall afford free access to every part of the premises and render all aid and assistance necessary to enable the inspector to make a thorough and complete inspection. However, food establishments which score ninety or greater shall be inspected biennially.

This section does not apply to retail food establishments which sell only prepackaged nonhazardous items.

91 Acts, ch 268, §428 SF 529
Section amended

CHAPTER 137B

FOOD SERVICE SANITATION CODE

137B.2 Definitions.

For purposes of the Iowa food service sanitation code, unless a different meaning is clearly indicated by the context:

1. *"Bed and breakfast home"* means a private residence which provides lodging and meals for guests, in which the host or hostess resides and in which no more than two guest families are lodged at the same time and which, while it may advertise and accept reservations, does not hold itself out to the public to be a restaurant, hotel or motel, does not require reservations and serves food only to overnight guests.
2. *"Commissary"* means a catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged, or stored.
3. *"Department"* means the department of inspections and appeals.
4. *"Director"* means the director of the department of inspections and appeals or the chief inspector of the inspections division of the department of inspections and appeals.
5. *"Food"* means any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
6. *"Food service establishment"* means a place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided. The term includes any such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term also includes delicatessen-type operations that prepare sandwiches intended for individual portion service and food service operations in schools and summer camps. The term does not include private homes where food is prepared or stored for individual family consumption, the location of food vending machines, supply vehicles, and retail food stores except grocery stores and convenience stores which include delicatessen-type operations or otherwise prepare food which is intended for individual portion service. The term does not include child day care facilities and food service facilities subject to inspection by other agencies of the state and located in nursing homes, health care facilities, or hospitals.
7. *"Food service sanitation ordinance"* means the 1976 edition of the federal food and drug administration food service sanitation ordinance. Copies of the food service sanitation ordinance shall be on file in the department.
8. *"Local board of health"* means a county, city, or district board of health.

9. *"Mobile food unit"* means a vehicle-mounted food service establishment designed to be readily movable.

10. *"Municipal corporation"* means a political subdivision of this state.

11. *"Pushcart"* means a nonself-propelled vehicle limited to serving nonpotentially hazardous foods, commissary wrapped food maintained at proper temperatures, or limited to the preparation and serving of frankfurters.

12. *"Regulatory authority"* means the department or a local board of health that has entered into an agreement with the director pursuant to section 137B.6 for authority to enforce the Iowa food service sanitation code in its jurisdiction.

13. *"Temporary food service establishment"* means a food service establishment that operates at a fixed location for a period of time of not more than twelve consecutive days in conjunction with a single event or celebration.

14. *"Transient food service establishment"* means a food service establishment which operates at various locations during a year, if the establishment does not operate at one location for more than three consecutive days in conjunction with a single event or celebration.

91 Acts, ch 90, §1 SF 269

NEW subsection 14 and subsections renumbered to alphabetize

137B.3 Adoption by rule.

As soon as practicable, the director shall adopt the food service sanitation ordinance, section 137B.2, subsection 7, by rule as part of the Iowa food service sanitation code with the following exceptions:

1. 1-102(h), (i), and (z) shall be deleted. Sections 1-102(h), (i), and (z) define *"food processing establishment"*, *"food service establishment"*, and *"temporary food service establishment"*.

2. 1-104 shall be deleted. Section 1-104 refers to the effective date of the ordinance and repeals all ordinances and parts of ordinances in conflict with the food service sanitation ordinance.

3. 10-101 shall be amended so that the following food service establishments have the described exemptions:

a. Food service operations in schools are exempt from the license fee requirement.

b. Places used by churches, fraternal societies, and civic organizations which engage in the serving of food not more often than once per week are exempt from the license requirement.

Section 10-101 states general compliance procedures.

4. 10-201 shall be amended so that food service operations in schools and summer camps shall be inspected at least once every year instead of twice every year. Section 10-201 refers to the frequency of inspections.

5. 10-601 shall be deleted. Section 10-601 refers to federal penalties.

6. 2-101 shall be amended to allow food licensed under chapter 137D and food specified under section 137A.1, subsection 2, paragraph "d", to be used or offered for sale.

7. 10-201 shall be amended so that food service establishments are inspected annually, except that food service establishments with scores of ninety or greater shall be inspected biennially.

91 Acts, ch 268, §429 SF 529
NEW subsection 7

137B.6 Authority to enforce.

The director shall regulate, license, and inspect food service establishments and enforce the Iowa food service sanitation code in Iowa. Municipal corporations shall not regulate, license, inspect, or collect license fees from food service establishments except as provided for in the Iowa food service sanitation code.

If a municipal corporation wants its local board of health to license, inspect, and otherwise enforce the Iowa food service sanitation code within its jurisdiction, the municipal corporation may enter into an agreement to do so with the director. The director may enter into such an agreement if the director finds that the local board of health has adequate resources to perform the required functions. A municipal corporation may only enter into an agreement to enforce the Iowa food service sanitation code if it also agrees to enforce the Iowa hotel sanitation code pursuant to section 137C.6 and the food and beverage vending machine laws pursuant to section 137E.3. To avoid duplication of inspection, the department, not a local board of health, shall inspect a food service establishment located within a food establishment, unless a local board of health has contracted with the department for inspections of food establishments and food service establishments.

If the director enters into an agreement with a municipal corporation as provided by this section, the director shall cause the inspection practices of a municipal corporation to be spot checked on a regular basis.

A local board of health that is responsible for enforcing the Iowa food service sanitation code within its jurisdiction pursuant to an agreement shall make an annual report to the director providing the following information:

1. The total number of food service establishment licenses granted or renewed during the year.
2. The number of food service establishment licenses granted or renewed during the year broken down into the following categories:
 - a. Mobile food units and pushcarts.
 - b. Temporary food service establishments.

c. Transient food service establishments.

d. Food service establishments with annual gross sales of under fifty thousand dollars other than mobile food units, pushcarts, or temporary food service establishments.

e. Food service establishments with annual gross sales of between fifty thousand and one hundred thousand dollars other than mobile food units, pushcarts, or temporary food service establishments.

f. Food service establishments with annual gross sales of more than one hundred thousand but less than two hundred fifty thousand dollars other than mobile food units, pushcarts, or temporary food service establishments.

g. Food service establishments with annual gross sales of two hundred fifty thousand dollars or more other than mobile food units, pushcarts, or temporary food service establishments.

3. The amount of money collected in license fees during the year.

4. Other information the director requests.

The director shall monitor local boards of health to determine if they are enforcing the Iowa food service sanitation code within their respective jurisdictions. If the director determines that the Iowa food service sanitation code is enforced by a local board of health, such enforcement shall be accepted in lieu of enforcement by the department in that jurisdiction. If the director determines that the Iowa food service sanitation code is not enforced by a local board of health, the director may rescind the agreement after reasonable notice and an opportunity for a hearing. If the agreement is rescinded, the director shall assume responsibility for enforcement in the jurisdiction involved.

A food service establishment under section 137B.2 which is also considered a food establishment under section 137A.6 shall be inspected by the department for both purposes at the same time.

91 Acts, ch 90, §2 SF 269

Subsection 2, NEW paragraph c and existing paragraphs relettered

137B.7 License fees.

Either the department or the municipal corporation shall collect the following annual license fees:

1. For a mobile food unit or pushcart, ten dollars.
2. For a temporary food service establishment per fixed location, ten dollars.
3. For a transient food service establishment, forty dollars.
4. For a food service establishment with annual gross sales of under fifty thousand dollars other than a mobile food unit, pushcart, or temporary food service establishment, forty dollars.
5. For a food service establishment with annual gross sales of between fifty thousand and one hundred thousand dollars other than a mobile food unit, pushcart, or temporary food service establishment, seventy dollars.
6. For a food service establishment with annual gross sales of more than one hundred thousand but less than two hundred fifty thousand dollars other

than a mobile food unit, pushcart, or temporary food service establishment, one hundred twenty-five dollars.

7. For a food service establishment with annual gross sales of two hundred fifty thousand dollars or more, one hundred fifty dollars.

Fees collected by the department shall be deposited in the general fund of the state. Fees collected by a municipal corporation shall be retained by it and for its use.

91 Acts, ch 90, §3 SF 269
NEW subsection 3 and existing subsections renumbered

137B.11 Suspension or revocation of licenses.

The department may suspend or revoke a license

issued to a person under this chapter if any of the following occurs:

1. The person's food service establishment does not conform to a provision of this chapter or a rule adopted pursuant to this chapter.

2. The person violates a provision of this chapter or a rule adopted pursuant to this chapter.

3. The person conducts an activity constituting a criminal offense in the food service establishment and is convicted of a serious misdemeanor or a more serious offense as a result.

91 Acts, ch 107, §8 SF 412
NEW section

137B.12 and 137B.13 Reserved.

CHAPTER 137C

HOTEL SANITATION CODE

137C.10 Suspension or revocation of licenses.

A regulatory authority may suspend or revoke a license issued to a person under the Iowa hotel sanitation code if any of the following occurs:

1. The person's hotel does not conform to a provision of the Iowa hotel sanitation code or a rule adopted pursuant to this chapter.

2. The person violates a provision of the Iowa hotel sanitation code or a rule adopted pursuant to this chapter.

3. The person conducts an activity constituting a criminal offense in the hotel and is convicted of a serious misdemeanor or a more serious offense as a result.

91 Acts, ch 107, §9 SF 412
Section stricken and rewritten

137C.11 Biennial inspections.

The regulatory authority shall inspect each hotel in the state at least once biennially. The inspector may enter the hotel at any reasonable hour to make the inspection. The management shall afford free access to every part of the premises and render all aid and assistance necessary to enable the inspector to make a thorough and complete inspection.

91 Acts, ch 268, §430 SF 529
Section amended

CHAPTER 137D

HOME FOOD ESTABLISHMENTS

137D.7 Reserved.

137D.8 Suspension or revocation of licenses.

The department may suspend or revoke a license issued to a person under this chapter if any of the following occurs:

1. The person's home food establishment does not conform to a provision of this chapter or a rule adopted pursuant to this chapter.

2. The person violates a provision of this chapter or a rule adopted pursuant to this chapter.

3. The person conducts an activity constituting a criminal offense in the home food establishment and is convicted of a serious misdemeanor or a more serious offense as a result.

91 Acts, ch 107, §10 SF 412
NEW section

CHAPTER 139

COMMUNICABLE AND REPORTABLE DISEASES AND POISONINGS

139.35 Reportable poisonings and illnesses — emergency information system.

1. If the results of an examination by a public, private, or hospital clinical laboratory of a specimen from a person in Iowa yield evidence of or are reactive for a reportable poisoning or a reportable illness from a toxic agent, including methemoglobinemia, the results shall be reported to the Iowa department of public health on forms prescribed by the department. If the laboratory is located in Iowa, the person in charge of the laboratory shall report the results. If the laboratory is not in Iowa, the health care provider submitting the specimen shall report the results.

2. The physician or other health practitioner attending a person infected with a reportable poisoning or a reportable illness from a toxic agent, including methemoglobinemia, shall immediately report the case to the Iowa department of public health. The Iowa department of public health shall publish and distribute instructions concerning the method of reporting. Reports shall be made in accordance with rules adopted by the Iowa department of public health.

3. A person in charge of a poison control or poison information center shall report cases of reportable poisoning, including methemoglobinemia, about which they receive inquiries to the Iowa department of public health.

4. The Iowa department of public health shall adopt rules designating reportable poisonings, including methemoglobinemia, and illnesses which must be reported under this section.

5. The Iowa department of public health shall establish and maintain a central registry to collect and store data reported pursuant to this section.

6. The Iowa department of public health shall timely provide copies of all reports of pesticide poisonings or illnesses received pursuant to this section to the secretary of agriculture who shall timely forward these reports and any reports of pesticide poisonings or illnesses received pursuant to section 206.14 to the registrant of a pesticide which is the subject of any reports.

7. The Iowa department of public health shall adopt rules specifying the requirements for the operation of an emergency information system operated by a registrant pursuant to section 206.12, subsection 2, paragraph "c", which shall not exceed requirements adopted by a poison control center as defined in section 206.2. The rules shall specify the qualifications of individuals staffing an emergency information system and shall specify the maximum amount of time that a registrant may take to provide the information to a poison control center or an attending physician treating a patient exposed to the registrant's product.

91 Acts, ch 124, §1 SF 297
NEW subsections 6 and 7

CHAPTER 139B

EMERGENCY CARE PROVIDERS — EXPOSURE TO DISEASE

For notification with respect to AIDS or HIV infection, see § 141.22A

139B.1 Emergency care provider notification.

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

a. *“Contagious or infectious disease”* means hepatitis in any form, meningococcal disease, tuberculosis, and any other disease with the exception of AIDS or HIV infection as defined in section 141.21, determined to be life-threatening to a person exposed to the disease as established by rules adopted by the department based upon a determination by the state epidemiologist and in accordance with guidelines of the centers for disease control of the United States department of health and human services.

b. *“Department”* means the Iowa department of public health.

c. *“Designated officer”* means a person who is designated by a department, agency, division, or service organization to act as an infection control liaison officer.

d. *“Emergency care provider”* means a person who is trained and authorized by federal or state law to provide emergency medical assistance or treatment, for compensation or in a voluntary capacity, including but not limited to, all of the following:

(1) A basic emergency care provider as defined in section 147.1.

(2) An advanced emergency medical care provider as defined in section 147A.1.

(3) A health care provider as defined in this section.

(4) A fire fighter.

(5) A peace officer.

“Emergency care provider” also includes a person who renders direct emergency aid without compensation.

e. *“Exposure”* means the risk of contracting disease.

f. *“Health care provider”* means a person licensed or certified under chapter 148, 148C, 150, 150A, 152, or 153 to provide professional health care service to a person during the person’s medical care, treatment, or confinement.

2. a. A hospital licensed under chapter 135B shall have written policies and procedures for notification of an emergency care provider who renders assistance or treatment to an individual when in the course of admission, care, or treatment of the individual the individual is diagnosed or is confirmed as having a contagious or infectious disease.

b. If an individual is diagnosed or confirmed as

having a contagious or infectious disease, the hospital shall notify the designated officer of an emergency care provider service who shall notify persons involved in attending or transporting the individual. For blood-borne contagious or infectious diseases, notification shall only take place upon filing of an exposure report form with the hospital. The exposure report form may be incorporated into the Iowa pre-hospital care report, the Iowa prehospital advanced care report, or a similar report used by an ambulance, rescue, or first responder service or law enforcement agency.

c. A person who renders direct emergency aid without compensation and is exposed to an individual who has a contagious or infectious disease shall also receive notification from the hospital upon the filing with the hospital of an exposure report form developed by the department.

d. The notification shall advise the emergency care provider of possible exposure to a particular contagious or infectious disease and recommend that the provider seek medical attention. The notification shall be provided as soon as is reasonably possible following determination that the individual has a contagious or infectious disease.

e. This subsection does not require a hospital to administer a test for the express purpose of determining the presence of a contagious or infectious disease. The notification shall not include the name of the individual with the contagious or infectious disease unless the individual consents.

f. The department shall adopt rules pursuant to chapter 17A to implement this subsection.

3. A health care provider may provide the notification required of hospitals in this section to emergency care providers if an individual who has a contagious or infectious disease is delivered by an emergency care provider to the office or clinic of a health care provider for treatment. The notification shall not include the name of the individual who has the contagious or infectious disease unless the individual consents.

4. This section does not preclude a hospital from providing notification to an emergency care provider or health care provider under circumstances in which the hospital’s policy provides for notification of the hospital’s own employees of exposure to a contagious or infectious disease that is not life-threatening if the report does not reveal a patient’s name unless the patient consents.

5. A hospital or health care provider or other person participating in good faith in making a report

under the notification provisions of this section or in notifying its own employees under procedures consistent with this section or in failing to make a report under this section is immune from liability, civil or criminal, which may otherwise be incurred or imposed

6 A hospital's or health care provider's duty of notification under this section is not continuing but

is limited to a diagnosis of a contagious or infectious disease made in the course of admission, care, and treatment following the rendering of emergency assistance or treatment to which notification under this section applies

91 Acts ch 143 §1 HF 655
NFW section

CHAPTER 141

ACQUIRED IMMUNE DEFICIENCY SYNDROME

141.22A Emergency care provider notification — penalty.

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

a "Emergency care provider" means a person who is trained and authorized by federal or state law to provide emergency medical assistance or treatment, for compensation or in a voluntary capacity, including but not limited to all of the following

(1) A basic emergency medical care provider as defined in section 147.1

(2) An advanced emergency medical care provider as defined in section 147A.1

(3) A health care provider as defined in this section

(4) A fire fighter

(5) A peace officer

"Emergency care provider" also includes a person who renders emergency aid without compensation

b "Health care provider" means a person licensed or certified under chapter 148, 148C, 150, 150A, 152, or 153 to provide professional health care service to a person during the person's medical care, treatment, or confinement

c "HIV infection" means HIV infection or AIDS as defined in section 141.21

d "Infectious bodily fluids" means bodily fluids capable of transmitting HIV infection as determined by the centers for disease control of the United States department of health and human services and adopted by rule of the department

e "Significant exposure" means the risk of contracting HIV infection by means of exposure to a person's infectious bodily fluids in a manner capable of transmitting HIV infection as determined by the centers for disease control of the United States department of health and human services and adopted by rule of the department

2 A hospital licensed under chapter 135B shall provide notification to an emergency care provider who renders assistance or treatment to an individu-

al, following submission of a significant exposure report by the emergency care provider to the hospital and a diagnosis or confirmation by the attending physician that the individual has HIV infection, and determination that the exposure reported was a significant exposure as defined pursuant to this section. The notification shall advise the emergency care provider of possible exposure to HIV infection. Notification shall be made in accordance with both of the following

a The hospital informs the individual when the individual's condition permits, of the submission of a significant exposure report

b The individual consents to serological testing by or voluntarily discloses the individual's HIV status to the hospital and consents to the provision of notification

Notwithstanding paragraphs "a" and "b" notification shall be made when the individual denies consent for or consent is not reasonably obtainable for serological testing, and in the course of admission, care, and treatment of the individual, the individual is diagnosed or is confirmed as having HIV infection

3 The hospital shall notify the designated officer of the emergency care provider service who in turn shall notify any of the persons, who submitted a significant exposure report, involved in attending or transporting the individual. The identity of the designated officer shall not be revealed to the individual. The designated officer shall inform the hospital of those parties who received the notification, and following receipt of this information and upon request of the individual, the hospital shall inform the individual of the parties to whom notification was provided

4 A person who renders direct emergency aid without compensation who is exposed to an individual who has HIV infection shall receive notification directly from the hospital in accordance with the procedures established pursuant to subsection 2. The hospital, upon request of the individual, shall

inform the individual of the persons to whom notification was made.

5. The process for notification under this section shall be initiated as soon as is reasonably possible consistent with the centers for disease control of the United States department of health and human services protocols for HIV prophylaxis.

6. The designated officer shall advise the person notified to seek immediate medical attention and shall advise the person of the provisions of confidentiality under this section. The department shall adopt rules to implement this subsection.

7. A health care provider, with consent of the individual, may provide the notification required of hospitals in this section to emergency care providers if an individual who has HIV infection is delivered by an emergency care provider to the office or clinic of the health care provider for treatment. The notification shall take place only upon submission of a significant exposure report form by the emergency care provider to the health care provider and the determination by the health care provider that a significant exposure has occurred.

8. This section does not require or permit a hospital or health care provider to administer a test for the express purpose of determining the presence of HIV infection except that testing may be performed if the individual consents and if the requirements of section 141.22 are satisfied.

9. A hospital or health care provider or other person participating in good faith in making a report under the notification provisions of this section, under procedures similar to this section for notification of its own employees upon filing of a significant exposure report, or in failing to make a report under this section is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

10. Notifications made pursuant to this section shall not disclose the identity of the individual who is diagnosed or confirmed as having HIV infection unless the individual provides a specific written release as provided in section 141.23, subsection 1, paragraph "a".

11. If notification is made under this section, and discloses the identity of the individual who is diagnosed or confirmed as having HIV infection, or oth-

erwise allows the emergency care provider to determine the identity of the individual, the identity of the individual shall be confidential information and shall not be disclosed by the emergency care provider to any other person unless a specific written release is obtained from the individual.

12. An emergency care provider who intentionally or recklessly makes an unauthorized disclosure under this section is subject to a civil penalty of one thousand dollars. The attorney general or the attorney general's designee may maintain a civil action to enforce this section. Proceedings maintained under this section shall provide for the anonymity of the individual and all documentation shall be maintained in a confidential manner.

13. A hospital's duty to notify under this section is not continuing but is limited to the diagnosis of HIV infection made in the course of admission, care, and treatment following the rendering of emergency assistance or treatment of the individual with the disease.

14. Notwithstanding subsection 13, if, following discharge or completion of care or treatment, an individual, for whom a significant exposure report was submitted but which report did not result in notification, wishes to provide information regarding the individual's HIV infection status to the emergency care provider who submitted the report, the hospital shall provide a procedure for notifying the emergency care provider.

15. The employer of an emergency care provider who submits a significant exposure report under this section shall pay the costs of HIV testing and counseling for the individual and the emergency care provider. However, the department shall pay the costs of HIV testing and counseling for an emergency care provider who is a person who renders direct emergency aid without compensation.

16. A significant exposure report is a confidential record and the remedies under section 141.24 are applicable to such records.

17. The department shall adopt rules pursuant to chapter 17A to implement this section.

91 Acts, ch 143, §2 HF 655, 91 Acts, ch 258, §31 HF 709

See also §139B 1

Section stricken and rewritten

Subsection 3 amended

CHAPTER 144

VITAL STATISTICS

144.13A Registration fee.

The county registrar or state registrar shall charge the parent a ten dollar fee for the registration of a certificate of birth and a separate fee established under section 144.46 for a certified copy of the certificate. The certified copy shall be mailed to the parent by the state registrar. If the person responsible for the filing of the certificate of birth under section 144.13 is not the parent, the person is entitled to 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 paid for under the obstetrical and newborn indigent patient care program established by chapter 255A, 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 and certified copy fee are 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 county 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.

91 Acts, ch 243, §1 HF 380
Section amended

144.24 Substituting new for original birth certificates — inspection.

If a new certificate of birth is established, the actual place and date of birth shall be shown on the certificate. The certificate shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of adoption, paternity, legitimation or sex change shall not be subject to inspection except under order of a court of competent jurisdiction, including but not limited to an order issued pursuant to section 600.16, or as provided by administrative rule for statistical or administrative purposes only. However, the state registrar shall, upon the application of an adult adopted person, an adoptive parent, or the legal representative of either the adult adopted person or the adoptive parent, inspect the original certificate and the evidence of adoption and reveal to the applicant the name and address of the court which issued the adoption decree.

91 Acts, ch 243, §2 HF 380
Section amended

144.32 Burial-transit permit. Repealed by 91 Acts, ch 116, § 23. HF 534

144.35 Extensions of time by rules.

The department may, by regulation and upon such conditions as it may prescribe to assure compliance with the purposes of this chapter, provide for extension of the periods prescribed in sections 144.26, 144.28, 144.29, and 144.31, for filing of death certificates, fetal death certificates, and medical certifications of cause of death in cases in which compliance with the applicable prescribed period would result in undue hardship.

91 Acts, ch 116, §2 HF 534
Section amended

CHAPTER 144B

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

144B.1 Definitions.

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

1. “*Attorney in fact*” means an individual who is designated by a durable power of attorney for health care as an agent to make health care decisions on behalf of a principal and has consented to act in that capacity.

2. “*Durable power of attorney for health care*” means a document authorizing an attorney in fact to make health care decisions for the principal if the principal is unable, in the judgment of the attending physician, to make health care decisions.

3. “*Health care*” means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual’s physical or mental condition. “*Health care*” does not include the provision of nutrition or hydration except when they are required to be provided parenterally or through intubation.

4. “*Health care decision*” means the consent, refusal of consent, or withdrawal of consent to health care.

5. “*Health care provider*” means a person who is licensed, certified, or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or in the practice of a profession.

6. “*Principal*” means a person age eighteen or older who has executed a durable power of attorney for health care.

91 Acts, ch 140, §1 HF 501
NEW section

144B.2 Durable power of attorney for health care.

A durable power of attorney for health care authorizes the attorney in fact to make health care decisions for the principal if the durable power of attorney for health care substantially complies with the requirements of this chapter. A document executed prior to May 8, 1991, purporting to create a durable power of attorney for health care shall be deemed valid if the document specifically authorizes the attorney in fact to make health care decisions and is signed by the principal.

91 Acts, ch 140, §2 HF 501
NEW section

144B.3 Requirements.

1. An attorney in fact shall make health care decisions only if the following requirements are satisfied:

a. The durable power of attorney for health care explicitly authorizes the attorney in fact to make health care decisions.

b. The durable power of attorney for health care contains the date of its execution and is witnessed or acknowledged by one of the following methods:

(1) Is signed by at least two individuals who, in the presence of each other and the principal, witnessed the signing of the instrument by the principal or by another person acting on behalf of the principal at the principal’s direction.

(2) Is acknowledged before a notarial officer within this state.

2. The following individuals shall not be witnesses for a durable power of attorney for health care:

a. A health care provider attending the principal on the date of execution.

b. An employee of a health care provider attending the principal on the date of execution.

c. The individual designated in the durable power of attorney for health care as the attorney in fact.

d. An individual who is less than eighteen years of age.

3. At least one of the witnesses for a durable power of attorney for health care shall be an individual who is not a relative of the principal by blood, marriage, or adoption within the third degree of consanguinity.

4. A durable power of attorney for health care or similar document executed in another state or jurisdiction in compliance with the law of that state or jurisdiction shall be deemed valid and enforceable in this state, to the extent the document is consistent with the laws of this state.

91 Acts, ch 140, §3 HF 501
NEW section

144B.4 Individuals ineligible to be attorney in fact.

The following individuals shall not be designated as the attorney in fact to make health care decisions under a durable power of attorney for health care:

1. A health care provider attending the principal on the date of execution.

2. An employee of a health care provider attending the principal on the date of execution unless the individual to be designated is related to the principal by blood, marriage, or adoption within the third degree of consanguinity.

91 Acts, ch 140, §4 HF 501
NEW section

144B.5 Durable power of attorney for health care — form.

1. A durable power of attorney for health care executed pursuant to this chapter may, but need not, be in the following form:

I hereby designate as my attorney in fact (my agent) and give to my agent the power to make health care decisions for me. This power exists only when I am unable, in the judgment of my attending physician, to make those health care decisions. The attorney in fact must act consistently with my desires as stated in this document or otherwise made known.

Except as otherwise specified in this document, this document gives my agent the power, where otherwise consistent with the law of this state, to consent to my physician not giving health care or stopping health care which is necessary to keep me alive.

This document gives my agent power to make health care decisions on my behalf, including to consent, to refuse to consent, or to withdraw consent to the provision of any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition. This power is subject to any statement of my desires and any limitations included in this document.

My agent has the right to examine my medical records and to consent to disclosure of such records.

2. In addition to the foregoing, the principal may provide specific instructions in the document conferring the durable power of attorney for health care, consistent with the provisions of this chapter.

3. The principal may include a statement indicating that the designated attorney in fact has been notified of and consented to the designation.

4. A durable power of attorney for health care may designate one or more alternative attorneys in fact.

91 Acts, ch 140, §5 HF 501
NEW section

144B.6 Attorney in fact — priority to make decisions.

1. Unless the district court sitting in equity specifically finds that the attorney in fact is acting in a manner contrary to the wishes of the principal or the durable power of attorney for health care provides otherwise, an attorney in fact who is known to the health care provider to be available and willing to make health care decisions has priority over any other person, including a guardian appointed pursuant to chapter 633, to act for the principal in all matters of health care decisions. The attorney in fact has authority to make a particular health care decision only if the principal is unable, in the judgment of the attending physician, to make the health care decision. If the principal objects to a decision to withhold or withdraw health care, the principal shall be presumed to be able to make a decision.

2. In exercising the authority under the durable power of attorney for health care, the attorney in fact has a duty to act in accordance with the desires of the principal as expressed in the durable power of attorney for health care or otherwise made known to the attorney in fact at any time. A declaration executed by the principal pursuant to the life-sustaining

procedures Act, chapter 144A, shall not be interpreted as expressing an intent to prohibit the withdrawal of hydration or nutrition when required to be provided parenterally or through intubation and shall not otherwise restrict the authority of the attorney in fact unless either the declaration or the durable power of attorney for health care expressly provides otherwise. If the principal's desires are unknown, the attorney in fact has a duty to act in the best interests of the principal, taking into account the principal's overall medical condition and prognosis.

91 Acts, ch 140, §6 HF 501
NEW section

144B.7 Authority to review medical records.

Except as limited by the durable power of attorney for health care, an attorney in fact has the same right as the principal to receive and review medical records of the principal, and to consent to the disclosure of medical records of the principal when acting pursuant to the durable power of attorney for health care.

91 Acts, ch 140, §7 HF 501
NEW section

144B.8 Revocation of durable power of attorney.

1. A durable power of attorney for health care may be revoked at any time and in any manner by which the principal is able to communicate the intent to revoke, without regard to mental or physical condition. Revocation may be by notifying the attorney in fact orally or in writing. Revocation may also be made by notifying a health care provider orally or in writing while that provider is engaged in providing health care to the principal. A revocation is only effective as to a health care provider upon its communication to the provider by the principal or by another to whom the principal has communicated revocation. The health care provider shall document the revocation in the treatment records of the principal.

2. The principal is presumed to have the capacity to revoke a durable power of attorney for health care.

3. Unless it provides otherwise, a valid durable power of attorney for health care revokes any prior durable power of attorney for health care.

4. If authority granted by a durable power of attorney for health care is revoked under this section, an individual is not subject to criminal prosecution or civil liability for acting in good faith reliance upon the durable power of attorney for health care unless the individual has actual knowledge of the revocation.

5. The fact of execution and subsequent revocation of a durable power of attorney shall have no effect upon subsequent health care decisions made in accordance with accepted principles of law and standards of medical care governing those decisions.

91 Acts, ch 140, §8 HF 501
NEW section

144B.9 Immunities and responsibilities.

1. A health care provider is not subject to criminal prosecution, civil liability, or professional disciplinary action if the health care provider relies on a health care decision and both of the following requirements are satisfied:

a. The decision is made by an attorney in fact who the health care provider believes in good faith is authorized to make the decision.

b. The health care provider believes in good faith that the decision is not inconsistent with the desires of the principal as expressed in the durable power of attorney for health care or otherwise made known to the health care provider, and, if the decision is to withhold or withdraw health care necessary to keep the principal alive, the health care provider has provided an opportunity for the principal to object to the decision.

2. Notwithstanding a contrary health care decision of the attorney in fact, the health care provider is not subject to criminal prosecution, civil liability, or professional disciplinary action for failing to withhold or withdraw health care necessary to keep the principal alive. However, the attorney in fact may make provisions to transfer the responsibility for the care of the principal to another health care provider.

3. An attorney in fact is not subject to criminal prosecution or civil liability for any health care decision made in good faith pursuant to a durable power of attorney for health care.

4. It shall be presumed that an attorney in fact, and a health care provider acting pursuant to the direction of an attorney in fact, are acting in good faith and in the best interests of the principal absent clear and convincing evidence to the contrary.

5. For purposes of this section, acting in “good faith” means acting consistent with the desires of the principal as expressed in the durable power of attorney for health care or otherwise made known to the attorney in fact, or where those desires are unknown, acting in the best interests of the principal, taking into account the principal’s overall medical condition and prognosis.

6. A health care provider or attorney in fact may presume that a durable power of attorney for health care is valid absent actual knowledge to the contrary.

91 Acts, ch 140, §9 HF 501
NEW section

144B.10 Emergency treatment.

This chapter does not affect the law governing health care treatment in an emergency.

91 Acts, ch 140, §10 HF 501
NEW section

144B.11 Prohibited practices.

1. A health care provider, health care service plan, insurer, self-insured employee welfare benefit plan, or nonprofit hospital plan shall not condition admission to a facility, or the providing of treatment, or insurance, on the requirement that an individual execute a durable power of attorney for health care.

2. A policy of life insurance shall not be legally impaired or invalidated in any manner by the withholding or withdrawing of health care pursuant to the direction of an attorney in fact appointed pursuant to this chapter.

91 Acts, ch 140, §11 HF 501
NEW section

144B.12 General provisions.

1. This chapter does not create a presumption concerning the intention of an individual who has not executed a durable power of attorney for health care and does not impair or supersede any right or responsibility of an individual to consent, refuse to consent, or withdraw consent to health care on behalf of another in the absence of a durable power of attorney for health care.

2. This chapter shall not be construed to condone, authorize, or approve any affirmative or deliberate act or omission which would constitute mercy killing or euthanasia.

3. If after executing a durable power of attorney for health care designating a spouse as attorney in fact, the marriage between the principal and the attorney in fact is dissolved, the power is thereby revoked. In the event of remarriage to each other, the power is reinstated unless otherwise revoked by the principal.

4. It is the responsibility of the principal to provide for notification of a health care provider of the terms of the principal’s durable power of attorney for health care.

91 Acts, ch 140, §12 HF 501
NEW section

CHAPTER 145

HEALTH DATA COMMISSION

145.3 Powers and duties — penalties.

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 public health and human services, and the insurance division of the department of commerce 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 director of public 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 cov-

erage, 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 director of public 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 director of public health establish a system of uniform physician identification numbers for use on the hospital discharge abstract forms.

g. The director 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 director of public health require the collection of physicians and registered nurses billing information from third-party payers and self-insurers as specified by

the health data commission. This billing information shall be collected for physicians as defined by section 135.1 and for registered nurses licensed under chapter 152. The collection, correlation, and development of this data shall include, but not be limited to, information and reports covering the physician designations as defined in section 135.1 and registered nurses licensed under chapter 152 and shall be made available annually.

i. The commissioner of insurance and the director 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.

j. The commissioner of insurance and the director of public health shall require a pilot project which will collect billing information on surgical procedures commonly performed by health care providers licensed under chapters 148, 149, 150 and 150A, as specified by the health data commission. The pilot project shall be completed by July 1, 1988.

4. The commission may require that:

a. The director of public 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 director of public health require hospitals to submit annually to the director 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, except that in no event shall hospitals with fewer than one hundred licensed acute care beds be required to install computerized severity-of-illness systems before July 1, 1993.

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.

f. The director of human services, the director of

public health, and the director of the department of elder affairs collect and analyze long-term care data.

5. The health data commission shall not contract with a corporation, association, or other entity that engages in whole or in part in the provision of health care services or a corporation, association, or entity that has a material or financial interest in the provision of health care services.

6. A hospital, physician, third-party payer, or other person required to provide information to the commission pursuant to this section, is subject to a civil penalty for failure to comply with this chapter or the rules adopted pursuant to this chapter. The commission may impose a civil penalty not to exceed five hundred dollars. Each day of noncompliance constitutes a separate offense. However, a penalty shall not be imposed for a technical, nonsubstantive violation or if the person required to provide information makes a good faith effort to comply with the commission's requirements.

The commission shall notify the noncomplying party of the commission's intent to impose a civil penalty. The notice shall be sent by certified mail to the party's last known address and shall state the nature of the party's actions leading to the charge of noncompliance, the specific statute or rule involved, and the amount of the proposed penalty. The notice shall advise the party that upon failure to pay the civil penalty, the penalty may be collected by civil action. The party shall be given the opportunity to respond to the imposition of the penalty in writing, within a reasonable time as established by rule of the commission.

The commission may reduce or void a civil penalty imposed under this section. A party upon whom a civil penalty is imposed may appeal the action pursuant to chapter 17A. Moneys collected from the civil penalties shall be deposited in the general fund of the state.

91 Acts, ch 163, §1, 2 HF 575
Subsection 4, paragraph d amended
NEW subsection 6

145.4 Confidential information and records.

Notwithstanding section 22.7, subsection 2, section 135B.12, section 217.30, or any other statute, it is lawful to provide the information requested pursuant to section 145.3 as follows:

1. From hospitals, third-party payers, and other persons to the director of public health or Iowa department of public health, director of human services or the department of human services, or the commissioner of insurance or the insurance division of the department of commerce.

2. From the commissioner of insurance and the director of human services and the director of public health to the health data commission.

3. From the health data commission to the corporation, association, or other entity providing research for the commission.

4. From the health data commission or its designee to interested persons.

Information provided pursuant to section 145 3 shall not identify a patient by name, address, or patient identification number unless authorized by the patient. Violation of this paragraph is a serious misdemeanor.

The commission shall determine the form in which information will be made available and to whom, when, and under what circumstances the information shall be made available. The commission may enter into agreements with private parties for the release of the information. Consistent with the purpose and intent to protect patient confidentiality

expressed in section 145 1, the agreements, the terms of which shall be dictated by the commission, may prohibit parties from rereleasing some or all of the information provided. The commission may assess civil penalties against those parties who violate the terms of the agreements.

A person shall not be civilly liable as a result of the person's acts, omissions, or decisions as a member of the commission or as an employee or agent in connection with the person's duties for the commission.

91 Acts ch 163 §3 HF 575
Unnumbered paragraph 3 amended

CHAPTER 147

GENERAL PROVISIONS REGULATING 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, physician assistant, 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, marital and family therapist, mental health counselor, or social worker means a person licensed under this title.

3 "Profession" means medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, practice as a physician assistant, psychology, chiropractic, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, pharmacy, physical therapy, occupational therapy, cosmetology, barbering, mortuary science, marital and family therapy, mental health counseling, social work, or dietetics.

4 "Department" shall mean the Iowa department of public 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.

e The board of trustees of a licensed hospital when performing a function relating to the reporting required by section 147 135, subsection 3.

7 "Basic emergency medical care provider" means a first responder, emergency rescue technician, or emergency medical technician-ambulance as defined in section 147 1, subsection 9, 10 and 11.

8 "First responder" means an individual trained in patient-stabilizing techniques, through the use of initial basic emergency medical care procedures and skills prior to the arrival of an ambulance, pursuant to rules established by the department, and who is currently certified as a first responder by the department.

9 "Emergency rescue technician" means an individual trained in various rescue techniques including rescue from heights and depths, extrication from automobiles, agricultural rescue, and rescue from water and special hazards, pursuant to rules established by the department, and who is currently certified as an emergency rescue technician by the department.

10 "Emergency medical technician ambulance" means an individual trained in patient assessment, the recognition of signs and symptoms regarding illness or injury, and the use of proper procedures when rendering basic emergency medical care, pursuant to rules established by the department, and who is currently certified as an emergency medical technician-ambulance by the department.

91 Acts ch 229 §1 SF 193
Subsections 2 and 3 amended

147.13 Designation of boards.

The examining boards provided in section 147.12 shall be designated as follows:

1. For medicine and surgery, and osteopathy, and osteopathic medicine and surgery, medical examiners.
2. For physician assistants, board of physician assistant examiners.
3. For psychology, psychology examiners.
4. For podiatry, podiatry examiners.
5. For chiropractic, chiropractic examiners.
6. For physical therapists and occupational therapists, physical and occupational therapy examiners.
7. For nursing, board of nursing.
8. For dentistry and dental hygiene, dental examiners.
9. For optometry, optometry examiners.
10. For speech pathology and audiology, speech pathology and audiology examiners.
11. For cosmetology, cosmetology examiners.
12. For barbering, barber examiners.
13. For pharmacy, pharmacy examiners.
14. For mortuary science, mortuary science examiners.
15. For social workers, social work examiners.
16. For marital and family therapists and mental health counselors, behavioral science examiners.
17. For dietetics, dietetic examiners.

91 Acts, ch 229, §2 SF 193

NEW subsection 16 and former subsection 16 renumbered as 17

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 constitutes a quorum.
3. For nursing examiners, four registered nurses, one of whom shall be actively engaged in practice, three of whom shall be nurse educators from nursing education programs; of these, one in higher education, one in diploma education, and one in area community and vocational-technical registered nurse education; one licensed practical nurse actively engaged in practice; 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 constitutes 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. For psychology examiners, 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 shall be persons who render services in psychology, one member shall represent areas of applied psychology and may be affiliated with training institutions and shall devote a major part of the member's time to rendering service in psychology, and one member shall be primarily engaged in research psychology. A majority of the members of the board constitutes 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.

12. For the board of physician assistant examiners, three members licensed to practice as physician assistants, at least two of whom practice in counties with a population of less than fifty thousand, one member licensed to practice medicine and surgery who supervises a physician assistant, one member licensed to practice osteopathic medicine and surgery who supervises a physician assistant, and two members who are not licensed to practice either medicine and surgery or osteopathic medicine and surgery or licensed as a physician assistant and who shall represent the general public. At least one of the physician members shall be in practice in a county with a population of less than fifty thousand. A majority of members of the board constitutes a quorum.

13. For behavioral science examiners, three members licensed to practice marital and family therapy, one of whom shall be employed in graduate teaching, training, or research in marital and family therapy and two of whom shall be practicing marital and family therapists; three members licensed to practice mental health counseling, one of whom shall be employed in graduate teaching, training, or research in mental health counseling and two of whom shall be practicing mental health counselors; and three members who are not licensed to practice marital and family therapy or mental health counseling and who shall represent the general public. A majority of the members of the board constitutes a quorum.

91 Acts, ch 229, §3 SF 193

Initial appointments to board of behavioral science examiners, 91 Acts, ch 229, §12

NEW subsection 13

147.74 Professional titles or abbreviations — false use prohibited.

1. Any person who falsely claims by the use of any professional title or abbreviation, either in writing, cards, signs, circulars, or advertisements, to be a practitioner of a system of the healing arts other than the one under which the person holds a license or who fails to use the following designations shall be guilty of a simple misdemeanor.

2. A physician or surgeon may precede the person's name with the title "Doctor", and shall add after the name the letters, "M. D."

3. An osteopath or osteopathic physician and surgeon may use the prefix "Doctor", but shall add after the person's name the letters, "D. O." or "O. S." as the case may be, or the words, "Osteopath" or "Osteopathic Physician and Surgeon".

4. A chiropractor may use the prefix "Doctor", but shall add after the person's name the letters, "D. C." or the word, "Chiropractor".

5. A dentist may use the prefix "Doctor", but shall add after the person's name the letters "D. D. S." or the word "Dentist" or "Dental Surgeon".

6. A podiatrist may use the prefix "Dr." but shall add after the person's name the word "Podiatrist".

7. A graduate of a school accredited on the board of optometric examiners may use the prefix "Doctor", but shall add after the person's name the letters "O. D."

8. A physical therapist registered or licensed under chapter 148A may use the words "physical therapist" after the person's name or signify the same by the use of the letters "PT" after the person's name.

9. A physical therapist assistant licensed under chapter 148A may use the words "physical therapist assistant" after the person's name or signify the same by use of the letters "PTA" after the person's name.

10. A psychologist who possesses a doctoral degree and who claims to be a certified practicing psychologist may use the prefix "Doctor" but shall add after the person's name the word "Psychologist".

11. A speech pathologist or audiologist with a doctoral degree may use the suffix "Ph.D.", or the prefix "Doctor" or "Dr." and add after the person's name the words "Speech Pathologist" or "Audiologist".

12. A social worker licensed under chapter 154C and this chapter may use the words "licensed social worker" after the person's name or signify the same by the use of the letters "L. S. W." after the person's name.

13. A marital and family therapist licensed under chapter 154D and this chapter may use the words "licensed marital and family therapist" after the person's name or signify the same by the use of the letters "L. M. F. T." after the person's name. A marital and family therapist licensed under chapter 154D and this chapter who possesses a doctoral degree may use the prefix "Doctor" or "Dr." in conjunction with the person's name, but shall add after the person's name the words "Licensed Marital and Family Therapist".

14. A mental health counselor licensed under chapter 154D and this chapter may use the words "licensed mental health counselor" after the person's name. A mental health counselor licensed under chapter 154D and this chapter who possesses a doctoral degree may use the prefix "Doctor" or "Dr." in conjunction with the person's name, but shall add after the person's name the words "Licensed Mental Health Counselor".

15. A pharmacist who possesses a doctoral degree recognized by the American council of pharmaceutical education from a college of pharmacy approved by the board of pharmacy examiners or a doctor of philosophy degree in an area related to pharmacy may use the prefix "Doctor" or "Dr." but shall add after the person's name the word "Pharmacist" or "Pharm. D."

16. A physician assistant registered or licensed under chapter 148C may use the words "physician assistant" after the person's name or signify the same by the use of the letters "P. A." after the person's name.

17. No other practitioner licensed to practice a profession under any of the provisions of this title shall be entitled to use the prefix "Dr." or "Doctor".

91 Acts ch 228, §1 SF 48, 91 Acts ch 229, §4 SF 193

Subsection numbers assigned

Subsection 8 stricken and rewritten

NEW subsections 9, 13, and 14

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. Application for a license to practice as a physician assistant, issuance of a license to practice as a physician assistant issued upon the basis of an examination given or approved by the board of physician assistant examiners, issuance of a license to practice as a physician assistant issued under a reciprocal agreement, renewal of a license to practice as a physician assistant, temporary license to practice as a physician assistant, registration of a physician assistant, temporary registration of a physician assistant, renewal of a registration of a physician assistant.

6. 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.

7. 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.

8. 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.

9. License to practice as a physical therapist as-

sistant issued on the basis of an examination given by the board of physical and occupational therapy examiners, license to practice as a physical therapist assistant issued under a reciprocal agreement, renewal of a license to practice as a physical therapist assistant.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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, original license to practice manicuring, renewal of a license to practice manicuring, 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.

16. 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 department of inspections and appeals 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 of inspections and appeals and an original barber shop license, re-

newal 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. License to practice marital and family therapy issued upon the basis of an examination given by the board of behavioral science examiners, license to practice marital and family therapy issued under a reciprocal agreement, or renewal of a license to practice marital and family therapy.

22. License to practice mental health counseling issued upon the basis of an examination given by the board of behavioral science examiners, license to practice mental health counseling issued under a reciprocal agreement, or renewal of a license to practice mental health counseling.

23. 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.

24. For a certified statement that a licensee is licensed in this state.

25. 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.

91 Acts, ch 228, §2 SF 48, 91 Acts, ch 229, §5 SF 193

NEW subsections 9, 21 and 22

Former subsections 9-19 renumbered as 10-20 and former subsections 20-22 renumbered as 23-25

DRUG DISPENSING, SUPPLYING,
AND PRESCRIBING

147.107 Drug dispensing, supplying, and prescribing — limitations.

1. A person, other than a pharmacist, physician, dentist, podiatrist, or veterinarian who dispenses as an incident to the practice of the practitioner's profession, shall not dispense prescription drugs or controlled substances.

2. A pharmacist, physician, dentist, or podiatrist who dispenses prescription drugs, including but not limited to controlled substances, for human use, may delegate nonjudgmental dispensing functions to staff assistants only when verification of the accuracy and completeness of the prescription is determined by the pharmacist or practitioner in the pharmacist's or practitioner's physical presence.

A physician, dentist, or podiatrist who dispenses prescription drugs, other than drug samples, pursuant to this subsection, shall annually register the fact that they dispense prescription drugs with the practitioner's respective examining board.

A physician, dentist, or podiatrist who dispenses prescription drugs, other than drug samples, pursuant to this subsection, shall offer to provide the patient with a written prescription that may be dispensed from a pharmacy of the patient's choice or offer to transmit the prescription to a pharmacy of the patient's choice.

3. A physician's assistant or registered nurse may supply when pharmacist services are not reasonably available or when it is in the best interests of the patient, on the direct order of the supervising physician, a quantity of properly packaged and labeled prescription drugs, controlled substances, or contraceptive devices necessary to complete a course of therapy. However, a remote clinic, staffed by a physician's assistant or registered nurse, where pharmacy services are not reasonably available, shall secure the regular advice and consultation of a pharmacist regarding the distribution, storage, and appropriate use of such drugs, substances, and devices.

4. Notwithstanding subsection 3, a physician assistant shall not dispense prescription drugs as an incident to the practice of the supervising physician or the physician assistant, but may supply, when pharmacist services are not reasonably available, or when it is in the best interests of the patient, a quantity of properly packaged and labeled prescription drugs, controlled substances, or medical devices necessary to complete a course of therapy. However, a remote clinic, staffed by a physician assistant, where pharmacy services are not reasonably available, shall secure the regular advice and consultation of a pharmacist regarding the distribution, storage, and appropriate use of such drugs, substances, and devices. Prescription drugs supplied under the provisions of this subsection shall be supplied for the purpose of accommodating the patient and shall not be sold for more than the cost of the drug and reasonable over-

head costs, as they relate to supplying prescription drugs to the patient, and not at a profit to the physician or the physician assistant. If prescription drug supplying authority is delegated by a supervising physician to a physician assistant, a nurse or staff assistant may assist the physician assistant in providing that service. Rules shall be adopted by the board of physician assistant examiners, after consultation with the board of pharmacy examiners, to implement this subsection.

5. Notwithstanding subsection 1 and any other provision of this section to the contrary, a physician may delegate the function of prescribing drugs, controlled substances, and medical devices to a physician assistant licensed pursuant to chapter 148C. When delegated prescribing occurs, the supervising physician's name shall be used, recorded, or otherwise indicated in connection with each individual prescription so that the individual who dispenses or administers the prescription knows under whose delegated authority the physician assistant is prescribing. Rules relating to the authority of physician assistants to prescribe drugs, controlled substances, and medical devices pursuant to this subsection shall be adopted by the board of physician assistant examiners, after consultation with the board of medical examiners and the board of pharmacy examiners, as soon as possible after July 1, 1991. The rules shall be reviewed and approved by the physician assistant rules review group created under subsection 7 and shall be adopted in final form by January 1, 1993. However, the rules shall prohibit the prescribing of schedule II controlled substances which are listed as stimulants or depressants pursuant to chapter 204. If rules are not reviewed and approved by the physician assistant rules review group created under subsection 7 and adopted in final form by January 1, 1993, a physician assistant may prescribe drugs as a delegated act of a supervising physician under rules adopted by the physician assistant board of examiners and subject to the rules review process established in section 148C.7. The board of physician assistant examiners shall be the only board to regulate the practice of physician assistants relating to prescribing and supplying prescription drugs, controlled substances and medical devices, notwithstanding section 148C.6A.

6. Health care providers shall consider the instructions of the physician assistant to be instruc-

tions of the supervising physician if the instructions concern duties delegated to the physician assistant by a supervising physician.

7. A physician assistant rules review group is established consisting of two physician assistants selected by the board of physician assistants, two physicians selected by the board of medical examiners, and one physician currently practicing as a supervising physician of physician assistants selected by the four other members of the rules review group no later than August 1, 1991. The rules review group shall select its own chairperson.

The rules review group shall review and approve or disapprove rules proposed for adoption relating to the authority of physician assistants to supply or prescribe drugs, controlled substances, and medical devices pursuant to subsection 5. Approval shall be by a simple majority of the members of the rules review group. A rule shall not become effective without the approval of the rules review group unless otherwise specified under this section.

8. Notwithstanding subsection 1, a family planning clinic may dispense birth control drugs and devices upon the order of a physician. Subsections 2 and 3 do not apply to a family planning clinic under this subsection.

9. Notwithstanding subsection 1, but subject to the limitations contained in subsections 2 and 3, a registered nurse who is licensed and registered as an advanced registered nurse practitioner and who qualifies for and is registered in a recognized nursing specialty, other than the specialty of nurse anesthetist, may prescribe substances or devices that are not controlled substances or devices, if the nurse is engaged in the practice of a nursing specialty, other than that of nurse anesthetist, for which the use of prescription medications and devices is recognized by the board of medical examiners and the board of nursing and the use of the medications and devices is regulated under rules accepted by the board of medical examiners and adopted by the board of nursing in consultation with the board of pharmacy examiners.

10. Notwithstanding section 147.86, a person, including a pharmacist, who violates this section is guilty of a simple misdemeanor.

91 Acts, ch 238, §1 SF 42, 91 Acts, ch 239, §1 SF 363
 Subsections 4-7 not to limit certain powers existing on June 5, 1991, 91 Acts, ch 238, §2, 3 SF 42
 NEW subsections 4-7 and former subsection 4 renumbered as 8
 NEW subsection 9 and former subsection 5 renumbered as 10

CHAPTER 148A

PHYSICAL THERAPISTS

148A.6 Physical therapist assistant.

1. A person shall not use the title "physical therapist assistant" or the letters "PTA", or represent to the public that the person is a physical therapist assistant, unless the person has obtained from the department a license pursuant to this section.

2. A licensed physical therapist assistant is required to function under the direction and supervision of a licensed physical therapist to perform physical therapy procedures delegated and supervised by the licensed physical therapist in a manner consistent with the rules adopted by the board of physical and occupational therapy examiners. Selected and delegated tasks of physical therapist assistants may include, but are not limited to, therapeutic procedures and related tasks, routine operational functions, documentation of treatment progress, and the use of selected physical agents. The ability of the licensed physical therapist assistant to perform the selected and delegated tasks shall be assessed on an ongoing basis by the supervising physical therapist. The licensed physical therapist assistant shall not interpret referrals, perform initial evaluation or re-evaluations, initiate physical therapy treatment programs, change specified treatment programs, or discharge a patient from physical therapy services.

3. Each applicant for a license to practice as a physical therapist assistant shall:

a. Successfully complete a course of study for the physical therapist assistant accredited by the commission on accreditation in education of the American physical therapy association, or another appropriate accrediting body, and meet other requirements established by the rules of the board of physical and occupational therapy examiners.

b. Have passed an examination administered by the board of physical and occupational therapy examiners.

c. Have the right to petition for waiver of education requirements under conditions defined by the board of physical and occupational therapy examiners.

4. This section does not prevent a person not licensed as a physical therapist assistant from performing services ordinarily performed by a physical therapy aide, assistant, or technician, provided that the person does not represent to the public that the person is a licensed physical therapist assistant, or use the title "*physical therapist assistant*" or the letters "PTA", and provided that the person performs services consistent with the supervision requirements of the board of physical and occupational therapy examiners for persons not licensed as physical therapist assistants.

91 Acts, ch 228, §3 SF 48
NEW section

CHAPTER 152

PRACTICE OF NURSING

Authority of advanced registered nurse practitioner to prescribe drugs, limitations, see § 147.107

152.1 Definitions.

As used in this chapter:

1. The "*practice of nursing*" means the practice of a registered nurse or a licensed practical nurse. It does not mean any of the following:

a. The practice of medicine and surgery, as defined in chapter 148, the osteopathic practice, as defined in chapter 150, the practice of osteopathic medicine and surgery, as defined in chapter 150A, or the practice of pharmacy as defined in chapter 155A, except practices which are recognized by the medical

and nursing professions and approved by the board as proper to be performed by a registered nurse.

b. The performance of nursing services by a student enrolled in an approved program of nursing if the performance is incidental to a course of study under this program.

c. The performance of services by employed workers in offices, hospitals, or health care facilities, as defined in section 135C.1, under the supervision of a physician or a nurse licensed under this chapter, or employed in the office of a psychologist, podiatrist,

trist, optometrist, chiropractor, speech pathologist, audiologist, or physical therapist licensed to practice in this state, and when acting while within the scope of the employer's license.

d. The practice of a nurse licensed in another state and employed in this state by the federal government if the practice is in discharge of official employment duties.

e. The care of the sick rendered in connection with the practice of the religious tenets of any church or order by the adherents thereof which is not performed for hire, or if performed for hire by those who depend upon prayer or spiritual means for healing in the practice of the religion of their church or denomination, so long as they do not otherwise engage in the practice of nursing as practical nurses.

2. The "practice of the profession of a registered nurse" means the practice of a natural person who is licensed by the board to do all of the following:

a. Formulate nursing diagnosis and conduct nursing treatment of human responses to actual or potential health problems through services, such as case finding, referral, health teaching, health counseling, and care provision which is supportive to or restorative of life and well-being.

b. Execute regimen prescribed by a physician.

c. Supervise and teach other personnel in the performance of activities relating to nursing care.

d. Perform additional acts or nursing specialties which require education and training under emergency or other conditions which are recognized by the medical and nursing professions and are approved by the board as being proper to be performed by a registered nurse.

e. Apply to the abilities enumerated in para-

graph "a" through "d" of this subsection scientific principles, including the principles of nursing skills and of biological, physical, and psychosocial sciences.

3. The "practice of a licensed practical nurse" means the practice of a natural person who is licensed by the board to do all of the following:

a. Perform services in the provision of supportive or restorative care under the supervision of a registered nurse or a physician.

b. Perform additional acts under emergency or other conditions which require education and training and which are recognized by the medical and nursing professions and are approved by the board, as being proper to be performed by a licensed practical nurse.

4. As used in this section, "nursing diagnosis" means to identify and use discriminatory judgment concerning physical and psychosocial signs and symptoms essential to determining effective nursing intervention.

5. "Board" means the board of nursing, created under chapter 147.

6. "Physician" means a person licensed in this state to practice medicine and surgery, osteopathy and surgery, or osteopathy, or a person licensed in this state to practice dentistry or podiatry when acting within the scope of the license. A physician licensed to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy in a state bordering this state shall be considered a physician for purposes of this chapter unless previously determined to be ineligible for such consideration by the Iowa board of medical examiners.

91 Acts, ch 100, §1 SF 114
 Subsection 6 amended

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 pharmaceutical agents, oral antimicrobial agents, oral antihistamines, oral antiglaucoma agents, and oral analgesic agents, and notwithstanding section 147.107, may without charge supply any of the above listed pharmaceuticals to commence a course of therapy. 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, 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 in this paragraph. 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.

91 Acts, ch 9, §1 SF 188
Unnumbered paragraph 3 amended

CHAPTER 154D

BEHAVIORAL SCIENCE EXAMINERS

Initial appointments to board, 91 Acts, ch 229, §12

154D.1 Definitions.

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

1. "*Board*" means the board of behavioral science examiners, established in section 147.13.
2. "*Licensed marital and family therapist*" means a person licensed to practice marital and family therapy under chapter 147 and this chapter.
3. "*Licensed mental health counselor*" means a person licensed to practice mental health counseling under chapter 147 and this chapter.
4. "*Licensee*" includes a licensed marital and family therapist and a licensed mental health counselor.
5. "*Marital and family therapy*" means the application of counseling techniques in the assessment and resolution of emotional conditions. This includes the alteration and establishment of attitudes and patterns of interaction relative to marriage, family life, and interpersonal relationships.
6. "*Mental health counseling*" means the provision of counseling services involving assessment, referral, consultation, and the application of counseling, human development principles, learning theory, group dynamics, and the etiology of maladjustment and dysfunctional behavior to individuals, families, and groups.

91 Acts, ch 229, §6 SF 193
NEW section

154D.2 Licensure — marital and family therapy — mental health counseling.

1. An applicant for a license to practice marital

and family therapy shall be granted a license by the board when the applicant satisfies all of the following requirements:

- a. Possesses a master's degree in marital and family therapy consisting of at least forty-five credit hours, or its equivalent, from a nationally accredited institution or from a program approved by the board.
 - b. Has at least two years of supervised clinical experience or its equivalent as approved by the board in consultation with the mental health and mental retardation commission.
 - c. Passes an examination administered by the board.
 - d. Has not failed the examination required in paragraph "c" within six months of the date of the current application.
2. An applicant for a license to practice mental health counseling shall be granted a license by the board when the applicant satisfies all of the following requirements:
 - a. Possesses a master's degree in counseling consisting of at least forty-five credit hours, or its equivalent, from a nationally accredited institution or from a program approved by the board.
 - b. Has at least two years of clinical experience, supervised by a licensee, in assessing mental health needs and problems and in providing appropriate mental health services as approved by the board of behavioral science examiners in consultation with the mental health and mental retardation commission.

c. Passes an examination administered by the board.

91 Acts, ch 229, §7 SF 193
NEW section

154D.3 Board organization and authority.

1. In addition to duties and responsibilities provided in chapters 147 and 258A, the board shall adopt rules relating to:

a. Standards required for licensees engaging in the professions covered by this chapter.

b. Standards for professional conduct of persons licensed under this chapter.

c. The administration of this chapter.

d. The status of active and inactive licensure, and guidelines for reentry of inactive licensees.

e. Educational activities which fulfill continuing education requirements for license renewals.

2. A separate subcommittee is established within the board for each of the professions under the board's jurisdiction. The chairperson of the board shall appoint to the subcommittee for each profession those members of the board who represent that profession. The chairperson shall appoint two of the public members of the board to serve on a subcommittee. Each subcommittee shall, by majority vote, rule on all license applications within the subcommittee's assigned profession, approve and administer the grading of the examination given to applicants for licenses to practice that profession, and otherwise coordinate the board's administration of all matters pertinent to regulation of the practice of the profession.

3. A decision or recommendation of a subcommittee shall not become effective without approval of the board. The board may initiate action relating to either of the professions within its jurisdiction.

4. Members attending meetings of the board's subcommittees shall be reimbursed on the same basis as members attending board meetings up to a maximum of six subcommittee meetings per calendar year.

5. The board shall hold at least two regular meetings each year, and no more than four additional meetings may be held upon the call of the chairperson of the board, or at the written request of at least four members of the board.

91 Acts, ch 229, §8 SF 193
NEW section

154D.4 Exemptions.

This chapter and chapter 147 do not prevent qualified members of other professions, including but not limited to nurses, psychologists, social workers, physicians, attorneys-at-law, or members of the clergy, from providing or advertising that they provide services of a marital and family therapy or mental health counseling nature consistent with the accepted standards of their respective professions, but these persons shall not use a title or description denoting that they are licensed marital and family therapists or licensed mental health counselors.

91 Acts, ch 229, §9 SF 193
NEW section

154D.5 Sexual conduct with client.

The license of a marital and family therapist or a mental health counselor shall be revoked if the board finds that the licensee engaged in sexual activity or genital contact with a client while acting or purporting to act within the licensee's scope of practice, whether or not the client consented to the sexual activity or genital contact.

The revocation shall be in addition to any other penalties provided by law.

91 Acts, ch 229, §10 SF 193
NEW section

CHAPTER 155A

PHARMACY PRACTICE ACT

155A.13A Nonresident pharmacy license — required, renewal, discipline.

1. *License required.* A pharmacy located outside of this state which delivers, dispenses, or distributes by any method, prescription drugs or devices to an ultimate user in this state shall obtain a nonresident pharmacy license from the board. The board shall make available an application form for a nonresident pharmacy license and shall require such information it deems necessary to fulfill the purposes of this section. A nonresident pharmacy shall do all of the following in order to obtain a nonresident pharmacy license from the board:

a. Submit a completed application form and an application fee as determined by the board.

b. Submit evidence of possession of a valid license, permit, or registration as a pharmacy in compliance with the laws of the state in which it is located, a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located, and evidence of compliance with all legal directions and requests for information issued by the regulatory or licensing agency of the state in which it is located.

c. Submit a list of the names, titles, and locations of all principal owners, partners, or officers of the nonresident pharmacy, all pharmacists employed by the nonresident pharmacy who deliver, dispense, or distribute by any method prescription drugs to an ultimate user in this state, and of the pharmacist in charge of the nonresident pharmacy. A nonresident pharmacy shall update the list within thirty days of any addition, deletion, or other change to the list.

d. Submit evidence that the nonresident pharmacy maintains records of the controlled substances delivered, dispensed, or distributed to ultimate users in this state.

e. Submit evidence that the nonresident pharmacy provides, during its regular hours of operation for at least six days and for at least forty hours per week, toll-free telephone service to facilitate communication between ultimate users in this state and a pharmacist who has access to the ultimate user's records in the nonresident pharmacy, and that the toll-free number is printed on the label affixed to each container of prescription drugs delivered, dispensed, or distributed in this state.

2. *License renewal.* A nonresident pharmacy shall renew its license on or before January 1 annually. In order to renew a nonresident pharmacy license, a nonresident pharmacy shall submit a renewal fee as determined by the board, and shall fulfill all of the requirements of subsection 1, paragraphs "b" through "e". A nonresident pharmacy shall pay an additional fee for late renewal for failure to renew a license within thirty-one days after expiration of the license.

3. *Discipline.* The board may deny, suspend, or revoke a nonresident pharmacy license for any violation of this section, section 155A.15, subsection 2, paragraph "a", "b", "d", "e", "f", "g", "h", or "i", chapter 203B, 204, 204A, 204B, or 205, or a rule of the board.

91 Acts, ch 233, §1 SF 539
NEW section

155A.15 Pharmacies — license required — discipline, violations, and penalties.

1. A pharmacy subject to section 155A.13 shall not be operated until a license or renewal certificate has been issued to the pharmacy by the board.

2. The board shall refuse to issue a pharmacy license for failure to meet the requirements of section 155A.13. The board may refuse to issue or renew a license or may impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation, if the board finds that the applicant or licensee has done any of the following:

a. Been convicted of a felony or a misdemeanor involving moral turpitude, or if the applicant is an association, joint stock company, partnership, or corporation, that a managing officer has been convicted of a felony or a misdemeanor involving moral turpitude, under the law of this state, another state, or the United States.

b. Advertised any prescription drugs or devices in a deceitful, misleading, or fraudulent manner.

c. Violated any provision of this chapter or any rule adopted under this chapter or that any owner or employee of the pharmacy has violated any provision of this chapter or any rule adopted under this chapter.

d. Delivered without legal authorization prescription drugs or devices to a person other than one of the following:

(1) A pharmacy licensed by the board.

(2) A practitioner.

(3) A person who procures prescription drugs or devices for the purpose of lawful research, teaching, or testing, and not for resale.

(4) A manufacturer or wholesaler licensed by the board.

However, this chapter does not prohibit a pharmacy from furnishing a prescription drug or device to a licensed health care facility for storage in a secured emergency pharmaceutical supplies container maintained within the facility in accordance with rules of the department of inspections and appeals.

e. Allowed an employee who is not a licensed pharmacist to practice pharmacy.

f. Delivered mislabeled prescription or non-prescription drugs.

g. Failed to engage in or ceased to engage in the business described in the application for a license.

h. Failed to keep and maintain records as required by this chapter, the controlled substances Act, or rules adopted under the controlled substances Act.

i. Failed to establish effective controls against diversion of prescription drugs into other than legitimate medical, scientific, or industrial channels as provided by this chapter and other Iowa or federal laws or rules.

91 Acts, ch 233, §2 SF 539
See Code editor's note
Subsection 2, paragraph d amended

155A.17 Wholesale drug license.

1. A person shall not establish, conduct, or maintain a wholesale drug business as defined in this chapter without a license. The license shall be identified as a wholesale drug license.

2. The board shall establish standards for drug wholesaler licensure and may deny, suspend, or revoke a drug wholesale license for failure to meet the standards or for a violation of the laws of this state, another state, or the United States relating to prescription drugs or controlled substances, or for a violation of this chapter, chapter 203B, 204, 204A, 204B, or 205, or a rule of the board.

3. The board shall adopt rules pursuant to chapter 17A on matters pertaining to the issuance of a wholesale drug license. The rules shall provide for conditions of licensure, compliance standards, licensure fees, disciplinary action, and other relevant matters.

4. This section does not apply to a manufactur-

er's representative acting in the usual course of business or employment as a manufacturer's representative.

91 Acts, ch 233, §3 SF 539
Section amended

155A.19 Notifications to board.

1. A pharmacy shall report in writing to the board, pursuant to its rules, the following:

- a. Permanent closing.
- b. Change of ownership.
- c. Change of location.
- d. Change of pharmacist in charge.
- e. The sale or transfer of prescription drugs, including controlled substances, on the permanent closing or change of ownership of the pharmacy.

f. Out-of-state purchases of controlled substances.

g. Theft or significant loss of any controlled substance on discovery of the theft or loss.

h. Disasters, accidents, and emergencies that may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or the treatment of injury, illness, and disease.

2. A pharmacist shall report in writing to the board within ten days a change of name, address, or place of employment.

91 Acts, ch 233, §4 SF 539
Subsection 2 amended

CHAPTER 157

COSMETOLOGY

157.11 Salon licenses.

Commencing January 1, 1977, a beauty salon shall not operate unless the owner has obtained a license issued by the department. The owner shall apply to the department on forms prescribed by the board. The department shall perform a sanitary inspection of each beauty salon biennially and may perform a sanitary inspection of a beauty salon prior to the issuance of a license. An inspection of a beauty salon shall also be conducted upon receipt of a complaint by the department.

The application shall be accompanied by the annual license fee determined pursuant to section 147.80. The license is valid for one year and may be renewed.

A licensed school of cosmetology at which students practice cosmetology is exempt from licensing as a beauty salon.

91 Acts, ch 268, §431 SF 529
Unnumbered paragraph 1 amended

CHAPTER 158

BARBERING

158.9 Barbershop licenses.

A barbershop shall not operate unless the owner has obtained a license issued by the department. The owner shall apply to the department on forms prescribed by the board. The department shall perform a sanitary inspection of each barbershop biennially and may perform a sanitary inspection of a barbershop prior to the issuance of a license. An inspection of a barbershop shall also be conducted upon receipt of a complaint by the department.

The application shall be accompanied by the an-

nual license fee determined pursuant to section 147.80. The license is valid for one year and may be renewed.

A licensed barber shop shall not employ more than one licensed barber assistant for each five licensed barbers.

A licensed barber school at which students practice barbering is exempt from licensing as a barber-shop.

91 Acts, ch 268, §432 SF 529
Unnumbered paragraph 1 amended

CHAPTER 159

DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP

159.1 Definitions controlling title.

For the purposes of this title, unless otherwise provided:

1. “*Department*” means the department of agriculture and land stewardship and if the department is required or authorized to do an act, unless otherwise provided, the act may be performed by an officer, regular assistant, or duly authorized agent of the department.

2. “*Official laboratory*” means a biological, chemical, or physical laboratory which performs testing or analysis pursuant to scientific procedures, to the extent the laboratory is recognized by the department as a reliable indicator of scientific results.

3. “*Pasteurization*” or “*pasteurized*” means the procedure of processing milk or a milk product, in order to ensure its safety from contaminants, if the procedure of pasteurization is consistent with standards adopted by the department pursuant to section 192.102.

4. “*Person*” shall include an individual, a corporation, company, firm, society, or association; and the act, omission, or conduct of any officer, agent, or other person acting in a representative capacity shall be imputed to the organization or person represented, and the person acting in such capacity shall also be liable for violation of this title.

5. “*Secretary*” means the secretary of agriculture.

91 Acts, ch 74, §1 SF 525
Subsections 2 and 3 effective January 1, 1992, 91 Acts, ch 74, §26 SF 525
NEW subsections 2 and 3 and former subsections 2 and 3 renumbered as 4 and 5

AGRICULTURAL MARKETING DIVISION

159.20 Powers of division.

An agricultural marketing division is created within the department. The division shall perform duties designed to lead to more advantageous marketing of Iowa agricultural commodities. The division may do any of the following:

1. Investigate the marketing of agricultural commodities.

2. Promote the sale, distribution, and merchandising of agricultural commodities.

3. Furnish information and assistance concerning agricultural commodities to the public.

4. Cooperate with the college of agriculture of the Iowa state university of science and technology in encouraging agricultural marketing education and research.

5. Accumulate and diffuse information concerning the marketing of agricultural commodities in co-

operation with persons, agencies, or the federal government. The division shall establish an agricultural commodity informational data base.

6. Investigate methods and practices related to the processing, handling, grading, classifying, sorting, weighing, packing, transportation, storage, inspection, or merchandising of agricultural commodities within this state.

7. Ascertain sources of supply for Iowa agricultural commodities. The department shall prepare and periodically publish lists of names and addresses of producers and consignors of agricultural commodities.

8. Perform inspection or grading of an agricultural commodity if requested by a person engaged in the production, marketing, or processing of the agricultural commodity. However, the person must pay for the services as provided by rules adopted by the department.

9. Cooperate with the Iowa department of economic development to avoid duplication of efforts between the division and the agricultural marketing program operated by the Iowa department of economic development.

10. Assist the office of renewable fuel and the renewable fuel advisory committee in administering the provisions of chapter 159A.

The division shall have a division administrator appointed by the secretary of agriculture.

As used in this subchapter, “*agricultural commodity*” means any unprocessed agricultural product, including animals, agricultural crops, and forestry products grown, raised, produced, or fed in Iowa for sale in commercial channels. “*Commercial channels*” means the processes of sale of a farm commodity or unprocessed product from the farm commodity to any person, public or private, who resells the farm commodity for breeding, processing, slaughter, or distribution.

91 Acts, ch 254, §4 SF 545
Section amended

159.22 Grants and gifts of funds.

The division may with the approval of the secretary accept grants and allotments of funds from the federal government and enter into co-operative agreements with the United States department of agriculture for projects to effectuate a purpose described in this subchapter. The division may accept grants, gifts or allotments of funds from any person for the purpose of carrying out the provisions of this subchapter. If funds are accepted from a person, the director shall prepare an itemized accounting to the department at the end of each fiscal year.

91 Acts, ch 254, §5 SF 545
Section amended

CHAPTER 159A

RENEWABLE FUELS

159A.1 Findings.

The general assembly finds and declares the following:

1. The production and processing of agricultural commodities and products represents the foundation of this state's economy, and the economic viability of this nation is contingent upon the production of wealth generated primarily from materials, including food and fiber, produced on this nation's family farms.

2. It is necessary to support industries using agricultural commodities to produce sources of energy in order to reduce the state's dependency upon petroleum products, and to ameliorate threats to this state's environment resulting from the atmospheric contamination of carbon monoxide.

3. This state adopts a policy of enhancing agricultural production through support of the renewable fuel industry as provided in this chapter, including rules adopted by the office of renewable fuel and the renewable fuel advisory committee.

91 Acts, ch 254, §6 SF 545
NEW section

159A.2 Definitions.

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

1. "Committee" means the renewable fuel advisory committee established pursuant to section 159A.4.

2. "Coordinator" means the administrative head of the office of renewable fuel appointed by the department as provided in section 159A.3.

3. "Fund" means the renewable fuel fund established pursuant to section 159A.7.

4. "Office" means the office of renewable fuel created pursuant to section 159A.3.

5. "Renewable fuel" means an energy source derived from an organic compound, including a photosynthate, which may be used to power an engine.

6. "Renewable fuel activities" means either of the following:

a. The research, development, production, promotion, marketing, or consumption of a renewable fuel.

b. The research, development, transfer, or use of technologies which directly or indirectly increase the supply or demand of a renewable fuel.

91 Acts, ch 254, §7 SF 545
NEW section

159A.3 Office of renewable fuel.

1. An office of renewable fuel is created within the agricultural marketing division of the depart-

ment and shall be staffed by a coordinator who shall be appointed by the division administrator. It shall be the policy of the office to further renewable fuel activities. The office shall first further renewable fuel activities based on the following considerations:

a. The price competitiveness of the fuel.

b. The production capacity and supply of the fuel.

c. The ease and safety of transporting and storing the fuel.

d. The degree to which the fuel is currently developed for ready transfer to current engine technology.

e. The degree to which the fuel is environmentally protective.

f. The degree to which the fuel provides economic development opportunities.

2. The duties of the office include, but are not limited to, the following:

a. Serving as advisor to the department regarding regulations, including federal and state standards, relating to oxygenate octane enhancers, as defined in section 214A.1.

b. Serving as advisor to the department regarding renewable fuel programs.

c. Serving as monitor of regulations administered in the state, in other states, or by the federal government. The office shall collect information and data prepared by state agencies related to these regulations, and provide referral and assistance to interested persons and agencies.

d. Cooperating with persons and agencies involved in renewable fuel activities, including other states and the federal government, to standardize regulations and coordinate programs, in order to increase administrative effectiveness and reduce administrative duplication.

e. Implementing policies and procedures designed to facilitate communication between persons involved in renewable fuel activities.

f. Assisting state or federal agencies, or assisting commercial enterprises or commodity organizations which are located in or desiring to locate in the state. The assistance may include support of public research relating to renewable fuel activities.

g. Conducting studies relating to the viability of producing or using a renewable fuel, and methods and schedules required to ensure a practicable transition to the use of a renewable fuel.

h. Preparing an annual report to the secretary regarding renewable fuel activities. The report shall include a review of research and research results, areas of study with promising potential, a summary

of initiatives in other states, and an analysis of state and federal regulations and programs.

i. Promoting the use of by-products resulting from the production of renewable fuel.

j. Cooperating with the committee in carrying out the purposes of the committee as provided in section 159A.5. The office shall regularly inform the committee regarding its operations and programs administered under this chapter, including financial reports concerning the fund.

3. A chief purpose of the office is to further the production and consumption of ethanol fuel in this state. The office shall be the primary state agency charged with the responsibility to promote public consumption of ethanol fuel.

4. The office shall cooperate with the Wallace technology transfer foundation of Iowa in formulating long-range strategic plans to guide state investment in applied research, development, and commercial transfer of selected scientific and technological innovation relating to renewable fuel technology.

5. The office and state entities, including the department, the committee, the Iowa department of economic development, the state department of transportation, the department of natural resources, regents' institutions, and the Wallace technology transfer foundation of Iowa, shall cooperate to implement this section.

91 Acts, ch 254, §8 SF 545
Projects, 91 Acts, ch 254, §24 SF 545
NEW section

159A.4 Advisory committee.

1. A renewable fuel advisory committee is established within the department. The committee shall be composed of the following persons:

a. The secretary, or a person designated by the secretary, representing the department of agriculture and land stewardship, who shall be the chairperson of the committee.

b. The director of the Iowa department of economic development, or a person designated by the director, representing the Iowa department of economic development.

c. The director of the state department of transportation, or a person designated by the director, representing the state department of transportation.

d. A person representing retail dealers as defined in section 214A.1 who shall be actively engaged in the business of selling motor vehicle fuel on a retail basis.

e. A person representing refiners of petroleum products who shall be actively engaged in the business of refining petroleum into motor vehicle fuel for the purpose of sale within the state.

f. A person representing an organization serving livestock producers in this state.

g. A person representing the Iowa corn growers association.

h. One person actively engaged in farming, as defined in section 172C.1.

The governor shall appoint persons who shall be confirmed by the senate, pursuant to section 2.32, to serve as voting members of the committee. However, the secretary of agriculture shall appoint the person representing the department of agriculture and land stewardship, the director of the Iowa department of economic development shall appoint the person representing that department, and the director of the state department of transportation shall appoint the person representing that department. The governor may make appointments of persons representing organizations listed under paragraphs "f" and "g" from a list of candidates which shall be provided by the organization upon request by the governor.

2. The members appointed pursuant to subsection 1, paragraphs "d" through "h", shall serve three-year terms beginning and ending as provided in section 69.19. However, the governor shall appoint initial members to serve for less than three years to ensure members serve staggered terms. A member is eligible for reappointment. A vacancy on the committee shall be filled for the unexpired portion of the regular term in the same manner as regular appointments are made.

3. The committee shall include four ex officio nonvoting members who shall be legislative members. The legislative members are two state senators, one appointed by the president of the senate, after consultation with the majority leader of the senate, and one appointed by the minority leader of the senate, after consultation with the president of the senate, from their respective parties; and two state representatives, one appointed by the speaker of the house of representatives, after consultation with the majority leader of the house of representatives, and one appointed by the minority leader of the house of representatives, from their respective parties.

4. The committee shall meet on a regular basis and at the call of the chairperson or upon the written request to the chairperson of two or more voting members.

5. The members other than those enumerated in subsection 1, paragraphs "a" through "c", are entitled to receive compensation as provided in section 7E.6.

6. Five voting members constitute a quorum and the affirmative vote of a majority of the voting members present is necessary for any substantive action to be taken by the committee. 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 duties of the committee.

7. The committee shall be staffed by the agricultural marketing division of the department. The coordinator shall serve as secretary to the committee.

91 Acts, ch 254, §9 SF 545
Confirmation, §2.32
NEW section

159A.5 Purpose of the committee.

1. The purpose of the committee is to provide

general oversight of operations of the office and to advise the office about all aspects concerning the production and consumption of renewable fuels. However, the committee shall not control policy decisions or direct the administration of this chapter.

2. The committee shall monitor conditions, practices, policies, programs, and procedures affecting the production and consumption of renewable fuels.

3. The committee shall monitor the condition of the fund and financial reports concerning the fund submitted by the office.

4. The committee shall review the annual report to the secretary regarding ethanol fuel activities, as provided in section 159A.3. The committee may make written comments concerning the contents of the report. Upon request of the committee, the coordinator shall include the comments as part of the report.

5. The committee, in cooperation with the coordinator, shall do all of the following:

a. Review the operations of the office and shall make recommendations regarding the effectiveness of programs provided under this chapter.

b. Establish performance goals for the office and adopt recommendations relating to improving the functions of the office and furthering the purposes of this chapter.

c. Encourage full support of programs designed to inform the public or targeted groups regarding renewable fuel production and consumption.

d. Support promotional programs or marketing strategies designed to encourage public consumption of renewable fuel.

91 Acts, ch 254, §10 SF 545
NEW section

159A.6 Point-of-sale public promotion program.

The office shall establish a program to promote the advantages related to the use of renewable fuel as an alternative to nonrenewable fuel. Promotions shall be designed to inform the ultimate consumer of advantages associated with using renewable fuel, and emphasize the benefits to the natural environment. The promotion shall inform consumers at the businesses of retail dealers of the motor vehicle fuel.

The committee shall develop standards for decals required pursuant to section 214A.16, which shall be designed to promote the advantages of using renew-

able fuel. The standards may be incorporated within a model decal adopted by the board* and approved by the office.

91 Acts, ch 254, §11 SF 545

*"Committee" probably intended, corrective legislation is pending
NEW section

159A.7 Renewable fuel fund.

1. A renewable fuel fund is created in the state treasury under the control of the office of renewable fuel. The fund is composed of moneys accepted by the office. The fund may include moneys appropriated by the general assembly, and other moneys available to and obtained or accepted by the office, including moneys from the United States, other states in the union, foreign nations, state agencies, political subdivisions, and private sources.

2. Moneys in the fund shall be used only to administer this chapter. Moneys in the fund shall be allocated at the beginning of each fiscal year as follows:

a. Up to forty percent may be dedicated to support promotion and advertising of ethanol fuel.

b. Up to thirty percent may be dedicated to support research at the university of Iowa.

c. Up to thirty percent may be dedicated to support research at Iowa state university of science and technology.

d. The remaining balance shall be used by the office to support other projects or programs developed by the office.

3. Moneys in the fund shall be subject to an annual audit by the auditor of state. The fund shall be subject to warrants by the director of revenue and finance, drawn upon the written requisition of the coordinator.

4. In administering the fund, the office may do all of the following:

a. Contract, sue and be sued, and adopt procedures necessary to administer this section. However, the office shall not in any manner, directly or indirectly, pledge the credit of the state.

b. Authorize payment from the fund, from any income received by investment of moneys in the fund, for administrative costs, commissions, attorney and accountant fees, and other reasonable expenses related to and necessary for administering the fund and administering the program.

5. Section 8.33 shall not apply to moneys in the fund.

91 Acts, ch 254, §12 SF 545
NEW section

CHAPTER 163

INFECTIOUS AND CONTAGIOUS DISEASES AMONG ANIMALS

163.1 Powers of department.

In the enforcement of this chapter the department of agriculture and land stewardship shall have power to

1 Make all necessary rules for the suppression and prevention of infectious and contagious diseases among animals within the state

2 Provide for quarantining animals affected with infectious or contagious diseases, or that have been exposed to such diseases, whether within or without the state

3 Determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of contagious or infectious diseases among animals

4 Establish, maintain, enforce, and regulate quarantine and other measures relating to the movements and care of diseased animals

5 Provide for the disinfection of suspected yards, buildings, and articles, and the destruction of such animals as may be deemed necessary

6 Enter any place where any animal is at the time located, or where it has been kept, or where the carcass of such animal may be, for the purpose of examining it in any way that may be necessary to determine whether it was or is infected with any contagious or infectious disease

7 Regulate or prohibit the arrival in, departure from, and passage through the state, of animals infected with or exposed to any contagious disease, and in case of violation of any such regulation or prohibition, to detain any animal at the owner's cost

8 Regulate or prohibit the bringing of animals into the state, which, in its opinion, for any reason, may be detrimental to the health of animals in the state

9 Co-operate with and arrange for assistance from the United States department of agriculture in performing its duties under this chapter

10 Impose civil penalties as provided in this chapter. The department may refer cases for prosecution to the attorney general

91 Acts ch 32 §1 SF 53
NEW subsection 10

163.30 Swine imported or native — pig dealers.

1 This section shall apply to all swine moved interstate and intrastate, except swine moved directly to slaughter or to a livestock market for sale directly to a slaughtering establishment for immediate slaughter

2 When used in this chapter

a "*Dealer*" means any person who is engaged in the business of buying for resale, or selling, or exchanging swine as a principal or agent or who claims to be so engaged, but does not include the owner or operator of a farm who does not claim to be so engaged, and who sells or exchanges only those swine which have been kept by the person solely for feeding or breeding purposes

b "*Separate and apart*" means a manner of holding swine so as not to have physical contact with other swine on the premises

c "*Swine moved*" means any physical relocation of swine to different premises, except that it does not include movement of swine when their ownership does not change, and both their prior and new locations, and the movement between such locations, are within the state of Iowa

3 No person shall act as a dealer without first securing a dealer's license from the department. The fee for a dealer's license shall be five dollars per annum and all licenses shall expire on the first day of July following date of issue. Licenses shall be numbered and the dealer shall retain the number from year to year. To secure a license, the applicant must file with the department a bond in the sum of ten thousand dollars with the secretary named as trustee, for the use and benefit of anyone damaged by a violation of this section, except that the bond shall not be required for dealers who are bonded in the same or a greater amount than required pursuant to the federal Packers and Stockyards Act

Each employee or agent doing business by buying for resale, selling or exchanging feeder swine in the name of a licensed dealer, shall be required to secure a permit and identification card issued by the department showing the person is employed by or represents a licensed dealer. All such permits and identification cards shall be issued upon application forms furnished by the department at a cost of three dollars per annum, and shall expire on the first day of July following the date of issue

A permittee shall not represent more than one dealer. Failure of a licensee or permittee to comply with this chapter or a rule made pursuant to this chapter is cause for revocation by the secretary of the permit or license after notice to the alleged offender and the holding of a hearing by the secretary. Rules shall be made in accordance with chapter 17A. A rule, the violation of which is made the basis for revocation, except temporary emergency rules, shall first have been approved after public hearing as provided in section 17A.4 after giving twenty days' notice of the hearing as follows

By mailing notice, by ordinary mail, to every person filing a request for notice accompanied by an addressed envelope with prepaid postage. Any person may file such a request to be listed with any agency for notice for the time and place for all hearings on proposed rules, which request shall be accompanied by a remittance of five dollars. Such fee shall be added to the operating fund of the department. The listing shall expire semiannually on January 1 and July 1.

4. All swine moved shall be individually identified with a distinctive and easily discernible ear tag affixed in either ear of the animal or other identification acceptable to the department, which has been specified by rule promulgated under the department's rulemaking authority. The department shall make ear tags available at convenient locations within each county and shall sell such tags at a price not exceeding the cost to producers and others to comply with this section.

Every seller, dealer and market operator shall keep a record of the ear tag numbers, or other approved identification, and the farm of origin of swine moved by or through that person, which records shall be made available by that person to any appropriate representative of the department or the United States department of agriculture.

5. All swine moved shall be accompanied by an official health certificate or veterinarian inspection certificate issued by the state of origin and prepared and signed by a veterinarian. The health certificate or veterinarian inspection certificate shall show the point of origin, the point of destination, individual identification, immunization status, and, when required, any movement permit number assigned to the shipment by the department. All such movement of swine shall be completed within seventy-two hours unless an extension of time for movement is granted by the department.

However, swine may be moved intrastate directly to an approved state, federal or auction market without such identification or certification, there to be identified and certificated.

However, registered swine for exhibition or breeding purposes which can be individually identified by an ear notch or tattoo or other method approved by the department are excepted from this identification requirement. In addition, native Iowa swine moved from farm to farm may be excepted from the identification requirement if the seller and purchaser sign a statement providing that feeder pigs will not be commingled for a period of thirty days and such fact is stated on the health certificate.

The department may combine an official health certificate or a veterinarian inspection certificate with a certificate of inspection required under chapter 166D.

6. The department may require issuance of movement permits on certain categories of swine moved, prior to their movement, pursuant to departmental rule. The rule shall be promulgated when in the judgment of the secretary, such movements would otherwise threaten or imperil the eradication of hog cholera in Iowa.

7. All swine moved shall be quarantined separate and apart from other swine located at the Iowa farm of destination for thirty days beginning with their arrival at such premises, or if such incoming swine are not held separate and apart, all swine on such premises shall be thus quarantined, except animals moving from such premises directly to slaughter.

There can only be one transfer by a dealer, involving not more than two markets, prior to quarantine.

8. The use of anti-hog-cholera serum or antibody concentrate shall be in accordance with rules issued by the department.

9. All swine found by a registered veterinarian to have any infectious, contagious, or communicable swine disease after delivery to any livestock sale barn or auction market for resale other than for slaughter, shall be immediately returned to the consignor's premises to be quarantined separate and apart for fifteen days. Such swine may not be moved from such premises for any purpose unless an official health certificate or veterinarian inspection certificate accompanies the movement or unless they are sent to slaughter. This subsection shall in no way supersede the requirements of sections 163A.2 and 163A.3.

91 Acts, ch 32, §2 SF 53
Subsection 5, NEW unnumbered paragraph 4

163.31 Falsification of certificates — penalty.

A person who falsifies an official health certificate or veterinarian inspection certificate issued pursuant to section 163.30 shall be subject to a civil penalty of not more than five thousand dollars for each reference to a swine falsified on the certificate. However, a person who falsifies a certificate of inspection issued pursuant to chapter 166D shall be subject to a civil penalty as provided in section 166D.16. A person shall not be subject to both penalties. A person shall also not be subject to a civil penalty totaling more than twenty-five thousand dollars for falsifying a certificate, regardless of the number of swine falsified on the certificate.

91 Acts, ch 32, §3 SF 53
NEW section

163.32 and 163.33 Repealed by 72 Acts, ch 1046, § 4.

CHAPTER 166D

PSEUDORABIES CONTROL

166D.16 Enforcement — penalty — certificates.

The provisions of this chapter including departmental rules adopted pursuant to this chapter shall be administered and enforced by the department. A person violating a provision of this chapter or any rule adopted pursuant to this chapter shall be subject to a civil penalty of at least one hundred dollars but not more than one thousand dollars. However, a person who falsifies a certificate of inspection issued pursuant to this chapter shall be subject to a civil penalty of not more than five thousand dollars for each swine falsified on the certificate. A person shall not be subject to a civil penalty totaling more than

twenty-five thousand dollars for falsifying a certificate, regardless of the number of swine falsified on the certificate.

The department may combine an official health certificate or a veterinarian inspection certificate as required under chapter 163 with a certificate of inspection.

In addition to any other remedies provided, the department may file a petition in the district court seeking an injunction restraining any person from violating provisions of this chapter including a rule adopted pursuant to this chapter.

91 Acts, ch 32, §4 SF 53

Unnumbered paragraph 1 amended and NEW unnumbered paragraph 2

CHAPTER 172C

CORPORATE OR PARTNERSHIP FARMING

172C.1 Definitions.

For the purposes of this chapter:

1. “*Actively engaged in farming*” means that a natural person who is a shareholder and an officer, director or employee of the corporation either:

a. Inspects the production activities periodically and furnishes at least half of the value of the tools and pays at least half the direct cost of production; or

b. Regularly and frequently makes or takes an important part in making management decisions substantially contributing to or affecting the success of the farm operation; or

c. Performs physical work which significantly contributes to crop or livestock production.

2. “*Agricultural land*” means land suitable for use in farming.

3. “*Authorized farm corporation*” means a corporation other than a family farm corporation founded for the purpose of farming and the ownership of agricultural land in which:

a. The stockholders do not exceed twenty-five in number; and

b. The stockholders are all natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or nonprofit corporations.

4. “*Authorized trust*” means a trust other than a family trust in which:

a. The beneficiaries do not exceed twenty-five in number; and

b. The beneficiaries are all natural persons, who are not acting as a trustee or in a similar capacity for a trust as defined in subsection 19 of this section, or persons acting in a fiduciary capacity, or nonprofit corporations; and

c. Its income is not exempt from taxation under the laws of either the United States or the state of Iowa.

5. The term “*beneficial ownership*” includes interests held by a nonresident alien individual directly or indirectly holding or acquiring a ten percent or greater share in the partnership, limited partnership, corporation or trust, or directly or indirectly through two or more such entities. In addition, the term beneficial ownership shall include interests held by all nonresident alien individuals if the nonresident alien individuals in the aggregate directly or indirectly hold or acquire twenty-five percent or more of the partnership, limited partnership, corporation or trust.

6. “*Contract feeder*” means a person owning in the applicable reporting year, as provided in section 172C.5B, more than two thousand five hundred hogs or five thousand head of poultry, if the hogs or poultry are subject to a contract or contracts for care and

feeding by a person or persons other than the owner on land which is not owned, leased, or held by the owner.

7. “*Corporation*” means a domestic or foreign corporation subject to chapter 490, a nonprofit corporation, or a cooperative.

8. “*Family farm corporation*” means a corporation:

a. Founded for the purpose of farming and the ownership of agricultural land in which the majority of the voting stock is held by and the majority of the stockholders are persons related to each other as spouse, parent, grandparent, lineal ascendants of grandparents or their spouses and other lineal descendants of the grandparents or their spouses, or persons acting in a fiduciary capacity for persons so related;

b. All of its stockholders are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or family trusts as defined in subsection 10 of this section; and

c. Sixty percent of the gross revenues of the corporation over the last consecutive three-year period comes from farming.

9. “*Family farm limited partnership*” means a limited partnership which meets all of the following conditions:

a. The limited partnership is formed for the purpose of farming and the ownership of agricultural land in which the general partner and a majority of the partnership interest is held by and the majority of limited partners are persons related to each other as spouse, parent, grandparent, lineal ascendants of grandparents or their spouses and other lineal descendants of the grandparents or their spouses, or persons acting in a fiduciary capacity for persons so related.

b. The general partner manages and supervises the day-to-day farming operations on the agricultural land.

c. All of the limited partners are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or family trusts.

d. Sixty percent of the gross revenues of the partnership over the last consecutive three-year period come from farming.

10. “*Family trust*” means a trust:

a. In which a majority interest in the trust is held by and the majority of the beneficiaries are persons related to each other as spouse, parent, grandparent, lineal ascendants of grandparents or their spouses and other lineal descendants of the grandparents or their spouses, or persons acting in a fiduciary capacity for persons so related; and

b. In which all the beneficiaries are natural persons, who are not acting as a trustee or in a similar capacity for a trust, as defined in subsection 19 of this section, or persons acting in a fiduciary capacity, or nonprofit corporations; and

c. If the trust is established on or after July 1, 1988, the trust must be established for the purpose of farming and sixty percent of the gross revenues of

the trust over the last consecutive three-year period must come from farming.

11. “*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 or the production of livestock. Farming shall not include the production of timber, forest products, nursery products, or sod and farming shall not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

12. “*Feedlot*” means a lot, yard, corral or other area in which hogs or cattle fed for slaughter are confined. The term includes areas which are used for the raising of crops or other vegetation and upon which hogs or cattle fed for slaughter are allowed to graze or feed.

13. “*Fiduciary capacity*” means an undertaking to act as executor, administrator, personal representative, guardian, conservator or receiver.

14. “*Limited partnership*” means a partnership as defined in section 545.101, subsection 7, which owns or leases agricultural land or is engaged in farming.

15. “*Nonprofit corporation*” means:

a. Corporations organized under the provisions of chapter 504 or 504A; or

b. Corporations which qualify under Title 26, section 501, “c”, (3) of the United States Code.

16. “*Nonresident alien*” means:

a. An individual who is not a citizen of the United States and who is not domiciled in the United States.

b. A corporation incorporated under the law of any foreign country.

c. A corporation organized in the United States, beneficial ownership of which is held, directly or indirectly, by nonresident alien individuals.

d. A trust organized in the United States or elsewhere if beneficial ownership is held, directly or indirectly, by nonresident alien individuals.

e. A partnership or limited partnership organized in the United States or elsewhere if beneficial ownership is held, directly or indirectly, by nonresident alien individuals.

17. “*Processor*” means a person, firm, corporation, or limited partnership, which alone or in conjunction with others, directly or indirectly controls the manufacturing, processing or preparation for sale of beef or pork products having a total annual wholesale value of ten million dollars or more. Any person, firm, corporation or limited partner with a ten percent or greater interest in another person, firm, corporation, or limited partnership involved in the manufacturing, processing or preparation for sale of beef or pork products having a total annual wholesale value of ten million dollars or more shall also be considered a processor.

18. “*Testamentary trust*” means a trust created by devising or bequeathing property in trust in a will as such terms are used in the Iowa probate code.

19. "Trust" means a fiduciary relationship with respect to property, subjecting the person by whom the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it. Trust does not include a person acting in a fiduciary capacity, as defined in subsection 13 of this section. A trust includes a legal entity holding property as trustee, agent, escrow agent, attorney-in-fact, and in any similar capacity.

91 Acts, ch 172, §2 SF 429
Subsections renumbered to alphabetize
Subsection 7 amended

172C.3 Penalties for prohibited operation — injunctive relief.

A processor violating section 172C.2 shall be assessed a civil penalty of not more than twenty-five thousand dollars. The courts of this state may prevent and restrain violations of this chapter through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of this chapter.

91 Acts, ch 172, §3 SF 429
Section amended

172C.4 Restriction on increase of holdings — exceptions — penalty.

No corporation or trust, other than a family farm corporation, authorized farm corporation, family trust, authorized trust or testamentary trust shall, either directly or indirectly, acquire or otherwise obtain or lease any agricultural land in this state. However, the restrictions provided in this section shall not apply to the following:

1. A bona fide encumbrance taken for purposes of security.

2. Agricultural land acquired for research or experimental purposes. Agricultural land is used for research or experimental purposes if any of the following apply:

a. Research and experimental activities are undertaken on the agricultural land and commercial sales of products produced from farming the agricultural land do not occur or are incidental to the research or experimental purposes of the corporation. Commercial sales are incidental to the research or experimental purposes of the corporation when such sales are less than twenty-five percent of the gross sales of the primary product of the research.

b. The agricultural land is used for the primary purpose of testing, developing, or producing seeds or plants for sale or resale to farmers as seed stock. Grain which is not sold as seed stock is an incidental sale and must be less than twenty-five percent of the gross sales of the primary product of the research and experimental activities.

c. The agricultural land is used by a corporation, including any trade or business which is under common control, as provided in 26 U.S.C. § 414 for the primary purpose of testing, developing, or producing animals for sale or resale to farmers as breeding

stock. However, after July 1, 1989, to qualify under this paragraph, the following conditions must be satisfied:

(1) The corporation must not hold the agricultural land other than as a lessee. The term of the lease must be for not more than twelve years. The corporation shall not renew a lease. The corporation shall not enter into a lease under this paragraph, if the corporation has ever entered into another lease under this paragraph "c", whether or not the lease is in effect. However, this subparagraph does not apply to a domestic corporation organized under chapter 504 or 504A.

(2) A term or condition of sale, including resale, of breeding stock must not relate to the direct or indirect control by the corporation of the breeding stock or breeding stock progeny subsequent to the sale.

(3) The number of acres of agricultural land held by the corporation must not exceed six hundred forty acres.

(4) The corporation must deliver a copy of the lease to the secretary of state. The secretary of state shall notify the lessee of receipt of the copy of the lease. However, this subparagraph does not apply to a domestic corporation organized under chapter 504 or 504A.

Culls and test animals may be sold under this paragraph "c". For a three-year period beginning on the date that the corporation acquires an interest in the agricultural land, the gross sales for any year shall not be greater than five hundred thousand dollars. After the three-year period ends, the gross sales for any year shall not be greater than twenty-five percent of the gross sales for that year of the breeding stock, or five hundred thousand dollars, whichever is less.

3. Agricultural land, including leasehold interests, acquired by a nonprofit corporation organized under the provisions of chapters 504 and 504A including land acquired and operated by or for a state university for research, experimental, demonstration, foundation seed increase or test purposes and land acquired and operated by or for nonprofit corporations organized specifically for research, experimental, demonstration, foundation seed increase or test purposes in support of or in conjunction with a state university.

4. Agricultural land acquired by a corporation for immediate or potential use in nonfarming purposes.

5. Agricultural land acquired by a corporation by process of law in the collection of debts, or pursuant to a contract for deed executed prior to August 15, 1975, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise.

6. A municipal corporation.

7. Agricultural land which is acquired by a trust company or bank in a fiduciary capacity or as trustee for a family trust, authorized trust or testamentary trust or for nonprofit corporations.

8 A corporation or its subsidiary organized under chapter 490 and to which section 312 8 is applicable

9 Agricultural land held or leased by a corporation on July 1, 1975, as long as the corporation holding or leasing the land on this date continues to hold or lease such agricultural land

10 Agricultural land held or leased by a trust on July 1, 1977, as long as the trust holding or leasing such land on this date continues to hold or lease such agricultural land

11 Agricultural land acquired by a trust for immediate use in nonfarming purposes

A corporation or trust, other than a family farm corporation, authorized farm corporation, family trust, authorized trust or testamentary trust, violating this section shall be assessed a civil penalty of not more than twenty-five thousand dollars and shall divest itself of any land held in violation of this section within one year after judgment. The courts of this state may prevent and restrain violations of this section through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of this section

91 Acts ch 172 §4 SF 429
Unnumbered paragraph 2 amended

172C.5 Restrictions on authorized farm corporations, authorized trusts, and limited partnerships — penalty.

1 An authorized farm corporation or authorized trust shall not, on or after July 1, 1987, and a limited partnership other than a family farm limited partnership shall not, on or after July 1, 1988, either directly or indirectly, acquire or otherwise obtain or lease agricultural land, if the total agricultural land either directly or indirectly owned or leased by the authorized farm corporation, limited partnership, or authorized trust would then exceed one thousand five hundred acres

a However, the restrictions provided in this subsection do not apply to agricultural land that is leased by an authorized farm corporation, authorized trust, or limited partnership to the immediate prior owner of the land for the purpose of farming, as defined in section 172C 1. Upon cessation of the lease to the immediate prior owner, the authorized farm corporation, authorized trust, or limited partnership shall, within three years following the date of the cessation, sell or otherwise dispose of the agricultural land leased to the immediate prior owner

b This subsection also does not apply to land that is held or acquired and maintained by an authorized farm corporation, authorized trust, or limited partnership to protect significant elements of the state's natural open space heritage, including but not limited to significant river, lake, wetland, prairie, forest areas, other biologically significant areas, land containing significant archaeological, historical, or cultural value, or fish or wildlife habitats, as defined in rules adopted by the department of natural resources

2 A person shall not, after July 1, 1988, become a stockholder of an authorized farm corporation, a beneficiary of an authorized trust, or a limited partner in a limited partnership which owns or leases agricultural land if the person is also any of the following

a A stockholder of an authorized farm corporation

b A beneficiary of an authorized trust

c A limited partner in a limited partnership which owns or leases agricultural land

However, this subsection shall not apply to limited partners in a family farm limited partnership

3 a An authorized farm corporation, authorized trust, or limited partnership violating this section shall be assessed a civil penalty of not more than twenty-five thousand dollars and shall divest itself of any land held in violation of this section within one year after judgment. A civil penalty of not more than one thousand dollars may be imposed on a person who becomes a stockholder of an authorized farm corporation, beneficiary of an authorized trust, or limited partner in a limited partnership in violation of this section. The person shall divest the interest held by the person in the corporation, trust, or limited partnership to comply with this section. The court may determine the method of divesting an interest held by a person found to be in violation of this chapter. A financial gain realized by a person who disposes of an interest held in violation of this chapter shall be forfeited to the state's general fund. All court costs and fees shall be paid by the person holding the interest in violation of this chapter

b The courts of this state may prevent and restrain violations of this section through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of this section

91 Acts ch 172 §5 SF 429
Subsection 3 paragraph a amended

172C.8 Reports by beneficiaries. Repealed by 91 Acts, ch 172, § 8 SF 429

172C.11 Penalties — reports.

Failure to timely file a report or the filing of false information is punishable by a civil penalty not to exceed one thousand dollars

For purposes of this section a report is timely filed if the report is filed prior to May 1 of the year in which it is required to be filed

The secretary of state shall notify a person who the secretary has reason to believe is required to file a report as provided by this chapter and who has not filed a timely report, that the person may be in violation of this section. The secretary of state shall include in the notice, a statement of the penalty which may be assessed if the required report is not filed within thirty days. The secretary of state shall refer to the attorney general any person who the secretary has reason to believe is required to report under this chapter if, after thirty days from receipt of the no-

tice, the person has not filed the required report. The attorney general may, upon referral from the secretary of state, file an action in district court to seek the assessment of a civil penalty of one hundred dollars for each day the report is not filed.

91 Acts, ch 172, §6 SF 429
Unnumbered paragraph 3 amended

172C.12 County assessor's report. Repealed by 91 Acts, ch 172, § 8. SF 429

172C.14 Duties of secretary of state.

The secretary of state shall notify the attorney general when the secretary of state has reason to believe a violation of this chapter has occurred. It is the intent of this section that information shall be made

available to members of the general assembly and appropriate committees of the general assembly in order to determine the extent of farming being carried out in this state by corporations and other business entities and the effect of such farming practices upon the economy of this state. The reports of corporations, limited partnerships, trusts, contractors, and processors required in this chapter shall be confidential reports except as to the attorney general for review and appropriate action when necessary. The secretary of state shall assist any committee of the general assembly existing or established for the purposes of studying the effects of this chapter and the practices this chapter seeks to study and regulate.

91 Acts, ch 172, §7 SF 429
Section amended

CHAPTER 173

STATE FAIR AND EXPOSITION

173.1 State fair authority.

The Iowa state fair authority is established as a public instrumentality of the state. The authority is not an agency of state government. However, the authority is considered a state agency and its employees state employees for the purposes of chapter 17A, the merit system provisions of chapter 19A, and chapters 20, 25A, 91B, 97B, and 509A. The authority is established to conduct an annual state fair and exposition on the Iowa state fairgrounds and to conduct other interim events consistent with its rules. The powers of the authority are vested in the Iowa state fair board. The Iowa state fair board consists of the following:

1. The governor of the state, the secretary of agriculture, and the president of the Iowa State University of science and technology or their qualified representatives.

2. Two directors from each congressional district to be elected at a convention as provided in section 173.2.

3. A president and vice president to be elected by the state fair board from the elected directors.

4. A treasurer to be elected by the board who shall serve as a nonvoting member.

5. A secretary to be elected by the board who shall serve as a nonvoting member.

91 Acts, ch 248, §1, 2 SF 452
1991 convention to elect ten directors to Iowa state fair board, staggered terms, 91 Acts, ch 248, §10, 11 SF 452, 91 Acts, ch 267, §631 HF 479
Subsections 2, 3 and 4 amended
NEW subsection 5

173.4 Voting power.

On all questions arising for determination by the convention, each member present shall be entitled to but one vote, and no proxies shall be recognized by the convention. However, a member who is also a board congressional director shall not be entitled to vote for a successor to each congressional director on the board.

91 Acts, ch 248, §3 SF 452
Section amended

173.5 Duties of the convention.

1. The convention shall establish staggered terms of office for the elected directors. Notwithstanding section 173.6, the convention may establish terms of office for initial elected directors for more or less than two years.

2. The convention shall elect a successor to each of the two district directors on the board whose term expires at noon on the day following the adjournment of the convention.

91 Acts, ch 248, §4 SF 452
Section stricken and rewritten

173.6 Terms of office.

The term of the president and vice president of the board shall be one year. A person shall not hold the office of president for more than three consecutive years, plus any portion of a year in which the person was first elected by the board to fill a vacancy.

A member of the board who is a director, elected

as provided in section 173.1, shall serve a term of two years. The term of a director shall begin at noon on the day following the adjournment of the convention at which the director was elected and shall continue until a successor is elected and qualified as provided in this chapter. However, a person elected as a director pursuant to section 173.1 shall not serve for more than five consecutive terms. A director who has ever served five consecutive terms is again eligible to serve for an additional five consecutive terms after not serving as a director for at least one term.

91 Acts, ch 248, §5 SF 452

An original director may serve unlimited number of terms, "original director" defined, 91 Acts, ch 248, §10 SF 452, 91 Acts, ch 267, §631 HF 479

Section amended

173.7 Vacancies.

If, after the adjournment of the convention, a vacancy occurs in the office of any member of the board elected by the convention the board shall fill the vacancy by election. The elected member shall qualify at once and serve until noon of the day following the adjournment of the next convention. If, by that time, the member elected by the board will not have completed the full term for which the member's predecessor was elected, the convention shall elect a member to serve for the unexpired portion of the term. The member elected by the convention shall qualify at the same time as other members elected by the convention.

91 Acts, ch 248, §6 SF 452

Section amended

173.11 Treasurer.

The board shall elect a treasurer who shall hold office for one year, and the treasurer shall:

1. Keep a correct account of the receipts and disbursements of all moneys belonging to the board.
2. Make payments on all warrants signed by the president and secretary from any funds available for such purpose.
3. Administer the funds of the Iowa state fair foundation as directed by the board and in accordance with procedures of the treasurer of state, and maintain a correct account of receipts and disbursements of assets of the foundation.

91 Acts, ch 132, §1 SF 172, 91 Acts, ch 248, §7 SF 452

Former subsection 3 stricken

NEW subsection 3

173.14 Functions of the board.

The state fair board has the custody and control of the state fairgrounds, including the buildings and equipment on it belonging to the state, and may:

1. Hold an annual fair and exposition on those grounds. All revenue generated by the fair and any interim uses shall be retained solely by the board.
2. Prepare premium lists and establish rules of exhibitors for the fair which shall be published by the board not later than sixty days prior to the opening of the fair.
3. Grant a written permit to persons as it deems proper to sell fruit, provisions, and other lawful articles under rules the board prescribes.

4. Appoint, as the president deems necessary, security personnel and peace officers qualified according to standards adopted by the board.

5. Take and hold property by gift, devise, or bequest for fair purposes. The president, secretary, and treasurer of the board shall have custody and control of the property, subject to the action of the board. Those officers shall give bonds as required in the case of executors, to be approved by the board and filed with the secretary of state.

6. Erect and repair buildings on the grounds and make other necessary improvements.

7. Grant written permission to persons to use the fairgrounds when the fair is not in progress.

8. Take, acquire, hold, and dispose of property by deed, gift, devise, bequest, lease, or eminent domain. The title to real estate acquired under this subsection and improvements erected on the real estate shall be taken and held in the name of the state of Iowa and shall be under the custody and control of the board. In the exercise of the power of eminent domain the board shall proceed in the manner provided in chapters 471 and 472.

9. Solicit and accept contributions from private sources for the purpose of financing and supporting the fair.

10. Make an agreement with the department of public safety to provide for security during the annual fair and exposition and interim events.

11. Administer the Iowa state fair foundation created in section 173.22. In administering the foundation the board shall authorize all payments from the foundation fund. The board on behalf of the foundation may contract, sue and be sued, and adopt rules necessary to carry out the provisions of this subsection, but the board shall not in any manner, directly or indirectly pledge the credit of the state.

91 Acts, ch 132, §2 SF 172, 91 Acts, ch 248, §8 SF 452

Subsection 4 amended

NEW subsection 11

173.14B Bonds and notes.

1. The board may issue and sell negotiable revenue bonds of the authority in denominations and amounts as the board deems for the best interests of the fair. However, the board must first submit a list of the purposes ranked by priority and a purpose must be authorized by a constitutional majority of each house of the general assembly and approved by the governor. A purpose must be one of the following:

- a. To acquire real estate to be devoted to uses for the fair.
- b. To pay any expenses or costs incidental to a building or repair project.
- c. To provide sufficient funds for the advancement of any of its corporate purposes.

2. The board may issue negotiable bonds and notes of the authority in principal amounts which are necessary to provide sufficient funds for achievement of its corporate purposes, the payment of interest on its bonds and notes, the establishment of re-

serves to secure its bonds and notes, and all other expenditures of the board incident to and necessary or convenient to carry out its purposes and powers, subject to authorization and approval required under subsection 1. However, the total principal amount of bonds and notes outstanding at any time under subsection 1 and this subsection shall not exceed six million dollars. The bonds and notes are deemed to be investment securities and negotiable instruments within the meaning of and for all purposes of the uniform commercial code.

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

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 its political subdivisions 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 board prescribes, fully negotiable instruments under the laws of this state, signed on behalf of the authority with the manual or facsimile signature of the president or vice president, attested by the manual or facsimile signature of the secretary, have impressed or imprinted on it the seal of the authority or facsimile of it, and coupons attached shall be signed with the facsimile signature of the president or vice president, 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 board prescribes, be sold at prices, at public or private sale, and in a manner as the board prescribes, and the board may pay all expenses, premiums, and commissions which it deems necessary or advantageous in connection with the issuance and sale; and be issued subject to the terms, conditions, and covenant 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 board for the most advantageous sale, which may include, but are not limited to, covenants with the

holders of the bonds as to those matters set forth in section 220.26, subsection 4, paragraph "b".

5. The board may issue bonds of the authority for the purpose of refunding any bonds or notes of the authority then outstanding, including the payment of any redemption premiums and any interest accrued or to accrue to the date of redemption of the outstanding bonds or notes. Until the proceeds of the 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 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 this chapter in the same manner and to the same extent as other bonds.

6. The board may issue negotiable bond anticipation notes of the authority 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 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 of the board may contain any provisions, conditions, or limitations, not inconsistent with this subsection, which the bonds or a bond resolution of the board 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 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 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 so created is binding from and after the time it is made against all parties having claims of any kind in tort, contract, or otherwise against the pledgor.

8. Members of the board and any person executing the authority's bonds, notes, or other obligations are not liable personally on the bonds, notes, or other obligations or subject to personal liability or ac-

countability by reason of the issuance of the authority's bonds or notes.

9. The board shall publish a notice of intention to issue bonds or notes in a newspaper published and of general circulation in the state. The notice shall include a statement of the maximum amount of bonds or notes proposed to be issued, and in general, what net revenues will be pledged to pay the bonds or notes and interest on them. An action shall not be brought questioning the legality of the bonds or notes, the power of the board to issue the bonds or notes, or the legality of any proceedings in connection with the authorization or issuance of the bonds or notes after sixty days from the date of publication of the notice.

91 Acts, ch 268, §228, 229 SF 529
 Subsection 1, unnumbered paragraph 1 amended
 Subsection 2 amended

173.22 Iowa state fair foundation.

An Iowa state fair foundation is established under the authority of the Iowa state fair board. A foundation fund is created within the state treasury composed of moneys available to and obtained or accepted by the foundation.

The foundation may solicit or accept gifts, including donations and bequests. A gift, to the greatest extent possible, shall be used according to the expressed desires of the person providing the gift. Assets of the foundation shall be used to support foundation activities, including foundation administration, or capital projects or major maintenance improvements at the Iowa state fairgrounds or to property under the control of the board. Foundation moneys may be expended on a matching basis with moneys appropriated from the general fund of the state or expended on a matching basis by the board from Iowa state fair authority receipts. All interest earned on moneys in the foundation fund or through other foundation assets shall be credited to and remain in the fund.

The auditor of state shall conduct regular audits of the foundation and shall make a certified report relating to the condition of the foundation and the foundation fund to the treasurer of the state, and to the treasurer and secretary of the state fair board.

91 Acts, ch 132, §3 SF 172
 NEW section

CHAPTER 174

COUNTY AND DISTRICT FAIRS

174.2 Powers of society.

Each society may hold annually a fair to further interest in agriculture and to encourage the improvement of agricultural products, livestock, articles of domestic industry, implements, and other mechanical devices. It may offer and award such premiums as will induce general competition.

In addition to the powers granted herein the society shall possess the powers of a corporation not for pecuniary profit under the laws of this state and those powers enumerated in its articles of incorporation, such powers to be exercised before and after the holding of such fairs.

No salary or compensation of any kind shall be paid to the president, vice president, treasurer, or to a director of the association for such duties. However, the president, vice president, treasurer, or a director of the association may be reimbursed for actual expenses incurred by carrying out duties under this

chapter or chapter 173, including, but not limited to attending the convention provided under section 173.2. A person claiming expenses under this paragraph shall be reimbursed to the same extent that a state employee is entitled to be reimbursed for expenses.

91 Acts, ch 248, §9 SF 452
 Unnumbered paragraph 3 amended

174.19 Report of county aid.

A society shall not receive an appropriation from a county under this chapter, until the society submits a financial statement to the county board of supervisors. The statement shall show all expenditures of moneys appropriated to the society from the county in the previous year. The financial statement submitted to the board of supervisors shall include vouchers related to the expenditures.

91 Acts, ch 98, §1 SF 56
 Section stricken and rewritten

CHAPTER 176A

COUNTY AGRICULTURAL EXTENSION LAW

176A.8 Powers and duties of county agricultural extension council.

The extension councils of each extension district of the state shall have, exercise, and perform the following powers and duties:

1. To elect from their own number annually in January a chairperson, vice chairperson, secretary and a treasurer who shall serve and be the officers of the extension council for a term expiring December 31 each year, and perform the functions and duties as herein in this chapter provided.

2. To and shall each year at the meeting preceding the election of council members, appoint from their own number one member whose term does not expire as of December 31 following the election to act as temporary chairperson of the first meeting of the extension council to be held in January after the election, and one to act as temporary secretary of the meeting.

3. To serve as an agency of the state and to manage and transact all of the business and affairs of its district and have control of all of the property acquired by it and necessary for the conduct of the business of the district for the purposes of this chapter.

4. To cause notice of the date, time, and place of the election to be published as provided in section 331.305 in a newspaper having general circulation in the extension district. The cost of publishing the notice shall be paid by the extension council.

5. To and shall, at least ninety days prior to the date fixed for the election of council members, appoint a nominating committee consisting of four persons who are not council members and designate the chairperson. The membership of the nominating committee shall be gender balanced. The nominating committee shall consider the geographic distribution of potential nominees in nominating one or more resident qualified electors of the extension district as candidates for election to each office to be filled at the election. To qualify for the election ballot, each nominee shall file a nominating petition signed by at least twenty-five eligible electors of the district with the county commissioner of elections at least sixty-nine days before the date of election.

The council shall also provide for the nomination by petition of candidates for election to membership on the extension council. A nominating petition shall be signed by at least twenty-five qualified electors of the extension district and shall be filed with the county commissioner of elections at least sixty-nine days before the date of the election.

6. To enter into a Memorandum of Understand-

ing with the extension service setting forth the co-operative relationship between the extension service and the extension district.

7. To employ all necessary extension professional personnel from qualified nominees furnished to it and recommended by the director of extension and not to terminate the employment of any such without first conferring with the director of extension, and to employ such other personnel as it shall determine necessary for the conduct of the business of the extension district, and to fix the compensation for all such personnel in co-operation with the extension service and in accordance with the Memorandum of Understanding entered into with such extension service.

8. To prepare annually on or before January 31 a budget for the fiscal year beginning July 1 and ending the following June 30, in accordance with the provisions of chapter 24 and certify the same to the board of supervisors of the county of their extension district as required by law.

9. To and shall be responsible for the preparation and adoption of the educational program on extension work in agriculture, home economics and 4-H club work, and periodically review said program and for the carrying out of the same in co-operation with the extension service in accordance with the Memorandum of Understanding with said extension service.

10. To make and adopt such rules not inconsistent with the law as it may deem necessary for its own government and the transaction of the business of the extension district.

11. To fill all vacancies in its membership to serve for the unexpired term of the member creating the vacancy by appointing a resident qualified elector of the extension district. However, if an unexpired term in which the vacancy occurs has more than seventy days to run after the date of the next pending election and the vacancy occurs seventy-four or more days before the election, the vacancy shall be filled at the next pending election.

12. To and shall, as soon as possible following the meeting at which the officers are elected, file in the office of the board of supervisors and of the county treasurer a certificate signed by its chairperson and secretary certifying the names, addresses and terms of office of each member, and the names and addresses of the officers of the extension council with the signatures of the officers affixed thereto, and said certificate shall be conclusive as to the organization of the extension district, its extension council, and as to its members and its officers.

13. To and shall deposit all funds received from the "county agricultural extension education fund" in a bank or banks approved by it in the name of the extension district. These receipts shall constitute a fund known as the "county agricultural extension education fund" which shall be disbursed by the treasurer of the extension council on vouchers signed by its chairperson and secretary and approved by the extension council and recorded in its minutes.

14. To expend the "county agricultural extension education fund" for salaries and travel, expense of personnel, rental, office supplies, equipment, communications, office facilities and services, and in payment of such other items as shall be necessary to carry out the extension district program; provided, however, it shall be unlawful for the county agricultural extension council to lease any office space which is occupied or used by any other farm organization or farm co-operative, and provided further, that it shall be lawful for the county agricultural extension council to lease space in a building owned or occupied by a farm organization or farm co-operative.

15. To carry over unexpended county agricultural extension education funds into the next year so that funds will be available to carry on the program until such time as moneys received from taxes are collected by the county treasurer. However, the unencumbered funds in the county agricultural extension education fund in excess of one-half the amount expended from the fund in the previous year shall be paid over to the county treasurer. The treasurer of the extension council with the approval of the council may invest agricultural extension education funds retained by the council and not needed for current expenses in the manner authorized for treasurers of political subdivisions under section 453.1.

16. To file with the county auditor and to publish in two newspapers of general circulation in the district before August 1 full and detailed reports under oath of all receipts, from whatever source derived, and expenditures of such county agricultural extension education fund showing from whom received, to whom paid and for what purpose for the last fiscal year.

91 Acts, ch 129, §22 HF 420
Subsection 5, unnumbered paragraph 1 amended

176A.10 County agricultural extension education tax.

The extension council of each extension district shall, at a regular or special meeting held in January in each year, estimate the amount of money required to be raised by taxation for financing the county agricultural extension education program authorized in this chapter. The annual tax levy and the amount of money to be raised from the levy for the county agricultural extension education fund shall not exceed the following:

1. *a.* Except as provided in paragraph "b", for an extension district having a population of less than thirty thousand, an annual levy of twenty and one-

fourth cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of seventy thousand dollars for the fiscal year commencing July 1, 1985, and seventy-five thousand dollars for each subsequent fiscal year.

b. For an extension district having a population of less than thirty thousand and as provided in subsection 6, an annual levy of thirty cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of eighty-seven thousand dollars payable during the fiscal year commencing July 1, 1992, and an increase of six thousand dollars in the amount payable during each subsequent fiscal year.

2. *a.* Except as provided in paragraph "b", for an extension district having a population of thirty thousand or more but less than fifty thousand, an annual levy of twenty and one-fourth cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of eighty-four thousand dollars for the fiscal year commencing July 1, 1985, and ninety thousand dollars for each subsequent fiscal year.

b. For an extension district having a population of thirty thousand or more but less than fifty thousand and as provided in subsection 6, an annual levy of twenty and one-fourth cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of one hundred four thousand dollars payable during the fiscal year commencing July 1, 1992, and an increase of seven thousand dollars in the amount payable during each subsequent fiscal year.

3. *a.* Except as provided in paragraph "b", for an extension district having a population of fifty thousand or more but less than ninety-five thousand, an annual levy of thirteen and one-half cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of one hundred five thousand dollars for the fiscal year commencing July 1, 1985, and one hundred twelve thousand five hundred dollars for each subsequent fiscal year.

b. For an extension district having a population of fifty thousand or more but less than ninety thousand and as provided in subsection 6, an annual levy of thirteen and one-half cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of one hundred thirty thousand five hundred dollars payable during the fiscal year commencing July 1, 1992, and an increase of nine thousand dollars in the amount payable during each subsequent fiscal year.

4. *a.* Except as provided in paragraph "b", for an extension district having a population of ninety-five thousand or more, an annual levy of thirteen and one-half cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of one hundred forty thousand dollars for the fiscal year commencing July 1, 1985, and one hundred fifty thousand dollars for each subsequent fiscal year.

b. For an extension district having a population of ninety thousand or more but less than two hundred thousand and as provided in subsection 6, an annual levy of thirteen and one-half cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of one hundred eighty thousand dollars payable during the fiscal year commencing July 1, 1992, and an increase of fifteen thousand dollars in the amount payable during each subsequent fiscal year.

5. For an extension district having a population of two hundred thousand or more and as provided in subsection 6, an annual levy of five cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of two hundred thousand dollars payable during the fiscal year commencing July 1, 1992, and an increase of twenty-five thousand dollars in the amount payable during each subsequent fiscal year.

6. An extension council of an extension district may choose to be subject to the levy and revenue limits specified in paragraphs "b" of subsections 1, 2, 3, and 4 and subsection 5 for the purpose of the annual levy for the fiscal year commencing July 1, 1991. Be-

fore an extension district may be subject to the levy and revenue limits specified in paragraphs "b" of subsections 1, 2, 3, and 4 and subsection 5, for fiscal years beginning on or after July 1, 1992, the question of whether the district shall be subject to the levy and revenue limits as specified in such subsections must be submitted to the registered voters of the district. The question shall be submitted at the time of a state general election. If the question is approved by a majority of those voting on the question the levy and revenue limits specified in paragraphs "b" of subsections 1, 2, 3, and 4 and subsection 5, shall thereafter apply to the extension district. The question need only be approved at one state general election. If a majority of those voting on the question vote against the question, the district may continue to submit the question at subsequent state general elections until approved.

The extension council in each extension district shall comply with chapter 24.

91 Acts, ch 156, §1 HF 691

1991 amendment applies to property taxes levied for fiscal year beginning July 1, 1991, payable in fiscal year beginning July 1, 1992, and applies for each subsequent fiscal year; 91 Acts, ch 156, §2 HF 691
Section amended

CHAPTER 179

DAIRY INDUSTRY COMMISSION

179.2 Commission created — suspension during national order — reactivation.

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 a per diem as specified in section 7E.6 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 com-

missioners 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.

91 Acts, ch 258, §32 HF 709
 Subsection 3 amended
 1991 amendment to subsection 3 retroactively applicable to January 1, 1991,
 91 Acts, ch 258, §73 HF 709

CHAPTER 183A

IOWA PORK PRODUCERS COUNCIL

183A.10 Per diem and expenses.

The members of the council shall receive a per diem as specified in section 7E.6 for each day spent on official business of the council, not to exceed six hundred dollars per annum, and their actual neces-

sary expenses, while engaged in council activity.

91 Acts, ch 258, §33 HF 709
 1991 amendment retroactively applicable to January 1, 1991, 91 Acts, ch 258,
 §73 HF 709
 Section amended

CHAPTER 185

SOYBEAN PROMOTION BOARD

185.14 Per diem and expenses.

Each member of the board shall receive a per diem as specified in section 7E.6 and actual expenses in performing official board functions not to exceed forty days per year. No member of the board shall be a salaried employee of the board or any organization or agency which is receiving funds from the board.

The board shall meet at least once every three months, and at such other times as deemed necessary by the board.

91 Acts, ch 258, §34 HF 709
 1991 amendment retroactively applicable to January 1, 1991, 91 Acts, ch 258,
 §73 HF 709
 Section amended

CHAPTER 185C
CORN PROMOTION BOARD

185C.11 Purpose of the board.

The purposes of the board shall be to:

1. Enter into contracts or agreements with recognized and qualified agencies or organizations for the development and carrying out of research and education programs directed toward better and more efficient production, marketing, and utilization of corn and corn 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 corn and corn products.
4. Work for prevention, modification, or elimination of trade barriers which obstruct the free flow of corn and corn products to market.

5. Promote the production and marketing of ethanol.

91 Acts, ch 254, §13 SF 545
NEW subsection 5

185C.14 Per diem and expenses.

Each member of the board shall receive a per diem as specified in section 7E.6 and actual expenses in performing official board functions not to exceed forty days per year. No member of the board shall be a salaried employee of the board or any organization or agency which is receiving funds from the board. The board shall meet at least once every three months, and at such other times as deemed necessary by the board.

91 Acts, ch 258, §35 HF 709
1991 amendment retroactively applicable to January 1, 1991, 91 Acts, ch 258, §73 HF 709
Section amended

CHAPTER 190
ADULTERATION OF FOODS

190.1 Definitions and standards.

For the purpose of this title, except chapter 192, the following definitions and standards of food are established:

1. *Butter.* Butter is the clean, nonrancid product made by gathering in any manner the fat of fresh or ripened milk or cream into a mass, with or without the addition of salt, or harmless coloring matter, and containing at least eighty percent, by weight, of milk fat.
2. *Oleomargarine.* Oleo, oleomargarine or margarine includes all substances, mixtures and compounds known as oleo, oleomargarine or margarine, or all substances, mixtures and compounds which have a consistence similar to that of butter and which contain any edible oils or fats other than milk fat if made in imitation or semblance of butter.
3. *Renovated butter.* Renovated butter is butter produced by taking original packing stock butter, or other butter, or both, and melting the same so that the milk fat can be extracted, then by mixing the said milk fat with skimmed milk, milk, cream, or some milk product, and reurning or reworking the said mixture; or butter made by any method which pro-

duces a product commonly known as boiled, processed, or renovated butter.

4. *Flavoring extract.* A flavoring extract is a solution in ethyl alcohol or other suitable medium of the sapid and odorous principles derived from an aromatic plant, or parts of the plant, with or without its coloring matter, and conforms in name to the plant used in its preparation.
5. *Almond extract.* Almond extract is the flavoring extract prepared from oil of bitter almonds, free from hydrocyanic acid, and contains not less than one percent by volume of oil of bitter almonds.
6. *Anise extract.* Anise extract is the flavoring extract prepared from oil of anise, and contains not less than three percent by volume of oil of anise.
7. *Cassia extract.* Cassia extract is the flavoring extract prepared from oil of cassia, and contains not less than two percent by volume of oil of cassia.
8. *Celery seed extract.* Celery seed extract is the flavoring extract prepared from celery seed or the oil of celery seed, or both, and contains not less than three-tenths percent by volume of oil of celery seed.
9. *Cinnamon extract.* Cinnamon extract is the flavoring extract prepared from oil of cinnamon, and

contains not less than two percent by volume of oil of cinnamon

10 *Clove extract* Clove extract is the flavoring extract prepared from oil of cloves, and contains not less than two percent by volume of oil of cloves

11 *Ginger extract* Ginger extract is the flavoring extract prepared from ginger, and contains in each one hundred cubic centimeters the alcohol-soluble matters from not less than twenty grams of ginger

12 *Lemon extract* Lemon extract is the flavoring extract prepared from oil of lemon, or from lemon peel, or both, and contains not less than five percent by volume of oil of lemon

13 *Terpeneless extract of lemon* Terpeneless extract of lemon is the flavoring extract prepared by shaking oil of lemon with dilute alcohol, or other suitable medium, or by dissolving terpeneless oil of lemon in such medium, and contains not less than two-tenths percent by weight of citral derived from oil of lemon

14 *Nutmeg extract* Nutmeg extract is the flavoring extract prepared from oil of nutmeg, and contains not less than two percent by volume of oil of nutmeg

15 *Orange extract* Orange extract is the flavoring extract prepared from oil of orange, or from orange peel, or both, and contains not less than five percent by volume of oil of orange

16 *Terpeneless extract of orange* Terpeneless extract of orange is the flavoring extract prepared by shaking oil of orange with dilute alcohol, or other suitable medium, or by dissolving terpeneless oil of orange in such medium, and corresponds in flavoring strength to orange extract

17 *Peppermint extract* Peppermint extract is the flavoring extract prepared from oil of peppermint, or from peppermint, or both, and contains not less than three percent by volume of oil of peppermint

18 *Rose extract* Rose extract is the flavoring extract prepared from attar of roses, with or without red rose petals, and contains not less than four-tenths percent by volume of attar of roses

19 *Savory extract* Savory extract is the flavoring extract prepared from oil of savory, or from savory, or both, and contains not less than thirty-five hundredths percent by volume of oil of savory

20 *Spearmint extract* Spearmint extract is the flavoring extract prepared from oil of spearmint, or from spearmint, or both, and contains not less than three percent by volume of oil of spearmint

21 *Star anise extract* Star anise extract is the flavoring extract prepared from oil of star anise, and contains not less than three percent by volume of oil of star anise

22 *Sweet basil extract* Sweet basil extract is the flavoring extract prepared from oil of sweet basil, or from sweet basil, or both, and contains not less than one-tenth percent by volume of oil of sweet basil

23 *Sweet marjoram extract* Sweet marjoram

extract is the flavoring extract prepared from the oil of marjoram, or from marjoram, or both, and contains not less than one percent by volume of oil of marjoram

24 *Thyme extract* Thyme extract is the flavoring extract prepared from oil of thyme, or from thyme, or both, and contains not less than two-tenths percent by volume of oil of thyme

25 *Tonka extract* Tonka extract is the flavoring extract prepared from tonka bean, with or without sugar or glycerin, and contains not less than one tenth percent by weight of coumarin extracted from the tonka bean, together with a corresponding proportion of the other soluble matters thereof

26 *Vanilla extract* Vanilla extract is the flavoring extract prepared from vanilla bean, with or without sugar or glycerin, and contains in one hundred cubic centimeters the soluble matters from not less than ten grams of the vanilla bean, and contains not less than thirty percent by volume of absolute ethyl alcohol, or other suitable medium

27 *Wintergreen extract* Wintergreen extract is the flavoring extract prepared from oil of wintergreen, and contains not less than three percent by volume of oil of wintergreen

28 *Food* Food shall include any article used by humans or domestic animals for food, drink, confectionery, or condiment, or which enters into the composition of the same, whether simple, blended, mixed, or compound. The term "blended" shall be construed to mean a mixture of like substances

29 *Oysters* Oysters shall not contain ice, nor more than sixteen and two-thirds percent by weight of free liquid

30 *Vinegar* Vinegar is the product made by the alcoholic and subsequent fermentation of fruits, grain, vegetables, sugar, or syrups without the addition of any other substance and containing an acidity of not less than four percent by weight of absolute acetic acid. The product may be distilled, but when not distilled it shall not carry in solution any other substance except the extractive matter derived from the substances from which it was made

31 *Cider or apple vinegar* Cider or apple vinegar is a similar product made by the same process solely from the juice of apples. Such vinegar which during the course of manufacture has developed in excess of four percent acetic acid may be reduced to said strength

32 *Corn sugar vinegar* Corn sugar vinegar is a similar product made by the same process solely from solutions of starch sugar

33 *Malt vinegar* Malt vinegar is a similar product made by the same process solely from barley malt or cereals whose starch has been converted by malt

34 *Sugar vinegar* Sugar vinegar is a similar product made by the same process solely from sucrose

35 *Lard* Lard is the fat rendered from fresh, clean, sound, fatty tissues from hogs in good health at the time of slaughter, with or without lard stearin

or a hardened lard. The tissues do not include bones, detached skin, head fat, ears, tails, organs, windpipes, large blood vessels, scrap fat, skimmings, settlings, pressings and the like and are reasonably free from muscle tissue and blood.

36. *Rendered pork fat.* Rendered pork fat is the fat other than lard, rendered from clean, sound carcasses, parts of carcasses, or edible organs from hogs in good health at the time of slaughter, except that stomachs, tails, bones from the head and bones from cured or cooked pork are not included. The tissues rendered are usually fresh, but may be cured, cooked, or otherwise prepared and may contain some meat food products. Rendered pork fat may be hardened by the use of lard stearin or hardened lard or rendered pork fat stearin or hardened rendered pork fat or any combination.

37. *Substitute for sugar.* Where sugar is given as one of the ingredients in a food product when the definition is established by law or by regulation, the following products may be used as optional ingredients: Dextrose (corn sugar) or corn syrup.

38. *Honey.* Honey is the secretion of floral nectar collected by the honeybee and stored in wax combs constructed by the honeybee, or the liquid derived therefrom.

39. *Sorghum syrup.* Sorghum syrup is liquid food derived by the concentration and heat treatment of the juice of sorghum cane including sorgo and sorghum vulgare. Sorghum syrup must contain not less than seventy-four percent by weight of soluble solids derived solely from juices of sorghum cane.

91 Acts, ch 74, §2, 3 SF 525
1991 amendments striking subsections 4-6 and 32-57 are effective January 1, 1992, 91 Acts, ch 74, §26 SF 525
Subsections 4-6 and 32-57 stricken and former subsections 7-31 and 58-68 renumbered as 4-28 and 29-39 respectively

190.2 Additional standards — milk and dairy products.

The department may establish and publish standards for foods when such standards are not fixed by law, but the same shall conform with those proclaimed by the secretary of agriculture of the United States.

The department shall adopt rules specifying standards for milk and dairy products which are consistent with the "*Pasteurized Milk Ordinance*", as provided in chapter 192, and applicable federal standards of identity.

91 Acts, ch 74, §4 SF 525
Unnumbered paragraph 2 effective January 1, 1992, 91 Acts, ch 74, §26 SF 525
NEW unnumbered paragraph 2

190.3 Food adulterations.

For the purposes of this chapter any food shall be deemed to be adulterated:

1. If any substance has been mixed or packed with it so as to reduce or injuriously affect its quality.
2. If any substance has been substituted to any extent.
3. If any valuable constituent has been removed to any extent.
4. If it has been mixed, colored, powdered, coated, or stained whereby damage or inferiority is concealed.
5. If it contains formaldehyde, sulphites or boron compound, or any poisonous or other ingredients injurious to health.
6. If it consists to any extent of a diseased, filthy, or decomposed animal or vegetable substance, whether manufactured or otherwise.
7. If it consists to any extent of an animal that has died otherwise than by slaughter.
8. If it is the product of or obtained from a diseased or infected animal.
9. If it has been damaged by freezing.
10. If it does not conform to the standards established by law or by the department.

The provisions of subsections 2 and 3 shall not apply to the addition of vitamins approved by the United States Pharmacopoeia or the removal of milk fat from milk.

91 Acts, ch 74, §5 SF 525
1991 amendment to unnumbered paragraph 2 effective January 1, 1992, 91 Acts, ch 74, §26 SF 525
Unnumbered paragraph 2 amended

190.14 Administration — milk and dairy products.

1. The department shall administer this chapter consistent with the provisions of the "*Grade 'A' Pasteurized Milk Ordinance, 1989 Revision*", as provided in section 192.102.

2. The department, as provided in section 192.108, may contract with a person qualified by the department to perform inspection of dairy farms, milk plants, receiving stations, or transfer stations to ensure compliance with this chapter.

91 Acts, ch 74, §6 SF 525
Effective January 1, 1992, 91 Acts, ch 74 §26 SF 525
NEW section

190.15 Violations — injunction.

The department may restrain a person violating this chapter or a rule adopted by the department under this chapter by petitioning the district court where the violation occurs for injunctive relief. Each day that a violation continues constitutes a separate violation.

91 Acts, ch 74, §7 SF 525
Effective January 1, 1992, 91 Acts, ch 74, §26 SF 525
NEW section

CHAPTER 191

LABELING FOODS

191.2 Dairy products and imitations.

The products enumerated below shall be labeled on the side or top of the container or package in which placed, kept, offered or exposed for sale, or sold as prescribed in sections 189.9 to 189.12, inclusive, except that the label shall be printed in letters not less than three-quarters inch in height and one-half inch in width and subject to the following regulations:

1. *Renovated butter.* Renovated butter shall be labeled with the words "Renovated Butter", and if offered or exposed for sale or sold in prints or rolls the wrapper of each and the container as required above shall be so labeled. If such butter is offered or exposed for sale uncovered and not in a container or package, a placard containing the required label shall be attached to the mass so as to be easily seen by the purchaser.

2. *Oleomargarine.* No person shall sell or offer for sale, colored oleo, oleomargarine or margarine unless — such oleo, oleomargarine or margarine is packaged; the net weight of the contents of any package sold in a retail establishment is one pound or less; there appears on the label of the package the word "oleo", "oleomargarine" or "margarine" in type or lettering at least as large as any other type or lettering on such label, and a full and accurate statement of all the ingredients contained in such oleo, oleomargarine or margarine; and each part of the contents of the package is contained in a wrapper which bears the word "oleo", "oleomargarine" or "margarine" in type or lettering not smaller than twenty-point type.

For the purposes of this chapter the term "*oleo*", "*oleomargarine*" or "*margarine*" includes all substances, mixtures and compounds known as oleo, oleomargarine or margarine, and all substances, mixtures and compounds which have a consistence similar to that of butter and which contain any edible oils or fats other than milk fat if made in imitation or semblance of butter. For the purposes of this chapter colored oleo, oleomargarine or margarine is oleo, oleomargarine or margarine to which any color has been added.

Whenever coloring of any kind has been added it shall be clearly stated on both inside wrapper and the outside package. The ingredients of oleo, oleomargarine or margarine shall be listed on both the inside wrapper and outside package in the order of the amounts of ingredients in the package.

Such oleo, oleomargarine or margarine shall contain vitamin "A" in such quantity that the finished oleo, oleomargarine or margarine contains not less

than fifteen thousand United States Pharmacopoeia units of vitamin "A" per pound, as determined by the method prescribed in the Pharmacopoeia of the United States for the total biological vitamin "A" activity.

3. *Imitation cheese.* Imitation cheese shall be labeled with the words "Imitation Cheese" on the cheese and on the package.

4. *Nonfat dry milk.* For the purposes of this chapter the product resulting from the removal of fat and water from milk and containing the lactose, milk proteins, and milk minerals in the same relative proportions as in the fresh milk from which it was made may be labeled and sold as "nonfat dry milk". It shall contain not over five percent by weight of moisture and the fat content shall not be over one and one-half percent by weight unless otherwise indicated.

5. All bottles, containers, and packages enclosing milk or milk products as defined in section 190.1, subsections 6 and 38 to 57,* shall be conspicuously labeled or marked with:

- a. The name of the contents as given in the definitions of this chapter and chapters 190 and 192.
- b. The word "reconstituted" or "recombined" if the product is made by reconstitution or recombination.
- c. The grade of the contents.
- d. The word "pasteurized" if the contents are pasteurized and the identity of the plant where pasteurized.
- e. The word "raw" if the contents are raw and the name or other identity of the producer.
- f. The designation vitamin "D" and the number of U.S.P. units per quart in the case of vitamin "D" milk or milk products.
- g. The volume or proportion of water to be added for recombining in the case of concentrated milk or milk products.
- h. The words "nonfat milk solids added" and the percentage added if such solids have been added, except that this requirement shall not apply to reconstituted or recombined milk and milk products.
- i. The words "artificially sweetened" in the name if nonnutritive or artificial sweeteners or both are used.
- j. The common name of stabilizers, distillates, and ingredients, provided that:

(1) Only the identity of the milk producer shall be required on cans delivered to a milk plant as provided in chapter 192 which receives only grade "A" raw milk for pasteurization, and which immediately dumps, washes, and returns the cans to the milk producer.

(2) The identity of both milk producer and the grade shall be required on cans delivered to a milk plant as provided in chapter 192 which receives both grade "A" raw milk for pasteurization and ungraded raw milk and which immediately dumps, washes, and returns the cans to the milk producer.

(3) In the case of concentrated milk products, the specific name of the product shall be substituted for the generic term "concentrated milk products", e.g., "homogenized concentrated milk", "concentrated skim milk", "concentrated chocolate milk", "concentrated chocolate flavored low fat milk".

(4) In the case of flavored milk or flavored reconstituted milk, the name of the principal flavor shall be substituted for the word "flavored".

(5) In the case of cultured milk and milk products, the special type culture used may be substituted for the word "cultured", e.g., "acidophilus buttermilk", "Bulgarian buttermilk", and "yogurt".

6. All vehicles and transport tanks containing milk or milk products shall be legibly marked with the name and address of the milk plant or hauler in possession of the contents.

7. Tanks transporting raw milk and milk products to a milk plant from sources of supply not under the supervision of the secretary or authorized municipal corporation are required to be marked with the name and address of the milk plant or hauler and shall be sealed; in addition, for each such shipment, a shipping statement shall be prepared containing at least the following information:

- a. Shipper's name, address, and permit number.
- b. Permit number of hauler, if not employee of shipper.
- c. Point of origin of shipment.
- d. Tanker identity number.
- e. Name of product.
- f. Weight of product.
- g. Grade of product.
- h. Temperature of product.
- i. Date of shipment.
- j. Name of supervising health authority at the point of origin.
- k. Whether the contents are raw, pasteurized, or otherwise heat treated.

Such statement shall be prepared in triplicate and

shall be kept on file by the shipper, the consignee, and the carrier for a period of six months for the information of the secretary.

8. The labeling information which is required on all bottles, containers, or packages of milk or milk products shall be in letters of an acceptable size, kind, and color satisfactory to the secretary and shall contain no marks or words which are misleading.

9. Milk and milk products are misbranded:

a. When their container bears or accompanies any false or misleading written, printed, or graphic matter.

b. When such milk and milk products do not conform to their definitions as contained in chapters 190, 191 and 192.

c. When such products are not labeled in accordance with this section.

91 Acts, ch 74, §8 SF 525
*Section 190 1, subsections 6 and 38 to 57, Code 1991, stricken, 91 Acts, ch 74, §2 3 SF 525

1991 amendment to subsection 5, paragraph j effective January 1, 1992, 91 Acts, ch 74, §26 SF 525

Subsection 5, paragraph j, subparagraphs 1 and 2 amended

191.9 Administration — milk and dairy products.

1. The department shall administer this chapter consistent with the provisions of the "Grade 'A' Pasteurized Milk Ordinance, 1989 Revision", as provided in section 192.102.

2. The department, as provided in section 192.108, may contract with a person qualified by the department to perform inspection of dairy farms, milk plants, receiving stations, or transfer stations to ensure compliance with this chapter.

91 Acts, ch 74, §9 SF 525
Effective January 1, 1992, 91 Acts, ch 74, §26 SF 525
NEW section

191.10 Violations — injunction.

The department may restrain a person violating this chapter or a rule adopted by the department under this chapter by petitioning the district court where the violation occurs for injunctive relief. Each day that a violation continues constitutes a separate violation.

91 Acts, ch 74, §10 SF 525
Effective January 1, 1992, 91 Acts, ch 74, §26 SF 525
NEW section

CHAPTER 192

PRODUCTION AND SALE OF DAIRY PRODUCTS

Repeal of §192.7, 192.10, 192.12, 192.17, 192.19, 192.29,
192.39, 192.41, 192.46, and 192.65 effective January 1, 1992,
91 Acts, ch 74, §24, 26 SF 525

192.5 Milk or milk products permit. Transferred to § 192.107 in Code Supplement 1991.

192.7 Pasteurization. Repealed by 91 Acts, ch 74, § 24, 26. SF 525

192.8 Definitions. Repealed by 91 Acts, ch 74, § 24, 26. SF 525

192.9 Record. Repealed by 91 Acts, ch 74, § 24, 26. SF 525

192.10 Injunction. Repealed by 91 Acts, ch 74, § 24, 26. SF 525 See § 192.146.

192.11 Grade "A" or ungraded — inspections — permits. Transferred to § 192.103 in Code Supplement 1991.

192.12 Access to premises. Repealed by 91 Acts, ch 74, § 24, 26. SF 525

192.13 Trade secrets protected. Repealed by 91 Acts, ch 74, § 24, 26. SF 525

192.14 Samples to be taken periodically. Repealed by 91 Acts, ch 74, § 24, 26. SF 525

192.15 Bacterial counts taken. Repealed by 91 Acts, ch 74, § 24, 26. SF 525

192.16 Notice of excessive counts. Repealed by 91 Acts, ch 74, § 24, 26. SF 525

192.17 Positive phosphatase test. Repealed by 91 Acts, ch 74, § 24, 26. SF 525

192.19 Table of standards. Repealed by 91 Acts, ch 74, § 24, 26. SF 525

192.20 Sanitation requirements for grade "A" raw milk for pasteurization. Repealed by 91 Acts, ch 74, § 24, 26. SF 525

192.21 Sanitation requirements for grade "A" pasteurized milk and milk products. Repealed by 91 Acts, ch 74, § 24, 26. SF 525

192.22 Milk for pasteurization from accredited area. Repealed by 91 Acts, ch 74, § 24, 26. SF 525

192.23 Transferring milk. Repealed by 91 Acts, ch 74, § 24, 26. SF 525

192.24 Milk served in container. Repealed by 91 Acts, ch 74, § 24, 26. SF 525

192.25 Temperature to be maintained. Repealed by 91 Acts, ch 74, § 24, 26. SF 525

192.26 Foreign milk sold in Iowa. Repealed by 91 Acts, ch 74, § 24, 26. SF 525

192.27 Building plans submitted to secretary. Repealed by 91 Acts, ch 74, § 24, 26. SF 525

192.28 Diseased persons excluded. Repealed by 91 Acts, ch 74, § 24, 26. SF 525

192.29 Infection from milk handler. Repealed by 91 Acts, ch 74, § 24, 26. SF 525

192.30 Law to be enforced by secretary of agriculture or municipalities. Transferred to § 192.141 in Code Supplement 1991.

192.31 Certification of grade "A" label. Transferred to § 192.109 in Code Supplement 1991.

192.32 Injunction for violations. Transferred to § 192.146 in Code Supplement 1991.

192.33 Rating required to retain permit. Transferred to § 192.110 in Code Supplement 1991.

192.34 Sanitary regulations. Transferred to § 192.115 in Code Supplement 1991.

192.35 Bacteriologists. Transferred to § 192.116 in Code Supplement 1991.

192.36 Duties. Transferred to § 192.117 in Code Supplement 1991.

192.37 Testing milk or cream. Transferred to § 192.131 in Code Supplement 1991.

192.38 Examination. Transferred to § 192.132 in Code Supplement 1991.

192.39 Supplying standard measures. Repealed by 91 Acts, ch 74, § 24, 26. SF 525

192.40 License term — fees. Transferred to § 192.133 in Code Supplement 1991.

192.41 Bottles and pipettes. Repealed by 91 Acts, ch 74, § 24, 26. SF 525

192.42 Substitute tester. Transferred to § 192.134 in Code Supplement 1991.

192.43 False tests. Transferred to § 192.135 in Code Supplement 1991.

192.44 Tests by unlicensed person. Transferred to § 192.136 in Code Supplement 1991.

192.45 Actions for purchase price — proof. Transferred to § 192.137 in Code Supplement 1991.

192.46 Milk plant fees. Repealed by 91 Acts, ch 74, § 24, 26. SF 525 See § 192.108.

192.47 Inspection fees and milk fund. Transferred to § 192.111 in Code Supplement 1991.

192.48 Inspections required — agreements. Transferred to § 192.108 in Code Supplement 1991.

192.54 Imitation butter. Transferred to § 192.143 in Code Supplement 1991.

192.55 Butter score required. Transferred to § 192.142 in Code Supplement 1991.

192.56 Container. Transferred to § 192.121 in Code Supplement 1991.

192.57 Milk bottles to be marked. Transferred to § 192.122 in Code Supplement 1991.

192.58 Adoption of brand. Transferred to § 192.123 in Code Supplement 1991.

192.59 Retention of marked container. Transferred to § 192.124 in Code Supplement 1991.

192.60 Return of bottles. Transferred to § 192.125 in Code Supplement 1991.

192.61 Stray containers. Transferred to § 192.126 in Code Supplement 1991.

192.62 Registered mark. Transferred to § 192.127 in Code Supplement 1991.

192.63 Certified laboratories. Transferred to § 192.118 in Code Supplement 1991.

192.64 Coloring rejected milk. Transferred to § 192.104 in Code Supplement 1991.

192.65 Transportation. Repealed by 91 Acts, ch 74, § 24, 26. SF 525

192.66 Bulk tanks on farms for milk. Transferred to § 194.21 in Code Supplement 1991.

192.67 through 192.100 Reserved.

192.101 Short title.

This chapter shall be known and may be cited as the “*Iowa Grade ‘A’ Milk Inspection Law*”.

91 Acts, ch 74, §11 SF 525

Effective January 1, 1992, 91 Acts, ch 74, §26 SF 525

NEW section

192.102 Grade “A” pasteurized milk ordinance.

The department shall adopt, by rule, the “*Grade ‘A’ Pasteurized Milk Ordinance, 1989 Revision*”, including a subsequent revision of the ordinance. If the ordinance specifies that compliance with a provision of the ordinance’s appendices is mandatory, the department shall also adopt that provision. The department shall not amend the ordinance, unless the department explains each amendment and reasons for the amendment in the Iowa administrative bulletin when the rules are required to be published pursuant to chapter 17A. The department shall administer this chapter consistent with the provisions of the ordinance.

91 Acts, ch 74, §12 SF 525

NEW section

192.103 Sale of grade “A” milk to final consumer — impoundment of adulterated or misbranded milk.

Only grade “A” pasteurized milk and milk products shall be sold to the final consumer, or to restaurants, soda fountains, grocery stores, or similar establishments; except in an emergency, the sale of pasteurized milk and milk products which have not been graded, or the grade of which is unknown, may be authorized by the secretary, in which case, such products shall be labeled “*ungraded*”.

No person shall within the state produce, provide, sell, offer, or expose for sale, or have in possession with intent to sell, any milk or milk product which is adulterated or misbranded; except, in an emergency, the sale of pasteurized milk and milk products which have not been graded, or the grade of which is unknown, may be authorized by the secretary, in

which case such products shall be labeled “ungraded”.

Any adulterated or misbranded milk or milk product may be impounded by the secretary or authorized municipal corporation and disposed of in accordance with applicable laws or regulations.

91 Acts, ch 74, §14 SF 525
1991 amendment, striking unnumbered paragraphs 4 through 7, effective January 1, 1992, 91 Acts, ch 74, §26 SF 525
Unnumbered paragraphs 4 7 stricken
Section transferred from §192 11 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.104 Coloring rejected milk.

It shall be the duty of the milk or cream grader to thoroughly mix with all rejected milk or cream, a harmless coloring matter as will prevent all such rejected milk from being offered for sale.

Section transferred from §192 64 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.105 and 192.106 Reserved.

PERMITS — INSPECTIONS

192.107 Milk or milk products permit.

A person who does not possess a permit issued by the department shall not bring, send, or receive into the state for sale, or sell, offer for sale, or store any milk or milk product as provided in this chapter and in chapters 190 and 191. However, the department may exempt from this requirement grocery stores, restaurants, soda fountains, or similar establishments where milk or a milk product is served or sold at retail, but not processed.

Only a person who complies with the requirements of this chapter and chapters 190 and 191 shall be entitled to receive and retain a permit from the department. Permits shall not be transferable with respect to persons or locations.

The department shall suspend a permit whenever there is reason to believe that a public health hazard exists, whenever the permit holder has violated any of the requirements of this chapter, chapter 190, or chapter 191, or whenever the permit holder has interfered with the department in the performance of its duties. However, where the milk or milk product involved creates, or appears to create, an imminent hazard to the public health, or in any case of a willful refusal to permit authorized inspection, the department shall serve upon the holder a written notice of intent to suspend the permit. The notice shall specify with particularity the violations in question and afford the holder such reasonable opportunity to correct such violations as may be agreed to by the parties, or in the absence of agreement, established by the secretary before making any order of suspension effective. A suspension of permit shall remain in effect until the violation has been corrected to the satisfaction of the department. As used in this section, the terms “public health hazard” and “imminent hazard” shall be defined by rules adopted by the department. The rules shall include examples of public health hazards and imminent hazards.

Upon written application of any person whose permit has been suspended, or upon application within forty-eight hours of any person who has been served with a notice of intention to suspend, and in the latter case before suspension, the department shall within seventy-two hours proceed to a hearing to ascertain the facts of such violation or interference and upon evidence presented at such hearing shall affirm, modify, or rescind the suspension or intention to suspend.

Upon repeated violation, the department may revoke a permit following reasonable notice to the permit holder and an opportunity for a hearing. This section is not intended to preclude the institution of a court action provided in this chapter, chapter 190, or chapter 191.

The provisions of this section are intended for the regulation of the production, processing, labeling, and distribution of grade “A” milk and grade “A” milk products under sanitary requirements which are uniform throughout the state.

91 Acts, ch 74, §13 SF 525
1991 amendment effective January 1, 1992, 91 Acts, ch 74, §26 SF 525
Section amended
Section transferred from §192 5 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.108 Administration of the chapter — inspections required.

The department shall administer this chapter and rules adopted pursuant to this chapter. The department is responsible for the inspection of a dairy farm, milk plant, transfer station, or receiving station to ensure compliance with this chapter and chapters 190 and 191. Whenever practical, the department shall enter into an inspection contract with a person qualified to perform inspection services if the agreement for the services is cost-effective and the quality of inspection ensures compliance with state and federal law. A person entering into an inspection contract with the department for the purpose of inspecting premises, taking samples, or testing samples, shall be deemed to be an agent of the department, and shall have the same authority under this chapter provided to the department, unless the contract specifies otherwise. The department shall review inspection services performed by a person under an inspection contract to ensure quality cost-effective inspections. If a person is acting in a manner which is inconsistent with the provisions of the applicable chapter or contract, the department may revoke the inspection contract after notice and hearing, in the manner described for permit revocation in section 192.107 and perform such acts as are necessary to enforce this chapter. Except as provided in this chapter or chapter 194, a person shall not charge a milk plant, receiving station, or transfer station a fee for inspection relating to milk or milk products.

91 Acts, ch 74, §19 SF 525
1991 amendment effective January 1, 1992, 91 Acts, ch 74, §26 SF 525
Section amended
Section transferred from §192 48 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.109 Certification of grade "A" label.

The Iowa department of public health shall annually survey and certify all milk labeled grade "A" pasteurized and grade "A" raw milk for pasteurization, and, in the event a survey shows the requirements for production, processing, and distribution for such grade are not being complied with, the fact thereof shall be certified by the Iowa department of public health to the secretary of agriculture who shall proceed with the provisions of section 192.107 for suspending the permit of the violator or who, if the secretary did not issue such permit, shall withdraw the grade "A" declared on the label.

Section transferred from §192 31 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.110 Rating required to retain permit.

A pasteurized milk and milk products sanitation compliance rating of ninety percent or more calculated according to the rating system as contained in the federal public health service publications, "*Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers 1989*" and "*Method of Making Sanitation Ratings of Milk Supplies, 1987 Revision*", is necessary to receive or retain a permit under section 192.107. The applicable provisions of these publications are incorporated into this section by this reference. A copy of each publication shall be on file with the department or in the office of the person subject to an inspection contract as provided in section 192.108.

91 Acts, ch 74, §18 SF 525

1991 amendment effective January 1, 1992, 91 Acts, ch 74, §26

Section amended

Section transferred from §192 33 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.111 Inspection fees and milk fund.

1. Except as otherwise provided in this section, a milk plant which is not a receiving station shall pay an inspection fee not greater than one thousand dollars per year. A transfer station shall pay an inspection fee not greater than two hundred dollars per year. A milk hauler shall pay an inspection fee not greater than twenty-five dollars per year. The secretary shall fix the fees annually. The fees shall be paid on July 1 of each year.

2. A purchaser of milk from a grade "A" milk producer shall pay an inspection fee not greater than one point five cents per hundredweight. The fee shall be payable monthly to the secretary in a manner prescribed by the secretary. A fee imposed under this subsection shall not be paid on milk subject to inspection by a municipal corporation pursuant to section 192.103.

3. a. Fees collected under this section and moneys appropriated to the department for dairy control shall be deposited in the milk fund which is established in the office of the treasurer of state. All moneys deposited in the milk fund are appropriated for the costs of inspection, sampling, analysis, and other expenses necessary for the administration of this

chapter and chapters 194 and 195. All moneys in the milk fund are subject to audit by the auditor of state. The milk fund is subject at all times to warrants by the director of revenue and finance, drawn upon written requisition of the secretary. Notwithstanding section 8.33, moneys, including interest earned, in the milk fund shall remain from year to year and shall not revert to the general fund.

b. If there is an unencumbered balance of funds in the milk fund on June 30 of any fiscal year equal to or exceeding one hundred fifty thousand dollars, the secretary shall reduce the fees provided for in subsection 2 of this section and section 194.20 for the next fiscal year in an amount which will result in an ending estimated balance for June 30 of the next fiscal year of one hundred fifty thousand dollars.

c. Notwithstanding the provisions of paragraph "a", and sections 192.133, 194.14, 194.19, 194.20, and 195.9 directing that fees collected and appropriations made for dairy control be deposited into the milk fund, for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, all fees collected under those sections shall be deposited into the general fund of the state. All moneys deposited in the general fund under this section shall be appropriated for the costs of inspection, sampling, analysis, and other expenses necessary for the administration of this chapter and chapters 194 and 195. Such appropriations shall not be deposited into the milk fund.

91 Acts, ch 260, §1214 HF 173

Restrictions on use of moneys deposited in state general fund, see 91 Acts, ch 263, §38 SF 209

Subsection 3, NEW paragraph c

Section transferred from §192 47 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.112 through 192.114 Reserved.

SANITATION — LABORATORIES

192.115 Sanitary regulations.

Every person who deals in or manufactures dairy products or imitations thereof shall maintain the person's premises, utensils, wagons, and equipment in a clean and hygienic condition.

Section transferred from §192 34 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.116 Bacteriologists.

The department of agriculture and land stewardship may employ dairy specialists or bacteriologists who shall devote their full time to the improvement of sanitation in the production, processing and marketing of dairy products. Said dairy specialists and bacteriologists shall have qualifications as to education and experience and such other requirements as the secretary may require.

Section transferred from §192 35 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.117 Duties.

Said dairy specialists and bacteriologists employed by the department shall co-operate with the dairy and food inspectors of the department and

with the health departments of cities for sanitary control of the production, processing, and marketing of dairy products. The department shall provide adequate laboratory facilities for the efficient performance of their duties.

Section transferred from §192 36 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.118 Certified laboratories.

To insure uniformity in the tests and reporting, an employee certified by the United States public health service of the bacteriological laboratory of the department shall annually certify, in accordance with the United States food and drug administration publication *“Evaluation of Milk Laboratories”* (1985 revision), all laboratories doing work in the sanitary quality of milk and dairy products for public report. The approval by the department shall be based on the evaluation of these laboratories as to personnel training, laboratory methods used, and reporting. The results on tests made by approved laboratories shall be reported to the department on request, on forms prescribed by the secretary of agriculture, and such reports may be used by the department.

The department shall annually certify, in accordance with the United States food and drug administration publication *“Evaluation of Milk Laboratories”* (1985 revision), every laboratory in the state doing work in the sanitary quality of milk and dairy products for public report. The certifying officer may enter any such place at any reasonable hour to make the survey. The management of the laboratory shall afford free access to every part of the premises and render all aid and assistance necessary to enable the certifying officer to make a thorough and complete examination.

91 Acts, ch 74, §21 SF 525

1991 amendment effective January 1, 1992, 91 Acts, ch 74, §26 SF 525

Section amended

Section transferred from §192 63 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.119 and 192.120 Reserved.

CONTAINERS

192.121 Container defined.

As used in this chapter, *“container”* means a rigid or nonrigid receptacle, including but not limited to a can, bottle, case, paper carton, cask, keg, or barrel.

91 Acts ch 74, §20 SF 525

1991 amendment effective January 1, 1992, 91 Acts, ch 74, §26 SF 525

Section stricken and rewritten

Section transferred from §192 56 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.122 Milk bottles to be marked.

Bottles or jars used for the sale of milk shall have clearly blown or permanently marked in the side of the bottle, the capacity of the bottle, and on the bottom of the bottle the name, initials, or certification mark of the manufacturer. The designating number shall be furnished by the department on request.

Section transferred from §192 57 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.123 Adoption of brand.

With the approval of the department any person who deals in or transports milk, cream, skimmed milk, buttermilk, or ice cream may adopt a distinctive mark or brand to be placed upon any container owned or used by the person, and the same may be registered with the department.

Section transferred from §192 58 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.124 Retention of marked container.

No person shall, without the consent of the owner, retain for a longer period than three days a container bearing a registered mark, and any person receiving such a container shall immediately return it to the owner by a common carrier. A receipt from a common carrier shall be prima-facie evidence that such container was returned.

Section transferred from §192 59 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.125 Return of bottles.

Milk and cream bottles bearing registered marks shall be returned by delivering them to the owner or the owner’s agent in person or by leaving them where they may be picked up by the owner.

Section transferred from §192 60 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.126 Stray containers.

When any person comes into possession of a container bearing a registered mark which belongs to another whose name and address the person does not know, the person shall immediately notify the department in writing, giving the size, shape, and mark of the container. Upon receipt of shipping directions from the department the person shall at once forward the container by a common carrier, collect, to the address furnished. Milk or cream bottles need not be returned when the cost of return is greater than the market value of the bottles.

Section transferred from §192 61 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.127 Registered mark.

No person shall for any purpose use any registered mark or any container bearing such mark, or remove or alter any such mark placed upon a container without the consent of the owner.

Section transferred from §192 62 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.128 through 192.30 Reserved.

TESTING FOR MILK FAT

192.131 Testing milk or cream — license.

Every person testing cream or milk to determine the percent of milk fat as a basis for fixing the purchase price shall secure a milk tester’s license from the department and shall make tests only by such process as has been approved by said department. Each composite sample taken shall cover a period of not more than sixteen days and all such composite samples shall cover the same period of time.

Section transferred from §192 37 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.132 Examination.

Each applicant for such a license shall be required to submit to examination and by actual demonstration show that the applicant is competent to test cream and milk according to an approved process.

Section transferred from §192 38 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.133 License term — fees.

A license, unless earlier revoked, is valid until July 1 after the date of its issuance. The maximum fee for a license is twenty-five dollars, which shall be paid before the license is issued, and standard test bottles and pipettes shall be furnished at actual cost. Fees collected under this section shall be deposited in the milk fund established in section 192.111.

See §192 111, subsection 3, paragraph c, and related footnote
Section transferred from §192 40 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.134 Substitute tester.

With the approval of the department any licensee may for valid reasons appoint a person to act for the licensee, not to exceed a period of fourteen days.

Section transferred from §192 42 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.135 False tests.

No person shall falsely manipulate or misread the Babcock test or any other milk or cream testing apparatus. The writing of a check or payment of money for cream or milk at any given test shall constitute prima-facie evidence that such test was made.

Section transferred from §192 43 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.136 Tests by unlicensed person.

The testing of each lot of milk or cream by an unlicensed person shall constitute a separate offense.

Section transferred from §192 44 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.137 Actions for purchase price — proof.

In an action by the vendor for the purchase price of cream or milk, sold on test to be made by the vendee, the burden of establishing the proper use of an approved test shall be upon the vendee.

Section transferred from §192 45 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.138 through 192.140 Reserved.

COTTAGE CHEESE — BUTTER

192.141 Grade standards for cottage cheese.

The department may establish grade “A” standards for cottage cheese dry curd, cottage cheese, and low fat cottage cheese as a part of the ordinance required by this chapter. However, a governmental body, including the department, a county as provided in chapter 331, or a city as provided in chapter 364 shall not require a grade “A” rating for these products as a condition precedent to their sale.

91 Acts, ch 74, §15, 16, 25 SF 525
1991 amendment effective January 1, 1992, 91 Acts, ch 74, §26 SF 525
Unnumbered paragraph 1 stricken
Unnumbered paragraph 2 amended
Section transferred from §192 30 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.142 Butter score required.

All butter carrying “AA”, “AB” and “C” grades shall score in conformity with U. S. D. A. standards.

Section transferred from §192 55 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.143 Imitation butter.

Imitation butter shall be sold only under the name of oleomargarine, and no person shall use in any way, in connection or association with the sale or exposure for sale or advertisement of any such product, the word “butter”, “creamery”, or “dairy”, or the name or representation of any breed of dairy cattle, or any combination of such word or words and representation, or any other words or symbols or combination thereof commonly used in the sale of butter.

Section transferred from §192 54 pursuant to directive in 91 Acts, ch 74, §25 SF 525

192.144 and 192.145 Reserved.

INJUNCTIONS

192.146 Injunction for violations.

A person who violates any provision of this chapter, chapter 190, or chapter 191, or a rule adopted under any of those chapters may be enjoined from continuing such violations. Each day upon which such a violation occurs constitutes a separate violation.

91 Acts, ch 74 §17 SF 525
1991 amendment effective January 1 1992 91 Acts ch 74 §26
Section amended
Section transferred from §192 32 pursuant to directive in 91 Acts ch 74 §25 SF 525

CHAPTER 192A

MARKETING OF DAIRY PRODUCTS

192A.30 Permit fees.

For the purpose of administering and enforcing this chapter, a processor or a person purchasing milk products from a processor for wholesale distribution shall obtain a permit, as provided by departmental rule, before milk products are sold by the person or wholesale purchaser in this state. The processor or wholesale purchaser shall pay to the secretary a permit fee in an amount set by the secretary, not to exceed five mills per hundredweight on milk processed into dairy products as defined in section 192A.1, and sold within the state of Iowa. However, the permit fee for the sale of ice cream or an additive variant of ice cream or nonmilk-fat imitation shall not exceed

three mills per gallon. Products upon which fees have been paid are exempt from further fees in successive transactions. The fees for each month thus computed shall be paid to the secretary on or before the twenty-fifth day of the following month.

Notwithstanding the provisions of this section, fees paid to the secretary shall not be deposited into the dairy trade practices trust fund for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, but shall be deposited into the general fund of the state.

91 Acts, ch 260, §1215 HF 173

Restrictions on use of moneys deposited in state general fund, see 91 Acts, ch 263, §38 SF 209

NEW unnumbered paragraph 2

CHAPTER 194

GRADES OF MILK

194.20 Inspection fees — grade “B” milk.

A purchaser of milk from a grade “B” milk producer shall pay an inspection fee not greater than one-half cent per hundredweight. The fee is payable monthly to the department at a time prescribed by the department. A fee imposed by this section shall not be paid on milk by a person administering the inspection pursuant to an inspection contract as provided in section 192.108. Fees collected under this section shall be deposited in the milk fund established in section 192.111.

91 Acts, ch 74, §22 SF 525

See §192.111, subsection 3, paragraph c, and related footnote

1991 amendment effective January 1 1992, 91 Acts, ch 74, §26 SF 525

Section amended

194.21 Bulk tanks on farms for milk.

Any producer using a bulk tank for cooling and storage of milk to be used for manufacturing purposes shall have an enclosed milk room which shall conform to the standards provided by this section. The floor shall be constructed of concrete or other impervious material, maintained in good repair, and graded to provide proper drainage. The walls and ceilings of the room shall be sealed and constructed of smooth easily cleaned material. All windows shall be screened and doors shall be self-closing. It shall be well ventilated and must meet the following requirements:

1. The bulk tank shall not be located over a drain or under a ventilator.
2. The hose port shall be located in an exterior wall and fitted with a tight self-closing door.
3. A two hundred twenty volt lock type electrical connection with ground and weatherproof type receptacle and switchbox shall be provided near the hose port.
4. Each milk room shall have an adequate supply of water readily accessible with facilities for heating the water, to insure the cleaning and sanitizing of the bulk tank, utensils and equipment and the keeping of the milk room clean.
5. No lights shall be placed directly over the bulk tank.
6. The bulk tank shall be properly located in the milk room for easy access to all areas for cleaning and servicing.
7. The enforcement of this section shall be administered by the department of agriculture and land stewardship.
8. Any person violating any provisions of this section shall be guilty of a simple misdemeanor.

Section transferred from §192.66 pursuant to directive in 91 Acts, ch 74, §25 SF 525

194.22 through 194.24 Reserved.

CHAPTER 198

COMMERCIAL FEED

198.3 Definitions.

For the purposes of this chapter:

1. "*Brand name*" means any word, name, symbol, or device or any combination thereof, identifying the commercial feed of a distributor and distinguishing it from that of others.

2. "*Broker*" means a person, other than a licensed manufacturer, who distributes commercial feed or commercial feed ingredients to a manufacturer.

3. "*Commercial feed*" means all materials except whole seeds unmixed or physically altered entire unmixed seeds, when not adulterated within the meaning of section 198.7, subsection 1, which are distributed for use as feed or for mixing in feed. The secretary by rule may exempt from this definition, or from specific provisions of this chapter, commodities such as hay, straw, stover, silage, cobs, husks, hulls and individual chemical compounds or substances when such commodities, compounds or substances are not intermixed or mixed with other materials, and are not adulterated within the meaning of section 198.7, subsection 1.

4. "*Contract feeder*" means a person who as an independent contractor, feeds commercial feed to animals pursuant to a contract whereby such commercial feed is supplied, furnished or otherwise provided to such person and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits or amount or quality of product.

5. "*Customer-formula feed*" means commercial feed which consists of a mixture of commercial feeds or feed ingredients, or both, each batch of which is manufactured according to the specific instructions of the final purchaser.

6. "*Distribute*" means either of the following:

a. To offer for sale, sell, exchange, or barter commercial feed.

b. To supply, furnish, or otherwise provide commercial feed to a contract feeder.

7. "*Distributor*" means any person who distributes.

8. "*Drug*" means any article intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in animals other than man and articles other than feed intended to affect the structure or any function of the animal body.

9. "*Feed ingredient*" means each of the constituent materials making up a commercial feed.

10. "*Label*" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the in-

voice or delivery slip with which a commercial feed is distributed.

11. "*Labeling*" means all labels and other written, printed or graphic matter upon a commercial feed or any of its containers or wrappers or, accompanying such commercial feed.

12. "*Manufacture*" means to grind, mix or blend or further process a commercial feed for distribution.

13. "*Mineral feed*" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

14. "*Official sample*" means a sample of feed taken by the secretary or the secretary's agent in accordance with the provisions of section 198.11, subsection 3, 5 or 6.

15. "*Percent*" or "*percentages*" means percentages by weight.

16. "*Pet*" means any domesticated animal normally maintained in or near the household of the owner thereof.

17. "*Pet food*" means any commercial feed prepared and distributed for consumption by dogs or cats.

18. "*Product name*" means the name of the commercial feed which identifies it as to kind, class, or specific use.

19. "*Specialty pet*" means any domesticated animal pet normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes and turtles.

20. "*Specialty pet food*" means any commercial feed prepared and distributed for consumption by specialty pets.

21. "*Ton*" means a net weight of two thousand pounds avoirdupois.

91 Acts, ch 97, §24 HF 198
Subsection 1 amended

198.5 Labeling.

A commercial feed shall be labeled as follows:

1. In case of a commercial feed, except a customer-formula feed, it shall be accompanied by a label bearing the following information:

a. The net weight.

b. The product name and the brand name, if any, under which the commercial feed is distributed.

c. The guaranteed analysis stated in such terms as the secretary by rule determines is required to advise the user of the composition of the feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods such as the methods published by the association of official analytical chemists.

d An ingredient statement containing the common or usual name of each ingredient used in the manufacture of the commercial feed. However, the secretary by rule may permit the use of a collective term for a group of ingredients which perform a similar function, or the secretary may exempt such commercial feeds, or any group of them, from this requirement if the secretary finds that a statement is not required in the interest of consumers.

e The name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed.

f Adequate directions for use for all commercial feeds containing drugs and for such other feeds as the secretary may require by rule as necessary for their safe and effective use.

g Such precautionary statements as the secretary by rule determines are necessary for the safe and effective use of the commercial feed.

2. In the case of a customer-formula feed, it shall be accompanied by a label, invoice, delivery slip or other shipping document, bearing the following information:

a Name and address of the manufacturer.

b Name and address of the purchaser.

c Date of delivery.

d The product name and brand name, if any, and the net weight of each commercial feed used in the mixture, and the net weight of each other ingredient used.

e Adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the secretary may require by rule as necessary for their safe and effective use.

f Such precautionary statements as the secretary by rule determines are necessary for the safe and effective use of the customer-formula feed.

g If a drug-containing product is used, information relating to the purpose of the medication in the form of a claim statement, plus the established name of each active drug ingredient and the level of each drug used in the final mixture.

91 Acts ch 97 §25 HF 198
Subsection 2 paragraph d amended

198.9 Inspection fees and reports.

1. An inspection fee to be fixed annually by the secretary at a rate of not more than sixteen cents per ton, shall be paid on commercial feed distributed in this state by the person who first distributes the commercial feed, subject to the following:

a The inspection fee is not required on the first distribution, if made to a qualified buyer who, with approval from the secretary, shall become responsible for the fee.

b A fee shall not be paid on a commercial feed if the payment has been made by a previous distributor.

c A fee shall not be paid on customer-formula feeds if the inspection fee is paid on the commercial feeds which are used as components of the customer-formula feeds.

d A minimum semiannual fee shall be twenty dollars.

e A licensed manufacturer shall pay the inspection fee on commercial feed that is fed to livestock owned by the licensee.

In the case of a pet food or specialty pet food, which is distributed in this state in packages of ten pounds or less, each product shall be registered and an annual registration fee of fifty dollars for each product shall be paid by January 1 of each year in lieu of the per ton rate as provided in this subsection. The inspection fee shall apply to those same products distributed in packages of more than ten pounds.

2. Each person who is liable for the payment of such fee shall:

a File, not later than the last day of January and July of each year, a semiannual statement, setting forth the number of net tons of commercial feeds distributed in this state during the preceding six months and upon filing the statement shall pay the inspection fee at the rate stated in subsection 1. Inspection fees which are due and owing and have not been remitted to the secretary within fifteen days following the due date shall have a delinquency fee of ten percent of the amount due or fifty dollars, whichever is greater, added to the amount due when payment is finally made. The assessment of this delinquency fee does not prevent the department from taking other actions as provided in this chapter.

b Keep such records as may be necessary or required by the secretary to indicate accurately the tonnage of commercial feed distributed in this state, and the secretary shall have the right to examine such records to verify statements of tonnage.

Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided in this section is sufficient cause for cancellation of the license of the distributor.

3. Fees collected shall constitute a fund for the payment of the costs of inspection, sampling, analysis, supportive research and other expenses necessary for the administration of this chapter.

If there is an unencumbered balance of funds in the commercial feed fund on June 30 of any fiscal year equal to or exceeding one hundred thousand dollars, the secretary of agriculture shall reduce the per ton fee provided for in subsection 1 for the next fiscal year in such amount as will result in an ending estimated balance for June 30 of the next fiscal year of one hundred thousand dollars.

The secretary shall publish a report not later than September 1 of each year. The report shall provide a detailed accounting of all sources of revenue and all dispositions of funds utilized by the commercial feed trust fund. The report shall detail full-time equivalent positions used in fulfilling the requirements of this chapter. The report shall also indicate to what extent any full-time equivalent positions are shared with other programs. Copies of the report issued by the secretary pursuant to this subsection shall be delivered each year to the members of the house of rep-

representatives and senate standing committees on agriculture.

Notwithstanding the provisions of this subsection directing that fees collected be deposited into the commercial feed fund, for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, all fees collected shall be deposited into the general fund of the state.

91 Acts, ch 97, §26 HF 198, 91 Acts, ch 260, §1216 HF 173
Restrictions on use of moneys deposited in state general fund, see 91 Acts, ch 263, §38 SF 209

Subsection 2, paragraph b, unnumbered paragraph 2 amended
Subsection 3, NEW unnumbered paragraph 4

198.10 Rules.

1. The secretary may adopt rules for commercial feeds and pet foods as specifically authorized in this chapter and other reasonable rules necessary in order to carry out the purpose and intent of this chapter or to secure the efficient enforcement of this chapter. In the interest of uniformity the secretary shall by rule adopt, unless the secretary determines that they are inconsistent with this chapter or are not appropriate to conditions which exist in this state, the following:

a. The official definitions of feed ingredients and official feed terms adopted by the Association of American Feed Control Officials and published in the official publication of that organization, and

b. Any rule adopted pursuant to the authority of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq., provided the secretary has the authority under this chapter to adopt such rules.

2. Before the issuance, amendment, or repeal of a rule authorized by this chapter, the secretary shall publish the proposed rule, amendment, or notice to repeal an existing rule in a manner reasonably calculated to give interested parties, including all current licensees, adequate notice, and shall afford all interested persons an opportunity to be heard, orally or in writing, within a reasonable period of time. After consideration of all views presented by interested persons, the secretary shall take appropriate action to issue the proposed rule or to amend or repeal an existing rule. However, if the secretary, pursuant to this chapter, adopts the official definitions of feed ingredients or official feed terms as adopted by the association of American feed control officials, or regulations promulgated pursuant to the authority of the federal Food, Drug, and Cosmetic Act, any amendment or modification adopted by that association, or by the secretary of health and human services in the case of regulations promulgated pursuant to the federal Food, Drug, and Cosmetic Act, shall be adopted

automatically under this chapter without regard to publication of the notice required by this subsection, unless the secretary by order specifically determines that an amendment or modification shall not be adopted.

91 Acts, ch 97, §27 HF 198
Subsection 2 amended

198.12 Detained commercial feeds.

1. When the secretary or the secretary's authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this chapter or of any of the rules adopted under this chapter, the secretary or agent may issue and enforce a written or printed "withdrawal from distribution" order, warning the distributor not to dispose of the lot of commercial feed in any manner until written permission is given by the secretary or the court. The secretary shall release the lot of commercial feed so withdrawn when the provisions and rules have been complied with. If compliance is not obtained within thirty days, the secretary may begin, or upon request of the distributor shall begin, proceedings for condemnation.

2. Any lot of commercial feed not in compliance with said provisions and rules shall be subject to seizure on complaint of the secretary to a court of competent jurisdiction in the area in which said commercial feed is located. In the event the court finds the said commercial feed to be in violation of this chapter and order the condemnation of said commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state, provided, that in no instance shall the disposition of said commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial feed or for permission to process or relabel said commercial feed to bring it into compliance with this chapter.

91 Acts, ch 97, §28 HF 198
Subsection 1 amended

198.15 Publication.

The secretary shall publish at least annually, in forms the secretary deems proper, information concerning the sales of commercial feeds, together with data on their production and use as the secretary considers advisable, and a report of the results of the analyses of official samples of commercial feeds sold within the state as compared with the analyses guaranteed on the label. However, the information concerning production and use of commercial feed shall not disclose the operations of any person.

91 Acts, ch 97, §29 HF 198
Section amended

CHAPTER 200

FERTILIZERS AND SOIL CONDITIONERS

200.9 Fertilizer fund.

Fees collected for licenses and inspection fees under sections 200.4 and 200.8, with the exception of those fees collected for deposit in the agriculture management account of the groundwater protection fund, shall be deposited in the treasury to the credit of the fertilizer fund to be used only by the department for the purpose of inspection, sampling, analysis, preparation, and publishing of reports and other expenses necessary for administration of this chapter. The secretary may assign moneys to the Iowa agricultural experiment station for research, work projects, and investigations as needed for the specific purpose of improving the regulatory functions for enforcement of this chapter.

Notwithstanding the provisions of this section and section 201.13 directing that those fees collected under sections 200.4 and 200.8 and moneys received under chapter 201 be deposited into the fertilizer fund, for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, all such fees and moneys shall be deposited into the general fund of the state. Moneys received under chapter 201 and deposited into the general fund of the state as a result of this paragraph are appropriated for purposes of section 201.13.

91 Acts, ch 260, §1217 HF 173
Restrictions on use of moneys deposited in state general fund, see 91 Acts, ch 263, §38 SF 209
Availability of state general fund for payment of expenses, see 91 Acts, ch 264, §905 SF 532
NEW unnumbered paragraph 2

CHAPTER 201

AGRICULTURAL LIME

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 and land stewardship 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.

See §200.9 and related footnotes
Footnote added, section not amended

CHAPTER 204

UNIFORM CONTROLLED SUBSTANCES (DRUGS)

204.101 Definitions.

As used in this chapter:

1. “*Administer*” means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

- a. A practitioner, or in the practitioner’s presence, by the practitioner’s authorized agent; or
- b. The patient or research subject at the direction and in the presence of the practitioner.

Nothing contained in this chapter shall be construed to prevent a physician, dentist, podiatrist or veterinarian from delegating the administration of controlled substances under this chapter to a nurse, intern, or other qualified individual or, as to veterinarians, to an orderly or assistant, under the veterinarian’s direction and supervision; all pursuant to rules adopted by the board.

2. “*Agent*” means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouse, or employee of the carrier or warehouse.

3. “*Board*” means the state board of pharmacy examiners.

4. “*Bureau*” means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.

5. “*Controlled substance*” means a drug, substance, or immediate precursor in schedules I through V of division II of this chapter.

6. “*Counterfeit substance*” means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

7. “*Deliver*” or “*delivery*” means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

8. “*Department*” means the department of public safety of the state of Iowa.

9. “*Dispense*” means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

10. “*Dispenser*” means a practitioner who dispenses.

11. “*Distribute*” means to deliver other than by administering or dispensing a controlled substance.

12. “*Distributor*” means a person who distributes.

13. “*Drug*” means:

a. Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

b. Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

c. Substances, other than food, intended to affect the structure or any function of the human body or animals; and

d. Substances intended for use as a component of any article specified in paragraphs “a”, “b”, or “c” of this subsection. It does not include devices or their components, parts, or accessories.

14. “*Immediate precursor*” means a substance which the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

15. “*Isomer*” means the optical isomer, except as used in section 204.204, subsection 4, section 204.204, subsection 9, paragraph “b”, and section 204.206, subsection 2, paragraph “d”. As used in section 204.204, subsection 4, and section 204.204, subsection 9, paragraph “b”, “*isomer*” means the optical, positional, or geometric isomer. As used in section 204.206, subsection 2, paragraph “d”, “*isomer*” means the optical or geometric isomer.

16. “*Manufacture*” means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for the individual’s own use, or the preparation, compounding, packaging, or labeling of a controlled substance:

a. By a practitioner as an incident to administering or dispensing of a controlled substance in the course of the practitioner’s professional practice, or

b. By a practitioner, or by an authorized agent

under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

17. "*Marijuana*" means all parts of the plants of the genus *cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, including tetrahydrocannabinols. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

18. "*Narcotic drug*" means any of the following, 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.

b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph "a", but not including the isoquinoline alkaloids of opium.

c. Opium poppy and poppy straw.

19. "*Opiate*" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section 204.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

20. "*Opium poppy*" means the plant of the species *Papaver somniferum* L., except its seeds.

21. "*Person*" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

22. "*Poppy straw*" means all parts, except the seeds, of the opium poppy, after mowing.

23. "*Practitioner*" means either:

a. A physician, dentist, podiatrist, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

b. A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

24. "*Production*" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

25. "*Simulated controlled substance*" means a substance which is not a controlled substance but which is expressly represented to be a controlled substance, or a substance which is not a controlled substance but which is impliedly represented to be a controlled substance and which because of its nature, packaging, or appearance would lead a reasonable person to believe it to be a controlled substance.

26. "*State*," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession, and any area subject to the legal authority of the United States of America.

27. "*Ultimate user*" means a person who lawfully possesses a controlled substance for the person's own use or for the use of a member of the person's household or for administering to an animal owned by the person or by a member of the person's household.

91 Acts, ch 8, §1 SF 116

Subsection 15 amended and subsections renumbered to alphabetize

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. Etoxeridine.
- y. Furethidine.
- z. Hydroxypethidine.
- aa. Ketobemidone.
- ab. Levomoramide.
- ac. Levophenacylmorphan.

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
at Beta-hydroxy-3-methylfentanyl (other name N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide)

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 Hydromorphinol
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-dimethoxy-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 sub section 8 Meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemare, 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 sp*, and synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following

(1) 1 *cis* or *trans* tetrahydrocannabinol, and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the United States food and drug administration

(2) 6 *cis* or *trans* tetrahydrocannabinol, and their optical isomers

(3) 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-thienyl analog of phencyclidine, TPCP, TCP

y 1-[1-(2-thienyl)cyclohexyl]-pyrrolidine Some trade or other names TXPy

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 Fenethylamine

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

9 *Other materials* Any material, compound, mixture, or preparation which contains any quantity of the following substances

a 3-methylfentanyl (N-[3-methyl-1-[2-phenylethyl]-4-piperidyl]-N-phenylpropanamide), its optical and geometric isomers, salts and salts of isomers

b 3,4-methylenedioxyamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers

c 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts, and salts of isomers

d 1-(2-phenylethyl)-4-phenyl-4-acetyloxypiperidine (PEPAP), its optical isomers, salts and salts of isomers

e N-[1-(1-methyl-2-phenyl)ethyl-4-piperidyl]-N-phenylacetamide (acetyl-alpha-methylfentanyl), its optical isomers, salts and salts of isomers

f N-[1-(1-methyl-2-(2-thienyl)ethyl-4-piperidyl)-N-phenylpropanamide (alpha-methylthiofentanyl), its optical isomers, salts, and salts of isomers

g N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (denzylfentanyl), its optical isomers, salts and salts of isomers

h N-[1-(2-hydroxy-2-phenyl)ethyl-4-piperidyl]-N-phenylpropanamide (beta-hydroxyfentanyl), its optical isomers, salts and salts of isomers

i N-[3-methyl-1-(2-hydroxy-2-phenyl)ethyl-4-piperidyl]-N-phenylpropanamide (beta-hydroxy-3-methylfentanyl), its optical and geometric isomers, salts and salts of isomers

j N-[3-methyl-1-(2-(2-thienyl)ethyl-4-piperidyl)-N-phenylpropanamide (3-methylthiofentanyl), its optical and geometric isomers, salts and salts of isomers

k N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thienylfentanyl), its optical isomers, salts and salts of isomers

l N-[1-(2-(2-thienyl)ethyl-4-piperidyl)-N-phenylpropanamide (thiofentanyl), its optical isomers, salts and salts of isomers

m N-[1-(2-phenylethyl)-4-piperidyl] N-(4-fluorophenyl)-propanamide (para-fluorofentanyl), its optical isomers, salts, and salts of isomers

n 3,4-methylenedioxy-N-ethylamphetamine, also known as N-ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, and MDEA

o N-hydroxy-3,4-methylenedioxyamphetamine, also known as N-hydroxy-alpha-methyl-3,4-(methylenedioxy) phenethylamine, and N-hydroxy MDA

p 4-methylaminorex, also known as 2-amino-4-methyl-5-phenyl-2-oxazoline

q N,N-dimethylamphetamine (some other names N,N, alpha-trimethylbenzene-ethanamine, N,N, alpha-trimethylphenethylamine), its salts, optical isomers and salts of optical isomers

91 Acts ch 8 §2 SF 116
Subsection 4 NEW paragraph y

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, nalmefene, 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, dextrophan and levopropoxyphene excepted

- a* Alphaprodine
- b* Alfentanil
- c* Anileridine
- d* Bezitramide
- e* Bulk dextropropoxyphene (nondosage forms)
- f* Carfentanil
- g* Dihydrocodeine
- h* Diphenoxylate
- i* Fentanil
- j* Isomethadone
- k* Levomethorphan

l Levorphanol

m Metazocine

n Methadone

o Methadone-intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane

p Moramide-intermediate, 2-methyl-3-morpholino 1,1-diphenylpropane-carboxylic acid

q Pethidine (meperidine)

r Pethidine-intermediate-A, 4-cyano-1-methyl 4-phenylpiperidine

s Pethidine-intermediate-B, ethyl-4-phenylpiperidine-carboxylate

t Pethidine-intermediate-C, 1-methyl-4-phenylpiperidine 4 carboxylic acid

u Phenazocine

v Piminodine

w Racemethorphan

x Racemorphan

y 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 Glutethimide

c Pentobarbital

d Phencyclidine

e 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 *Hallucinogenic substances* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances

a Marijuana when used for medicinal purposes pursuant to rules of the board of pharmacy examiners.

b Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration approved drug product. [Some other names for dronabinol (6aR-trans)-6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo [b,d] pyran-1-01, or (-)-delta 9-(trans)-tetrahydrocannabinol.]

c Nabilone [another name for nabilone:(+)-trans-3-(1,1-di-methylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy-6,6-dimethyl-9H - dibenzo [b,d] pyran-9-one].

8. The board of pharmacy examiners, by rule, may except any compound, mixture, or preparation containing any stimulant listed in subsection 4 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant effect on the central nervous system, and if the admixtures are included in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

91 Acts ch 8 §3 SF 116

Subsection 5 NEW paragraph b and former paragraphs b d relettered as c e

204.208 Schedule III — substances included.

1. The controlled substances listed in this section are included in schedule III.

2. *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 (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- a* Benzphetamine.
- b* Chlorphentermine.
- c* Clortermine.
- d* Phendimetrazine.

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 having a depressant effect on the central nervous system:

a Any compound, mixture or preparation containing amobarbital, secobarbital, pentobarbital or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedules.

b Any suppository dosage form containing amobarbital, secobarbital, pentobarbital or any salt of any of these drugs and approved by the federal food and drug administration for marketing only as a suppository.

c Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof.

d Chlorhexadol.

e Lysergic acid.

f Lysergic acid amide.

g Methyprylon.

h Sulfondiethylmethane.

i Sulfonethylmethane.

j Sulfonmethane.

k Tiletamine and zolazepam or any salt thereof, including the following:

(1) Some trade or other names for a tiletamine-zolazepam combination product: Telazol.

(2) Some trade or other names for tiletamine: 2-[ethylamino]-2-[2-thienyl]-cyclohexanone.

(3) Some trade or other names for zolazepam: 4-[2-fluorophenyl]-6, 8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7[1H]-one flupyrazapon.

4. *Nalorphine*

5. *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 point eight grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

b Not more than one point eight grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

c Not more than three hundred milligrams of dihydrocodeinone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

d Not more than three hundred milligrams of dihydrocodeinone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

e Not more than one point eight grams of dihydrocodeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

f Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

g Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

h Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

6. *Anabolic steroids.* Anabolic steroids as defined in section 203B.2 and rules of the board adopted pursuant to chapter 17A.

7. The board by rule may except any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections 2 and 3 of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

91 Acts, ch 8, §4 SF 116; 91 Acts, ch 37, §1 SF 308
Subsection 3, paragraph e stricken and former paragraphs f-l relettered as e-k
NEW subsection 6 and former subsection 6 renumbered as 7

204.302 Registration requirements.

1. Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, shall obtain and maintain a biennial registration issued by the board in accordance with its rules.

2. Persons registered by the board under this chapter to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this division.

3. The following persons need not register and may lawfully possess controlled substances under this chapter:

a. An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if the agent or employee is acting in the usual course of the agent's or employee's business or employment.

b. A common or contract carrier or warehouse operator, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment.

c. An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in possession of a schedule V substance.

4. A separate registration is required for each principal place of business or professional practice

where the applicant manufactures, distributes, or dispenses controlled substances.

5. The board may inspect the establishment of a registrant or applicant for registration in accordance with the board's rules.

91 Acts, ch 233, §5 SF 539
Subsection 1 amended

204.304 Revocation and suspension of registration.

1. A registration under section 204.303 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the board upon a finding that the registrant:

a. Has furnished false or fraudulent material information in any application filed under this chapter;

b. Has had the registrant's federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances; or

c. Has been convicted of a public offense under any state or federal law relating to any controlled substance. For the purpose of this section only, a conviction shall include a plea of guilty, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court which forfeiture has not been vacated, or a finding of guilt in a criminal action even though the entry of the judgment or sentence has been withheld and the individual placed on probation.

d. Has committed such acts as would render the registrant's registration under section 204.303 inconsistent with the public interest as determined under that section.

2. The board may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

3. If the board suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances may be forfeited to the state.

4. The board shall promptly notify the bureau and the department of all orders suspending or revoking registration and all forfeitures of controlled substances.

91 Acts, ch 233, §6 SF 539
Subsection 1, NEW paragraph d

CHAPTER 206

PESTICIDES

206.2 Definitions.

When used in this chapter

1 The term "*active ingredient*" means

a In the case of a pesticide other than a plant growth regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests

b In the case of a plant growth regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof

c In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant

d In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue

2 The term "*adulterated*" shall apply to any pesticide if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted

3 The term "*antidote*" means the most practical immediate treatment in case of poisoning and includes first aid treatment

4 "*Certified applicator*" means any individual who is certified under this chapter as authorized to use any pesticide

5 "*Certified commercial applicator*" means a pesticide applicator or individual who applies or uses a pesticide or device on any property of another for compensation

6 "*Certified private applicator*" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person

7 "*Chlordane*" means 1,2,4,5,6,7,8,8-octachloro-4,7-methano-3a,4,7,7a-tetrahydroindane, Octa klor 1068, Velsicol 1068, Dowklor

8 "*Commercial applicator*" means a person, corporation, or employee of a person or corporation who enters into a contract or an agreement for the sake of monetary payment and agrees to perform a service by applying a pesticide but does not include a farmer trading work with another, a person employed by a farmer not solely as a pesticide applicator who applies pesticide as an incidental part of the

person's general duties, or a person who applies pesticide as an incidental part of a custom farming operation

9 The term "*device*" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects, birds, or rodents or destroying, repelling, or mitigating fungi, nematodes, weeds or such other pests as may be designated by the secretary, but not including equipment used for the application of pesticides when sold separately therefrom

10 The term "*distribute*" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state

11 The term "*hazard*" means a probability that a given pesticide will have an adverse effect on man or the environment in a given situation, the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time

12 The term "*inert ingredient*" means an ingredient which is not an active ingredient

13 The term "*ingredient statement*" means either

a A statement of the name and percentage by weight of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide

b When the pesticide contains arsenic in any form, the ingredient statement shall also include percentages of total and water soluble arsenic, each calculated as elemental arsenic

14 The term "*label*" means the written, printed, or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the pesticide or device

15 The term "*labeling*" means all labels and other written, printed or graphic matter

a Upon the pesticide or device or any of its containers or wrappers

b Accompanying the pesticide or device at any time

c To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the United States department of agriculture or interior, the United States public health service, the state agricultural experiment stations, the Iowa State University, the Iowa department of public health, the department of natural resources, or other similar federal institutions or official agencies of this state or other

states authorized by law to conduct research in the field of pesticides.

16. The term “*misbranded*” shall apply:

a. To any pesticide or device if its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

b. To any pesticide:

(1) If it is an imitation of or is offered for sale under the name of another pesticide.

(2) If its labeling bears any reference to registration under this chapter, when not so registered.

(3) If the labeling accompanying it does not contain directions for use which are necessary and if complied with adequate for the protection of the public.

(4) If the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living persons and other vertebrate animals.

(5) If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there is to be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase.

(6) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness as compared with other words, statements, designs, or graphic matter in the labeling and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(7) If in the case of an insecticide, nematocide, fungicide, or herbicide when used as directed or in accordance with commonly recognized practice it shall be injurious to living persons or other vertebrate animals, or vegetation, except weeds, to which it is applied, or to the person applying such pesticide.

(8) If in the case of a plant growth regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such pesticide; provided, that physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant growth regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

17. The term “*permit*” means a written certificate, issued by the secretary or the secretary’s agent under rules adopted by the department authorizing the use of certain state restricted use pesticides.

18. The term “*person*” means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.

19. The term “*pesticide*” shall mean (a) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating directly

or indirectly any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living persons, which the secretary shall declare to be a pest, and (b) any substances intended for use as a plant growth regulator, defoliant or desiccant.

20. The term “*pesticide dealer*” means any person who distributes restricted use pesticides; pesticide for use by commercial or public pesticide applicators; or general use pesticides labeled for agricultural or lawn and garden use with the exception of dealers whose gross annual pesticide sales are less than ten thousand dollars for each business location owned or operated by the dealer.

21. The term “*plant growth regulator*” means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

22. “*Poison control center*” means an entity existing as part of a hospital licensed under chapter 135B which adheres to the standards of the American association of poison control centers.

23. “*Public applicator*” means an individual who applies pesticides as an employee of a state agency, county, municipal corporation, or other governmental agency. This term does not include employees who work only under the direct supervision of a public applicator.

24. The term “*registrant*” means the person registering any pesticide or device or who has obtained a certificate of license from the department pursuant to the provisions of this chapter.

25. The term “*restricted use pesticide*” means any pesticide restricted as to use by rule of the secretary as adopted under section 206.20.

26. “*State restricted use pesticide*” means a pesticide which is restricted for sale, use, or distribution under section 455B.491.

27. “*Toxic to humans*” means not generally recognized as safe as provided by the United States food and drug administration pursuant to 21 C.F.R. pt. 182.

28. The term “*under the direct supervision of*” means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator or a state licensed commercial applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

29. The term “*unreasonable adverse effects on the environment*” means any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.

91 Acts, ch 124, §2 SF 297

Subsections 22 and 27 retroactively applicable to July 1, 1990, and apply to

inert ingredient information received by state officials on and after that date, 91 Acts, ch 124, §4 SF 297
 NEW subsections 22 and 27 and subsections renumbered to alphabetize

206.8 Pesticide dealer license.

1. It shall be unlawful for any person to act in the capacity of a pesticide dealer, or advertise as, or assume to act as a pesticide dealer at any time without first having obtained a license from the secretary which shall expire at the end of the calendar year of issue. A license shall be required for each location or outlet located within this state from which such pesticides are distributed. Any manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes such pesticides directly into this state shall obtain a pesticide dealer license for the manufacturer's, registrant's, or distributor's principal out-of-state location or outlet.

2. A pesticide dealer shall pay by June 30 of each year to the department an annual license fee based on the gross retail sales of all pesticides sold for use in this state by the dealer in the previous year. The license fee shall be set as follows:

a. A pesticide dealer with less than one hundred thousand dollars in gross retail pesticide sales shall have the option to pay a license fee based on one-tenth of one percent of the gross retail pesticide sales in the previous year or to pay a license fee according to the following:

(1) Twenty-five dollars, if the annual gross retail pesticide sales are less than twenty-five thousand dollars.

(2) Fifty dollars, if the annual gross retail pesticide sales are twenty-five thousand dollars or more but less than fifty thousand dollars.

(3) Seventy-five dollars, if the annual gross retail pesticide sales are fifty thousand dollars or more but less than seventy-five thousand dollars.

(4) One hundred dollars, if the annual gross retail pesticide sales are seventy-five thousand dollars or more but less than one hundred thousand dollars.

The secretary shall provide for a three-month grace period for licensure and shall impose a late fee of ten dollars upon the licensure of a dealer applying for licensure during the month of October, a late fee of fifteen dollars upon the licensure of a dealer applying for licensure during the month of November, a late fee of twenty-five dollars upon the licensure of a dealer applying for licensure during the month of December, and a late fee of twenty-five dollars upon the licensure of a dealer applying for licensure for each month after the month of December.

b. A pesticide dealer with one hundred thousand dollars or more in gross retail pesticide sales shall pay a license fee based on one-tenth of one percent of the gross retail pesticide sales in the previous year. The secretary shall provide for a three-month grace period for licensure and shall impose a late fee of two percent of the license fee upon the licensure of a dealer applying for licensure during the month of October, a late fee of four percent of the license fee upon

the licensure of a dealer applying for licensure during the month of November, a late fee of five percent of the license fee upon the licensure of a dealer applying for licensure during the month of December, and a late fee of five percent upon the licensure of a dealer applying for licensure for each month after the month of December.

Up to twenty-five dollars of each annual license fee shall be retained by the department for administration of the program, and the remaining moneys collected shall be deposited in the agriculture management account of the groundwater protection fund.

3. Provisions of this section shall apply to a pesticide applicator who sells pesticides as an integral part of the applicator's pesticide application service, or any federal, state, county, or municipal agency which provides pesticides only for its own programs.

4. Application for a license required for manufacturers and distributors who are not engaged in the retail sale of pesticides shall be accompanied by a twenty-five dollar fee for each business location within the state required to be licensed, and shall be on a form prescribed by the secretary.

91 Acts, ch 89, §1 SF 33
 Subsection 2 amended

206.10 License renewals — delinquent fee.

If the application for renewal of a license provided for in this chapter, other than a pesticide dealer license, is not filed prior to the first of January in any year, a delinquent fee of twenty-five percent shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license is issued. A delinquent fee does not apply if the applicant furnishes an affidavit certifying that the applicant has not applied pesticides after the expiration of the applicant's license. All licenses issued under this chapter expire December 31 each year. However, a license issued to a pesticide dealer expires as provided in section 206.8.

91 Acts, ch 89, §2 SF 33
 Section amended

206.12 Registration.

1. Every pesticide which is distributed, sold, or offered for sale for use within this state or delivered for transportation or transported in intrastate commerce between points within the state through any point outside this state shall be registered with the department of agriculture and land stewardship. All registration of products shall expire on the thirty-first day of December following date of issuance, unless such registration shall be renewed annually, in which event expiration date shall be extended for each year of renewal registration, or until otherwise terminated; provided that:

a. For the purpose of this chapter, fertilizers in mixed fertilizer-pesticide formulations shall be considered as inert ingredients.

b. Within the discretion of the secretary, or the secretary's authorized representative, a change in the labeling or formulae of a pesticide may be made

within the current period of registration, without requiring a reregistration of the product, provided the name of the item is not changed.

2. The registrant shall file with the department a statement containing:

a. The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant.

b. The name of the pesticide.

c. An ingredient statement in which the accepted common name and percentage by weight of each active ingredient is listed as well as the percentage of inert ingredients in the pesticides. A separate inert ingredient statement containing the common name of each inert ingredient listed in rank order according to weight of each inert ingredient in the pesticide shall also be submitted to the secretary. Except as required by subsection 4, the registrant is not required to state the percentage composition or specific weight of any inert ingredient within a pesticide. The information required by this paragraph shall be submitted in a manner and according to procedures specified by the secretary.

Upon written request by the director of the department of natural resources, the secretary shall provide a copy of the ingredient statement and inert ingredient statement to the department. Upon written request by the director of the center for health effects of environmental contamination, the secretary shall provide a copy of the ingredient statement and inert ingredient statement to the center.

From on and after July 1, 1990, to December 31, 1991, the identity of an inert ingredient in a specific pesticide shall be treated as a confidential trade secret which is not subject to release under chapter 22.

On and after January 1, 1992, the identity of an inert ingredient in a specific pesticide shall be treated as a confidential trade secret if the following two conditions are met: the registrant states, at the time of registration, that the inert ingredient is a confidential trade secret; and the registrant certifies one of the following:

(1) The registrant has provided to any data base system used by a poison control center operating in this state the information required by an attending physician to treat a patient for exposure or adverse reaction to the registrant's product, including the identification of all ingredients which are toxic to humans.

(2) The registrant operates an emergency information system as provided in section 139.35 that is available to poison control centers twenty-four hours a day every day of the year. The emergency information system must provide information to medical professionals required for the sole purpose of treating a specific patient for exposure or adverse reaction to the registrant's product, including the identification of all ingredients which are toxic to humans, and toxicological and medical management information.

Poison control centers may share the information provided by the registrant with an attending physi-

cian for the purpose of treating a specific patient exposed to the registrant's product. The secretary, the director of the department of natural resources, and the director of the center for health effects of environmental contamination shall treat the presence of any inert ingredient in a particular pesticide that meets the two conditions as a confidential trade secret which is not subject to release under chapter 22. This section does not prohibit research or monitoring of any aspect of any inert ingredient. This section does not prohibit the public disclosure of research, monitoring, published or summary data relative to any inert ingredient so long as such disclosure does not link an inert ingredient to a particular brand of pesticide registered in this state.

This section shall not be construed to prohibit the release of information independently obtained from a source other than registrations filed under this chapter which links an inert ingredient to a pesticide registered in this state.

d. A complete copy of the labeling accompanying the pesticide and a statement of all claims made and to be made for it including directions for use.

e. A full description of the tests made and results thereof upon which the claims are based, if requested by the secretary. In the case of renewal or reregistration, a statement may be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

3. The registrant, before selling or offering for sale any pesticide for use in this state, shall register each brand and grade of such pesticide with the secretary upon forms furnished by the secretary, and the secretary shall set the registration fee annually at one-fifth of one percent of gross sales within this state with a minimum fee of two hundred fifty dollars and a maximum fee of three thousand dollars for each and every brand and grade to be offered for sale in this state except as otherwise provided. The annual registration fee for products with gross annual sales in this state of less than one million five hundred thousand dollars shall be the greater of two hundred fifty dollars or one-fifth of one percent of the gross annual sales as established by affidavit of the registrant. The secretary shall adopt by rule exemptions to the minimum fee. Fifty dollars of each fee collected shall be deposited in the treasury to the credit of the pesticide fund to be used only for the purpose of enforcing the provisions of this chapter and the remainder of each fee collected shall be placed in the agriculture management account of the groundwater protection fund.

Notwithstanding the provisions of this subsection directing that fifty dollars of each fee collected be deposited into the pesticide fund, for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, fifty dollars of each fee collected shall be deposited into the general fund of the state.

4. The secretary, whenever the secretary deems it necessary in the administration of this chapter, may require the submission of the complete formula

of any pesticide. If it appears to the secretary that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of this chapter, the secretary shall register the article.

5. If it does not appear to the secretary that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this chapter, the secretary shall notify the registrant of the manner in which the article, labeling, or other material required to be submitted fail to comply with this chapter so as to afford the registrant an opportunity to make the necessary corrections.

6. Notwithstanding any other provisions of this chapter, registration is not required in the case of a pesticide shipped from one plant within this state to another plant within this state operated by the same person.

7. a. Each licensee under section 206.8 shall file an annual report at the time of application for licensure with the secretary of agriculture in a form specified by the secretary of agriculture and which includes the following information:

(1) The gross retail sales of all pesticides sold at retail for use in this state by a licensee with one hundred thousand dollars or more in gross retail sales of the pesticides sold for use in this state.

(2) The individual label name and dollar amount of each pesticide sold at retail for which gross retail sales of the individual pesticide are three thousand dollars or more.

b. A person who is subject to the household hazardous materials permit requirements, and whose gross annual retail sales of pesticides are less than ten thousand dollars for each business location

owned or operated by the person, shall report annually, the individual label name of an individual pesticide for which annual gross retail sales are three thousand dollars or more. The information shall be submitted on a form provided to household hazardous materials permittees by the department of natural resources, and the department of natural resources shall remit the forms to the department of agriculture and land stewardship.

c. Notwithstanding the reporting requirements of this section, the secretary of agriculture may, upon recommendation of the advisory committee created pursuant to section 206.23, and if the committee declares a pesticide to be a pesticide of special concern, require the reporting of annual gross retail sales of a pesticide.

d. A person who sells feed which contains a pesticide as an integral part of the feed mixture, shall not be subject to the reporting requirements of this section. However, a person who manufactures feed which contains a pesticide as an integral part of the feed mixture shall be subject to the licensing requirements of section 206.8.

e. The information collected and included in the report required under this section shall remain confidential. Public reporting concerning the information collected shall be performed in a manner which does not identify a specific brand name in the report.

91 Acts, ch 89, §3 SF 33, 91 Acts, ch 124, §3 SF 297, 91 Acts, ch 260, §1218 HF 173

Restrictions on use of moneys deposited in state general fund, see 91 Acts, ch 263, §38 SF 209

Availability of state general fund for payment of expenses, see 91 Acts, ch 264, §905 SF 532

1991 amendments to subsection 2, paragraph c retroactively applicable to July 1, 1990, and apply to inert ingredient information received by state officials on and after that date, 91 Acts, ch 124, §4 SF 297

Subsection 2, paragraph c, unnumbered paragraph 3 amended and divided, and unnumbered paragraph 6 added

Subsection 3, NEW unnumbered paragraph 2

Subsection 7, paragraph a subparagraph (1) amended

CHAPTER 208A

MOTOR VEHICLE ANTIFREEZE ACT

208A.10 Fees remitted.

All fees provided for in this chapter shall be collected by the secretary of agriculture and shall be de-

posited in the general fund of the state.

91 Acts, ch 260, §1219 HF 173

Section amended

CHAPTER 214A

MOTOR VEHICLE FUEL

214A.2 Tests and standards.

1. The secretary shall adopt rules pursuant to chapter 17A for carrying out this chapter. The rules may include, but are not limited to, specifications relating to motor fuel or oxygenate octane enhancers. In the interest of uniformity, the secretary shall adopt by reference or otherwise specifications relating to tests and standards for motor fuel or oxygenate octane enhancers, established by the American society for testing and materials (A.S.T.M.), unless the secretary determines those specifications are inconsistent with this chapter or are not appropriate to the conditions which exist in this state.

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. *a.* Gasoline with a mixture of ten percent or more ethanol, but not more than thirteen percent, shall be known as conventional blend ethanol.

b. Gasoline with a mixture of more than thirteen percent ethanol, but not more than twenty-five percent, shall be known as high blend ethanol. For purposes of chapters 323A, 324, and 422, high blend ethanol shall be treated as conventional blend ethanol.

c. Gasoline shall not contain a mixture of more than twenty-five percent ethanol.

4. Gasoline shall not contain methanol without an equal amount of cosolvent, and shall not contain more than five percent methanol.

91 Acts, ch 87, §1 HF 657
Subsection 3, paragraphs a and b amended

214A.16 Notice of blended fuel — decal.

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 decal. The design and location of the decals may be prescribed by rules adopted by the department. A decal identifying a renewable fuel shall be consistent with standards adopted pursuant to section 159A.6. If the department does not establish standards for a decal relating to a specific oxygenate octane enhancer, the wording shall be on a white adhesive decal with black letters at least one-half 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. The department may approve an application to place a decal in a special location on a pump or container or use a decal with special lettering or colors, if the decal appears clear and conspicuous to the consumer. The application shall be made in writing pursuant to procedures adopted by the department. Designs for a decal identifying a renewable fuel shall be consistent with standards adopted pursuant to section 159A.6.

91 Acts, ch 254, §14 SF 545
Section amended

CHAPTER 217

DEPARTMENT OF HUMAN SERVICES

Annual plan for use of federal social services
block grant funds 91 Acts ch 269 § 10 SF 541

217.9A Commission on children, youth, and families.

1 *Policy* It is the policy of the state of Iowa to promote the best interests of children, youth, and families. In accordance with this policy, the division of child and family services shall do all of the following:

a Promote coordination of federal, state, and local services by developing a plan to streamline delivery of services and making recommendations to the governor and general assembly by December 1 of each year.

b Work with state agencies in an advisory capacity to help plan needed services for children, youth, and families.

c Provide the director of human services, general assembly, and governor with recommendations and information to improve services for children, youth, and families by December 1 of each year.

d Identify state and federal resources that can be used in local areas.

e Provide information to parents to assist and support them in their parenting roles.

The commission shall examine the following issues related to the cycle of dependency which some families have on services, including, but not limited to, child care, chemical dependency, child welfare, youth employment, parent education, health, and education.

2 *Commission* The commission on children, youth, and families is established.

a The following persons or the persons' designees are members of the commission:

(1) The director of the Iowa department of public health.

(2) The director of the department of education.

(3) The director of the department of corrections.

(4) The director of the department of human rights.

b The following members of the commission shall be appointed by the governor:

(1) A member of a county board of supervisors.

(2) A member of the board of directors of a school corporation.

(3) One citizen, who shall be a professional family counselor.

(4) Seven citizens who have expertise in the areas of child care, child welfare, youth employment, maternal and child health, chemical dependency, education, or law.

(5) A person sixteen through eighteen years of age at the time of appointment.

c The following shall be nonvoting members of the commission:

(1) Two members of the senate, not more than one from any political party, appointed by the president of the senate, after consultation with the majority leader and the minority leader of the senate.

(2) Two members of the house of representatives, not more than one from any political party, appointed by the speaker of the house after consultation with the majority leader and the minority leader of the house.

(3) A district judge appointed by the governor.

(4) The administrator of the division of child and family services.

d The members of the commission appointed by the governor shall be appointed to terms of four years beginning May 1. Legislative members shall be appointed to terms of two years beginning January 1 of odd-numbered years. However, members appointed under paragraphs "b" and "c" shall cease to be members if they no longer hold the office from which they were appointed. Not more than six of the members appointed under paragraph "b" shall belong to the same political party at the time of appointment. Of the members appointed under paragraph "b", at least two members shall be members of a minority race. For purposes of this section, Hispanics shall be considered a racial group. A person designated under paragraph "a" is appointed for a term of four years beginning May 1 and must be an assistant director, or head of a division, bureau, or section of that agency whose function relates to children, youth, or families while serving on the commission. Vacancies shall be filled in the same manner as the original appointment.

e The members of the commission shall elect from the commission's voting membership a chairperson of the commission. The commission shall meet at regular intervals at least six times each year and may hold special meetings at the call of the chairperson or at the request of a majority of the voting members.

f The purpose of the commission is to promote coordination of state, local, and private programs, resources, and services to meet the needs of children, youth, and families. The commission shall work to identify unmet needs and to develop a plan to meet those needs and to improve coordination of efforts. The commission shall serve as an advocate for

Iowa's children, youth, and families to decision-making bodies and to the public. The commission shall make an annual report to the general assembly and governor by December 1 of its activities and legislative recommendations. The commission shall adopt rules pursuant to chapter 17A for the commission.

g. Members of the commission, while engaged in their official duties, shall be reimbursed for their actual expenses. Members may also be eligible to receive compensation as provided in section 7E.6.

h. The commission may receive federal funds or any grants or gifts on behalf of the state for the purposes within its jurisdiction. All federal funds, grants, and gifts shall be deposited with the treasurer of state and used only for the purposes agreed upon as conditions for receipt of the funds, grants, or gifts.

i. The commission shall have the responsibility of budgetary decisions for the commission.

91 Acts, ch 109, §3 SF 479
NEW section

217.11 Family development and self-sufficiency council created.

A family development and self-sufficiency council is established within the department of human services. The council consists of the following persons:

1. The director of the department of human services or the director's designee.
2. The director of the Iowa department of public health or the director's designee.

3. The administrator of the division of community action agencies in the department of human rights or the administrator's designee.

4. The administrator of the division of child and family services of the department of human services or the administrator's designee.

5. The dean of the college of family and consumer sciences at Iowa State University or the dean's designee.

6. A representative from the family life institute designated by the director of that institute.

7. The director of the public policy center at the University of Iowa or the director's designee.

8. Two recipients or former recipients of the aid to dependent children program, selected by the other members of the committee.

9. The head of the department of home economics at the University of Northern Iowa or that person's designee.

10. The director of the department of education or the director's designee.

The department of human services shall contract with the department of health and human rights to staff and administer grants provided under section 217.12.

91 Acts, ch 109, §2 SF 479
Subsection 4 amended

217.37 Rules for spouse's support. Repealed by 91 Acts, ch 258, § 72. HF 709 See § 249A.3(9).

CHAPTER 218

GOVERNMENT OF INSTITUTIONS UNDER DEPARTMENT OF HUMAN SERVICES

218.3 Primary authority for management.

The primary authority and responsibility to control, manage, direct, and operate the institutions set forth in section 218.1 is assigned within the department of human services as follows:

1. The director of the department of human services has primary authority and responsibility relative to the following institutions: the state training school, and the Iowa juvenile home.

2. The administrator of the division of mental health, mental retardation, and developmental disabilities of the department of human services has primary authority and responsibility relative to the following institutions: Glenwood state hospital-school, Woodward state hospital-school, mental health institute, Cherokee, Iowa, mental health institute, Clarinda, Iowa, mental health institute, In-

dependence, Iowa and mental health institute, Mount Pleasant, Iowa.

91 Acts, ch 258, §36 HF 709
Unnumbered paragraph 1, and subsection 1 amended

218.13 Employee record checks.

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

a. "Department" means the department of human services.

b. "Institution" means an institution controlled by the department as described in section 218.1.

c. "Resident" means a person committed or admitted to an institution.

2. If a person is being considered for employment involving direct responsibility for a resident or with access to a resident when the resident is alone,

or if a person will reside in a facility utilized by an institution, and if the person has been convicted of a crime or has a record of founded child abuse, the department shall perform an evaluation to determine whether the crime or founded child abuse warrants prohibition of employment or residence in the facility. The department shall conduct criminal and child abuse record checks of the person in this state and may conduct these checks in other states. The investigation and evaluation shall be performed in accordance with procedures adopted for this purpose by the department.

3. If the department determines that a person, who is employed by an institution or resides in a facility utilized by an institution, has been convicted of a crime or has a record of founded child abuse, the department shall perform an evaluation to determine whether prohibition of the person's employment or residence is warranted. The evaluation shall be performed in accordance with procedures adopted for this purpose by the department.

4. In an evaluation, the department shall consider the nature and seriousness of the crime or founded

child abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child abuse, the circumstances under which the crime or founded child abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded child abuse again, and the number of crimes or founded child abuses committed by the person involved. The department may permit a person who is evaluated to be employed or reside or to continue employment or residence if the person complies with the department's conditions relating to employment or residence which may include completion of additional training.

5. If the department determines that the person has committed a crime or has a record of founded child abuse which warrants prohibition of employment or residence, the person shall not be employed by an institution or reside in a facility utilized by an institution.

91 Acts, ch 138, §3 HF 296
 Applicability, 91 Acts, ch 138, §10 HF 296
 NEW section

CHAPTER 220

IOWA FINANCE AUTHORITY

HOUSING IMPROVEMENT FUND PROGRAM

220.100 Housing improvement fund program.

1. A housing improvement fund is created within the authority. The moneys in the housing improvement fund are annually appropriated to the authority which shall allocate the available funds among and within the programs authorized by this section. Notwithstanding section 8.33, unencumbered or unobligated moneys remaining in the fund on June 30 of any fiscal year shall not revert to any other fund but shall be available for expenditure for subsequent fiscal years. Notwithstanding section 453.7, interest or earnings on moneys in the fund or appropriated to the fund shall be credited to the fund. The authority may expend up to four percent of the moneys appropriated for the programs in this section for administrative costs of the authority for those programs. The authority may provide financial assistance to a housing sponsor or an individual in the form of loans, guarantees, grants, interest subsidies, or by other means for the programs authorized by this section.

2. By rule, the authority shall establish the following financial assistance programs and provide the requirements for their proper administration:

a. A grant program for the homeless for the construction, rehabilitation, expansion, or costs of operations of group home shelters for the homeless.

b. A home maintenance and repair program providing repair services to elderly, handicapped, or disabled families which qualify as lower income or very low income families.

c. A rental rehabilitation program for the construction or rehabilitation of single or multifamily rental properties leased to lower income or very low income families.

d. A home ownership incentive program to help lower income and very low income families achieve single family home ownership. Funds provided under this program shall not be restricted to first-time home buyers but shall be limited to mortgages under fifty-five thousand dollars, except in those areas of the state where the median price of homes exceeds the state average. The assistance provided shall include at least one of the following kinds of assistance:

- (1) Closing costs assistance
- (2) Down payment assistance
- (3) Home maintenance and repair assistance
- (4) Loan processing assistance through a loan endorser review contractor who acts on behalf of the authority in assisting lenders in processing loans that will qualify for government insurance or guarantee or for financing under the authority's mortgage revenue bond program
- (5) Mortgage insurance program

Five percent of the moneys expended under this program shall be used to finance the purchase or acquisition, in communities with a population of less than ten thousand, of manufactured homes as defined in 42 U S C § 5403. Moneys available for this purpose which are unencumbered or unobligated at the end of the fiscal year shall revert to the housing improvement fund for reallocation for the next fiscal year.

Not more than fifty percent of the assistance provided under this program shall be provided under subparagraphs (4) and (5). So long as at least one of the kinds of assistance described in subparagraphs (1) through (5) is provided, additional assistance not described in subparagraphs (1) through (5) may also be provided.

e The housing category of the rural community 2000 program, as described in section 15.286

3 The authority shall coordinate the programs authorized by this section with the other programs under the jurisdiction of the authority.

4 Each application for financial assistance shall be rated based on local, housing sponsor, and recipient financial commitment, proposals for leveraging other financial assistance, experience with the recip-

ient group involved, consideration for the housing project in the context of overall community needs, including vacancy rate of rental property and ratio of subsidized rental housing to nonsubsidized housing, ability to provide a counseling support system to the recipients, and a demonstrated capability by the housing sponsor to provide follow-up monitoring of recipients to determine if identifiable results have been achieved.

5 For the purposes of this section, "housing sponsor" is a for-profit entity, nonprofit corporation, local government, or a joint venture involving a for-profit entity, nonprofit corporation or local government.

6 None of the funds provided to a housing sponsor under this section shall be used for the costs of administration.

7 During each regular session of the general assembly, the authority shall present, to the appropriate appropriations subcommittee, a report concerning the total estimated resources to be available for expenditure under this section for the next fiscal year and the amount the authority proposes to allocate to each program under this section.

8 A homelessness advisory committee is created consisting of the executive director or the executive director's designee, the directors or their designees from the departments of economic development, elder affairs, human services, and human rights, and at least three individuals from the private sector to be selected by the executive director. The advisory committee shall advise the authority in coordinating programs that provide for the homeless.

91 Acts ch 267 §316 HF 479
Section amended

CHAPTER 225B

PREVENTION OF DISABILITIES

Chapter repealed effective June 30, 1996. 91 Acts ch 169 § 9 SF 342.

225B.1 Findings and intent.

1 The general assembly finds that

a Thousands of Iowans are affected by a developmental disability which is a disability that arises before age twenty-two and is of sufficient severity to affect an individual's ability to participate as an independent, productive member of the community. Many other Iowans experience less severe mental or physical disabilities or disabilities which occur in their adult years which require specialized services. Many disabilities are due to conditions that are preventable or could be minimized if recognized or

treated early. Preventing disabilities would result in a substantial savings to the state both in terms of human potential and public funds.

b There is a need for a coordinated and comprehensive prevention of disabilities effort in the state. Many state departments and private organizations are involved in prevention activities but there is no unified prevention strategy or ongoing coordination in the planning, implementation, and evaluation of prevention of disabilities activities in the state.

2 It is the intent of the general assembly to establish a system to coordinate prevention of disabili-

ty activities among the state departments and to assist the governor and the general assembly in determining priorities and establishing policies for the prevention of disabilities.

91 Acts, ch 169, §1 SF 342
NEW section

225B.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. "Committee" means the technical assistance committee to the council.
2. "Council" means the prevention of disabilities policy council.
3. "Disability" means a mental or physical impairment that results in significant functional limitation in one or more areas of major life activity and in the need for specialized care, treatment, or training services of extended duration.
4. "Prevention activities" means activities that attempt to eliminate the occurrence of the disability, reduce the prevalence of the disability in the community, identify a problem early and use intervention at the outset to eliminate the potential for abnormality, or minimize the long-term disability or mitigate the effects of the disability.

91 Acts, ch 169, §2 SF 342
NEW section

225B.3 Prevention of disabilities policy council established — membership — duties.

1. A prevention of disabilities policy council is established to provide oversight in the development and operation of a coordinated prevention of disabilities system. The council shall consist of the following members:

- a. Two members of the senate appointed by the senate majority leader and minority leader and two members of the house of representatives appointed by the speaker of the house and the house minority leader.
- b. Three providers of disability prevention services, recommended by the Iowa governor's planning council for developmental disabilities, appointed by the governor, and confirmed by the senate.
- c. Three persons with expertise in priority prevention areas, recommended by the Iowa governor's planning council for developmental disabilities, appointed by the governor, and confirmed by the senate.
- d. Three persons with disabilities or family members of a person with disabilities, recommended by the Iowa governor's planning council for developmental disabilities, appointed by the governor and confirmed by the senate.

2. Members of the council appointed by the governor shall serve three-year staggered terms. Members of the general assembly appointed to the council shall serve two-year terms and shall serve as ex officio, nonvoting members. Vacancies on the council shall be filled in the same manner as original appointments. Members are entitled to reimbursement

of actual expenses incurred in performance of their official duties.

3. The council shall do all of the following:
 - a. Oversee the planning, implementation, and evaluation of a coordinated strategy for the prevention of disabilities among state departments which is based upon the Iowa state plan for the prevention of developmental disabilities of 1988.
 - b. Promote cooperative and complementary planning among the public, private, and volunteer sectors involved in prevention activities and research regarding disabilities.
 - c. Develop and implement a system to measure the outcome and assess the overall impact of the prevention efforts of the state.
 - d. Encourage research into the causes and prevention of disabling conditions.
 - e. Promote professional and provider training in state-of-the-art prevention of disabilities measures.
 - f. Recommend policy and priorities for the prevention of disabilities.
 - g. Adopt rules to implement this chapter.
 - h. Seek and apply for federal grants and private foundation funding to support the responsibilities of the council. The council shall also seek in-kind and other private contributions to fulfill the federal matching funds requirements for the purpose of section 225B.7.
 - i. Submit to the governor and the general assembly by November 1, 1992, and annually on November 1 thereafter, a report that includes all of the following:
 - (1) A continuum of cost-effective prevention of disability activities.
 - (2) A listing of existing activities and the state agency responsible for the activities.
 - (3) Recommendations to coordinate the planning, delivery, and evaluation of existing activities.
 - (4) Recommendations to address the lack of prevention of disability activities.
 - (5) Recommendations to measure the outcomes and assess the overall impacts of the state's prevention of disability efforts.
 - (6) Recommendations to promote cooperative planning among the public, private, and volunteer sectors and to increase public-private partnership involvement in prevention of disability activities.
 - (7) A review of existing research and personnel training programs.
 - (8) Priorities for disability prevention activities in the state.
 - (9) Recommendations for legislative, administrative, or budgetary changes.
4. The council shall meet at least six times during the year. A majority of the members of the council constitutes a quorum, and a majority of the council is necessary to act on matters within the purview of the council.

91 Acts, ch 169, §3 SF 342
Confirmation, §2 32
NEW section

225B.4 Technical assistance committee to the prevention policy council established — membership — duties.

1. A technical assistance committee to the prevention of disabilities policy council is established and shall consist of the following members:

a The director of the department of human services, or the director's designee.

b The director of the Iowa department of public health, or the director's designee.

c The director of the department of education, or the director's designee.

d The director of the department of natural resources, or the director's designee.

e The director of the state department of transportation, or the director's designee.

f The commissioner of the department of public safety, or the commissioner's designee.

g The director of the department of human rights, or the director's designee.

h The president of Iowa state university of science and technology, or the president's designee.

i The president of the university of Iowa, or the president's designee.

j The president of the university of northern Iowa, or the president's designee.

2. The technical assistance committee shall do all of the following:

a Provide technical assistance to the council in developing a prevention of disabilities coordination system.

b Establish policies to facilitate the development, implementation, and evaluation of the prevention of disabilities coordination system.

c Recommend prevention of disability priorities to the council.

3. The committee shall meet as needed to assist the council.

4. Members are entitled to reimbursement of actual expenses incurred in performance of their official duties.

91 Acts, ch 169, §4 SF 342
NEW section

225B.5 State agencies — cooperative efforts.

The departments represented by the committee shall cooperate with the council in collecting and sharing pertinent data, and in developing, implementing, and evaluating the prevention of disabilities coordination system.

91 Acts, ch 169, §5 SF 342
NFW section

225B.6 Evaluation.

The prevention coordination system and the council are subject to review and evaluation by the governor and the general assembly.

91 Acts, ch 169, §6 SF 342
NFW section

225B.7 Implementation.

1. The prevention coordination system and the activities of the council shall be implemented as resources are made available.

2. The council shall, during the fiscal year beginning July 1, 1991, request grants from the Iowa governor's planning council for developmental disabilities and from private foundations to defray a minimum of seventy-five percent of the costs of implementation of this chapter. The funds shall be used to carry out the purposes of this chapter, including but not limited to, any of the following purposes:

a Establishing the structure for implementation of the prevention coordination system.

b Coordinating the activities of the council, state agencies, and state board of regents' institutions to develop the prevention coordination system and prepare the council's annual report.

91 Acts, ch 169, §7 SF 342
Appropriation 91 Acts, ch 169, §8
NEW section

CHAPTER 225C

MENTAL HEALTH, MENTAL RETARDATION,
AND DEVELOPMENTAL DISABILITIES

Enhanced mental health, mental retardation, and developmental
disabilities services, candidate services, and case management,
§ 249A.25 249A.27

225C.21 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 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.

91 Acts, ch 38, §1 SF 345
Subsection 2 amended

225C.38 Payment — amount — reports.

1. If an application for a family support subsidy is approved by the department:

a. A family support subsidy shall be paid to the parent or legal guardian on behalf of the family member. An approved subsidy shall be payable as of the first of the next month after the department approves the written application.

b. A family support subsidy shall be used to meet the special needs of the family. This subsidy is intended to complement but not supplant public assistance or social service benefits based on economic need, available through governmental programs.

c. Except as provided in section 225C.41, a family support subsidy for a fiscal year shall be in an amount equivalent to the monthly maximum supplemental security income payment available in Iowa on July 1 of that fiscal year for an adult recipient living in the household of another, as formulated under federal regulations. In addition, the parent or legal guardian of a family member who is in an out-of-home placement at the time of application may receive a one-time lump-sum advance payment of twice the monthly family support subsidy amount for the purpose of meeting the special needs of the family in preparing for in-home care.

2. The department shall administer the family support subsidy program and the payments made under the program as follows:

a. In each fiscal year, the department shall establish a figure for the number of family members for whom a family support subsidy shall be provided at any one time during the fiscal year. The figure shall be established by dividing the amount appropriated by the general assembly for family support subsidy payments during the fiscal year by the family support subsidy payment amount established in subsection 1, paragraph “c”.

b. On or before July 15 in each fiscal year, the department shall approve the provision of a number of family support subsidies equal to the figure established in paragraph “a”. During any thirty-day period, the number of family members for whom a family support subsidy is provided shall not be less than this figure.

3. The parent or legal guardian who receives a family support subsidy shall report, in writing, the following information to the department:

a. Not less than annually, a statement that the family support subsidy was used to meet the special needs of the family.

b. The occurrence of any event listed in section 225C.40.

c. A request to terminate the family support subsidy.

91 Acts, ch 38, §2, 3 SF 345
Subsection 1, paragraph c amended
Subsection 2 stricken and rewritten

225C.41 Appropriations.

Family support subsidy payments shall be paid from funds appropriated by the general assembly for this purpose.

Notwithstanding section 8.33, funds remaining unexpended on June 30 of any fiscal year shall not revert to the general fund of the state but shall remain available to provide family support subsidy payments in the succeeding fiscal year.

91 Acts, ch 38, §4 SF 345
NEW unnumbered paragraph 2

225C.42 Annual evaluation of program.

1. The department shall conduct an annual evaluation of the family support subsidy program and shall submit the evaluation report with recommendations to the governor and general assembly by September 30 following the end of the fiscal year.

2 The evaluation content shall include but is not limited to all of the following items

a A statement of the number of children and families served by the program during the fiscal year and the number remaining on the waiting list at the end of the fiscal year

b A description of the children and family needs to which payments were applied

c An analysis of the extent to which payments enabled children to remain in their homes. The analysis shall include but is not limited to all of the following items concerning children affected by the payments: the number and percentage of children who remained with their families, the number and percentage of children who returned to their home from an out-of-home placement and the type of placement from which the children returned, and the number of children who received an out of home placement during the fiscal year and the type of placement

d An analysis of parent satisfaction with the program

e An analysis of efforts to encourage program participation by eligible families

f The results of a survey of families participating in the program in order to assess the adequacy of subsidy payment amounts and the degree of unmet need for services and supports

3 The evaluation content may include any of the following items

a An overview of the reasons families voluntarily terminated participation in the family support subsidy program and the involvement of the department in offering suitable alternatives

b The geographic distribution of families receiving subsidy payments

c An overview of problems encountered by families in applying for the program, including obtaining documentation of eligibility

91 Acts ch 38 §5 SF 345
Section amended

CHAPTER 226

STATE MENTAL HEALTH INSTITUTES

226.12 Monthly reports.

The administrator shall assure that the superintendent of each institute provides monthly reports concerning the programmatic, environmental, and fiscal condition of the institute. The administrator

or the administrator's designee shall periodically visit each institute to validate the information

91 Acts ch 38 §6 SF 345
Section stricken and rewritten

CHAPTER 229

HOSPITALIZATION OF MENTALLY ILL PERSONS

229.7 Service of notice upon respondent.

Upon the filing of an application for involuntary hospitalization, the clerk shall docket the case and immediately notify a district court judge, district associate judge, or magistrate who is admitted to the practice of law in this state, who shall review the application and accompanying documentation. If the application is adequate as to form, the court may set a time and place for a hearing on the application, if feasible, but the hearing shall not be held less than forty-eight hours after notice to the respondent unless the respondent waives such minimum prior no-

tice requirement. The court shall direct the clerk to send copies of the application and supporting documentation, together with a notice informing the respondent of the procedures required by this chapter, to the sheriff or the sheriff's deputy for immediate service upon the respondent. If the respondent is taken into custody under section 229.11, service of the application, documentation and notice upon the respondent shall be made at the time the respondent is taken into custody.

91 Acts ch 108 §4 SF 453
Section amended

229.13 Hospitalization for evaluation — unauthorized departure.

If upon completion of the hearing the court finds that the contention that the respondent is seriously mentally impaired has been sustained by clear and convincing evidence, it shall order the respondent placed in a hospital or other suitable facility as expeditiously as possible for a complete psychiatric evaluation and appropriate treatment. The court shall furnish to the hospital or facility at the time the respondent arrives there a written finding of fact setting forth the evidence on which the finding is based. The chief medical officer of the hospital or facility shall report to the court no more than fifteen days after the individual is admitted to the hospital or facility, making a recommendation for disposition of the matter. An extension of time may be granted for not to exceed seven days upon a showing of cause. A copy of the report shall be sent to the respondent's attorney, who may contest the need for an extension of time if one is requested. Extension of time shall be granted upon request unless the request is contested, in which case the court shall make such inquiry as it deems appropriate and may either order the respondent's release from the hospital or facility or grant extension of time for psychiatric evaluation. If the chief medical officer fails to report to the court within fifteen days after the individual is admitted to the hospital or facility, and no extension of time has been requested, the chief medical officer is guilty of contempt and shall be punished under chapter 665. The court shall order a rehearing on the application to determine whether the respondent should continue to be held at the facility.

If, after placement and admission of a respondent in a hospital or other suitable facility, the respondent departs from the hospital or facility without prior proper authorization from the chief medical officer, upon receipt of notification of the respondent's departure by the chief medical officer, a peace officer of the state shall without further order of the court exercise all due diligence to take the respondent into protective custody and return the respondent to the hospital or facility.

91 Acts, ch 108, §5 SF 453
NEW unnumbered paragraph 2

229.14 Chief medical officer's report.

The chief medical officer's report to the court on the psychiatric evaluation of the respondent shall be made not later than the expiration of the time specified in section 229.13. At least two copies of the report shall be filed with the clerk, who shall dispose of them in the manner prescribed by section 229.10, subsection 2. The report shall state one of the four following alternative findings:

1. That the respondent does not, as of the date of the report, require further treatment for serious mental impairment. If the report so states, the court shall order the respondent's immediate release from involuntary hospitalization and terminate the proceedings.

2. That the respondent is seriously mentally impaired and in need of full-time custody, care and treatment in a hospital, and is considered likely to benefit from treatment. If the report so states, the court shall enter an order which may require the respondent's continued hospitalization for appropriate treatment.

3. That the respondent is seriously mentally impaired and in need of treatment, but does not require full-time hospitalization. If the report so states it shall include the chief medical officer's recommendation for treatment of the respondent on an outpatient or other appropriate basis, and the court shall enter an order which may direct the respondent to submit to the recommended treatment. The order shall provide that if the respondent fails or refuses to submit to treatment as directed by the court's order, the court may order that the respondent be taken into immediate custody as provided by section 229.11 and, following notice and hearing held in accordance with the procedures of section 229.12, may order the respondent treated as a patient requiring full-time custody, care and treatment in a hospital until such time as the chief medical officer reports that the respondent does not require further treatment for serious mental impairment or has indicated the respondent is willing to submit to treatment on another basis as ordered by the court.

4. The respondent is seriously mentally impaired and in need of full-time custody and care, but is unlikely to benefit from further treatment in a hospital. If the report so states, the chief medical officer shall recommend an alternative placement for the respondent and the court shall enter an order which may direct the respondent's transfer to the recommended placement. A respondent who is an inmate in the custody of the department of corrections may, as a court-ordered alternative placement, receive mental health services in a correctional program. If the court or the respondent's attorney considers the placement inappropriate, an alternative placement may be arranged upon consultation with the chief medical officer and approval of the court.

91 Acts, ch 219, §2 SF 496
Subsection 4 amended

229.21 Judicial hospitalization referee.

1. The chief judge of each judicial district may appoint at least one judicial hospitalization referee for each county within the district. 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 the chief judge of the judicial district and receive compensation at a rate fixed by the supreme court. If the referee expects to be absent 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.

2. When an application for involuntary hospitalization under this chapter or an application for involuntary commitment or treatment of chronic 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, district associate judge, or magistrate who is admitted to the practice of law in this state is accessible, 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 the court by sections 229.7 to 229.22 or sections 125.75 to 125.94 in the proceeding so initiated. However, any commitment to a facility regulated and operated under chapter 135C, shall be in accordance with section 135C.23.

3. Any respondent with respect to whom the judicial hospitalization referee has found the contention that the respondent is seriously mentally impaired or a chronic 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.

4. 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.

5. 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, jurisdic-

tion of the matter shall revert to the judicial hospitalization referee.

91 Acts, ch 108, §6 SF 453
Section amended

229.27 Hospitalization not to equate with incompetency — procedure for finding incompetency due to mental illness.

1. Hospitalization of a person under this chapter, either voluntarily or involuntarily, does not constitute a finding of nor equate with nor raise a presumption of incompetency, nor cause the person so hospitalized to be deemed a person of unsound mind nor a person under legal disability for any purpose including but not limited to any circumstances to which sections 447.7, 472.15, 545.402, subsection 5, paragraph "b", 545.705, 597.6, 614.8, 614.19, 614.22, 614.24, 614.27, 622.6, 633.244, and 675.21 are applicable.

2. The applicant may, in initiating a petition for involuntary hospitalization of a person under section 229.6 or at any subsequent time prior to conclusion of the involuntary hospitalization proceeding, also petition the court for a finding that the person is incompetent by reason of mental illness. The test of competence for the purpose of this section shall be whether the person possesses sufficient mind to understand in a reasonable manner the nature and effect of the act in which the person is engaged; the fact that a person is mentally ill and in need of treatment for that illness but because of the illness lacks sufficient judgment to make responsible decisions with respect to the person's hospitalization or treatment does not necessarily mean that that person is incapable of transacting business on any subject.

3. A hearing limited to the question of the person's competence and conducted in substantially the manner prescribed in sections 633.552 to 633.556 shall be held when:

a. The court is petitioned or proposes upon its own motion to find incompetent by reason of mental illness a person whose involuntary hospitalization has been ordered under section 229.13 or 229.14, and who contends that the person is not incompetent; or

b. A person previously found incompetent by reason of mental illness under subsection 2 petitions the court for a finding that the person is no longer incompetent and, after notice to the applicant who initiated the petition for hospitalization of the person and to any other party as directed by the court, an objection is filed with the court. The court may order a hearing on its own motion before acting on a petition filed under this paragraph. A petition by a person for a finding that the person is no longer incompetent may be filed at any time without regard to whether the person is at that time hospitalized for treatment of mental illness.

4. Upon petitioning the court for a finding that a respondent is incompetent by reason of mental illness, the applicant may also request the court to appoint a conservator for the respondent. The court may appoint a temporary conservator as provided by

section 633.573, or may defer a decision on the appointment of a conservator until a report is received under section 229.13 if the respondent is hospitalized for evaluation pursuant to that section.

5. Nothing in this chapter shall preclude use of any other procedure authorized by law for declaring

any person legally incompetent for reasons which may include mental illness, without regard to whether that person is or has been hospitalized for treatment of mental illness.

91 Acts ch 93 §1 SF 495
Subsection 1 amended

CHAPTER 230

SUPPORT OF THE MENTALLY ILL

230.12 Action to determine legal settlement.

1. When a dispute arises between different counties or between the administrator and a county as to the legal settlement of a person admitted or committed to a state hospital for the mentally ill, the attorney general, at the request of the administrator, shall, without the advancement of fees, cause an action to be brought in the district court of any county where such dispute exists, to determine the legal settlement. This action may be brought at any time when it appears that the dispute cannot be amicably settled. All counties which may be the place of the legal settlement, so far as known, shall be made defendants and the allegation of the settlement may be in the alternative. The action shall be tried as in equity.

2. If the action involves a dispute between counties, the county determined to be the county of legal settlement shall reimburse a county for the amount of costs paid by that county on behalf of the person and for interest on this amount in accordance with section 535.3. In addition, the court may order the county determined to be the county of legal settlement to reimburse any other county involved in the dispute for the other county's reasonable legal costs related to the dispute and may tax the reasonable legal costs as court costs. The court may order the county determined to be the county of legal settlement to pay a penalty to the other county, in an amount which does not exceed twenty percent of the total amount of reimbursement and interest.

91 Acts ch 267 §141 HF 479
Section amended

CHAPTER 230A

COMMUNITY MENTAL HEALTH CENTERS

230A.5 Election of trustees.

The election of community mental health center trustees 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 eligible electors of the county or affiliated counties equal in number to one percent of

the vote cast therein for president of the United States or governor, as the case may be, in the last previous general election, and shall be filed with the county commissioner of elections. A plurality shall be sufficient to elect community mental health center trustees, and no primary election for that office shall be held.

91 Acts ch 129 §23 HF 420
Section amended

CHAPTER 232

JUVENILE JUSTICE

232.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. "*Abandonment of a child*" means the relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.

2. "*Adjudicatory hearing*" means a hearing to determine if the allegations of a petition are true.

3. "*Adult*" means a person other than a child.

4. "*Case permanency plan*" means the plan, mandated by Pub. L. No. 96-272, as codified in 42 U.S.C., secs. 671(a)(16), 627(a)(2)(B), and 675(1),(5), which is designed to achieve placement in the least restrictive, most family-like setting available and in close proximity to the parent's home, consistent with the best interests and special needs of the child, and which considers the placement's proximity to the school in which the child is enrolled at the time of placement. The plan shall specifically include all of the following:

a Plans for carrying out the voluntary placement agreement or judicial determination pursuant to which the child entered care.

b The type and appropriateness of the placement and services to be provided to the child.

c The care and services that will be provided to the child, natural parents, and foster parents.

d How the care and services will meet the needs of the child while in care and will facilitate the child's return home or other permanent placement.

e To the extent the records are available and accessible, a summary of the child's health and education records, including the date the records were supplied to the agency or individual who is the child's foster care provider.

f When a child is sixteen years of age or older, a written plan of services which, based upon an assessment of the child's needs, would assist the child in preparing for the transition from foster care to independent living.

5. "*Child*" means a person under eighteen years of age.

6. "*Child in need of assistance*" means an unmarried child:

a Whose parent, guardian or other custodian has abandoned or deserted the child.

b Whose parent, guardian, other custodian, or

other member of the household in which the child resides has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.

c Who has suffered or is imminently likely to suffer harmful effects as a result of either of the following:

(1) Mental injury caused by the acts of the child's parent, guardian, or custodian.

(2) The failure of the child's parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.

d Who has been, or is imminently likely to be, sexually abused by the child's parent, guardian, custodian or other member of the household in which the child resides.

e Who is in need of medical treatment to cure, alleviate, or prevent serious physical injury or illness and whose parent, guardian or custodian is unwilling or unable to provide such treatment.

f Who is in need of treatment to cure or alleviate serious mental illness or disorder, or emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior toward self or others and whose parent, guardian, or custodian is unwilling or unable to provide such treatment.

g Whose parent, guardian, or custodian fails to exercise a minimal degree of care in supplying the child with adequate food, clothing or shelter and refuses other means made available to provide such essentials.

h Who has committed a delinquent act as a result of pressure, guidance, or approval from a parent, guardian, custodian, or other member of the household in which the child resides.

i Who has been the subject of or a party to sexual activities for hire or who poses for live display or for photographic or other means of pictorial reproduction or display which is designed to appeal to the prurient interest and is patently offensive; and taken as a whole, lacks serious literary, scientific, political or artistic value.

j Who is without a parent, guardian or other custodian.

k Whose parent, guardian, or other custodian for good cause desires to be relieved of the child's care and custody.

l Who for good cause desires to have the child's parents relieved of the child's care and custody.

m Who is in need of treatment to cure or alleviate chemical dependency and whose parent, guardian, or custodian is unwilling or unable to provide such treatment.

n Whose parent's or guardian's mental capacity or condition, imprisonment, or drug or alcohol abuse results in the child not receiving adequate care

6A "*Desertion*" means the relinquishment or surrender for a period in excess of six months of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of desertion need not include the intention to desert, but is evidenced by the lack of attempted contact with the child or by only incidental contact with the child.

7 "*Director*" means the director of the department of human services or that person's designee.

8 "*Complaint*" means an oral or written report which is made to the juvenile court by any person and alleges that a child is within the jurisdiction of the court.

9 "*Court*" means the juvenile court established under section 602.7101.

9A "*Court appointed special advocate*" means a person duly certified by the judicial department for participation in the court appointed special advocate program and appointed by the court to represent the interests of a child in any judicial proceeding to which the child is a party or is called as a witness or relating to any dispositional order involving the child resulting from such proceeding.

10 "*Criminal justice agency*" means any agency which has as its primary responsibility the enforcement of the state's criminal laws or of local ordinances made pursuant to state law.

11 "*Custodian*" means a stepparent or a relative within the fourth degree of consanguinity to a child who has assumed responsibility for that child, a person who has accepted a release of custody pursuant to division IV, or a person appointed by a court or juvenile court having jurisdiction over a child. The rights and duties of a custodian with respect to a child are as follows:

a To maintain or transfer to another the physical possession of that child.

b To protect, train, and discipline that child.

c To provide food, clothing, housing, and medical care for that child.

d To consent to emergency medical care, including surgery.

e To sign a release of medical information to a health professional.

All rights and duties of a custodian shall be subject to any residual rights and duties remaining in a parent or guardian.

12 "*Delinquent act*" means

a The violation of any state law or local ordinance which would constitute a public offense if committed by an adult except any offense which by law is exempted from the jurisdiction of this chapter.

b The violation of a federal law or a law of another state which violation constitutes a criminal offense if the case involving that act has been referred to the juvenile court.

13 "*Department*" means the department of human services and includes the local, county and regional officers of the department.

14 "*Detention*" means the temporary care of a child in a physically restricting facility designed to ensure the continued custody of the child at any point between the child's initial contact with the juvenile authorities and the final disposition of the child's case.

15 "*Detention hearing*" means a hearing at which the court determines whether it is necessary to place or retain a child in detention.

16 "*Dismissal of complaint*" means the termination of all proceedings against a child.

17 "*Dispositional hearing*" means a hearing held after an adjudication to determine what dispositional order should be made.

18 "*Family in need of assistance*" means a family in which there has been a breakdown in the relationship between a child and the child's parent, guardian or custodian.

19 "*Guardian*" means a person who is not the parent of a child, but who has been appointed by a court or juvenile court having jurisdiction over the child, to make important decisions which have a permanent effect on the life and development of that child and to promote the general welfare of that child. A guardian may be a court or a juvenile court. Guardian does not mean conservator, as defined in section 633.3, although a person who is appointed to be a guardian may also be appointed to be a conservator.

Unless otherwise enlarged or circumscribed by a court or juvenile court having jurisdiction over the child or by operation of law, the rights and duties of a guardian with respect to a child shall be as follows:

a To consent to marriage, enlistment in the armed forces of the United States, or medical, psychiatric, or surgical treatment.

b To serve as guardian ad litem, unless the interests of the guardian conflict with the interests of the child or unless another person has been appointed guardian ad litem.

c To serve as custodian, unless another person has been appointed custodian.

d To make periodic visitations if the guardian does not have physical possession or custody of the child.

e To consent to adoption and to make any other decision that the parents could have made when the parent-child relationship existed.

20 "*Guardian ad litem*" means a person appointed by the court to represent the interests of a child in any judicial proceeding to which the child is a party, and includes a court appointed special advocate, except that a court appointed special advocate shall not file motions pursuant to section 232.54, subsections 1 and 4, and section 232.103, subsection 2, paragraph "c".

21 "*Health practitioner*" means a licensed physician or surgeon, osteopath, osteopathic physician or surgeon, dentist, optometrist, podiatrist or chiropractor, a resident or intern of any such profession, and any registered nurse or licensed practical nurse.

22 "*Informal adjustment*" means the disposition

of a complaint without the filing of a petition and may include but is not limited to the following

a Placement of the child on nonjudicial probation

b Provision of intake services

c Referral of the child to a public or private agency other than the court for services

23 "*Informal adjustment agreement*" means an agreement between an intake officer, a child who is the subject of a complaint, and the child's parent, guardian or custodian providing for the informal adjustment of the complaint

24 "*Intake*" means the preliminary screening of complaints by an intake officer to determine whether the court should take some action and if so, what action

25 "*Intake officer*" means a juvenile court officer or other officer appointed by the court to perform the intake function

26 "*Judge*" means the judge of a juvenile court

26A "*Juvenile*" means the same as "*child*" However, in the interstate compact on juveniles, sections 232 171 and 232 172, "*juvenile*" means a person defined as a juvenile in the law of a state which is a party to the compact

27 "*Juvenile court social records*" or "*social records*" means all records made with respect to a child in connection with proceedings over which the court has jurisdiction under this chapter other than official records and includes but is not limited to the records made and compiled by intake officers, predisposition reports, and reports of physical and mental examinations

28 "*Juvenile detention home*" means a physically restricting facility used only for the detention of children

29 "*Juvenile parole officer*" means a person representing an agency which retains jurisdiction over the case of a child adjudicated to have committed a delinquent act, placed in a secure facility and subsequently released, who supervises the activities of the child until the case is dismissed

30 "*Juvenile court officer*" means a person appointed as a juvenile court officer under section 602 7202 and a chief juvenile court officer appointed under section 602 1217

31 "*Juvenile shelter care home*" means a physically unrestricting facility used only for the shelter care of children

31A "*Mental injury*" means a nonorganic injury to a child's intellectual or psychological capacity as evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, considering the child's cultural origin

32 "*Nonjudicial probation*" means the informal adjustment of a complaint which involves the supervision of the child who is the subject of the complaint by an intake officer or juvenile court officer for a period during which the child may be required to comply with specified conditions concerning the child's conduct and activities

33 "*Nonsecure facility*" means a physically unrestricting facility in which children may be placed pursuant to a dispositional order of the court made in accordance with the provisions of this chapter

34 "*Official juvenile court records*" or "*official records*" means official records of the court of proceedings over which the court has jurisdiction under this chapter which includes but is not limited to the following

a The docket of the court and entries therein

b Complaints, petitions, other pleadings, motions, and applications filed with a court

c Any summons, notice, subpoena, or other process and proofs of publication

d Transcripts of proceedings before the court

e Findings, judgments, decrees and orders of the court

35 "*Parent*" means a natural or adoptive mother or father of a child but does not include a mother or father whose parental rights have been terminated

36 "*Peace officer*" means a law enforcement officer or a person designated as a peace officer by a provision of the Code

37 "*Petition*" means a pleading the filing of which initiates formal judicial proceedings in the juvenile court

38 "*Physical abuse or neglect*" or "*abuse or neglect*" means any nonaccidental physical injury suffered by a child as the result of the acts or omissions of the child's parent, guardian or custodian or other person legally responsible for the child

39 "*Predisposition investigation*" means an investigation conducted for the purpose of collecting information relevant to the court's fashioning of an appropriate disposition of a delinquency case over which the court has jurisdiction

40 "*Predisposition report*" is a report furnished to the court which contains the information collected during a predisposition investigation

41 "*Probation*" means a legal status which is created by a dispositional order of the court in a case where a child has been adjudicated to have committed a delinquent act, which exists for a specified period of time, and which places the child under the supervision of a juvenile court officer or other person or agency designated by the court The probation order may require a child to comply with specified conditions imposed by the court concerning conduct and activities, subject to being returned to the court for violation of those conditions

42 "*Registry*" means the central registry for child abuse information as established under chapter 235A

43 "*Residual parental rights and responsibilities*" means those rights and responsibilities remaining with the parent after transfer of legal custody or guardianship of the person of the child These include but are not limited to the right of visitation, the right to consent to adoption, and the responsibility for support

44 "*Secure facility*" means a physically restricting facility in which children adjudicated to have

committed a delinquent act may be placed pursuant to a dispositional order of the court.

45. “*Sexual abuse*” means the commission of a sex offense as defined by the penal law.

46. “*Shelter care*” means the temporary care of a child in a physically unrestricting facility at any time between a child’s initial contact with juvenile authorities and the final judicial disposition of the child’s case.

47. “*Shelter care hearing*” means a hearing at which the court determines whether it is necessary to place or retain a child in shelter care.

48. “*Social investigation*” means an investigation conducted for the purpose of collecting information relevant to the court’s fashioning of an appropriate disposition of a child in need of assistance case over which the court has jurisdiction.

49. “*Social report*” means a report furnished to the court which contains the information collected during a social investigation.

50. “*Taking into custody*” means an act which would be governed by the laws of arrest under the criminal code if the subject of the act were an adult. The taking into custody of a child is subject to all constitutional and statutory protections which are afforded an adult upon arrest.

51. “*Termination hearing*” means a hearing held to determine whether the court should terminate a parent-child relationship.

52. “*Termination of the parent-child relationship*” means the divestment by the court of the parent’s and child’s privileges, duties and powers with respect to each other.

52A. “*Voluntary placement*” means a foster care placement in which the department provides foster care services to a child according to a signed placement agreement between the department and the child’s parent or guardian.

53. “*Waiver hearing*” means a hearing at which the court determines whether it shall waive its jurisdiction over a child alleged to have committed a delinquent act so that the state may prosecute the child as if the child were an adult.

91 Acts, ch 232, §1 SF 471
Subsection 4 amended

232.8 Jurisdiction.

1. *a.* The juvenile court has exclusive original jurisdiction in proceedings concerning a child who is alleged to have committed a delinquent act unless otherwise provided by law, and has exclusive original jurisdiction in proceedings concerning an adult who is alleged to have committed a delinquent act prior to having become an adult, and who has been transferred to the jurisdiction of the juvenile court pursuant to an order under section 803.5.

b. Violations by a child of provisions of chapter 98, 106, 106A, 109, 109A, 110, 110A, 110B, 111, 321, or 321G which would be simple misdemeanors if committed by an adult, and violations by a child of county or municipal curfew or traffic ordinances, are excluded from the jurisdiction of the juvenile court

and shall be prosecuted as simple misdemeanors as provided by law. A child convicted of a violation excluded from the jurisdiction of the juvenile court under this paragraph shall be sentenced pursuant to section 805.8, where applicable, and pursuant to section 903.1, subsection 3, for all other violations.

2. A case involving a person charged in a court other than the juvenile court with the commission of a public offense not exempted by law from the jurisdiction of the juvenile court and who is within the provisions of subsection 1 of this section shall immediately be transferred to the juvenile court. The transferring court shall order a transfer and shall forward the transfer order together with all papers, documents and a transcript of all testimony filed or admitted into evidence in connection with the case to the clerk of the juvenile court. The jurisdiction of the juvenile court shall attach immediately upon the signing of an order of transfer. From the time of transfer, the custody, shelter care and detention of the person alleged to have committed a delinquent act shall be in accordance with the provisions of this chapter and the case shall be processed in accordance with the provisions of this chapter.

3. The juvenile court, after a hearing and in accordance with the provisions of section 232.45, may waive jurisdiction of a child alleged to have committed a public offense so that the child may be prosecuted as an adult for such offense in another court. If the child pleads guilty or is found guilty of a public offense in another court of this state that court may, with the consent of the child, defer judgment and without regard to restrictions placed upon deferred judgments for adults, place the child on probation for a period not less than one year upon such conditions as it may require. Upon fulfillment of the conditions of probation the child shall be discharged without entry of judgment.

4. In a proceeding concerning a child who is alleged to have committed a second delinquent act or a second violation excluded from the jurisdiction of the juvenile court, the court or the juvenile court shall determine whether there is reason to believe that the child regularly abuses alcohol or other controlled substance and may be in need of treatment. If the court so determines, the court shall advise appropriate juvenile authorities and refer such offenders to the juvenile court for disposition pursuant to section 232.52A.

5. Nothing in this chapter shall be interpreted as affecting the statutory limitations on prosecutions for murder in the first or second degree.

91 Acts, ch 240, §9 HF 232
Subsection 1, unnumbered paragraphs 1 and 2 lettered as a and b and paragraph b amended

232.22 Placement in detention.

1. No child shall be placed in detention unless:

- a.* The child is being held under warrant for another jurisdiction; or
- b.* The child is an escapee from a juvenile correctional or penal institution; or

c. There is probable cause to believe that the child has violated conditions of release imposed under section 232.44, subsection 5, paragraph "b", 232.52, or 232.54 and there is a substantial probability that the child will run away or otherwise be unavailable for subsequent court appearance; or

d. There is probable cause to believe the child has committed a delinquent act, and:

(1) There is a substantial probability that the child will run away or otherwise be unavailable for subsequent court appearance; or

(2) There is a serious risk that the child if released may commit an act which would inflict serious bodily harm on the child or on another; or

(3) There is a serious risk that the child if released may commit serious damage to the property of others.

2. Except as provided in subsection 6, a child may be placed in detention as provided in this section in one of the following facilities only:

a. A juvenile detention home.

b. Any other suitable place designated by the court other than a facility under paragraph "c".

c. A room in a facility intended or used for the detention of adults if there is probable cause to believe that the child has committed a delinquent act which if committed by an adult would be a felony, or aggravated misdemeanor under section 708.2 or 709.11, a serious or aggravated misdemeanor under section 321J.2, or a violation of section 123.46, and if all of the following apply:

(1) The child is at least fourteen years of age.

(2) The child has shown by the child's conduct, habits, or condition that the child constitutes an immediate and serious danger to another or to the property of another, and a facility or place enumerated in paragraph "a" or "b" is unavailable, or the court determines that the child's conduct or condition endangers the safety of others in the facility.

(3) The facility has an adequate staff to supervise and monitor the child's activities at all times.

(4) The child is confined in a room entirely separated from detained adults, is confined in a manner which prohibits communication with detained adults, and is permitted to use common areas of the facility only when no contact with detained adults is possible.

However, if the child is to be detained for a violation of section 123.46 or section 321J.2, placement in a facility pursuant to this paragraph shall be made only after an attempt has been made to notify the parents or legal guardians of the child and request that the parents or legal guardians take custody of the child. If the parents or legal guardians cannot be contacted, or refuse to take custody of the child, an attempt shall be made to place the child in another facility, including but not limited to a local hospital or shelter care facility. Also, a child detained for a violation of section 123.46 or section 321J.2 pursuant to this paragraph shall only be detained in a facility with adequate staff to provide continuous visual supervision of the child.

d. A place used for the detention of children prior to an adjudicatory hearing may also be used for the detention of a child awaiting disposition to a placement under section 232.52, subsection 2, paragraph "c" while the adjudicated child is awaiting transfer to the disposition placement.

3. A child shall not be held in a facility under subsection 2, paragraph "a" or "b" for a period in excess of twenty-four hours without an oral or written court order authorizing the detention. When the detention is authorized by an oral court order, the court shall enter a written order before the end of the next day confirming the oral order and indicating the reasons for the order.

4. A child shall not be detained in a facility under subsection 2, paragraph "c" for a period of time in excess of six hours without the oral or written order of a judge or a magistrate authorizing the detention. A judge or magistrate may authorize detention in a facility under subsection 2, paragraph "c" for a period of time in excess of six hours but less than twenty-four hours, excluding weekends and legal holidays, but only if all of the following occur or exist:

a. The facility serves a geographic area outside a standard metropolitan statistical area as determined by the United States census bureau.

b. The court determines that an acceptable alternative placement does not exist pursuant to criteria developed by the department of human services.

c. The facility has been certified by the department of corrections as being capable of sight and sound separation pursuant to this section and section 356.3.

d. The child is awaiting an initial hearing before the court pursuant to section 232.44.

The restrictions contained in this subsection relating to the detention of a child in a facility under subsection 2, paragraph "c" do not apply if the court has waived its jurisdiction over the child for the alleged commission of a felony offense pursuant to section 232.45.

5. An adult within the jurisdiction of the court under section 232.8, subsection 1, who has been placed in detention, is not bailable under chapter 811. If such an adult is detained in a room in a facility intended or used for the detention of adults, the adult shall be confined in a room entirely separated from adults not within the jurisdiction of the court under section 232.8, subsection 1.

6. If the court has waived its jurisdiction over the child for the alleged commission of a forcible felony offense pursuant to section 232.45 or 232.45A, and there is a serious risk that the child may commit an act which would inflict serious bodily harm on another person, the child may be held in the county jail, notwithstanding section 356.3. However, wherever possible the child shall be held in sight and sound separation from adult offenders. A child held in the county jail under this subsection shall have all the rights of adult postarrest or pretrial detainees.

91 Acts, ch 232, §2, 3 SF 471

Subsection 2, unnumbered paragraph 1 amended

NEW subsection 6

232.45A Waiver to and conviction by district court — processing.

1 Once jurisdiction over a child has been waived by the juvenile court as provided in section 232 45, and a conviction is entered by the district court, the clerk of the juvenile court shall immediately send a certified copy of the findings required by section 232 45, subsection 8, and the judgment of conviction to the department of public safety. The department shall maintain a file on each child who has previously been waived to and convicted by the district court in a prosecution as an adult. The file shall be accessible by law enforcement officers on a twenty-four hour per day basis.

2 Once a child sixteen years of age or older has been waived to and convicted of a forcible felony by the district court, all criminal proceedings against the child for any forcible felony occurring subsequent to the date of the conviction of the child shall begin in district court, notwithstanding sections 232 8 and 232 45. A copy of the findings required by section 232 45, subsection 8, shall be made a part of the record in the district court proceedings.

3 If proceedings against a child for a forcible felony who has previously been waived to and convicted of a forcible felony by the district court are mistakenly begun in the juvenile court, the matter shall be transferred to district court upon the discovery of the prior waiver and conviction, notwithstanding sections 232 8 and 232 45.

91 Acts ch 232 §4 SF 471
NEW section

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 1 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. The court shall consider ordering placement in family foster care as an alternative to group foster care.

e An order transferring the guardianship of the child, subject to the continuing jurisdiction and custody of the court for the purposes of section 232 54, to the director of the department of human services for purposes of placement in the state training school or other facility, provided that the child is at least twelve years of age and the court finds the placement to be in the best interests of the child or necessary for the protection of the public, and that the child has been found to have committed an act which is a forcible felony, as defined in section 702 11, or the court finds any three of the following conditions exist:

(1) The child is at least fifteen years of age and the court finds the placement to be in the best interests of the child or necessary to the protection of the public.

(2) The child has committed an act which is a crime against a person and which would be an aggravated misdemeanor or a felony if the act were committed by an adult.

(3) The child has previously been found to have committed a delinquent act.

(4) The child has previously been placed in a treatment facility outside the child's home.

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.

When the court orders the transfer of legal custody of a child pursuant to subsection 2, paragraph "d", and the child is sixteen years of age or older, the order shall specify the services needed to assist the child in preparing for the transition from foster care to independent living.

7. If the court orders the transfer of the custody of the child to the department of human services or to another agency for placement in foster group care, the department or agency shall make every reasonable effort to place the child within the state, in the least restrictive setting available and in close proximity to the parents' home, consistent with the child's best interests and special needs, and shall consider the placement's proximity to the school in which the child is enrolled at the time of placement.

8. If a child has previously been adjudicated as a child in need of assistance, and a social worker or other caseworker from the department of human services has been assigned to work on the child's case, the court may order the department of human services to assign the same social worker or caseworker to work on any matters related to the child arising under this division.

9. *a.* Upon receipt of an application from the director of the department of human services, the court shall enter an order to temporarily transfer a child who has been placed in the state training school pursuant to subsection 2, paragraph "e", to a facility which has been designated to be an alternative placement site for the state training school, provided the court finds that all of the following conditions exist:

(1) There is insufficient time to file a motion and hold a hearing for a substitute dispositional order under section 232.54.

(2) Immediate removal of the child from the

state training school is necessary to safeguard the child's physical or emotional health.

(3) That reasonable attempts to notify the parents, guardian ad litem, and attorney for the child have been made.

b. If the court finds the conditions in paragraph "a" exist and there is insufficient time to provide notice as required under rule of juvenile procedure 4.6, the court may enter an ex parte order temporarily transferring the child to the alternative placement site.

c. Within three days of the child's transfer, the director shall file a motion for a substitute dispositional order under section 232.54 and the court shall hold a hearing concerning the motion within fourteen days of the child's transfer.

90 Acts, ch 1239, §7 HF 2517, 91 Acts, ch 232, §5, 6 SF 471, 91 Acts, ch 258, §37 HF 709

1990 and 1991 amendments to subsection 2, paragraph e effective October 1, 1991, 90 Acts, ch 1239, §24 HF 2517, 91 Acts, ch 258, §74 HF 709

Subsection 2, paragraph e amended

Subsection 6, NEW unnumbered paragraph 2

Subsection 7 amended

232.102 Transfer of legal custody of child 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.

If the child is sixteen years of age or older, the order shall specify the services needed to assist the child in preparing for the transition from foster care to independent living.

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 child 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 8, to the director of human services for the purposes of placement in the Iowa juvenile home at Toledo.

4. *a.* Upon receipt of an application from the director of the department of human services, the court shall enter an order to temporarily transfer a child who has been placed in the Iowa juvenile home at Toledo pursuant to subsection 3, to a facility which has been designated to be an alternative placement site for the juvenile home, provided the court finds that all of the following conditions exist:

(1) There is insufficient time to file a motion and

hold a hearing for a new dispositional order under section 232 103

(2) Immediate removal of the child from the juvenile home is necessary to safeguard the child's physical or emotional health

(3) That reasonable attempts to notify the parents, guardian ad litem, and attorney for the child have been made

b If the court finds the conditions in paragraph "a" exist and there is insufficient time to provide notice as required under rule of juvenile procedure 4 6, the court may enter an ex parte order temporarily transferring the child to the alternative placement site

c Within three days of the child's transfer, the director shall file a motion for a new dispositional order under section 232 103 and the court shall hold a hearing concerning the motion within fourteen days of the child's transfer

5 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

6 The child shall not be placed in the state training school

7 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 reasonable effort to return the child to the child's home as quickly as possible consistent with the best interest of the child 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 If the court orders the transfer of custody to the department of human services or to another agency for placement

in foster group care, the department or agency shall make every reasonable effort to place the child within Iowa, in the least restrictive setting available, and in close proximity to the parents' home, consistent with the child's best interests and special needs, and shall consider the placement's proximity to the school in which the child is enrolled at the time of placement

8 An agency, facility, institution, or person to whom custody of the child has been transferred pursuant to this section shall file a written report with the court at least every six months concerning the status and progress of the child The court shall hold a periodic dispositional review hearing for each child in placement pursuant to this section in order to determine whether the child should be returned home, an extension of the placement should be made, a permanency hearing should be held, 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

a The initial dispositional review hearing shall not be waived or continued beyond six months after the date of the dispositional hearing

b Subsequent dispositional review hearings shall not be waived or continued beyond twelve months after the date of the most recent dispositional review hearing

c For purposes of this subsection, a hearing held pursuant to section 232 103 or 232 104 satisfies the requirements for initial or subsequent dispositional review

91 Acts ch 232 §7 8 SF 471
 Subsection 1 NEW unnumbered paragraph 2 (after paragraph c)
 Subsection 7 amended

232.119 Adoption exchange established.

1 The purpose of this section is to facilitate the placement of all children in Iowa who are legally available for adoption through the establishment of an adoption exchange to help find adoptive homes for these children

2 An adoption information exchange is established within the department to be operated by the department or by an individual or agency under contract with the department

a All special needs children under state guardianship shall be registered on the adoption exchange within sixty days of the termination of parental

rights pursuant to section 232.117 or 600A.9 and assignment of guardianship to the director.

b. Prospective adoptive families requesting a special needs child shall be registered on the adoption exchange upon receipt of an approved home study.

3. To register a child on the exchange, the adoption worker or agency shall submit all pertinent information concerning the child, a brief description and photo of the child, and other information needed to be compatible with the national adoption exchange. The exchange shall include a photo-listing book which shall be updated regularly. The adoption worker or agency which places a child on the exchange shall provide updated registration information within ten working days after a change in the information previously submitted occurs.

4. The exchange shall include a matching service for children registered or listed in the adoption photo-listing book and prospective adoptive families listed on the exchange. The department shall register a child with the national exchange if the child has not been placed for adoption after three months on the exchange established pursuant to this section.

5. A request to defer registering the child on the exchange shall be granted if any of the following conditions exist:

- a. The child is in an adoptive placement.
- b. The child's foster parents or another person with a significant relationship is being considered as the adoptive family.
- c. The child needs diagnostic study or testing to clarify the child's problem and provide an adequate description of the problem.
- d. The child is currently hospitalized and receiving medical care that does not permit adoptive placement.
- e. The child is fourteen years of age or older and will not consent to an adoption plan and the consequences of not being adopted have been explained to the child.

Upon receipt of a valid written request for deferral pursuant to paragraphs "a" through "e", the exchange shall grant the deferral, except that a deferral based on paragraph "b" or "c" shall be granted for no more than a one-time, ninety-day period unless the termination of parental rights order is appealed. However, if the foster parents or another person with a significant relationship continues to be considered the child's prospective adoptive family, addi-

tional extensions of the deferral may be granted until ninety days after the date of the final decision regarding the appeal.

91 Acts, ch 232, §9, 10 SF 471

Subsection 4 amended

Subsection 5, unnumbered paragraph 2 (after paragraph e) amended

232.142 Maintenance and cost of juvenile homes.

1. County boards of supervisors which singly or in conjunction with one or more other counties provide and maintain juvenile detention and juvenile shelter care homes are subject to this section.

2. For the purpose of providing and maintaining a county or multicounty home, the board of supervisors of any county may issue general county purpose bonds in accordance with sections 331.441 to 331.449. Expenses for providing and maintaining a multicounty home shall be paid by the counties participating in a manner to be determined by the boards of supervisors.

3. A county or multicounty juvenile home approved pursuant to this section shall receive financial aid from the state in a manner approved by the director. Aid paid by the state shall be at least ten percent and not more than fifty percent of the total cost of the establishment, improvements, operation, and maintenance of the home.

4. The director shall adopt minimal rules and standards for the establishment, maintenance, and operation of such homes as shall be necessary to effect the purposes of this chapter. The rules shall apply the requirements of section 237.8, concerning employment and evaluation of persons with direct responsibility for a child or with access to a child when the child is alone and persons residing in a child foster care facility, to persons employed by or residing in a home approved under this section. The director shall, upon request, give guidance and consultation in the establishment and administration of the homes and programs for the homes.

5. The director shall approve annually all such homes established and maintained under the provisions of this chapter. A home shall not be approved unless it complies with minimal rules and standards adopted by the director and has been inspected by the department of inspections and appeals.

91 Acts, ch 138, §4 HF 296

Applicability of 1991 amendment to subsection 4, 91 Acts, ch 138, §10 HF 296

Subsection 4 amended

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 to the following persons or entities:

a. Subjects of a report as follows:

(1) To a child named in a report as a victim of abuse or to the child's attorney or guardian ad litem.

(2) To a parent or the attorney for the parent of a child named in a report as a victim of abuse.

(3) To a guardian or legal custodian, or that person's attorney, of a child named in a report as a victim of abuse.

(4) To a person or the attorney for the person named in a report as having abused a child.

b. Persons involved in an investigation of child abuse as follows:

(1) To a health practitioner or mental health professional who is examining, attending, or treating a child whom such practitioner or professional believes or has reason to believe has been the victim of abuse or to a health practitioner or mental health professional whose consultation with respect to a child believed to have been the victim of abuse is requested by the department.

(2) To an employee or agent of the department of human services responsible for the investigation of a child abuse report.

(3) To a law enforcement officer responsible for assisting in an investigation of a child abuse allegation or for the temporary emergency removal of a child from the child's home.

(4) 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 investigation, diagnosis, assessment, and disposition of a child abuse case.

(5) In an individual case, to the mandatory reporter who reported the child abuse.

c. Individuals, agencies, or facilities providing care to a child as follows:

(1) To a licensing authority for a facility providing care to 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.

(2) To an authorized person or agency responsible 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 registry deems access to child abuse information by such person or agency to be necessary.

(3) To an employee or agent of the department of human services responsible for registering or licensing or approving the registration or licensing of an agency or facility, or to an individual providing care to a child and regulated by the department.

(4) To an employee of the department of human services responsible for an adoptive placement, a certified adoption investigator, or licensed child placing agency responsible for an adoptive placement.

(5) To an administrator of a psychiatric medical institution for children licensed under chapter 135H.

(6) To an administrator of a child foster care facility licensed under chapter 237 if the information concerns a person employed or being considered for employment by the facility.

(7) To an administrator of a child day care facility registered or licensed under chapter 237A if the information concerns a person employed or being considered for employment by or living in the facility.

(8) To the superintendent of the Iowa Braille and sight saving school if the information concerns a person employed or being considered for employment or living in the school.

(9) To the superintendent of the school for the deaf if the information concerns a person employed or being considered for employment or living in the school.

(10) To an administrator of a community mental health center accredited under chapter 230A if the information concerns a person employed or being considered for employment by the center.

d. Relating to judicial and administrative proceedings as follows:

(1) To a juvenile court involved in an adjudication or disposition of a child named in a report.

(2) To a 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.

(3) To a court or administrative agency hearing an appeal for correction of child abuse information as provided in section 235A.19.

(4) To an expert witness at any stage of an appeal necessary for correction of child abuse information as provided in section 235A.19.

(5) To a probation or parole officer, juvenile court officer, or adult correctional officer having custody or supervision of, or conducting an investigation for a court or the board of parole regarding, a

person named in a report as a victim of child abuse or as having abused a child.

e. Others as follows:

(1) To a person conducting bona fide research on child abuse, but without information identifying individuals named in a child abuse report, unless having that information open to review is essential to the research or evaluation and the authorized registry officials give prior written approval and the child, the child's guardian or guardian ad litem and the person named in a report as having abused a child give permission to release the information.

(2) To registry or department personnel when necessary to the performance of their official duties or to a person or agency under contract with the department to carry out official duties and functions of the registry.

(3) To the department of justice for the sole purpose of the filing of a claim for reparation pursuant to section 910A.5 and section 912.4, subsections 3 through 5.

(4) To a legally constituted child protection agency of another state which is investigating or treating a child named in a report as having been abused or to a public or licensed child placing agency of another state responsible for an adoptive placement.

(5) To the attorney for the department of human services who is responsible for representing the department.

(6) To the foster care review boards created pursuant to sections 237.16 and 237.19.

(7) To an employee or agent of the department of human services regarding a person who is providing child day care if the person is not registered or licensed to operate a child day care facility.

(8) To the board of educational examiners created under chapter 260 for purposes of determining whether a practitioner's license should be denied or revoked.

(9) To a legally constituted child protection agency in another state if the agency is conducting a records check of a person who is providing care to a child in the other state.

(10) To the legally authorized protection and advocacy agency recognized in section 135C.2, if a person identified in the information as a victim or a perpetrator of abuse resides in or receives services from a facility or agency because the person is diagnosed as having a developmental disability or a mental illness.

(11) To the department of human services for a record check relating to employment or residence pursuant to section 218.13.

3. Access to unfounded child abuse information is authorized only to those persons identified in subsection 2, paragraph "a", paragraph "b", subparagraphs (2) and (5), and paragraph "e", subparagraph (2).

91 Acts, ch 97, §30 HF 198, 91 Acts, ch 138, §5, 6 HF 296
Applicability of 1991 amendments to subsection 2, paragraph c, subparagraph (10), and paragraph e, subparagraph (11), 91 Acts, ch 138, §10 HF 296
Subsection 2, paragraph c, NEW subparagraph (10)
Subsection 2, paragraph e, subparagraph (3) amended
Subsection 2, paragraph e, NEW subparagraph (11)

CHAPTER 235B

DEPENDENT ADULT ABUSE

235B.1 Dependent adult abuse services.

The department shall establish and operate a dependent adult abuse services program. The program shall emphasize the reporting and evaluation of cases of abuse of a dependent adult who is unable to protect the adult's own interests or unable to perform or obtain essential services. The program shall include but is not limited to:

1. The establishment of multidisciplinary teams to provide leadership at the local and district levels in the delivery of services to victims of dependent adult abuse. The membership of a team shall include individuals who possess knowledge and skills related to the diagnosis, assessment, and disposition of dependent adult abuse cases and who are professionals practicing in the disciplines of medicine, public health, mental health, social work, law, law enforce-

ment, or other disciplines relative to dependent adults. Members of a team shall include, but are not limited to, persons representing the area agencies on aging, county attorneys, health care providers, and other persons involved in advocating or providing services to dependent adults.

2. Provisions for information sharing and case consultation among service providers, care providers, and victims of dependent adult abuse.

3. Procedures for referral of cases among service providers, including the referral of victims of dependent adult abuse residing in licensed health care facilities.

91 Acts, ch 231, §1 SF 455
Section stricken and rewritten

235B.2 Definitions.

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

1. *"Caretaker"* means a related or nonrelated person who has the responsibility for the protection, care, or custody of a dependent adult as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of the court.

2. *"Court"* means the district court.

3. *"Department"* means the department of human services.

4. *"Dependent adult"* means a person eighteen years of age or older who is unable to protect the person's own interests or unable to adequately perform or obtain services necessary to meet essential human needs, as a result of a physical or mental condition which requires assistance from another, or as defined by departmental rule.

5. *"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 unreasonable 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, including theft, 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 or mental health care, or 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.

Dependent adult abuse does not include 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.

Dependent adult abuse does not include the withholding or withdrawing of health care from a dependent adult who is terminally ill in the opinion of a licensed physician, when the withholding or 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.

6. *"Individual employed as an outreach person"*

means a natural person who, in the course of employment, makes regular contacts with dependent adults regarding available community resources.

7. *"Person"* means person as defined in section 4.1.

91 Acts, ch 231, §2 SF 455
Section stricken and rewritten
Subsections renumbered to alphabetize

235B.3 Dependent adult abuse reports.

1. The department shall receive dependent adult abuse reports and shall collect, maintain, and disseminate the reports by establishing a central registry for dependent adult abuse information. The department shall evaluate the reports expeditiously. However, the department of inspections and appeals is solely responsible for the evaluation and disposition of dependent adult abuse cases within health care facilities and shall inform the department of human services of such evaluations and dispositions.

2. All of the following persons shall report suspected dependent adult abuse to the department:

a. A self-employed social worker.

b. A social worker under the jurisdiction of the department of human services.

c. A social worker employed by a public or private person including a public or private health care facility as defined in section 135C.1.

d. A certified psychologist.

e. A person who, in the course of employment, examines, attends, counsels, or treats a dependent adult and reasonably believes the dependent adult has suffered abuse, including:

(1) A member of the staff of a community mental health center, a member of the staff of a hospital, a member of the staff or employee of a public or private health care facility as defined in section 135C.1.

(2) A peace officer.

(3) An in-home homemaker-home health aide.

(4) An individual employed as an outreach person.

(5) A health practitioner, as defined in section 232.68.

(6) A member of the staff or an employee of a community, supervised apartment living arrangement, sheltered workshop, or work activity center.

3. If a staff member or employee is required to report pursuant to this section the person shall immediately notify the person in charge or the person's designated agent, and the person in charge or the designated agent shall make the report.

4. Any other person who believes that a dependent adult has suffered abuse may report the suspected abuse to the department of human services.

5. Following the reporting of suspected dependent adult abuse, the department of human services shall complete an assessment of necessary services and shall make appropriate referrals for receipt of these 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.

6. Upon a showing of probable cause that a dependent adult has been abused, a court may authorize a person, also authorized by the department, to make an evaluation, to enter the residence of, and to examine the dependent adult. Upon a showing of probable cause that a dependent adult has been financially exploited, a court may authorize a person, also authorized by the department, to make an evaluation, and to gain access to the financial records of the dependent adult.

7. The department shall inform the appropriate county attorneys of any reports of dependent adult abuse. The department may request information from any person believed to have knowledge of a case of dependent adult abuse. The person, including but not limited to a county attorney, a law enforcement agency, a multidisciplinary team, or a social services agency 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.

a. If, upon completion of the evaluation or upon referral from the department of inspections and appeals, the department determines that the best interests of the dependent adult require 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 court during all stages of court proceedings involving a suspected case of dependent adult abuse.

c. In every case involving 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.

8. A person participating in good faith in report-

ing or cooperating with or assisting the department 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 participating in good faith in a judicial proceeding resulting from the report or cooperation or assistance or relating to the subject matter of the report, cooperation, or assistance.

9. It shall be unlawful for any person or employer to discharge, suspend, or otherwise discipline a person required to report or voluntarily reporting an instance of suspected dependent adult abuse pursuant to subsection 2 or 4, or cooperating with, or assisting the department of human services in evaluating a case of dependent adult abuse, or participating in judicial proceedings relating to the reporting or cooperation or assistance based solely upon the person's reporting or assistance relative to the instance of dependent adult abuse. A person or employer found in violation of this subsection is guilty of a simple misdemeanor.

10. A person required by this section to report a suspected case of dependent adult abuse who knowingly and willfully fails to do so is guilty of a simple misdemeanor. A person required by this section to report a suspected case of dependent adult abuse who knowingly fails to do so is civilly liable for the damages proximately caused by the failure.

11. The department of inspections and appeals shall adopt rules which require licensed health care facilities to separate an alleged dependent adult abuser from a victim following an allegation of perpetration of abuse and prior to the completion of an investigation of the allegation.

91 Acts, ch 231, §3 SF 465
NEW section

DEPENDENT ADULT ABUSE INFORMATION REGISTRY

235B.4 Legislative findings and purposes.

The general assembly finds and declares that a central registry is required to provide a single source for the statewide collection, maintenance, and dissemination of dependent adult abuse information. Such a registry is imperative for increased effectiveness in dealing with the problem of dependent adult abuse. The general assembly also finds that vigorous protection of rights of individual privacy is an indispensable element of a fair and effective system of collecting, maintaining, and disseminating dependent adult abuse information.

The purposes of this section and sections 235B.5 to 235B.13 are to facilitate the identification of victims or potential victims of dependent adult abuse by making available a single, statewide source of dependent adult abuse data; to facilitate research on dependent adult abuse by making available a single, statewide source of dependent adult abuse data; and to provide maximum safeguards against the unwar-

ranted invasions of privacy which such a registry might otherwise entail.

91 Acts, ch 231, §4 SF 455
NEW section

235B.5 Creation and maintenance of a central registry.

1. There is created within the department a central registry for dependent adult abuse information. The department shall organize and staff the registry and adopt rules for its operation.

2. The registry shall collect, maintain, and disseminate dependent adult abuse information as provided in this chapter.

3. The department shall maintain a toll-free telephone line, which shall be available on a twenty-four-hour-a-day, seven-day-a-week basis and which the department and all other persons may use to report cases of suspected dependent adult abuse and that all persons authorized by this chapter may use for obtaining dependent adult abuse information.

4. An oral report of suspected dependent adult abuse initially made to the central registry shall be immediately transmitted by the department to the appropriate county department of human services or law enforcement agency, or both.

5. An oral report of suspected dependent adult abuse initially made to the central registry regarding a health care facility shall be transmitted by the department to the department of inspections and appeals on the first working day following the submitting of the report.

6. The registry, upon receipt of a report of suspected dependent adult abuse, shall search the records of the registry, and if the records of the registry reveal any previous report of dependent adult abuse involving the same adult or if the records reveal any other pertinent information with respect to the same adult, the appropriate office of the department of human services or the appropriate law enforcement agency shall be immediately notified of that fact.

7. The central registry shall include but not be limited to report data, investigation data, and disposition data.

91 Acts, ch 231, §5 SF 455
NEW section

235B.6 Authorized access.

1. Notwithstanding chapter 22, the confidentiality of all dependent adult abuse information shall be maintained, except as specifically provided by subsections 2 and 3.

2. Access to dependent adult abuse information other than unfounded dependent adult abuse information is authorized only to the following persons:

a. A subject of a report including all of the following:

(1) To an adult named in a report as a victim of abuse or to the adult's attorney or guardian ad litem.

(2) To a guardian or legal custodian, or that person's attorney, of an adult named in a report as a victim of abuse.

(3) To the person or the attorney for the person named in a report as having abused an adult.

b. A person involved in an investigation of dependent adult abuse including all of the following:

(1) A health practitioner or mental health professional who is examining, attending, or treating an adult whom such practitioner or professional believes or has reason to believe has been the victim of abuse or to a health practitioner or mental health professional whose consultation with respect to an adult believed to have been the victim of abuse is requested by the department.

(2) An employee or agent of the department responsible for the investigation of a dependent adult abuse report.

(3) A law enforcement officer responsible for assisting in an investigation of a dependent adult abuse allegation.

(4) 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 investigation, diagnosis, assessment, and disposition of a case of dependent adult abuse.

(5) The mandatory reporter who reported the dependent adult abuse in an individual case.

c. A person providing care to an adult including all of the following:

(1) A licensing authority for a facility providing care to an adult named in a report.

(2) A person authorized as responsible for the care or supervision of an adult named in a report as a victim of abuse or a person named in a report as having abused an adult if the court or registry deems access to dependent adult abuse information by such person to be necessary.

(3) An employee or agent of the department responsible for registering or licensing or approving the registration or licensing of a person, or to an individual providing care to an adult and regulated by the department.

(4) The legally authorized protection and advocacy agency recognized pursuant to section 135C.2 if a person identified in the information as a victim or a perpetrator of abuse resided in or receives services from a facility or agency because the person is diagnosed as having a developmental disability or a mental illness.

d. Relating to judicial and administrative proceedings, persons including all of the following:

(1) A court upon a finding that information is necessary for the resolution of an issue arising in any phase of a case involving dependent adult abuse.

(2) A court or administrative agency hearing an appeal for correction of dependent adult abuse information as provided in section 235B.10.

(3) An expert witness at any stage of an appeal necessary for correction of dependent adult abuse information as provided in section 235B.10.

e. Other persons including all of the following:

(1) A person conducting bona fide research on dependent adult abuse, but without information

identifying individuals named in a dependent adult abuse report, unless having that information open to review is essential to the research or evaluation and the authorized registry officials give prior written approval and the adult, the adult's guardian or guardian ad litem, and the person named in a report as having abused an adult give permission to release the information.

(2) Registry or department personnel when necessary to the performance of their official duties or a person or agency under contract with the department to carry out official duties and functions of the registry.

(3) 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 through 5.

(4) A legally constituted adult protection agency of another state which is investigating or treating an adult named in a report as having been abused.

(5) The attorney for the department who is responsible for representing the department.

(6) A health care facility administrator or the administrator's designee, following the appeals process, for the purpose of hiring staff or continued employment of staff.

3. Access to unfounded dependent adult abuse information is authorized only to those persons identified in subsection 2, paragraph "a", paragraph "b", subparagraphs (2) and (5), and paragraph "e", subparagraph (2).

91 Acts, ch 231, §6 SF 455
NEW section

235B.7 Requests for dependent adult abuse information.

1. Requests for dependent adult abuse information shall be in writing on forms prescribed by the department, except as otherwise provided by subsection 2. Request forms shall require information sufficient to demonstrate authorized access.

2. Requests for dependent adult abuse information may be made orally by telephone if a person making the request believes that the information is needed immediately and if information sufficient to demonstrate authorized access is provided. If a request is made orally by telephone, a written request form shall be filed within seventy-two hours of the oral request.

3. Subsections 1 and 2 do not apply to dependent adult abuse information that is disseminated to an employee of the department or to the attorney representing the department as authorized by section 235B.6.

91 Acts, ch 231, §7 SF 455
NEW section

235B.8 Redissemination of dependent adult abuse information.

1. A recipient of dependent adult abuse information authorized to receive the information shall not redisseminate the information, except that re-

dissemination shall be permitted when all of the following conditions apply:

a. The redissemination is for official purposes in connection with prescribed duties or, in the case of a health practitioner, pursuant to professional responsibilities.

b. The person to whom such information would be redisseminated would have independent access to the same information under section 235B.6.

c. A written record is made of the redissemination, including the name of the recipient and the date and purpose of the redissemination.

d. The written record is forwarded to the registry within thirty days of the redissemination.

2. The department may notify, orally, the mandatory reporter in an individual dependent adult abuse case of the results of the case investigation and of the confidentiality provisions of sections 235B.6 and 235B.12. The department shall subsequently transmit a written notice to the mandatory reporter of the results and confidentiality provisions. A copy of the written notice shall be transmitted to the registry and shall be maintained by the registry as provided in section 235B.9.

91 Acts, ch 231, §8 SF 455
NEW section

235B.9 Sealing and expungement of dependent adult abuse information.

1. Dependent adult abuse information relating to a particular case of suspected dependent adult abuse shall be sealed ten years after the receipt of the initial report of such abuse by the registry unless good cause is shown why the information should remain open to authorized access. If a subsequent report of a suspected case of dependent adult abuse involving the adult named in the initial report as the victim of abuse or a person named in such report as having abused an adult is received by the registry within the ten-year period, the information shall be sealed ten years after receipt of the subsequent report unless good cause is shown why the information should remain open to authorized access.

2. Dependent adult 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 dependent adult abuse information which is determined by a preponderance of the evidence to be unfounded shall be expunged immediately when it is determined to be unfounded.

3. However, if a correction of dependent adult abuse information is requested under section 235B.10 and the issue is not resolved at the end of one year the information shall be retained until the issue is resolved and if the dependent adult abuse information is not determined to be founded, the information shall be expunged immediately when it is determined to be unfounded.

4. The registry, at least annually, shall review and determine the current status of dependent adult abuse reports which are at least one year old and in

connection with which no investigatory report has been filed by the department. If no investigatory report has been filed, the registry shall request the department to file a report. If a report is not filed within ninety days subsequent to a request, the report and relative information shall be sealed and remain sealed unless good cause is shown why the information should remain open to authorized access.

91 Acts, ch 231 §9 SF 455
NEW section

235B.10 Examination, requests for correction or expungement and appeal.

1. Any person or that person's attorney shall have the right to examine dependent adult 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, a written statement to the effect that dependent adult 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 court case relating to the information or findings.

3. The decision resulting from the hearing may be appealed to the court of Polk county by the person requesting the correction or to the 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 dependent adult 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 to the record and evidence shall be prohibited unless otherwise ordered by the court. The clerk shall maintain a separate docket for such actions. A person other than the appellant shall not permit a copy of the testimony or pleadings or the substance of the testimony or pleadings 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 235B.12.

5. If 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 the fact. Upon application to the court and service of notice on the registry, an individual may request and obtain a list of all per-

sons who have received dependent adult 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 an adult may be withheld upon a determination by the registry that disclosure of the person's identity would be detrimental to the person's interest.

91 Acts, ch 231 §10 SF 455
NEW section

235B.11 Civil remedy.

Any aggrieved person may institute a civil action for damages under chapter 25A or 613A or to restrain the dissemination of dependent adult abuse information in violation of this chapter, and any person proven to have disseminated or to have requested and received dependent adult abuse information in violation of this chapter shall be liable for actual damages and exemplary damages for each violation and shall be liable for court costs, expenses, and reasonable attorney's fees incurred by the party bringing the action. In no case shall the award for damages be less than five hundred dollars.

91 Acts, ch 231 §11 SF 455
NEW section

235B.12 Criminal penalties.

1. Any person who willfully requests, obtains, or seeks to obtain dependent adult abuse information under false pretenses, or who willfully communicates or seeks to communicate dependent adult abuse information to any person except in accordance with sections 235B.6 through 235B.8, or any person connected with any research authorized pursuant to section 235B.6 who willfully falsifies dependent adult abuse information or any records relating to the information is guilty of a serious misdemeanor. Any person who knowingly, but without criminal purposes, communicates or seeks to communicate dependent adult abuse information except in accordance with sections 235B.6 through 235B.8 is guilty of a simple misdemeanor.

2. Any reasonable grounds for belief that a person has violated any provision of this chapter is grounds for the immediate withdrawal of any authorized access the person might otherwise have to dependent adult abuse information.

91 Acts, ch 231 §12 SF 455
NEW section

235B.13 Registry reports.

1. The registry may compile statistics, conduct research, and issue reports on dependent adult abuse, provided identifying details of the subjects of dependent adult abuse reports are deleted from any report issued.

2. The registry shall issue an annual report on its administrative operation, including information as to the number of requests for dependent adult abuse data, the proportion of requests attributable to each type of authorized access, the frequency and nature of irregularities, and other pertinent matters.

91 Acts, ch 231, §13 SF 455
NEW section

235B.14 and 235B.15 Reserved.

INFORMATION, EDUCATION, AND TRAINING

235B.16 Information, education, and training requirements.

1. The department of elder affairs, in cooperation with the department, shall conduct a public information and education program. The elements and goals of the program include but are not limited to:

a. Informing the public regarding the laws governing dependent adult abuse and the reporting requirements for dependent adult abuse.

b. Providing care givers with information regarding services to alleviate the emotional, psychological, physical, or financial stress associated with the care giver and dependent adult relationship.

c. Affecting public attitudes regarding the role of a dependent adult in society.

2. The department, in cooperation with the department of elder affairs and the department of inspections and appeals, shall institute a program of education and training for persons, including members of provider groups and family members, who may come in contact with dependent adult abuse. The program shall include but is not limited to instruction regarding recognition of dependent adult abuse and the procedure for the reporting of suspected abuse.

3. The content of the continuing education required pursuant to chapter 258A for a licensed professional providing care or service to a dependent adult shall include, but is not limited to, the responsibilities, obligations, powers, and duties of a person regarding the reporting of suspected dependent adult abuse, and training to aid the professional in identifying instances of dependent adult abuse.

4. The department of inspections and appeals shall provide training to investigators regarding the collection and preservation of evidence in the case of suspected dependent adult abuse.

5. A person required to report cases of dependent adult abuse pursuant to section 235B.3, other than

a physician whose professional practice does not regularly involve providing primary health care to adults, shall complete two hours of training relating to the identification and reporting of dependent adult abuse within six months of initial employment or self-employment which involves the examination, attending, counseling, or treatment of adults on a regular basis. Within one month of initial employment or self-employment, the person shall obtain a statement of the abuse reporting requirements from the person's employer or, if self-employed, from the department. The person shall complete at least two hours of additional dependent adult abuse identification and reporting training every five years.

If the person is an employee of a hospital or similar public or private facility, the employer shall be responsible for providing the training. To the extent that the employer provides approved training on the employer's premises, the hours of training completed by employees shall be included in the calculation of nursing or service hours required to be provided to a patient or resident per day. If the person is self-employed, the person shall be responsible for obtaining the training.

The person may complete the initial or additional training as a part of a continuing education program required under chapter 258A or may complete the training as a part of a training program offered by the department of human services, the department of elder affairs, the department of inspections and appeals, the Iowa law enforcement academy, or a similar public agency.

A person required to complete both child abuse and dependent adult abuse mandatory reporter training may complete the training through a program which combines child abuse and dependent adult abuse curricula and thereby meet the training requirements of both this subsection and section 232.69 simultaneously.

6. The department shall require an educational program for employees of the registry on the proper use and control of dependent adult abuse information.

91 Acts, ch 231 §14 SF 455
NEW section

CHAPTER 235C

COUNCIL ON CHEMICALLY EXPOSED INFANTS

235C.3 Council duties.

The council shall be responsible for the following activities

1 *Data collection* The council shall assemble relevant materials regarding the extent to which infants born in Iowa are chemically exposed, the services currently available to meet the needs of infants born who are chemically exposed, and the costs incurred in caring for infants born who are chemically exposed, including both costs borne directly by the state and costs borne by society

2 *Prevention and education* The council, after reviewing the data collected pursuant to subsection 1, and after reviewing education and prevention programs employed in Iowa and in other states, shall make recommendations to the appropriate division to develop a state prevention and education campaign, including the following components

a A broad-based public education campaign outlining the dangers inherent in substance use during pregnancy

b A health professional training campaign, including recommendations concerning the curriculum offered at the college of medicine at the state university of Iowa, providing assistance in the identification of women at risk of substance abuse during pregnancy and strategies to be employed in assisting those women to maintain healthy lifestyles during pregnancy Included in this education campaign shall be guidelines to health professionals offering information on assessment, laboratory testing, medication use, and referrals

c A targeted public education campaign directed toward high-risk populations

d A technical assistance program for developing support programs to identified high-risk populations, including pregnant women who previously have given birth to chemically exposed infants or currently are using substances dangerous to the health of the fetus

e An education program for use within the school system, including training materials for school personnel to assist those personnel in identification, care, and referral

3 *Identification* The council shall develop recommendations regarding state programs or policies to increase the identification of chemically exposed infants

4 *Treatment services* The council shall seek to improve effective treatment services within the state for chemically exposed infants As part of this responsibility, the council shall make recommendations which shall include, but are not limited to, the following

a Identification of programs available within the state for serving chemically exposed infants and their families

b Recommended ways to enhance funding for effective treatment programs, including the use of state health care programs and services under the medical assistance program and the maternal and child health programs

c Identification of means to serve children who were chemically exposed infants when the children enter the school system

As an additional part of this responsibility, the council shall determine whether a problem exists with respect to substance abuse treatment providers and physicians discriminating against pregnant women in providing treatment or prenatal care

5 *Care and placement* The council shall work with the department of human services to expand appropriate placement options for chemically exposed infants who have been abandoned by their parents or cannot safely be returned home As part of this responsibility, the council shall do all of the following

a Assist the department of human services in developing rules to establish specialized foster care services that can attract foster parents to care for chemically exposed infants

b Identify additional services, such as therapeutic day care services, that may be needed to effectively care for chemically exposed infants

c Review the need for residential programs designed to meet the needs of chemically exposed infants

As an additional part of the responsibility, the council shall determine whether a problem exists with respect to substance abuse treatment providers and physicians discriminating against pregnant women in providing treatment or prenatal care

6 *Awards of grants and development of pilot programs* From funds appropriated for this purpose, the council shall award grants or develop pilot programs to achieve the purposes of the council

7 *Annual report* The council shall annually report to the governor and members of the general assembly on the progress it has made toward meeting its responsibilities

The council shall meet at least twice annually, and may establish such subcommittees and task forces as are necessary to achieve its purpose

8 *Confidentiality of information* Data collected pursuant to this chapter shall be confidential to the extent necessary to protect the identity of persons who are the subjects of the data collection

CHAPTER 236

DOMESTIC ABUSE

Pilot program for domestic abuse prosecution, plans and procedures, 91 Acts, ch 219, § 38 SF 496

236.2 Definitions.

For purposes of this chapter, unless a different meaning is clearly indicated by the context:

1. “*Department*” means the department of justice.
2. “*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 or persons divorced from each other and not residing together at the time of the assault.
3. “*Emergency shelter services*” include, but are not limited to, secure crisis shelters or housing for victims of domestic abuse.
4. “*Family or household members*” means spouses, persons cohabiting, parents, or other persons related by consanguinity or affinity, except children under eighteen.
5. “*Pro se*” means a person proceeding on the person’s own behalf without legal representation.
6. “*Support services*” include, but are not limited to, legal services, counseling services, transportation services, child care services, and advocacy services.

91 Acts, ch 218, §4 SF 444

NEW subsection 5 and former subsection 5 renumbered as 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, if any. If the plaintiff is proceeding pro se, the petition shall state a mailing address for the plaintiff.
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 hear-

ing if the payment of costs would prejudice the plaintiff’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 plaintiff’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.

91 Acts, ch 218, §5 SF 444
Subsection 1 amended

236.3A Plaintiffs proceeding pro se — provision of forms and assistance.

1. The department shall prescribe standard forms to be used by plaintiffs seeking protective orders by proceeding pro se in actions under this chapter. The standard forms shall include language in fourteen-point boldface type, with a box which may be checked by the plaintiff, indicating that the plaintiff wishes to proceed by filing an affidavit pursuant to section 236.3, because the plaintiff does not have sufficient funds to pay the cost of filing and service. Standard forms prescribed by the department shall be the exclusive forms used by plaintiffs proceeding pro se, and may be used by other plaintiffs. The department shall distribute the forms to the clerks of the district courts.

2. The clerk of the district court shall furnish the required forms to persons seeking protective orders through pro se proceedings pursuant to this chapter.

91 Acts, ch 218, §6 SF 444
NEW section

236.5 Disposition.

Upon a finding that the defendant has engaged in domestic abuse:

1. The court may order that the plaintiff, the defendant, and the children who are members of the household receive professional counseling, either from a private source approved by the court or from a source appointed by the court. Costs of counseling shall be paid in full or in part by the parties and taxed as court costs. If the court determines that the parties are unable to pay the costs, they may be paid in full or in part from the county treasury.

2. The court may grant a protection order or approve a consent agreement which may contain but is not limited to any of the following provisions:

- a. That the defendant cease domestic abuse of the plaintiff.

b. That the defendant grant possession of the residence to the plaintiff to the exclusion of the defendant or that the defendant provide suitable alternate housing for the plaintiff.

c. That the defendant stay away from the plaintiff's residence, school or place of employment.

d. The awarding of temporary custody of or establishing temporary visitation rights with regard to children under eighteen. In awarding temporary custody or temporary visitation rights, the court shall give primary consideration to the safety of the victim and the children. If the court finds that the safety of the victim or the children will be jeopardized by unsupervised or unrestricted visitation, the court shall condition or restrict visitation as to time, place, duration, or supervision, or deny visitation entirely, as needed to guard the safety of the victim and the children. The court shall also investigate whether any other existing orders awarding custody or visitation rights should be modified.

e. That the defendant pay the clerk a sum of money for the separate support and maintenance of the plaintiff and children under eighteen.

An order for counseling, a protection order or approved consent agreement shall be for a fixed period of time not to exceed one year. The court may amend its order or a consent agreement at any time upon a petition filed by either party and after notice and hearing.

The order shall state whether a person is to be taken into custody by a peace officer for a violation of the terms stated in the order.

3. An order or consent agreement under this section shall not affect title to real property.

4. A certified copy of any order or approved consent agreement shall be issued to the plaintiff, the defendant and the county sheriff having jurisdiction to enforce the order or consent agreement, and the twenty-four hour dispatcher for the county sheriff. Any subsequent amendment or revocation of an order or consent agreement shall be forwarded by the clerk to all individuals and the county sheriff previously notified. The clerk shall notify the county sheriff and the twenty-four hour dispatcher for the county sheriff in writing so that the county sheriff and the county sheriff's dispatcher receive written notice within six hours of filing the order, approved consent agreement, amendment, or revocation. The county sheriff's dispatcher shall notify all law enforcement agencies having jurisdiction over the matter and the twenty-four hour dispatcher for the law enforcement agencies upon notification by the clerk. The clerk shall send or deliver a written copy of any such document to the law enforcement agencies and the twenty-four hour dispatcher within twenty-four hours of filing the document.

91 Acts, ch 218, §7, 8 SF 444, 91 Acts, ch 219, §3 SF 496
 Subsection 2, paragraph d amended
 Subsection 4 amended

236.8 Contempt.

The court may hold a party in contempt for a vio-

lation of an order or court-approved consent agreement entered under this chapter, for violation of a temporary or permanent protective order or order to vacate the homestead under chapter 598, or for violation of any order that establishes conditions of release or is a protective order or sentencing order in a criminal prosecution arising from a domestic abuse assault. If held in contempt, the defendant shall serve a jail sentence. Any jail sentence imposed under this section shall be served on consecutive days.

91 Acts, ch 218, §9 SF 444
 Section 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 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 justice 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 justice.

91 Acts, ch 19, §1 SF 180
 Unnumbered paragraph 1 amended

236.11 Duties of peace officer — magistrate.

A peace officer shall use every reasonable means to enforce an order or court-approved consent agreement entered under this chapter, a temporary or permanent protective order or order to vacate the homestead under chapter 598, or any order that establishes conditions of release or is a protective order or sentencing order in a criminal prosecution arising from a domestic abuse assault. If a peace officer has reason to believe that domestic abuse has occurred, the peace officer shall ask the abused person if any prior orders exist, and shall contact the twenty-four hour dispatcher to inquire if any prior orders exist. If a peace officer has probable cause to believe that a person has violated an order or approved consent agreement entered under this chapter, a temporary or permanent protective order or order to vacate the homestead under chapter 598, or any order establishing conditions of release or a protective or sentencing order in a criminal prosecution arising from a domestic abuse assault, the peace officer shall take the person into custody and shall take the person without unnecessary delay before the nearest or most accessible magistrate in the judicial district in which the person was taken into custody. The magis-

trate shall make an initial preliminary determination whether there is probable cause to believe that an order or consent agreement existed and that the person taken into custody has violated its terms. The magistrate's decision shall be entered in the record.

If a peace officer has probable cause to believe that a person has violated an order or approved consent agreement entered under this chapter, a temporary or permanent protective order or order to vacate the homestead under chapter 598, or any order establishing conditions of release or a protective or sentencing order in a criminal prosecution arising from a domestic abuse assault, and the peace officer is unable to take the person into custody within twenty-four hours of making the probable cause determination, the peace officer shall either request a magistrate to make a determination as to whether a rule to show cause or arrest warrant should be issued, or refer the matter to the county attorney.

If the magistrate finds probable cause, the magistrate shall order the person to appear before the court which issued the original order or approved the consent agreement, whichever was allegedly violated, at a specified time not less than three days nor more than ten days after the initial appearance under this section. The magistrate shall cause the original court to be notified of the contents of the magistrate's order.

A peace officer shall not be held civilly or criminally liable for acting pursuant to this section provided that the peace officer acts in good faith, on probable cause, and the officer's acts do not constitute a willful and wanton disregard for the rights or safety of another.

91 Acts, ch 218, §10 SF 444
Unnumbered paragraph 1 amended and NEW unnumbered paragraph 2

236.12 Prevention of further abuse — notification of rights — arrest — 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 for you, the children who are members of the household, and the defendant.

You have the right to seek help from the court to seek a protective order with or without the assistance of legal representation. You have the right to seek help from the courts without the payment of court costs if you do not have sufficient funds to pay the costs.

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. A peace officer may, with or without a warrant, arrest a person under section 708.2, subsection 4, if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to believe that a domestic abuse assault has been committed which did not result in any injury to the alleged victim.

b. Except as otherwise provided in subsection 3, a peace officer shall, with or without a warrant, arrest a person under section 708.2, subsection 2, if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to believe that a domestic abuse assault has been committed which resulted in the alleged victim's suffering a bodily injury.

c. Except as otherwise provided in subsection 3, a peace officer shall, with or without a warrant, arrest a person under section 708.2, subsection 1, if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to believe that a domestic abuse assault has been committed with the intent to inflict a serious injury.

d. Except as otherwise provided in subsection 3, a peace officer shall, with or without a warrant, arrest a person under section 708.2, subsection 3, if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to believe that a domestic abuse assault has been committed and that the al-

leged abuser used or displayed a dangerous weapon in connection with the assault.

3. As described in subsection 2, paragraph “b”, “c”, or “d”, the peace officer shall arrest the person whom the peace officer believes to be the primary physical aggressor. The duty of the officer to arrest extends only to those persons involved who are believed to have committed an assault. Persons acting with justification, as defined in section 704.3, are not subject to mandatory arrest. In identifying the primary physical aggressor, a peace officer shall consider the need to protect victims of domestic abuse, the relative degree of injury or fear inflicted on the persons involved, and any history of domestic abuse between the persons involved. A peace officer’s identification of the primary physical aggressor shall not be based on the consent of the victim to any subsequent prosecution or on the relationship of the persons involved in the incident, and shall not be based solely upon the absence of visible indications of injury or impairment.

4. A peace officer is not civilly or criminally liable for actions pursuant to this section taken in good faith.

91 Acts, ch 218, §11 SF 444

Subsection 1, paragraph c, NEW unnumbered paragraph 3, after subparagraph (4)

236.14 Initial appearance required — contact to be prohibited.

1. Notwithstanding chapters 804 and 805, a person taken into custody pursuant to section 236.11 or arrested pursuant to section 236.12 may be released on bail or otherwise only after an initial appearance before a magistrate as provided in chapter 804 and the rules of criminal procedure or section 236.11, whichever is applicable.

2. When a person arrested for a domestic abuse assault, or taken into custody for contempt proceedings pursuant to section 236.11, is brought before a magistrate and the magistrate finds probable cause to believe that domestic abuse or a violation of an order or consent agreement has occurred and that the presence of the alleged abuser in the victim’s residence poses a threat to the safety of the alleged victim, persons residing with the alleged victim, or members of the alleged victim’s immediate family, the magistrate shall enter an order which shall require the alleged abuser to have no contact with the alleged victim, persons residing with the alleged victim, or members of the alleged victim’s immediate family, and to refrain from harassing the alleged victim, persons residing with the alleged victim, or members of the alleged victim’s immediate family, in addition to any other conditions of release determined and imposed by the magistrate under section 811.2. A no-contact order requiring the alleged abuser to have no contact with the alleged victim’s children shall prevail over any existing order awarding custody or visitation rights, which may be in conflict with the no-contact order.

The court order shall contain the court’s directives

restricting the defendant from having contact with the victim or the victim’s relatives.

The clerk of the court or other person designated by the court shall provide a copy of this order to the victim pursuant to chapter 910A. The order has force and effect until it is modified or terminated by subsequent court action in the contempt proceeding or the criminal or juvenile court action and is reviewable in the manner prescribed in section 811.2. The clerk of the district court shall also provide oral or other notice and copies of the no-contact order to the applicable law enforcement agencies and the twenty-four hour dispatcher for the law enforcement agencies, in the manner provided for protective orders under section 236.5. The clerk shall provide oral or other notice and copies of modifications or vacations of these orders in the same manner.

Violation of this no-contact order is punishable by summary contempt proceedings. If held in contempt for violation of a no-contact order, the person shall be confined in the county jail for a minimum of seven days. A jail sentence imposed pursuant to this paragraph shall be served on consecutive days.

91 Acts, ch 218, §12 SF 444, 91 Acts, ch 219, §4 SF 496

Subsection 2, unnumbered paragraphs 1, 3 and 4 amended

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 department for designation and funding as a provider of emergency shelter services and support services to victims of domestic abuse or sexual assault. 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.

91 Acts, ch 218, §13 SF 444

Section amended

236.15A Income tax checkoff for domestic abuse services.

A person who files an individual or a joint income tax return with the department of revenue and finance under section 422.13 may designate any amount to be paid to the general fund of the state and used for the purposes of providing emergency shelter services, support services, and other services to victims of domestic abuse or sexual assault. 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 be used for the purposes of providing services to victims of domestic abuse or sexual assault, the amount designated shall be reduced to the remaining amount of refund or the remaining amount remitted with the return.

It is the intent of the general assembly that the funds generated from the checkoff be appropriated and used for the purposes of providing services to victims of domestic abuse or sexual assault.

The director of revenue and finance shall draft the income tax form to allow the designation of contributions to be used for the purposes of providing services to victims of domestic abuse or sexual assault on the tax return.

The department of revenue and finance 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 treasurer of state.

The department of revenue and finance shall consult the crime victim assistance board concerning the adoption of 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 finance and accounts identified as owing under section 421.17 and the political contribution allowed under section 56.18 shall be satisfied.

91 Acts, ch 218, §14 SF 444

Section applies retroactively to January 1, 1991, for tax years beginning on or after that date, 91 Acts, ch 218, §34 SF 444

NEW section

236.16 Department powers and duties.

1. The department 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.

c. Designate and award moneys for publicizing and staffing a statewide, toll-free telephone hotline for use by victims of domestic abuse. The department may award a grant to a public agency or a private, nonprofit organization for the purpose of operating the hotline. The operation of the hotline shall include informing victims of their rights and of various community services that are available, referring victims to service providers, receiving complaints concerning misconduct by peace officers and encouraging victims to refer such complaints to the office of citizens' aide, providing counseling services to victims over the telephone, and providing domestic abuse victim advocacy.

d. Advertise the toll-free telephone hotline through the use of public service announcements, billboards, print and broadcast media services, and other appropriate means, and contact media organizations to encourage the provision of free or inexpensive advertising concerning the hotline and its services.

e. Develop, with the assistance of the entity op-

erating the telephone hotline and other domestic abuse victim services providers, brochures explaining the rights of victims set forth under section 236.12 and the services of the telephone hotline, and distribute the brochures to law enforcement agencies, victim service providers, health practitioners, charitable and religious organizations, and other entities that may have contact with victims of domestic abuse.

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 department 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.

91 Acts, ch 218, §15 SF 444

Subsection 1, NEW paragraphs c, d and e

236.17 Domestic abuse training requirements.

The department, in cooperation with victim service providers, shall work with various professional organizations to encourage organizations to establish training programs for professionals who work in the area of domestic abuse prevention and services. Domestic abuse training may include, but is not limited to, the following areas:

1. The enforcement of both civil and criminal remedies in domestic abuse matters.

2. The nature, extent, and causes of domestic abuse.

3. The legal rights and remedies available to domestic abuse victims, including crime victim compensation.

4. Services available to domestic abuse victims and their children, including the domestic abuse telephone hotline.

5. The mandatory arrest provisions of section 236.12, and other duties of peace officers pursuant to this chapter.

6. Techniques for intervention in domestic abuse cases.

91 Acts, ch 218, §16 SF 444, 91 Acts, ch 219, §33 SF 496

NEW section

236.18 Reference to certain criminal provisions.

In addition to the criminal penalties contained in this chapter, certain criminal penalties and provisions pertaining to domestic abuse assaults are set forth in sections 708.2A and 708.2B.

91 Acts, ch 218, §17 SF 444

NEW section

CHAPTER 237

CHILD FOSTER CARE FACILITIES

237.8 Personnel.

1. A person shall not be allowed to provide services in a facility if the person has a disease which is transmissible to other persons through required contact in the workplace, which presents a significant risk of infecting other persons, which presents a substantial possibility of harming other persons, or for which no reasonable accommodation can eliminate the risk of infecting other persons.

2. *a.* If a person is being considered for licensure under this chapter, or for employment involving direct responsibility for a child or with access to a child when the child is alone, by a licensee under this chapter, or if a person will reside in a facility utilized by a licensee, and if the person has been convicted of a crime or has a record of founded child abuse, the department and the licensee for an employee of the licensee shall perform an evaluation to determine whether the crime or founded child abuse warrants prohibition of licensure, employment, or residence in the facility. The department shall conduct criminal and child abuse record checks in this state and may conduct these checks in other states. The evaluation shall be performed in accordance with procedures adopted for this purpose by the department.

b. If the department determines that a person has committed a crime or has a record of founded child abuse and is licensed, employed by a licensee, or resides in a licensed facility the department shall notify the licensee that an evaluation will be conducted to determine whether prohibition of the person's licensure, employment, or residence is warranted.

c. In an evaluation, the department and the licensee for an employee of the licensee shall consider the nature and seriousness of the crime or founded child abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child abuse, the circumstances under which the crime or founded child abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded child abuse again, and the number of crimes or founded child abuses committed by the person involved. The department may permit a person who is evaluated to be licensed, employed, or to reside, or to continue to be licensed, employed, or to reside in a licensed facility, if the person complies with the department's conditions relating to the person's licensure, employment, or residence, which may include completion of additional training. For an employee of a licensee, these conditional requirements shall be developed with the licensee. The department has final authori-

ty in determining whether prohibition of the person's licensure, employment, or residence is warranted and in developing any conditional requirements under this paragraph.

d. If the department determines that the person has committed a crime or has a record of founded child abuse which warrants prohibition of licensure, employment, or residence, the person shall not be licensed under this chapter and shall not be employed by a licensee or reside in a licensed facility.

91 Acts, ch 138, §7 HF 296
Applicability of 1991 amendments to subsection 2, paragraphs a and c, 91 Acts, ch 138, §10 HF 296
Subsection 2, paragraphs a and c amended

237.15 Definitions.

For the purposes of this division unless otherwise defined:

1. "*Case permanency plan*" means the plan, mandated by Pub. L. No. 96-272, as codified in 42 U.S.C., §§ 671(a)(16), 627(a)(2)(B), and 675(1),(5), which is designed to achieve placement in the least restrictive, most family-like setting available and in close proximity to the parent's home, consistent with the best interests and special needs of the child, and which considers the placement's proximity to the school in which the child is enrolled at the time of placement. The plan shall specifically include all of the following:

a. Plans for carrying out the voluntary placement agreement or judicial determination pursuant to which the child entered care.

b. The type and appropriateness of the placement and services to be provided to the child.

c. The care and services that will be provided to the child, natural parents, and foster parents.

d. How the care and services will meet the needs of the child while in care and will facilitate the child's return home or other permanent placement.

e. The efforts to place the child with a relative.

f. The rationale for an out-of-state placement, and the efforts to prevent such placement, if the child has been placed out of state.

g. Time frames to meet the stated permanency goal and short-term objectives.

h. To the extent the records are available and accessible, a summary of the child's health and education records, including the date the records were supplied to the licensee who is the child's foster care provider.

i. When a child is sixteen years of age or older, a written plan of services which, based upon an assessment of the child's needs, would assist the child in preparing for the transition from foster care to independent living.

2. “*Child receiving foster care*” means a child defined in section 234.1 whose foster care placement is the financial responsibility of the state pursuant to section 234.35, who is under the guardianship of the department, or who has been involuntarily hospitalized for mental illness pursuant to chapter 229.

3. “*Family*” means the social unit consisting of the child and the biological or adoptive parent, step-parent, brother, sister, stepbrother, stepsister, and grandparent of the child.

4. “*Local board*” means a local foster care review board created pursuant to section 237.19.

5. “*Person or court responsible for the child*” means the department, including but not limited to the department of human services, agency, or individual who is the guardian of a child by court order issued by the juvenile or district court and has the responsibility of the care of the child, or the court having jurisdiction over the child.

6. “*State board*” means the state foster care review board created pursuant to section 237.16.

91 Acts, ch 232, §11 SF 471
Subsection 1 amended

CHAPTER 237A

CHILD DAY CARE FACILITIES

237A.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. “*Administrator*” means the administrator of the division designated by the director to administer this chapter.

2. “*Child*” means a person under eighteen years of age.

3. “*Child care center*” or “*center*” means a facility providing child day care for seven or more children, except when the facility is registered as a family day care home or group day care home.

4. “*Child day care*” means the care, supervision, or guidance of a child by a person other than the parent, guardian, relative, or custodian for periods of less than twenty-four hours per day per child on a regular basis in a place other than the child’s home, but does not include care, supervision, or guidance of a child by any of the following:

a. An instructional program administered by a public or nonpublic school system accredited by the department of education or the state board of regents, except a program provided under section 279.49.

b. A church-related instructional program of not more than one day per week.

c. Short-term classes held between school terms.

d. A child care center for sick children operated as part of a pediatrics unit in a hospital licensed by the department of inspections and appeals pursuant to chapter 135B.

e. A nonprofit program operated by volunteers for no charge for not more than two hours during any twenty-four hour period.

f. A program provided by the state or a political subdivision, which provides recreational classes for a period of less than two hours per day.

5. “*Child day care facility*” or “*facility*” means a child care center, group day care home, or registered family day care home.

6. “*County board*” means the county board of social welfare.

7. “*Department*” means the department of human services.

8. “*Director*” means the director of human services.

9. a. “*Family day care home*” means a person or program which provides child day care to less than seven children at any one time or to less than twelve children at any one time as authorized by section 237A.3, subsection 1.

b. “*Group day care home*” means a facility providing child day care for more than six but less than twelve children, with no more than six children at one time being less than six years of age.

10. “*Licensed center*” means a center issued a full or provisional license by the department under the provisions of this chapter or a center for which a license is being processed.

11. “*Low-income family*” means a family whose monthly gross income is less than the lower of:

a. Eighty percent of the median income of a family of four in this state adjusted to take into account the size of the family; or

b. The median income of a family of four in the fifty states and the District of Columbia adjusted to take into account the size of the family.

12. “*Preschool*” means a child day care facility which provides to children ages three through five, for periods of time not exceeding three hours per day, programs designed to help the children to develop intellectual skills, social skills and motor skills, and to extend their interest and understanding of the world about them.

13. "Relative" means a person who by marriage, blood or adoption is a parent, grandparent, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, or guardian.

14. "State day care advisory committee" means the state day care advisory committee established pursuant to sections 237A.21 and 237A.22.

91 Acts, ch 151, §1 HF 500
Subsections renumbered to alphabetize
Subsection 4, NEW paragraphs e and f

237A.2 Licensing of child care centers.

A person shall not establish or operate a child care center without obtaining a license under the provisions of this chapter. A center may operate for a specified period of time, to be established by rule of the department, if application for a license has been made. The department shall issue a license if it determines that the following conditions have been met:

1. An application for a license or a renewal has been filed with the administrator on forms provided by the department.
2. The center is maintained to comply with state health and fire laws.
3. The center is maintained to comply with rules promulgated under section 237A.12.

A person denied a license under the provisions of this section shall receive written notice of the denial stating the reasons for denial and shall be provided with an opportunity for an evidentiary hearing. Licenses granted under this chapter shall be valid for one year from the date of issuance unless revoked or suspended in accordance with the provisions of section 237A.8. A record of the license shall be kept by the department. The license shall be posted in a conspicuous place in the center and shall state the particular premises in which child day care may be offered and the number of individuals who may be received for care at any one time. No greater number of children than is authorized by the license shall be kept in the center at any one time.

The administrator may issue a provisional license for a period of time not to exceed one year if the center does not meet standards required under this section. A provisional license shall be posted in a conspicuous place in the center as provided in this section. If written plans to bring the center up to standards, giving specific dates for completion of work, are submitted to and approved by the department promulgating the regulations, the provisional license shall be renewable.

A program which is not a child care center by reason of the definition of child day care in section 237A.1, subsection 4, but which provides care, supervision, or guidance to a child may be issued a license if the program complies with all the provisions of this chapter.

If the department has denied or revoked a license because the applicant or person has continually or repeatedly failed to operate a licensed center in compliance with this chapter and rules adopted pursuant

to this chapter, the person shall not own or operate a child care center for a period of six months from the date the license is denied or revoked. The department shall not act on an application for a license submitted by the applicant or person during the six-month period.

Notwithstanding any requirement established under this chapter, an exception is provided for the period beginning on June 4, 1991, and ending December 31, 1991, in accordance with the provisions of this paragraph, to permit a center to care for one more child than the amount of children authorized for the center. The exception applies to any limit on the number of children and to requirements for numerical ratios of staff persons to children. The exception applies only to a child who meets both of the following circumstances: the child has a parent serving in the United States armed services who is stationed outside the state of Iowa due to the Persian Gulf conflict and there is no charge for the care provided to the child.

91 Acts, ch 232, §12 SF 671
NEW unnumbered paragraphs 5 and 6

237A.3 Registration of family and group day care homes.

1. A person who operates or establishes a family day care home may apply to the department for registration under this chapter. The department shall issue a certificate of registration upon receipt of a statement from the family day care home that the home complies with rules adopted by the department. The registration certificate shall be posted in a conspicuous place in the family day care home, shall state the name of the registrant, the number of individuals who may be received for care at any one time, and the address of the home, and shall include a check list of registration compliances. No greater number of children than is authorized by the certificate shall be kept in the family day care home at any one time. However, a registered or unregistered family day care home may provide care for more than six but less than twelve children at any one time for a period of less than two hours, provided that each child in excess of six children is attending school full-time on a regular basis. In determining the number of children cared for at any one time in a registered or unregistered family day care home, if the person who operates or establishes the home is a child's parent, guardian, relative, or custodian and the child is not attending school full-time on a regular basis or is not receiving child day care full-time on a regular basis from another person, the child shall be considered to be receiving child day care from the person and shall be counted as one of the children cared for in the home. The registration process may be repeated on an annual basis. A child day care provider or program which is not a family day care home by reason of the definition of child day care in section 237A.1, subsection 4, but which provides care, supervision or guidance to a child may be issued a certificate of registration under this chapter.

2. A person shall not operate or establish a group day care home unless the person obtains a certificate of registration under this chapter. In order to be registered, the group day care home shall have at least one responsible individual, age fourteen or older, on duty to assist the group day care home provider when there are more than six children present for more than a two-hour period. All other requirements of this chapter for registered family day care homes and the rules adopted under this chapter for registered family day care homes apply to group day care homes. In addition, the department shall adopt rules relating to the provision in group day care homes for a separate area for sick children. In consultation with the state fire marshal, the department shall adopt rules relating to the provision of fire extinguishers, smoke detectors, and two exits accessible to children.

3. A person who operates or establishes a family day care home or a group day care home and who is a child foster care licensee under chapter 237 shall register with the department under this chapter. For purposes of registration and determination of the maximum number of children who can be provided child day care by the family day care home or group day care home, the children receiving child foster care shall be considered the children of the person operating the family day care home or group day care home.

4. If the department has denied or revoked a registration because the applicant or person has continually or repeatedly failed to operate a registered child day care facility in compliance with this chapter and rules adopted pursuant to this chapter, the person shall not own or operate a registered facility for a period of six months from the date the registration is denied or revoked. The department shall not act on an application for registration submitted by the applicant or person during the six-month period.

5. Notwithstanding any requirement established under this chapter, an exception is provided for the period beginning on June 4, 1991, and ending December 31, 1991, in accordance with the provisions of this subsection, to permit a family day care home or group day care home to care for one more child than the amount of children authorized for the home. The exception applies to any limit on the number of children and to requirements for numerical ratios of staff persons to children. The exception applies only to a child who meets both of the following circumstances: the child has a parent serving in the United States armed services who is stationed outside the state of Iowa due to the Persian Gulf conflict and there is no charge for the care provided to the child.

91 Acts, ch 151, §2 HF 500, 91 Acts, ch 232, §13 SF 471, 91 Acts ch 267, §142 HF 479

See Code editor's note to §15 287

Subsection 1 amended

NEW subsections 4 and 5

237A.5 Personnel.

1. All personnel in licensed or registered facilities shall have good health as evidenced by a report following a preemployment physical examination taken within six months prior to beginning employment. The examination shall include communicable disease tests by a licensed physician as defined in section 135C.1 and shall be repeated every three years after initial employment. Controlled medical conditions which would not affect the performance of the employee in the capacity employed shall not prohibit employment.

2. a. If a person is being considered for licensure or registration under this chapter, or for employment involving direct responsibility for a child or with access to a child when the child is alone, by a child day care facility subject to licensure or registration under this chapter, or if a person will reside in a facility, and if the person has been convicted of a crime or has a record of founded child abuse, the department and the licensee or registrant for an employee of the licensee or registrant shall perform an evaluation to determine whether the crime or founded child abuse warrants prohibition of licensure, registration, employment, or residence in the facility. The department shall conduct criminal and child abuse record checks in this state and may conduct these checks in other states. The evaluation shall be performed in accordance with procedures adopted for this purpose by the department.

b. If the department determines that a person has committed a crime or has a record of founded child abuse and is licensed, employed by a licensee or registrant or registered under this chapter, or resides in a licensed or registered facility the department shall notify the licensee or registrant that an evaluation will be conducted to determine whether prohibition of the person's licensure, registration, employment, or residence is warranted.

c. In an evaluation, the department and the licensee or registrant for an employee of the licensee or registrant shall consider the nature and seriousness of the crime or founded child abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child abuse, the circumstances under which the crime or founded child abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded child abuse again, and the number of crimes or founded child abuses committed by the person involved. The department may permit a person who is evaluated to be licensed, registered, employed, or to reside, or to continue to be licensed, registered, employed, or to reside in a licensed facility, if the person complies with the department's conditions relating to the person's licensure, registration, employment, or residence, which may include completion of additional training. For an employee of a

licensee or registrant, these conditional requirements shall be developed with the licensee or registrant. The department has final authority in determining whether prohibition of the person's licensure, registration, employment, or residence is warranted and in developing any conditional requirements under this paragraph.

d. If the department determines that the person has committed a crime or has a record of founded child abuse which warrants prohibition of licensure, registration, employment, or residence, the person shall not be licensed or registered under this chapter to operate a child day care facility and shall not be employed by a licensee or registrant or reside in a facility licensed or registered under this chapter.

91 Acts, ch 138, §8 HF 296
 Applicability of 1991 amendments to subsection 2, paragraphs a and c; 91 Acts, ch 138, §10 HF 296
 Subsection 2, paragraphs a and c amended

237A.12 Rules.

Subject to the provisions of chapter 17A, the administrator 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 preschools 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 director 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.

If a school district or accredited nonpublic school building complies with standards adopted by the state fire marshal for school buildings under chapter 100, the building is considered appropriate for use by a child day care facility caring for school age children. The rules adopted by the administrator under this section shall not require the facility to comply with building requirements which differ from requirements for use of the building as a school.

Standards and requirements set by a city or county for a school building used as a child day care facility 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 standards and requirements set for the primary purpose of the building.

91 Acts, ch 151, §3 HF 500
 NEW unnumbered paragraphs 4 and 5

237A.27 Crisis child care.

The department shall establish a special child care registration or licensure classification for crisis child care which is provided on a temporary emergency basis to a child when there is reason to believe that the child may be subject to abuse or neglect. The special classification is not subject to the definitional restrictions of child day care in this chapter relating to the provision of child day care for a period of less than twenty-four hours per day on a regular basis. However, the provision of crisis child care shall be limited to a period of not more than seventy-two hours for a child during any single stay. A person providing crisis child care must be registered or licensed under this chapter and must be participating in the federal crisis nursery pilot project. The department shall adopt rules pursuant to chapter 17A to implement this section.

91 Acts, ch 267, §143 HF 479
 NEW section

CHAPTER 239

AID TO DEPENDENT CHILDREN

239.2 Eligibility for aid to dependent children.

Assistance shall be granted under this chapter to a dependent child who:

1. Is living in a suitable family home maintained by a specified relative.

2. Is living in this state other than for a temporary purpose, with a specified relative who is living in this state voluntarily with the intent of making the relative's home in this state and not for a temporary purpose.

3. Is not, with respect to assistance applied for by reason of partial or total unemployment of a parent, the child of a parent who:

a. Has been unemployed for less than thirty days prior to receipt of assistance under this chapter.

b. Is partially or totally unemployed due to a work stoppage which exists because of a labor dispute at the factory, establishment or other premises at which the parent is or was last employed.

c. At any time during the thirty-day period prior to receipt of assistance under this chapter or at any time thereafter while assistance is payable under this chapter, has not been available for employment, has not actively sought employment, or has without good cause refused any bona fide offer of employment or training for employment. The following reasons for refusing employment or training are not good cause: Unsuitable or unpleasant work or training, if the parent is able to perform the work or training without unusual danger to the parent's health; or the amount of wages or compensation, unless the wages for employment are below the federal minimum wage.

d. Has not registered for work with the state employment service established pursuant to section 96.12, or thereafter has failed to report at an employment office in accordance with regulations prescribed pursuant to section 96.4, subsection 1.

The division may prescribe requirements in addition to or in lieu of the foregoing, for eligibility for assistance under this chapter to children whose parents are partially or totally unemployed, which are necessary to secure financial participation of the federal government in payment of such assistance.

91 Acts, ch 173, §1 SF 470
Subsection 3, paragraph e stricken

239.19 Transfer of aid funds to other work and training programs.

The department of human services may transfer aid to dependent children funds in its control to any other department or agency of the state for the purpose of providing funds to carry out the job opportunities and basic skills training program created by the federal Family Support Act of 1988, Title II, Pub. L. No. 100-485, as codified in 42 U.S.C. § 602 et seq.

91 Acts, ch 173, §2 SF 470
Section amended

239.21 Transitional child care assistance.

A recipient who loses eligibility for assistance under this chapter because of an increase in earned income, increased hours of employment, or loss of the earned income disregards is eligible to receive transitional child care assistance, in accordance with the provisions of the federal Family Support Act of 1988, Title III, Pub. L. No. 100-485, as codified in 42 U.S.C. § 602 et seq., for a period of twelve months following the loss of assistance. The department shall deliver the transitional child care assistance through a vendor voucher payment or purchase of service system which requires the recipient to contribute to the cost of the assistance in accordance with a sliding-scale fee established by rule.

91 Acts, ch 173, §3 SF 470
Conformity to federal law and regulations, 91 Acts, ch 267, §110 HF 479
Section amended

CHAPTER 242

TRAINING SCHOOL

242.1 State training school — Eldora and Toledo.

1. Effective January 1, 1992, a diagnosis and evaluation center and other units are established at Eldora to provide to juvenile delinquents a program which focuses upon appropriate developmental skills, treatment, placements, and rehabilitation.

2. The diagnosis and evaluation center which is used to identify appropriate treatment and placement alternatives for juveniles and any other units for juvenile delinquents which are located at Eldora

and the unit for juvenile delinquents at Toledo shall together be known as the “state training school”. For the purposes of this chapter “director” means the director of human services and “superintendent” means the administrator in charge of the diagnosis and evaluation center for juvenile delinquents and other units at Eldora and the unit for juvenile delinquents at Toledo.

90 Acts, ch 1239, §15, 16 HF 2517
Amendment in 90 Acts, ch 1239, §16, effective January 1, 1992, 90 Acts, ch 1239, §24 HF 2517
Section stricken and rewritten

CHAPTER 246

IOWA DEPARTMENT OF CORRECTIONS

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.

l. Adopt rules, policies, and procedures, subject to the approval of the board, pertaining to the supervision of parole and work release.

m. Provide routine administrative and support services to the board of parole.

n. Cooperate with Iowa State University of science and technology to provide, for purposes of agricultural research, development, and testing, the use of resources, including property, facilities, labor, and services, connected with institutions listed in section 246.102. However, use of the resources by the university is subject to approval by the director. Before granting approval, the director shall require that the university compensate the department for the use of the resources, on terms specified by the director.

o. Establish and maintain a correctional training center at the Mount Pleasant correctional facility.

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 de-

partment for construction, facility planning, and project accomplishment with the department of general services and by contracting under chapter 28E for data processing 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.

See Code editor's note, section not amended

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, work release, or parole. The director may transfer an inmate of a correctional institution 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 correctional 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.

91 Acts, ch 219, §6 SF 496
Subsection 1 amended

246.207 Violator facility.

The director shall establish a violator facility as a freestanding facility, or designate a portion of an existing correctional facility for the purpose. A violator facility is for the confinement of offenders, for no longer than sixty days, who have violated conditions of release under work release, parole, or probation, or who are sentenced to the custody of the director for assignment to a treatment facility under section 246.513. The director shall adopt rules pursuant to chapter 17A, subject to the approval of the board, to implement this section.

91 Acts, ch 219, §7 SF 496
NEW section

246.310 Canteens.

The director may maintain a canteen at an 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. Any money in the fund over the amount needed to do normal business transactions, and to reimburse any accounts which have subsidized the canteen fund, shall be considered profit. This money may remain in the canteen fund and be used for any purchase which the superintendent approves that will directly and collectively benefit the inmates of the institution.

91 Acts, ch 260, §1220 HF 173
Section amended

246.310A Institution reading rooms.

The director shall, as necessary, provide suitable space for reading material for inmates. For purposes of this section, "*reading material*" does not include material depicting or describing the genitals, sex acts, masturbation, excretory functions, or sadomasochistic abuse which the average person, taking the material as a whole and applying contemporary community standards with respect to what is suitable material for inmates, would find appeals to the prurient interest and is patently offensive; and the material, taken as a whole, lacks serious literary, scientific, political, or artistic value. The space shall be located so that any visitors, other than those authorized pursuant to section 246.512, shall not be able to view the space or the materials located within that space.

91 Acts, ch 258, §38 HF 709
Section amended

246.508 Property of inmate — inmate savings fund.

1. 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 upon discharge.

2. The director shall establish and maintain an inmate savings fund in an interest-bearing account for the deposit of all or part of an inmate's allowances, as provided in section 246.702. All or part of an inmate's allowances shall be deposited into the savings fund, until the inmate's deposit is equal to the amount due the inmate upon discharge, parole, or placement on work release, as provided in section 906.9. If an inmate's deposits equal this amount, the inmate may voluntarily withdraw from the savings fund. The director shall notify the inmate of this right to withdraw and shall provide the inmate with a written request form to facilitate the withdrawal. If the inmate withdraws and the inmate's deposits exceed the amount due as provided in section 906.9, the director shall disburse the excess amount as provided for allowances under section 246.702, except

the director shall not deposit the excess amount in the inmate savings fund. If the inmate chooses to continue to participate in the savings fund, the inmate's deposits shall be returned to the inmate upon discharge, parole, or placement on work release. Otherwise, the inmate's deposits shall be disposed of as provided in subsection 3. An inmate's deposits into the savings fund may be used to provide the money due the inmate upon discharge, parole, or placement on work release, as required under section 906.9. Interest earned from the savings fund shall be placed in a separate account, and may be used for purchases approved by the director to directly and collectively benefit inmates.

3. Upon the death of an inmate, the superintendent of the institution shall immediately take possession of the decedent's property left at the institution, including the inmate's deposits into the inmate savings fund, and shall deliver the property to the person designated by the inmate to be contacted in case of an emergency. However, if the property left by the decedent cannot be delivered to the designated person, delivery may be made to the surviving spouse or an heir of the decedent. If the decedent's property cannot be delivered to the designated person and no surviving spouse or heir is known, the superintendent shall deliver the property to the treasurer of state for disposition as unclaimed property pursuant to chapter 556, after deducting expenses incurred in disposing of the decedent's body or property.

91 Acts, ch 219, §8 SF 496
Section amended

246.513 Assignment of OWI violators to treatment facilities.

1. *a.* The department of corrections in cooperation with judicial district departments of correctional services shall establish in each judicial district a continuum of programming, including residential facilities and institutions, for the supervision and treatment of offenders convicted of violating chapter 321J who are sentenced to the custody of the director. The department of corrections shall develop standardized assessment criteria for the assignment of offenders to a facility established pursuant to this chapter. The facilities established shall meet all the following requirements:

(1) Is a treatment facility meeting the licensure standards of the division of substance abuse of the department of public health.

(2) Is a facility meeting applicable standards of the American corrections association.

(3) Is a facility which meets any other rule or requirement adopted by the department pursuant to chapter 17A.

b. Except as otherwise provided in this section, the offender shall be assigned to a community-based correctional program. If medical treatment is necessary, the offender may be assigned to the Iowa medical and classification center at Oakdale for treatment and assignment, until the offender's health status

permits placement in a community-based correctional program.

c. If there is insufficient space in a community-based correctional program to accommodate the offender, the court may order the offender to be released on personal recognizance or bond, released to the supervision of the judicial district department of correctional services, or held in jail. If the offender is ordered to the supervision of a judicial district department of correctional services, the district director may request, and the director of the department may approve, the transfer of the offender to the Iowa medical and classification center at Oakdale for classification and assignment, until space is available in a community-based correctional program.

d. If an offender fails to satisfactorily perform in a program conducted by a community-based correctional program, the offender shall be transferred to the Iowa medical and classification facility at Oakdale for classification and assignment.

e. A program established under this section shall operate in accordance with the rules and requirements adopted by the department pursuant to chapter 17A.

2. The assignment of an offender pursuant to subsection 1 shall be for purposes of risk management, substance abuse treatment, and education, and may include work programs for the offender at times when the offender is not participating in other program components.

3. Upon request by the director a county shall provide temporary confinement for offenders allegedly violating the conditions of assignment to a treatment program if space is available. The department shall negotiate a reimbursement rate with each county for the temporary confinement of offenders allegedly violating the conditions of assignment to a treatment program who are in the custody of the director 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. A county holding offenders ordered to jail pursuant to subsection 1 due to insufficient space in a community-based correctional program shall be reimbursed. Payment shall be made upon submission of a voucher executed by the sheriff and approved by the director.

4. The department shall adopt rules for the funding of the program by means of self-contribution by the offenders, insurance reimbursement on behalf of offenders, or other forms of funding, program structure, criteria for the evaluation of facilities and offenders for participation in the programs, and all other issues the director shall deem appropriate.

91 Acts, ch 219, §9 SF 496
Section amended

246.702 Deduction to pay court costs, industries program costs, incarceration costs, or dependents — deposits — savings fund.

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 deduct an amount, not to exceed ten percent of the amount of the allowance, unless the inmate requests a larger amount, to be deposited into the inmate savings fund established in section 246.508. However, if the inmate's deposit in the inmate savings fund is sufficient to pay the amount due the inmate upon discharge, parole, or placement on work release pursuant to section 906.9, and the inmate has voluntarily withdrawn from the savings fund, the director shall not make further deposits from the inmate's allowances into the savings fund unless the inmate chooses to participate in the savings fund. The director may deduct and disburse an amount sufficient for industries' programs to qualify under the eligibility requirements established in the Justice Assistance Act of 1984, Pub. L. No. 98-473, including an amount to pay all or part of the cost of the inmate's incarceration. 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.

91 Acts, ch 219, §10 SF 496
Section amended

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 general assembly. 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 session of the general assembly. 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.

Notwithstanding section 8.36, the department shall annually prepare a financial statement covering the previous calendar year 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 section.

91 Acts, ch 260, §1221 HF 173
Unnumbered paragraph 1 amended

246.901 Work release program.

The Iowa department of corrections, in consultation with the board of parole, shall establish a work release program under which the board of parole may grant inmates sentenced to an institution under the jurisdiction of the department 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 an out-of-state work or treatment placement or 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. This work release program is in addition to the institutional work release program established in section 246.910.

91 Acts, ch 219, §11 SF 496
Section amended

246.909 Work release and OWI violators — reimbursement to department for transportation costs.

The department of corrections shall arrange for the return of a work release client or offender convicted of violating chapter 321J who escapes or participates in an act of absconding from the facility to which the client is assigned. The client or offender shall reimburse the department of corrections for the cost of transportation incurred because of the escape or act of absconding. The amount of reimburse-

ment 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.

91 Acts, ch 219, §12 SF 496
Section amended

246.910 Institutional work release program.

1. In addition to the work release program established in section 246.901, the department of corrections shall establish an institutional work release program for each institution. The program shall provide that the department may grant inmates sentenced to an institution under its jurisdiction 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 an out-of-state work or treatment placement or release for the purpose of seeking employment or 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.

2. A committee shall be established by the department for the work release program at each institution to review applications for participation in the program.

3. An inmate who is eligible to participate in the work release program may apply to the superintendent of the institution for permission to participate in the program. The application shall include a statement that, if the application is approved, the inmate agrees to abide by all terms and conditions of the inmate's work release plan adopted by the committee. In addition, the application shall state the name and address of the proposed employer, if any, and shall contain other information as required by the committee. The committee may approve, disapprove, or defer action on the application. If the application is approved, the committee shall adopt an institutional work release plan for the applicant. The plan shall contain the elements required by this section and other conditions as the committee deems necessary and proper. The plan shall be signed by the inmate prior to participation in the program. Approval of a plan may be revoked at any time by the superintendent or the committee.

4. The department may contract with a judicial district department of correctional services for the housing and supervision of an inmate in local facilities as provided in section 246.904. The institutional work release plan shall indicate the place where the inmate is to be housed when not on work assignment. The plan shall not allow for placement of an inmate on work release for more than six months in any twelve-month period without unanimous committee approval to do so. However, an inmate may

be temporarily released to the supervision of a responsible person to participate in family and select-ed community, religious, educational, social, civic, and recreational activities when the committee de-termines that the participation will directly facilitate the release of the inmate from the institution to the community. The department 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 housing and supervising the inmate.

5 An inmate employed in the community under

an institutional work release plan approved pursu-ant to this section shall surrender the inmate's total earnings less payroll deductions required by law to the superintendent, or to the judicial district depart-ment of correctional services if it is housing or super-vising the inmate. The superintendent or the judicial district department of correctional services shall de-duct from the earnings in the priority established in section 246.905.

6 The department of corrections shall adopt rules for the implementation of this section.

91 Acts ch 219 §13 SF 496
NEW section

CHAPTER 249A

MEDICAL ASSISTANCE

249A.2 Definitions.

As used in this chapter

1 "*Additional medical assistance*" means pay-ment of all or part of the costs of any or all of the care and services authorized to be provided by Title XIX of the federal Social Security Act, section 1905(a), paragraphs (6), (7), (9) to (16), and (18), as codified in 42 U.S.C. § 1396d(a), pars (6), (7), (9) to (16), and (18).

2 "*County board*" means the county board of so-cial welfare appointed pursuant to section 234.9.

3 "*Department*" means the department of human services.

4 "*Director*" means the director of human ser-vices.

5 "*Discretionary medical assistance*" means medical assistance or additional medical assistance provided to individuals whose income and resources are in excess of eligibility limitations but are insuffi-cient to meet all of the costs of necessary medical care and services, provided that if the assistance in-cludes services in institutions for mental diseases or intermediate care facilities for the mentally retard-ed, or both, for any group of such individuals, the as-sistance also includes for all covered groups of such individuals at least the care and services enumerated in Title XIX of the federal Social Security Act, sec-tion 1905(a), paragraphs (1) through (5), and (17), as codified in 42 U.S.C. § 1396d(a), pars (1) through (5), and (17), or any seven of the care and services enumerated in Title XIX of the federal Social Secu-rity Act, section 1905(a), paragraphs (1) through (7) and (9) through (18), as codified in 42 U.S.C. § 1396d(a), pars (1) through (7), and (9) through (18).

6 "*Group health plan cost sharing*" means pay-ment under the medical assistance program of a pre-

mum, a coinsurance amount, a deductible amount, or any other cost sharing obligation for a group health plan as required by Title XIX of the federal Social Security Act, section 1906, as codified in 42 U.S.C. § 1396e.

7 "*Medical assistance*" means payment of all or part of the costs of the care and services required to be provided by Title XIX of the federal Social Secu-rity Act, section 1905(a), paragraphs (1) through (5), and (17), as codified in 42 U.S.C. § 1396d(a), pars (1) through (5), and (17).

8 "*Medicare cost sharing*" means payment under the medical assistance program of a premium, a coinsurance amount, or a deductible amount for federal medicare as provided by Title XIX of the fed-eral Social Security Act, section 1905(p)(3), as codi-fied in 42 U.S.C. § 1396d(p)(3).

9 "*Provider*" means an individual, firm, corpora-tion, association, or institution which is providing or has been approved to provide medical assistance to recipients under this chapter.

10 "*Recipient*" means a person who receives medical assistance under this chapter.

91 Acts ch 107 §11 SF 412 91 Acts ch 158 §12 SF 343
NEW subsection 6 and former subsections 6, 7, and 8 renumbered as 7, 8
and 10

Subsection 8 amended
NEW subsection 9

249A.3 Eligibility.

The extent of and the limitations upon eligibil-ity for assistance under this chapter is prescribed by this section, subject to federal requirements, and by laws appropriating funds for assistance provided pursuant to this chapter.

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 tem-porarily 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.

e. Is a pregnant woman whose pregnancy has been medically verified and who qualifies under either of the following:

(1) The woman would be eligible for a cash payment under the aid to dependent children program, or under an aid to dependent children, unemployed parent program, under chapter 239, if the child were born and living with the woman in the month of payment.

(2) The woman meets the income and resource requirements of the aid to dependent children program under chapter 239, provided the unborn child is considered a member of the household, and the woman's family is treated as though deprivation exists.

f. Is a child who is less than seven years of age and who meets the income and resource requirements of the aid to dependent children program under chapter 239.

g. Is a child who is less than eight years of age as prescribed by the federal Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203 § 4101, whose income is not more than one hundred percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

h. Is a woman who, while pregnant, meets eligibility requirements for assistance under the federal Social Security Act, § 1902(l) and continues to meet the requirements except for income. The woman is eligible to receive assistance until sixty days after the date pregnancy ends.

i. Is a pregnant woman who is determined to be presumptively eligible by a health care provider qualified under the federal Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 9407. The woman is eligible for ambulatory prenatal care assistance for a period of fourteen days following the pre-

sumptive eligibility determination. If the department receives the woman's medical assistance application within the fourteen-day period, the woman is eligible for ambulatory prenatal care assistance for forty-five days from the date presumptive eligibility was determined or until the department actually determines the woman's eligibility for medical assistance, whichever occurs first. The costs of services provided during the presumptive eligibility period shall be paid by the medical assistance program for those persons who are determined to be ineligible through the regular eligibility determination process.

j. Is a pregnant woman or infant less than one year of age whose income does not exceed the federally prescribed percentage of the poverty level in accordance with the federal Medicare Catastrophic Coverage Act of 1988, Pub. L. No. 100-360, § 302.

k. Is a pregnant woman or infant whose income is more than the limit prescribed under the federal Medicare Catastrophic Coverage Act of 1988, Pub. L. No. 100-360 § 302, but not more than one hundred eighty-five percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

l. Is a child for whom adoption assistance or foster care maintenance payments are paid under Title IV-E of the federal Social Security Act.

m. Is an individual or family who is ineligible for aid to dependent children under chapter 239 because of requirements that do not apply under Title XIX of the federal Social Security Act.

n. Was a federal supplemental security income or a state supplementary assistance recipient, as defined by section 249.1, and a recipient of federal social security benefits at one time since August 1, 1977, and would be eligible for federal supplemental security income or state supplementary assistance but for the increases due to the cost of living in federal social security benefits since the last date of concurrent eligibility.

o. Is an individual whose spouse is deceased and who is ineligible for federal supplemental security income or state supplementary assistance, as defined by section 249.1, due to the elimination of the actuarial reduction formula for federal social security benefits under the federal Social Security Act and subsequent cost of living increases.

p. Is an individual who is at least sixty years of age and is ineligible for federal supplemental security income or state supplementary assistance, as defined by section 249.1, because of receipt of social security widow or widower benefits and is not eligible for federal medicare, part A coverage.

q. Is a disabled individual, and is at least eighteen years of age, who receives parental social security benefits under the federal Social Security Act and is not eligible for federal supplemental security income or state supplementary assistance, as defined by section 249.1, because of the receipt of the social security benefits.

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, for resources transferred to the individual's spouse before October 1, 1989, or to a person other than the individual's spouse before July 1, 1989, 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.

7. In determining the eligibility of an individual for medical assistance under this chapter, the department shall consider resources transferred to the individual's spouse on or after October 1, 1989, or to a person other than the individual's spouse on or after July 1, 1989, as provided under the federal Social Security Act, section 1917(c), as codified in 42 U.S.C. § 1396p(c), as amended.

8. Medicare cost sharing shall be provided to or on behalf of an individual who is a resident of the state or a resident who is temporarily absent from

the state and who is either a qualified medicare beneficiary as defined under Title XIX of the federal Social Security Act, section 1905(p)(1), as codified in 42 U.S.C. § 1396d(p)(1) or a qualified disabled and working person as defined under Title XIX of the federal Social Security Act, section 1905(s), as codified in 42 U.S.C. § 1396d(s).

9. Beginning October 1, 1990, in determining the eligibility of an institutionalized individual for assistance under this chapter, the department shall establish a minimum community spouse resource allowance amount of twenty-four thousand dollars to be retained for the benefit of the institutionalized individual's community spouse in accordance with the federal Social Security Act, section 1924(f) as codified in 42 U.S.C. § 1396r-5(f).

10. Group health plan cost sharing shall be provided as required by Title XIX of the federal Social Security Act, section 1906, as codified in 42 U.S.C. § 1396e.

91 Acts, ch 158, §3, 4 SF 343
 Subsection 8 amended
 NEW subsection 10

249A.4 Duties of director.

The director shall be responsible for the effective and impartial administration of this chapter and shall, in accordance with the standards and priorities established by this chapter, by applicable federal law, by the regulations and directives issued pursuant to federal law, and by the state plan approved in accordance with federal law, make rules, establish policies, and prescribe procedures to implement this chapter. Without limiting the generality of the foregoing delegation of authority, the director is hereby specifically empowered and directed to:

1. Determine the greatest amount, duration, and scope of assistance which may be provided, and the broadest range of eligible individuals to whom assistance may effectively be provided, under this chapter within the limitations of available funds. In so doing, the director shall at least every six months evaluate the scope of the program currently being provided under this chapter, project the probable cost of continuing a like program, compare such probable cost with the remaining balance of the state appropriation made for payment of assistance under this chapter during the current appropriation period, and expand or curtail the program accordingly; provided that reimbursement for medical and health services shall be made in accordance with subsection 9. After each evaluation of the scope of the program, the director shall report to the general assembly through the legislative council or in another manner as the general assembly may by resolution direct.

2. Have authority to determine, when available funds permit expansion of the program provided under this chapter beyond the minimum scope required by subsection 1 of this section, whether priority shall be given to providing additional medical assistance to the individuals and families described in section 249A.3, subsection 1, or to providing medical

assistance to some or all of the individuals and families described in section 249A.3, subsection 2, unless the general assembly has by law made such determination.

3. Have authority to provide for payment under this chapter of assistance rendered to any applicant prior to the date the application is filed.

4. Have authority to contract with any corporation authorized to engage in this state in insuring groups or individuals for all or part of the cost of medical, hospital, or other health care or with any corporation maintaining and operating a medical, hospital, or health service prepayment plan under the provisions of chapter 514 or with any health maintenance organization authorized to operate in this state, for any or all of the benefits to which any recipients are entitled under this chapter to be provided by such corporation or health maintenance organization on a prepaid individual or group basis.

5. May, to the extent possible, contract with a private organization or organizations whereby such organization will handle the processing of and the payment of claims for services rendered under the provisions of this chapter and under such rules and regulations as shall be promulgated by such department. The state department may give due consideration to the advantages of contracting with any organization which may be serving in Iowa as "intermediary" or "carrier" under Title XVIII of the federal Social Security Act, as amended.

6. Shall co-operate with any agency of the state or federal government in any manner as may be necessary to qualify for federal aid and assistance for medical assistance in conformity with the provisions of chapter 249, this chapter and Titles XVI and XIX of the federal Social Security Act, as amended.

7. Shall provide for the professional freedom of those licensed practitioners who determine the need for or provide medical care and services, and shall provide freedom of choice to recipients to select the provider of care and services, except when the recipient is eligible for participation in a health maintenance organization or prepaid health plan which limits provider selection and which is approved by the department. However, this shall not limit the freedom of choice to recipients to select providers in instances where such provider services are eligible for reimbursement under the medical assistance program but are not provided under the health maintenance organization or under the prepaid health plan, or where the recipient has an already established program of specialized medical care with a particular provider. The department may also restrict the recipient's selection of providers to control the individual recipient's overuse of care and services, provided the department can document this overuse. The department shall promulgate rules for determining the overuse of services, including rights of appeal by the recipient.

8. Shall advise and consult at least semiannually with a council composed of the president, or the president's representative who is a member of the

professional organization represented by the president, of the Iowa medical society, the Iowa osteopathic medical association, the Iowa state dental society, the Iowa state nurses association, the Iowa pharmacists association, the Iowa podiatry society, the Iowa optometric association, the community mental health centers association of Iowa, the Iowa psychological association, the Iowa hospital association, the Iowa osteopathic hospital association, opticians' association of Iowa, Inc., the Iowa hearing aid society, the Iowa speech, language, and hearing association, the Iowa health care association, the Iowa association for home care, the Iowa council of health care centers, and the Iowa association of homes for the aging, together with one person designated by the Iowa state board of chiropractic examiners; one state representative from each of the two major political parties appointed by the speaker of the house, one state senator from each of the two major political parties appointed by the president of the senate, after consultation with the majority leader and the minority leader of the senate, each for a term of two years; the president or the president's representative of the association for retarded citizens; four public representatives, appointed by the governor for staggered terms of two years each, none of whom shall be members of, or practitioners of, or have a pecuniary interest in any of the professions or businesses represented by any of the several professional groups and associations specifically represented on the council under this subsection, and at least one of whom shall be a recipient of medical assistance; the director of public health, or a representative designated by the director; and the dean of the college of medicine, university of Iowa, or a representative designated by the dean.

For each council meeting, other than those held during the time the general assembly is in session, each legislative member of the council shall be reimbursed for actual traveling and other necessary expenses and shall receive a per diem as specified in section 7E.6 for each day in attendance, as shall the public representatives, regardless of whether the general assembly is in session.

9. Determine the method and level of reimbursement for all medical and health services referred to in section 249A.2, subsection 1 or 7, after considering all of the following:

- a. The promotion of efficient and cost-effective delivery of medical and health services.
- b. Compliance with federal law and regulations.
- c. The level of state and federal appropriations for medical assistance.
- d. Reimbursement at a level as near as possible to actual costs and charges after priority is given to the considerations in paragraphs "a", "b", and "c".

10. Shall provide an opportunity for a fair hearing before the department of inspections and appeals to an individual whose claim for medical assistance under this chapter is denied or is not acted upon with reasonable promptness. Upon completion of a hearing, the department of inspections and appeals shall

issue a decision which is subject to review by the department of human services.

11. In determining the medical assistance eligibility of a pregnant woman, infant, or child under the federal Social Security Act, § 1902(l), resources which are used as tools of the trade shall not be considered.

12. In determining the medical assistance eligibility of a pregnant woman, infant, or child under the federal Social Security Act, § 1902(l), or pursuant to section 249A.3, subsection 2, paragraph "g", the department shall establish resource standards and exclusions not less generous than the resource standards and exclusions adopted pursuant to section 255A.5, if in compliance with federal laws and regulations.

13. In implementing subsection 9, relating to reimbursement for medical and health services under this chapter, when a selected out-of-state acute care hospital facility is involved, a contractual arrangement may be developed with the out-of-state facility that is in accordance with the requirements of Titles XVIII and XIX of the federal Social Security Act. The contractual arrangement is not subject to other reimbursement standards, policies, and rate setting procedures required under this chapter.

Judicial review of the decisions of the department of human services may be sought in accordance with chapter 17A. If a petition for judicial review is filed, the department of human services shall furnish the petitioner with a copy of the application and all supporting papers, a transcript of the testimony taken at the hearing, if any, and a copy of its decision.

91 Acts, ch 97, §32 HF 198, 91 Acts, ch 158, §5 SF 343
Former subsection 13 stricken
NEW subsection 13

249A.8 Fraudulent practice.

A person who knowingly makes or causes to be made false statements or misrepresentations of material facts in application for payment of services or merchandise rendered or purportedly rendered by a provider participating in the medical assistance program under this chapter is guilty of a fraudulent practice.

91 Acts, ch 107, §12 SF 412
NEW section

249A.20 through 249A.24 Reserved.

ENHANCED MENTAL HEALTH, MENTAL RETARDATION, AND DEVELOPMENTAL DISABILITIES SERVICES

Mental health, mental retardation,
and developmental disabilities generally, ch 225C

249A.25 Enhanced mental health, mental retardation, and developmental disabilities services plan oversight committee.

1. For purposes of this section and section 249A.26, "oversight committee" means the enhanced mental health, mental retardation, and developmental disabilities services plan oversight committee and "candidate service" means day treatment, partial

hospitalization, and case management Case management is limited to persons with mental retardation, a developmental disability, or chronic mental illness

2 An enhanced mental health, mental retardation, and developmental disabilities services plan oversight committee is created in the department to assure that the services plan is implemented within identified, budgeted, and appropriated funds

3 The oversight committee shall have nine members Two members shall be designated by the fiscal committee of the legislative council and are subject to approval by the governor The director of human services and the administrator of the division of mental health, mental retardation, and developmental disabilities or their designees shall be members Three members shall be designated by the Iowa state association of counties One member shall be designated by the state mental health and mental retardation commission One member shall be designated by the governor's planning council on developmental disabilities Members shall serve staggered three-year terms and vacancies shall be filled in the same manner as the initial appointment Members are entitled to actual and necessary expenses

4 The oversight committee shall do all of the following

a Take action on whether to include behavior management as a candidate service in the state medical assistance plan amendment, to develop a federal waiver request for behavior management as a candidate service, or to take no action to include behavior management as a covered service Decisions shall be based upon a determination of the availability of funds for the nonfederal share of the cost of the service

b Explore and make recommendations regarding the submission to the federal government of a state medical assistance plan waiver for any candidate services which are not accepted by the federal government as a state medical assistance plan amendment

c Explore and make recommendations regarding the submission to the federal government of a state medical assistance plan waiver for any services provided to persons with mental retardation, a developmental disability, or chronic mental illness

d Review and make recommendations regarding the county case management implementation plan and budget to the state mental health and mental retardation commission

e Track the expenditures for, and utilization of, candidate services Report a variance in an approved plan to the governor, the legislative fiscal bureau, and each county

f Recommend action regarding variations from the budgeted, appropriated, and identified expenditures and projected expenditure offsets to the council on human services and the state mental health and mental retardation commission

g Submit a report regarding the results of the implementation of the provisions of this section, in-

cluding the impact upon the institutional populations, to the governor and the general assembly The report shall contain recommendations regarding continuing the provisions of this section in subsequent fiscal years

h Recommend rules, or amendments to existing rules, which implement the provisions of this section, to the council on human services and the state mental health and mental retardation commission

i Develop a methodology to determine the base year expenditure for a county maintenance of effort established pursuant to section 249A.26 which includes an amount for each of the candidate services

j Issue a final advisory decision regarding any issue of disagreement between a county and the department relating to expenditures for candidate services or the county's maintenance of effort

91 Acts ch 158 §6 SF 343
NEW section

249A.26 Candidate services fund — county participation.

1 A state candidate services fund is created in the office of the treasurer of state under the authority of the department The fund shall consist of moneys appropriated to the fund and moneys received from counties pursuant to this section Notwithstanding section 8.33, moneys in the candidate services fund which are unobligated or unexpended on June 30 of any fiscal year shall not revert to the general fund of the state but shall remain in the candidate services fund and be used for the purposes of this section Any interest or other earnings on the moneys in the candidate services fund shall remain in the candidate services fund and shall be used for the purposes of this section

2 The county of legal settlement shall be billed for fifty percent of the nonfederal share of the cost of case management provided to adults, day treatment, and partial hospitalization provided under the medical assistance program for persons with mental retardation, a developmental disability, or chronic mental illness For purposes of this section, chronic mental illness does not include organic mental disorders

3 If a county's expenditures for candidate services provided to persons with mental retardation, a developmental disability, or chronic mental illness exceeds the county's base year expenditure amount for these services established under 1988 Iowa Acts, chapter 1276, section 14, the county shall receive from the candidate services fund the least amount of the following

a The difference between the county's total expenditures for the candidate services in the fiscal year and the base year expenditure amount

b The amount expended by the county under subsection 2

c The amount by which the total expenditures for persons with mental retardation, a developmental disability, or chronic mental illness for a fiscal year, exceeds the maintenance of effort expenditures

established under 1988 Iowa Acts, chapter 1276, section 14.

91 Acts ch 158 §7 SF 343
NEW section

249A.27 Indemnity for case management and disallowed costs.

1. If the department contracts with a county or consortium of counties to provide case management services funded under medical assistance, the state shall appear and defend the department's employees and agents acting in an official capacity on the department's behalf and the state shall indemnify the employees and agents for acts within the scope of their employment. The state's duties to defend and indemnify shall not apply if the conduct upon which

any claim is based constitutes a willful and wanton act or omission or malfeasance in office.

2. If the department is the case management contractor, the state shall be responsible for any costs included within the unit rate for case management services which are disallowed for medical assistance reimbursement by the federal health care financing administration. The contracting county shall be credited for the county's share of any amounts overpaid due to the disallowed costs. However, if certain costs are disallowed due to requirements or preferences of a particular county in the provision of case management services, the county shall not receive credit for the amount of the costs.

91 Acts ch 158 §8 SF 343
NEW section

CHAPTER 249B

DEBT FOR MEDICAL ASSISTANCE TO INSTITUTIONALIZED SPOUSE

249B.1 Definitions.

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

1. "*Community spouse*" means an individual who has not resided or is not likely to reside in a hospital or a health care facility for more than twenty-nine consecutive days and is married to an institutionalized spouse.

2. "*Community spouse resource allowance*" means a resource amount established for a community spouse pursuant to state policy adopted in accordance with the federal Social Security Act, section 1924(f)(2), as codified in 42 U.S.C. § 1396r-5(f)(2).

3. "*Court order*" means a judgment or order of a court of this state or another state requiring the payment of a set or determinable amount of monetary support.

4. "*Department*" means the department of human services.

5. "*Institutionalized spouse*" means a married individual who has resided or is likely to reside in a hospital or a health care facility for more than twenty-nine consecutive days.

6. "*Medical assistance*" means "*medical assistance*", "*additional medical assistance*", "*discretionary medical assistance*" or "*medicare cost sharing*" as defined in section 249A.2 which is provided to an individual pursuant to chapter 249A and Title XIX of the federal Social Security Act.

7. "*Minimum monthly maintenance needs allowance*" or "*minimum allowance*" means the minimum monthly maintenance needs allowance established for the community spouse in accordance with Title XIX of the federal Social Security Act, section 1924(d)(3), as codified in 42 U.S.C. § 1396r-5(d)(3).

91 Acts ch 158 §9 SF 343
Subsection 6 amended

CHAPTER 249C

WORK AND TRAINING PROGRAM

249C.1 Definitions.

For the purposes of this chapter:

1. "Department" means the department of human services.
2. "Director" means the director of human services, or the director's designee.
3. "Eligible person" includes each person who is receiving public assistance or who lives in the same household as a recipient of public assistance and whose needs are taken into account in determining the assistance payment. However, the following are not "eligible persons" unless they voluntarily request to be included:
 - a. A person who is under the age of sixteen years.
 - b. A person who has attained the age of sixty-five years.
 - c. A person whose health or disability does not permit any kind of work or training.
 - d. A person who is already engaged in an adequate full-time program of work, training, or school.
 - e. A person who is required to be present and is actually present in the home on a substantially continuous basis because of the illness or incapacity of another member of the household.
 - f. A person who is required to be present and is actually present in the home on a substantially continuous basis for the purpose of child care.
 - g. A person who is not an eligible person pursuant to rules adopted by the director and as required by the federal Family Support Act of 1988, Title II, Pub. L. No. 100-485, as codified in 42 U.S.C. § 602 et seq.
4. "Public assistance" means aid or assistance provided under chapter 239.
5. "Training" includes appropriate education.

91 Acts, ch 173, §4, 5 SF 470
 Subsections renumbered to alphabetize
 Subsection 3, NEW paragraph g
 Subsection 4 amended

249C.3 Work and training program.

The director shall establish a work and training program for persons and members of families applying for and receiving public assistance. The division of job service of the department of employment services, the division of job training of the department of economic development, and all state, county, and public educational agencies and institutions provid-

ing vocational rehabilitation, adult education, or vocational or technical training shall assist and cooperate in the program. They shall make agreements and arrangements for maximum co-operation and use of all available resources in the program. By mutual agreement the director may delegate any of the director's powers and duties under this chapter to the division of job service of the department of employment services or to the division of job training of the department of economic development.

91 Acts, ch 173, §6 SF 470
 Section amended

249C.6 Participation required.

Each eligible person shall be required to participate in the work and training program, to co-operate fully in the program, and to accept any reasonably suitable employment, training, or education offered to the person in connection with the program, as a condition of receiving public assistance. If the person fails or refuses to do so, the person shall not receive public assistance. The person's disqualification shall not disqualify other members of the person's family who are entitled to public assistance, except as required under the federal Family Support Act of 1988, Title II, Pub. L. No. 100-485, as codified in 42 U.S.C. § 602 et seq., but their public assistance shall not be paid to the disqualified person and shall be paid in a manner which will not permit the disqualified person to have access to the assistance funds. A person shall not be disqualified for public assistance if it is impossible to arrange suitable work or training for the person.

91 Acts, ch 173, §7 SF 470
 Section amended

249C.18 Educational participation requirements.

An eligible person may participate or cooperate in a program to attain a certificate of general educational development, high school diploma, or adult basic literacy where the person has not previously received such certification. The participation shall be optional unless required under the federal Family Support Act of 1988, Title II, Pub. L. No. 100-485, as codified in 42 U.S.C. § 602 et seq. The department shall provide incentives to encourage optional participation.

91 Acts, ch 173, §8 SF 470
 Section amended

CHAPTER 249E

ELDER FAMILY HOMES

249E.1 Definitions.

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

1. *“Assessment”* means the administration of a standardized tool and the use of other procedures to identify existing impairments, situations, and problems which are barriers to a resident’s ability to function and to identify strengths and specific needs.

2. *“Department”* means the department of elder affairs.

3. *“Elder”* means a person sixty years of age or older.

4. *“Elder family home”* means a private household owned by a responsible party offering a social living arrangement for at least two but not more than five persons, the majority of whom are elders, who are not related within the third degree of consanguinity and who are not able or willing to adequately maintain themselves in an independent living arrangement, but who are essentially capable of physical self care.

5. *“Essentially capable of self care”* means the elder is ambulatory or can move from place to place; is of sound mind; can manage the activities of daily living including personal hygiene and grooming, toileting, dressing and undressing, feeding, and medicating; and can attend to the care of personal property adequately with minimal support or occasional assistance.

6. *“Not able or willing to adequately maintain themselves in an independent living arrangement”* means that the elders require some assistance, encouragement, or social stimulation for adequate self care or to maintain physical or mental health or personal safety.

7. *“Responsible party”* means the person providing room and board in an elder family home who resides in the home. The responsible party may be but is not required to be an elder.

91 Acts, ch 88, §1 SF 10
NEW section

249E.2 Registration of elder family homes.

1. The department shall establish a registration program for elder family homes. In order to meet the zoning requirements for classification as an elder family home under section 358A.31 or 414.29, all of the following conditions must be met:

a. The responsible party shall register the home as an elder family home with the department.

b. The responsible party shall comply with visitation and assessment requirements as determined by the department.

c. The responsible party shall attend annual training as prescribed by the commission of elder affairs.

2. If, following a visitation, the care review committee finds that the needs of all of the residents of an elder family home are not being adequately met, the care review committee shall notify the appropriate area agency on aging. The area agency on aging shall cause to be performed a complete assessment of any of the residents whose needs are not being met. If, following the full assessment, the care review committee determines that any of the residents require additional services to meet the needs of the resident, the care review committee shall inform the responsible party that unless the resident relocates to a facility which is able to provide necessary services, the elder family home will no longer be designated as an elder family home and will no longer be in compliance with zoning requirements. The department shall notify the city council or the county board of supervisors if an elder family home is found to no longer be in compliance.

3. If the responsible party does not comply with the recommendations of the care review committee pursuant to subsection 2, the elder family home shall lose its designation for the purposes of zoning.

4. If the care review committee has probable cause to believe that any elder family home is in fact acting as a health care facility as defined under chapter 135C, upon producing identification that an individual is an inspector, an inspector of the department of inspections and appeals may enter the elder family home to determine if the home is in fact operating as an unlicensed health care facility. If the inspector is denied entrance, the inspector may, with the assistance of the county attorney in the county in which the elder family home is located, apply to the district court for an order requiring the responsible party to permit entry and inspection.

5. The department of elder affairs shall maintain a registry of elder family homes and shall act as a resource and referral agency for elder family homes.

6. Upon application for registration by a person seeking approval for an elder family home, the department shall notify the city council or county board of supervisors of the city or county in which the proposed elder family home is to be located. The city council or county board of supervisors shall respond to the application within thirty days of notification.

7. The department may delegate any duties under this section to local area agencies on aging.

8. The commission shall adopt by rule proce-

dures for appointing members of a care review committee for each elder family home. To the maximum extent possible, the care review committee appointed for an elder family home shall include a person involved in a local retired senior volunteer program. The rules shall incorporate the provisions, if applica-

ble, for care review committees pursuant to sections 135C.25, 135C.38, and 249D.44.

9. The commission of elder affairs shall adopt rules as necessary, to implement this section.

91 Acts, ch 88, §2 SF 10
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; the Vietnam Conflict at any time between December 22, 1961, and May 7, 1975, both dates inclusive; and the Persian Gulf Conflict at any time between August 2, 1990, and the date the president or the congress of the United States declares a permanent cessation of hostilities, both dates inclusive. However, if congress enacts a date different from August 2, 1990, as the beginning of the Persian Gulf Conflict for purposes of determining whether a veteran is entitled to receive military benefits as a veteran of the Persian Gulf Conflict, that date shall be substituted for August 2, 1990. 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, the Vietnam Conflict, and the Persian Gulf Conflict; however, this qualification does not preclude membership to a veteran who served in more than one of the wars or conflicts.

91 Acts, ch 199, §1 HF 694
Section amended

250.13 Burial — expenses.

The commission is responsible for the interment in a suitable cemetery of the body 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; the Vietnam Conflict at any time between December 22, 1961, and May 7, 1975, both dates inclusive; and the Persian Gulf Conflict at any time between August 2, 1990, and the date the president or the congress of the United States declares a permanent cessation of hostilities, 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. However, if congress enacts a date different from August 2, 1990, as the beginning of the Persian Gulf Conflict for purposes of determining whether a veteran is entitled to receive military benefits as a veteran of the Persian Gulf Conflict, that date shall be substituted for August 2, 1990. The commission may pay the expenses in a sum not exceeding an amount established by the board of supervisors.

91 Acts, ch 199, §2 HF 694
Section amended

250.14 County appropriation.

The board of supervisors of each county may appropriate moneys for the food, clothing, shelter, utilities, medical benefits, and 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; the Vietnam Conflict at any time between December 22, 1961, and May 7, 1975, both dates inclusive; and the Persian Gulf Conflict at any time between August 2, 1990, and the date the president or the congress of the United States declares a permanent cessation of hostilities, 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. However, if congress enacts a date different from August 2, 1990, as the beginning of the

Persian Gulf Conflict for purposes of determining whether a veteran is entitled to receive military benefits as a veteran of the Persian Gulf Conflict, that date shall be substituted for August 2, 1990.

The appropriation shall be expended by the joint action and control of the board of supervisors and the county commission of veteran affairs.

91 Acts, ch 1, §1 HF 4, 91 Acts, ch 199, §3 HF 694
See Code editor's note to §15 287
Unnumbered paragraph 1 amended

250.16 Markers for graves.

The county commission of veteran affairs may furnish a suitable and appropriate metal marker 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; the Vietnam Conflict at any time between December 22, 1961, and May 7, 1975, both dates inclusive; and the Persian Gulf Conflict at any time between August 2, 1990, and the date the president or the congress of the United States declares a permanent cessation of hostilities, both dates inclu-

sive; and who is buried within the limits of the county, 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. If congress enacts a date different from August 2, 1990, as the beginning of the Persian Gulf Conflict for purposes of determining whether a veteran is entitled to receive military benefits as a veteran of the Persian Gulf Conflict, that date shall be substituted for August 2, 1990.

91 Acts, ch 199, §4 HF 694
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, or may conclude their responsibility by paying a mutually agreed to fee for perpetual care when the cemetery authority has established a perpetual care fund for the cemetery, to be paid either as a lump sum, or in not to exceed five installments in a manner agreed to by the parties.

91 Acts, ch 188, §1 HF 237
Section amended

CHAPTER 252B

CHILD SUPPORT RECOVERY

252B.1 Definitions.

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

1. "Child" includes but shall not be limited to a stepchild, foster child or legally adopted child and means a child actually or apparently under eighteen years of age, and a dependent person eighteen years of age or over who is unable to maintain the person's self and is likely to become a public charge. "Child" includes "dependent children" as defined in section 239.1, subsection 3.

2. "Resident parent" means the parent with whom the child is residing at the time the support collection or paternity determination services provided in sections 252B.5 and 252B.6 are requested or commenced.

3. "Absent parent" means the parent who either cannot be located or who is located and is not residing with the child at the time the support collection or paternity determination services provided in sections 252B.5 and 252B.6 are requested or commenced.

4. "Department" means the department of human services.

5. "Director" means the director of human services.

6. "Unit" means the child support recovery unit created in section 252B.2.

91 Acts, ch 97, §33 HF 198
Unnumbered paragraph 1 amended

252B.9 Information and assistance from others — availability of records.

1. a. The director may request from state, county and local agencies, information and assistance deemed necessary to carry out the provisions of this chapter. State, county and local agencies, officers and employees shall co-operate with the unit in locating absent parents of children on whose behalf public assistance is being provided and shall on request supply the department with available information relative to the location, income and property holdings of the absent parent and the custodial par-

ent, notwithstanding any provisions of law making this information confidential. The cooperation and information required by this subsection shall also be provided to the department when it is requested by the unit on behalf of persons who have applied for support enforcement services.

b. Parents of a child on whose behalf support enforcement services are provided shall provide information regarding income, resources, financial circumstances, and property holdings to the department for the purpose of establishment, modification, or enforcement of a support obligation. The department may provide the information to parents of a child as needed to implement the requirements of section 598.21, subsection 4, notwithstanding any provisions of law making this information confidential.

2. Except as otherwise provided in subsection 1, paragraph “b”, information recorded by the department pursuant to this section shall be available only to the unit, attorneys prosecuting a case in which the unit may participate according to sections 252B.5 and 252B.6, courts having jurisdiction in support or abandonment proceedings, and agencies in other states charged with support collection and paternity determination responsibilities as determined by the rules of the department and the provisions of Title IV of the federal Social Security Act. However, information relating to the location of an absent parent shall be made available, pursuant to federal regulations, to a resident parent, legal guardian, attorney, or agent of a child who is not receiving assistance under Title IV-A of the federal Social Security Act. Unless otherwise prohibited by federal statute or regulation, the child support recovery unit shall release information relating to an absent parent to another unit of the department pursuant to a written request for the information approved by the director.

91 Acts, ch 177, §1 HF 558
Section amended

252B.13A Collection services center.

1. The department shall establish within the unit a collection services center for the receipt and disbursement of support payments as defined in section 598.1 required pursuant to an order for which the unit is providing enforcement services under this chapter. For purposes of this section, support payments do not include attorney fees or court costs.

2. The center shall develop an automated system to provide support payment records from the center to the clerks of the district court and the clerks of the district court are authorized to receive this information.

3. On January 1 of each year the center shall submit a report to the fiscal committee of the legislative council relating to the time required between the time the payment is received and the time the funds are distributed to the recipient.

91 Acts, ch 177, §2 HF 558
Transition provisions, notice, 90 Acts ch 1224, §1, 91 Acts, ch 267, §422, 425 HF 479
Subsection 1 amended

252B.14 Support payments — collection services center — clerk of the district court.

All support payments required pursuant to orders entered under this chapter and chapter 234, 252A, 252C, 598, 675, or any other chapter shall be directed and processed as follows:

1. If the child support recovery unit is providing enforcement services for a support order, support payments made pursuant to the order shall be directed to and processed as follows:

a. Payments made through income withholding, wage assignment, unemployment insurance offset, or tax offset shall be directed to and disbursed by the collection services center.

b. Payments made through electronic transfer of funds, including but not limited to use of an automated teller machine, a telephone initiated bank account withdrawal, or an automatic bank account withdrawal shall be directed to and disbursed by the collection services center.

c. Payments made through any other method shall be directed to the clerk of the district court in the county in which the order for support is filed and shall be disbursed by the collection services center.

2. If the child support recovery unit is not providing enforcement services for a support order, support payments made pursuant to the order shall be directed to and disbursed by the clerk of the district court in the county in which the order for support is filed.

3. Payments to persons other than the clerk of the district court or the collection services center do not satisfy the support obligations created by a support order or judgment, except as provided for trusts and social security income in section 252D.1, 598.22, or 598.23, or for tax refunds or rebates in section 602.8102, subsection 47, and except as provided in section 598.22A.

91 Acts, ch 177, §3 HF 558
Transition provisions, notice, 90 Acts, ch 1224, §1, 91 Acts, ch 267, §422, 425 HF 479
Subsection 3 amended

252B.15 Processing and disbursement of support payments.

1. If the child support recovery unit is providing enforcement services for a support order, the collection services center is the official entity responsible for disbursing the support payments made pursuant to the order.

2. The collection services center shall notify the clerk of the district court of any order for which the child support recovery unit is providing enforcement services. The clerk of the district court shall forward any support payment made pursuant to the order, along with any support payment information, to the collection services center. The collection services center shall process and disburse the payment in accordance with federal requirements.

3. If the child support recovery unit is not providing enforcement services for a support order, the clerk of the district court in the county in which the

order for support is filed is the official entity responsible for disbursing of support payments made pursuant to the order.

4. If the unit's child support enforcement services relating to a support order are terminated but the support obligation remains accrued or accruing, the support payment receipt and disbursement responsibilities relating to the order shall be transferred from the collection services center to the appropriate clerk of the district court. The department shall send notice of the transfer to the last known addresses of the obligor and obligee. The issuance of notice to the obligor is the equivalent of a court order requiring the obligor to direct payment to the clerk of the district court for disbursement. The department shall adopt rules pursuant to chapter 17A relating to the transfer of the responsibilities and notice requirements.

5. If it is possible to identify the support order to which a payment is to be applied, a payment received by the collection services center or the clerk of the district court shall be disbursed to the appropriate individual or office within two working days in accordance with section 598.22.

91 Acts, ch 177 §4 HF 558
Transition provisions, notice, 90 Acts, ch 1224, §1, 91 Acts, ch 267, §422, 425 HF 479
Subsection 4 amended

252B.16 Transfer of support order processing responsibilities — ongoing procedures.

1. For a support order being processed by the clerk of the district court, upon notification that the unit is providing enforcement services related to the order, the clerk of the district court shall immediately transfer the responsibility for the disbursement of support payments received pursuant to the order to the collection services center.

2. The department shall adopt rules pursuant to chapter 17A to ensure that the affected parties are notified that the support payment disbursement responsibilities have been transferred to the collection services center from the clerk of the district court. The rules shall include a provision requiring that a notice shall be sent by regular mail to the last known addresses of the obligee and the obligor. The issuance of notice to the obligor is the equivalent of a court order requiring the obligor to direct payment to the collection services center for disbursement.

91 Acts, ch 177, §5 HF 558
Transition provisions, notice, 90 Acts, ch 1224, §1, 91 Acts, ch 267, §422, 425 HF 479
Subsection 2 amended

CHAPTER 252D

CHILD SUPPORT — INCOME ASSIGNMENT AND IMMEDIATE WITHHOLDING

252D.18 Duties of the 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, or subchapter II, 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 or collection services center.

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, or subchapter II, 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.

91 Acts, ch 177, §6 HF 558
Subsection 1 amended

CHAPTER 255

MEDICAL AND SURGICAL TREATMENT OF INDIGENT PERSONS

255.1 Complaint — determination of medical assistance eligibility.

Any adult resident of the state may file a complaint in the office of the clerk of any juvenile court, charging that any legal resident of Iowa residing in the county where the complaint is filed is pregnant or is suffering from some malady or deformity that can probably be improved or cured or advantageously treated by medical or surgical treatment or hospital care, and that neither such person nor persons legally chargeable with the person's support are able to pay therefor.

The county general relief director shall ascertain from the local office of human services if an applicant for the indigent patient program would qualify for medical assistance or the medically needy program under chapter 249A without the spend-down provision required pursuant to section 249A.3, subsection 2, paragraph "g". If the applicant qualifies, the patient shall be certified for medical assistance and shall not be counted under this chapter.

91 Acts, ch 267, §226 HF 479
NEW unnumbered paragraph 2

255.16 County quotas.

Subject to subsequent qualifications in this section, there shall be treated at the university hospital during each fiscal year a number of committed indigent patients from each county which bears the same relation to the total number of committed indigent patients admitted during the year as the population of the county bears to the total population of the state according to the last preceding official census. This standard applies to indigent patients, the expenses of whose commitment, transportation, care, and treatment are borne by appropriated funds, and does not govern the admission of obstetrical patients under chapter 255A or obstetrical or orthopedic patients under this chapter in accordance with eligibility standards pursuant to section 255A.5. If the number of patients admitted from any county exceeds by more than ten percent the county quota as fixed under the first sentence of this section, the charges and expenses of the care and treatment of the patients in excess of ten percent of the quota shall be paid from the funds of the county at actual cost; but if the number of excess patients from any county does not exceed ten percent, all costs, expenses, and charges incurred in their behalf shall be paid from the appropriation for the support of the hospital. Notwithstanding the quota established for a county under this section, the governor, upon a finding of necessity due to a regional or statewide economic

emergency, may increase a county's quota of the number of committed indigent patients admitted to the university hospital.

91 Acts, ch 97, §34 HF 198
Section amended

255.24A Indigent patient program report.

Funds shall not be allocated to the university hospital fund until the superintendent of the university of Iowa hospitals and clinics has filed with the department of revenue and finance and the legislative fiscal bureau a quarterly report containing the account required in section 255.24. The report shall include information required in section 255.24 for patients by the type of service provided.

91 Acts, ch 267, §237 HF 479
NEW section

255.26 Expenses — how paid — action to reimburse county.

Warrants issued under section 255.25 shall be promptly drawn on the treasurer of state and forwarded by the director of revenue and finance to the treasurer of the state university, and the same shall be by the treasurer of the state university placed to the credit of the funds which are set aside for the support of said hospital. However, warrants shall not be paid unless the UB-82 claim required pursuant to section 255A.13 has been filed with the Iowa health data commission. The superintendent of the said university hospital shall certify to the auditor of state on the first day of January, April, July and October of each year, the amount as herein provided not previously certified by the superintendent due the state from the several counties having patients chargeable thereto, and the auditor of state shall thereupon charge the same to the county so owing. A duplicate certificate shall also be mailed to the auditor of each county having patients chargeable thereto. Expenses for obstetrical patients served under section 255A.9 shall be reimbursed as specified in section 255A.9.

The county auditor, upon receipt of the certificate, shall enter it to the credit of the state in the ledger of state accounts, and at once issue a notice to the county treasurer authorizing the county treasurer to transfer the amount to the general state revenue, which notice shall be filed by the treasurer as authority for making the transfer. The county treasurer shall include the amount transferred in the next remittance of state taxes to the treasurer of state, to accrue to the credit of the university hospital fund.

The state auditor shall certify the total cost of commitment and caring for each indigent patient

under the terms of this statute to the county auditor of such patient's legal residence, and such certificate shall be preserved by the county auditor and shall be a debt due from the patient or the persons legally responsible for the patient's care, maintenance or support; and whenever in the judgment of the board of supervisors the same or any part thereof shall be collectible, the said board may in its own name collect the same and is hereby authorized to institute suits for such purpose; and after deducting the county's share of such cost shall cause the balance to be paid into the state treasury to reimburse the university hospital fund. Transportation shall be provided at no charge to a patient who is certified for medical assistance under chapter 249A, and shall be reimbursed from the university hospital fund.

Should any county fail to pay these bills within sixty days from the date of certificate from the superintendent, the director of revenue and finance shall charge the delinquent county the penalty of one

percent per month on and after sixty days from date of certificate until paid. Such penalties shall be credited to the general fund of the state.

91 Acts, ch 267, §227 HF 479
Unnumbered paragraph 3 amended

255.27 Faculty to prepare blanks — printing.

The medical faculty of the state university hospital shall from time to time prepare blanks containing questions and requiring information that it finds necessary and proper to be obtained by the physician who examines a patient under order of court. The blanks shall be printed by the state, and a sufficient supply shall be furnished by the superintendent of printing to the clerk of each juvenile court in the state. The cost of printing the blanks shall be audited, allowed, and paid in the same manner as other bills for public printing.

91 Acts, ch 97, §35 HF 198
Section amended

CHAPTER 255A

OBSTETRICAL AND NEWBORN INDIGENT PATIENT CARE PROGRAM

255A.5 Minimum eligibility standards.

The Iowa department of public health, in collaboration with the department of human services and in consultation with the Iowa state association of counties, shall adopt rules, pursuant to chapter 17A, establishing minimum standards for eligibility for obstetrical and newborn care, including physician examination, medical testing, ambulance services, and inpatient transportation costs, for indigent obstetrical and newborn care provided by the university of Iowa hospitals and clinics and by other licensed hospitals and physicians. The minimum standards for eligibility shall provide eligibility for persons with incomes at or below one hundred eighty-five percent of the annual revision of the poverty income guidelines published by the United States department of health and human services, and shall pro-

vide, but shall not be limited to providing, eligibility for uninsured and underinsured persons financially unable to pay for necessary obstetrical and newborn care and orthopedic care. The minimum standards may include a spend-down provision. The resource standards shall be set at or above the resource standards under the federal supplemental security income program. The resource exclusions allowed under the federal supplemental security income program shall be allowed and shall include resources necessary for self-employment.

91 Acts, ch 122, §1 SF 115
Section amended

255A.14 Funds — reversion of unencumbered balance. Repealed by 91 Acts, ch 122, § 2. SF 115

CHAPTER 256

DEPARTMENT OF EDUCATION

Study of functions school districts are required to perform to receive aid or remain accredited, 91 Acts, ch 104, § 2 SF 313

256.7 Duties of state board.

Except for the college student aid commission, the state board shall:

1. Adopt and establish policy for programs and services of the department pursuant to law.
2. Constitute the state board for vocational education under chapters 258 and 259.
3. Prescribe standards and procedures for the approval of practitioner preparation programs and professional development programs, offered by practitioner preparation institutions and area education agencies, in this state. Procedures provided for approval of programs shall include procedures for enforcement of the prescribed standards and shall not include a procedure for the waiving of any of the standards prescribed.
4. Adopt, and update annually, a five-year plan for the achievement of educational goals in Iowa.
5. Adopt rules under chapter 17A for carrying out the responsibilities of the department.
6. Hear appeals of persons aggrieved by decisions of boards of directors of school corporations under chapter 290 and other appeals prescribed by law. The state board may review the record and shall review the decision of the director of the department of education or the administrative law judge designated by the director in appeals heard and decided by the director under chapter 290, and may affirm, modify, or vacate the decision, or may direct a re-hearing before the director.
7. Develop plans for the restructuring of school districts, area education agencies, and merged area schools, with specific emphasis on combining the area education agencies and merged area schools. The plans shall be reported to the general assembly not later than October 1, 1987.

In addition, the state board shall develop plans for redrawing the boundary lines of area education agencies so that the total number of area education agencies is no fewer than four and no greater than twelve. The state board shall also study the governance structure of the merged area schools, including but not limited to governance at the state level with a director of area school education serving under a state board. The plans relating to the area education agencies and merged area schools shall be submitted to the general assembly not later than January 8, 1990.

The focus of the plans shall be to assure more productive and efficient use of limited resources, equity of geographical access to facilities, equity of educa-

tional opportunity within the state, and improved student achievement.

The state board shall consult with representatives from the local school districts, area education agencies, and merged area schools in developing the plans. The representatives shall include board members, school administrators, teachers, parents, students, associations interested in education, and representatives of communities of various sizes.

8. Develop plans for the approval of teacher preparation programs that incorporate the results of recently completed research and national studies on teaching for the twenty-first century and develop plans for providing assistance to newly graduated teachers, including options for internships and reduced teaching loads. The plans shall be submitted to the general assembly not later than June 30, 1990.

9. Adopt rules under chapter 17A for the use of telecommunications as an instructional tool for students enrolled in kindergarten through grade twelve and served by local school districts, accredited or approved nonpublic schools, area education agencies, community colleges, institutions of higher education under the state board of regents, and independent colleges and universities in elementary and secondary school classes and courses. The rules shall include but need not be limited to rules relating to programs, educational policy, instructional practices, staff development, use of pilot projects, curriculum monitoring, and the accessibility of licensed teachers.

When curriculum is provided by means of telecommunications, it shall be taught by an appropriately licensed teacher. The teacher shall either be present in the classroom, or be present at the location at which the curriculum delivered by means of telecommunications originates.

The rules shall provide that when the curriculum is taught by an appropriately licensed teacher at the location at which the telecommunications originates, the curriculum received shall be under the supervision of a licensed teacher. For the purposes of this subsection, "supervision" means that the curriculum is monitored by a licensed teacher and the teacher is accessible to the students receiving the curriculum by means of telecommunications.

The state board shall establish an advisory committee to make recommendations for rules required under this subsection on the use of telecommunications as an instructional tool. The committee shall

be composed of representatives from community colleges, area education agencies, accredited or approved nonpublic schools, and local school districts from various enrollment categories. The representatives shall include board members, school administrators, teachers, parents, students, and associations interested in education.

For the purpose of the rules adopted by the state board, telecommunications means narrowcast communications through systems that are directed toward a narrowly defined audience and includes interactive live communications.

10. Rules adopted under this section shall provide that telecommunications shall not be used by school districts as the exclusive means to provide any course which is required by the minimum educational standards for accreditation.

11. Develop evaluation procedures that will measure the effects of instruction by means of telecommunications on student achievement, socialization, intellectual growth, motivation, and other related factors deemed relevant by the state board, for the development of an educational data base. The state board shall consult with the state board of regents and the practitioner preparation departments at its institutions, other practitioner preparation departments located within private colleges and universities, educational research agencies or facilities, and other agencies deemed appropriate by the state board, in developing these procedures.

12. Adopt rules pursuant to chapter 17A relating to educational programs and budget limitations for educational programs pursuant to sections 282.28, 282.29, 282.30, and 282.31. The rules adopted pursuant to this subsection shall be written by June 30, 1987.

13. Prescribe guidelines for facility standards, maximum class sizes, and maximum in classroom pupil-teacher and teacher-aide ratios for grades kindergarten through three and before and after school and summer child care programs provided under the direction of the school district. The department also shall indicate modifications to such guidelines necessary to address the needs of at-risk children.

14. Elect to a two-year term, from its members in each even-numbered year, a president of the state board, who shall serve until a successor is elected and qualified.

15. Adopt by January 15, 1991, rules which set criteria for the establishment and approval of quality instructional centers at the community colleges under section 280A.45. Rules adopted shall contain criteria for the identification of a quality instructional center, for the enhancement of other programs in order to upgrade other programs to quality instructional center status, and for the review of program offerings for purposes of retention of quality instructional center status.

16. Adopt by January 15, 1991, rules which establish guidelines for the approval of program sharing and administrative sharing agreements entered into by two or more community colleges or by a com-

munity college and a higher education institution under the control of the board of regents under section 280A.46.

17. By January 1, 1991, develop a brochure, to be distributed by school districts to students in grades nine through eleven, which explains the postsecondary options law contained in chapter 261C.

18. Adopt, by July 1, 1992, rules and a procedure for accrediting all community college programs in Iowa. Rules adopted shall satisfy the requirements for implementing the educational and service program contained in section 280A.48.

19. Adopt rules and a procedure for accrediting all apprenticeship programs in the state which receive state or federal funding. In developing the rules, the state board shall consult with schools and labor or trade organizations affected by or currently operating apprenticeship or training programs. Rules adopted shall be the same or similar to criteria established for the operation of apprenticeship programs at community colleges.

20. Adopt rules which require each community college which establishes a new jobs training project or projects and receives funds derived from or associated with the project or projects to establish a separate account to act as a repository for any funds received and to report annually, by January 15, to the general assembly on funds received and disbursed during the preceding fiscal year in the form required by the department.

21. If funds are appropriated by the general assembly for the program, adopt rules for the administration of the teacher exchange program, including, but not limited to, rules for application to participate in the program, rules relating to the number of times that a given applicant may participate in the program, and rules describing reimbursable expenses and establishing honoraria for teacher participants.

91 Acts, ch 84, §1 HF 516
NEW subsection 21

256.9 Duties of director.

Except for the college student aid commission, the director shall:

1. Carry out programs and policies as determined by the state board.

2. Recommend to the state board rules necessary to implement programs and services of the department.

3. Establish divisions of the department as necessary or desirable in addition to divisions required by law. The organization of the department shall promote coordination of functions and services relating to administration, supervision, and improvement of instruction.

4. Employ personnel and assign duties and responsibilities of the department. The director shall appoint a deputy director and division administrators deemed necessary. They shall be appointed on the basis of their professional qualifications, experience in administration, and background. Members of the professional staff are not subject to the merit

system provisions of chapter 19A and are subject to section 256.10.

5. Transmit to the department of management information about the distribution of state and federal funds pursuant to state law and rules of the department.

6. Develop a budget and transmit to the department of management estimates of expenditure requirements for all functions and services of the department.

7. Accept and administer federal funds apportioned to the state for educational and rehabilitation purposes and accept surplus commodities for distribution when made available by a governmental agency. The director may also accept grants and gifts on behalf of the department.

8. Cooperate with other governmental agencies and political subdivisions in the development of rules and enforcement of laws relating to education.

9. Conduct research on education matters.

10. Submit to each regular session of the general assembly recommendations relating to revisions or amendments to the school laws.

11. Approve, coordinate, and supervise the use of electronic data processing by school districts, area education agencies, and merged areas.

12. Act as the executive officer of the state board.

13. Act as custodian of a seal for the director's office and authenticate all true copies of decisions or documents.

14. Appoint advisory committees, in addition to those required by law, to advise in carrying out the programs, services, and functions of the department.

15. Provide the same educational supervision for the schools maintained by the director of human services as is provided for the public schools of the state and make recommendations to the director of human services for the improvement of the educational program in those institutions.

16. Interpret the school laws and rules relating to the school laws.

17. Hear and decide appeals arising from the school laws not otherwise specifically granted to the state board.

18. Prepare forms and procedures as 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, and notify the area education agency board, district board, or school authorities when a report has not been filed in the manner or on the dates prescribed by law or by rule that the school will not be accredited until the report has been properly filed.

19. Determine by inspection, supervision, or otherwise the condition, needs, and progress of the schools under the supervision of the department, make recommendations to the proper authorities for the correction of deficiencies and the educational and physical improvement of the schools, and re-

quest a state audit of the accounts of a school district, area education agency, school official, or school employee handling school funds when it is apparent that an audit should be made.

20. Preserve reports, documents, and correspondence that may be of a permanent value, which shall be open for inspection under reasonable conditions.

21. Keep a record of the business transacted by the director.

22. Endeavor to promote among the people of the state an interest in education.

23. Classify and define the various schools under the supervision of the department, formulate suitable courses of study, and publish and distribute the classifications and courses of study and promote their use.

24. Report biennially to the governor, at the time provided by law, the condition of the schools under the department's supervision, including the number of school districts, the number and value of schoolhouses, the enrollment and attendance in each district for the previous year, any measures proposed for the improvement of the public schools, financial and statistical information of public importance, and general information relating to educational affairs and conditions within the state or elsewhere. The report shall also review the programs and services of the department.

25. 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 area.

26. Cause to be printed in book form, during the months of June and July in the year 1987 and every four years thereafter, if deemed necessary, all school laws then in force with forms, rulings, decisions, notes, and suggestions which may aid school officers in the proper discharge of their duties. A sufficient number shall be furnished to school officers, directors, superintendents, area administrators, members of the general assembly, and others as reasonably requested.

27. 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 26.

28. 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.

29. Provide administrative services for the independent nonprofit quasi-public First In the Nation in Education foundation.

30. Approve the salaries of area education agency administrators.

31. Develop criteria and procedures to assist in the identification of at-risk children and their developmental needs.

32. Develop, in conjunction with the child development coordinating council or other similar agency,

child-to-staff ratio recommendations and standards for at-risk programs based on national literature and test results and Iowa longitudinal test results

33 Develop programs in conjunction with the center for early development education to be made available to the school districts to assist them in identification of at-risk children and their developmental needs. For a period of one year, beginning July 1, 1988, and ending June 30, 1989, direct the educational services division of the area education agencies to develop program plans to assist the districts in educating at-risk children. The area education agencies may enter into contracts with other groups or agencies to provide all or part of the program. The programs shall include but are not limited to

- a Administrator and staff in-service education
- b Area education agency and district staff utilization plans
- c Qualifications required of personnel administering the program
- d Child-to-staff ratio specifications
- e Longitudinal testing of the children
- f Referrals to outside agencies
- g An emphasis on integrating the identified children with the balance of the class
- h Proposed curriculum content and materials
- i Cost projections for provision of the programs

34 Conduct or direct the area education agency to conduct feasibility surveys and studies, if requested under section 282.11, of the school districts within the area education agency service areas and all adjacent territory, including but not limited to contiguous districts in other states, for the purpose of evaluating and recommending proposed whole grade sharing agreements requested under section 282.7 and section 282.10, subsections 1 and 4. The surveys and studies shall be revised periodically to reflect reorganizations which may have taken place in the area education agency, adjacent territory, and contiguous districts in other states. The surveys and studies shall include a cover page containing recommendations and a short explanation of the recommendations. The factors to be used in determining the recommendations include, but are not limited to

- a The possibility of long-term survival of the proposed alliance
- b The adequacy of the proposed educational programs versus the educational opportunities offered through a different alliance
- c The financial strength of the new alliance
- d Geographical factors
- e The impact of the alliance on surrounding schools

Copies of the completed surveys and studies shall be transmitted to the affected districts' school boards

35 Develop standards and instructional materials to do all of the following

- a Assist school districts in developing appropriate before and after school programs for elementary school children

- b Assist school districts in the development of child care services and programs to complement half-day and all-day kindergarten programs

- c Assist school districts in the development of appropriate curricula for all-day, everyday kindergarten programs

- d Assist school districts in the development of appropriate curricula for the early elementary grades one through three

- e Assist prekindergarten instructors in the development of appropriate curricula and teaching practices

Standards and materials developed shall include materials which employ developmentally appropriate practices and incorporate substantial parental involvement. The materials and standards shall include alternative teaching approaches including collaborative teaching and alternative dispute resolution training. The department shall consult with the child development coordinating council, the state day care advisory committee, the department of human services, the state board of regents center for early developmental education, the area education agencies, the department of child development in the college of family and consumer sciences at Iowa state university of science and technology, the early childhood elementary division of the college of education at the university of Iowa, and the college of education at the university of northern Iowa, in developing these standards and materials.

For purposes of this section "*substantial parental involvement*" means the physical presence of parents in the classroom, learning experiences designed to enhance the skills of parents in parenting and in providing for their children's learning and development, or educational materials which may be borrowed for home use.

36 By July 1, 1990, develop or direct the area education agencies to develop, a statewide technical assistance support network to provide school districts, or district subcontractors under section 279.49, with assistance in creating developmentally appropriate programs under section 279.49.

37 Administer and approve grants to school districts which provide innovative in-school programming for at risk children in grades kindergarten through three, in addition to regular school curricula for children participating in the program, with the funds for the grants being appropriated for at-risk children by the general assembly. Grants approved shall be for programs in schools with a high percentage of at-risk children. Preference shall be given to programs which integrate at-risk children with the rest of the school population, which agree to limit class size and pupil-teacher ratios, which include parental involvement, which demonstrate community support, which cooperate with other community agencies, which provide appropriate guidance counseling services, and which use teachers with an early childhood endorsement. Grant programs shall contain an evaluation component that measures student outcomes.

38. Develop a model written publications code including reasonable provisions for the regulation of the time, place, and manner of student expression.

39. Establish by July 1, 1991, a six-month pilot project to develop and maintain nutrition guidelines which are consistent with the dietary guidelines for Americans recommended dietary allowances established by the national research council and regulations adopted by the United States department of agriculture for school lunches and breakfasts, and for all food and beverages sold on public school grounds or the grounds of a nonpublic school receiving funds under section 283A.10, which are in addition to the requirements imposed under the federal child nutrition program regulations. The nutrition guidelines shall include guidelines for fat, saturated fat, sugar, sodium, fiber, and cholesterol; shall encourage that where comparable food products of equal nutritional value are available, the food product lower in fat, saturated fat, sugar, sodium, or cholesterol shall be used; and shall provide that each meal is to contain at least one-third of the recommended dietary allowance established by the national research council in effect on January 1, 1990. If, however, dietary guidelines for children are published by the United States department of agriculture and department of health and human services, the nutrition guidelines used in the pilot project shall conform to the new federal dietary guidelines for children. The department shall, through establishment of the pilot project, determine the feasibility of extending the nutrition guidelines established in the project to other schools and school districts in the state. In determining the feasibility of extending the nutrition guidelines, the department shall consult with school food service directors in the state. The department shall submit a report to the general assembly outlining and describing the proposed pilot project, including the proposed pilot project guidelines, by January 1, 1991, and shall submit, at the conclusion of the pilot project, a report, along with any recommendations, relating to the modification of those guidelines and the feasibility of extending the guidelines to other schools and school districts.

40. Provide educational resources and technical assistance to schools relating to the implementation of the nutritional guidelines for food and beverages sold on public school grounds or on the grounds of nonpublic schools receiving funds under section 283A.10.

41. Develop by September 1, 1990, an application and review process for the identification of quality instructional centers at the community colleges. The process developed shall include but is not limited to the development of criteria for the identification of a quality instructional center as well as for the enhancement of other program offerings in order to upgrade programs to quality instructional center status. Criteria established shall be designed to increase student access to programs, establish high quality occupational and vocational education programs, and to enhance interinstitutional cooperation in program offerings.

42. Explore, in conjunction with the state board of regents, the need for coordination between school districts, area education agencies, regents' institutions, and community colleges for purposes of delivery of courses, use of telecommunications, transportation, and other similar issues. Coordination may include, but is not limited to, coordination of calendars, programs, schedules, or telecommunications emissions. The department shall develop recommendations which shall be submitted in a report to the general assembly by February 15, 1991.

43. Develop by September 1, 1990, an application and review process for approval of administrative and program sharing agreements between two or more community colleges or a community college and an institution of higher education under the board of regents entered into pursuant to section 280A.46.

44. Prepare a plan and a report for ensuring that all Iowa children will be able to satisfy the requirements for high school graduation. The plan and report shall include a statement of the dimensions of the dropout problem in Iowa; a survey of existing programs geared to dropout prevention; a plan for use of competency-based outcome methods and measures; proposals for alternative means for satisfying graduation requirements including alternative high school settings, supervised vocational experiences, education experiences within the correctional system, screening and assessment mechanisms for identifying students who are at risk of dropping out and the development of an individualized education plan for identified students; a requirement that schools provide information to students who drop out of school on options for pursuing education at a later date; the development of basic materials and information for schools to present to students leaving school; a requirement that students notify their school districts of residence when the student discontinues school, including the reasons for leaving school and future plans for career development; a requirement that, unless a student chooses to make the information relating to the student leaving school confidential, schools make the information available to community colleges, area education agencies, and other educational institutions upon request; and recommendations for the establishment of pilot projects for the development of model alternative options education programs; a plan for implementation of any recommended courses of action to attain a zero dropout rate by the year 2000; and other requirements necessary to achieve the goals of this subsection. Alternative means for satisfying graduation requirements which relate to the development of individualized education plans for students who have dropped out of the regular school program shall include, but are not limited to, a tracking component that requires a school district to maintain periodic contact with a student, assistance to a dropout in curing any of the student's academic deficiencies, an assessment of the student's employability skills and plans to improve those skills, and treatment or coun-

seling for a student's social needs. The department shall also prepare a cost estimate associated with implementation of proposals to attain a zero dropout rate, including but not limited to evaluation of existing funding sources and a recommended allocation of the financial burden among federal, state, local, and family resources. The report and plan shall be submitted to the general assembly by January 15, 1993.

45. If funds are appropriated by the general assembly for the program, administer the teacher exchange program, develop forms for requests to participate in the program, and process requests from teacher participants for reimbursement of expenses incurred as a result of participating in the program.

91 Acts, ch 84, §2 HF 516, 91 Acts, ch 126, §1 SF 473
Subsection 24 amended
NEW subsection 45

256.11 Educational standards.

The state board shall adopt rules under chapter 17A and a procedure for accrediting all public and nonpublic schools in Iowa offering instruction at any or all levels from the prekindergarten level through grade twelve. The rules of the state board shall require that a multicultural, nonsexist approach is used by schools and school districts. The educational program shall be taught from a multicultural, nonsexist approach. Global perspectives shall be incorporated into all levels of the educational program.

The rules adopted by the state board pursuant to section 256.17, Code Supplement 1987, to establish new standards shall satisfy the requirements of this section to adopt rules to implement the educational program contained in this section.

The educational program shall be as follows:

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 cooperative efforts between home and school shall focus on community resources. Except as otherwise provided in this subsection, a prekindergarten teacher shall hold a license certifying that the holder is qualified to teach in prekindergarten. A nonpublic school which offers only a prekindergarten may, but is not required to, seek and obtain accreditation.

If the board of directors of a school district contracts for the operation of a prekindergarten program, the program shall be under the oversight of an appropriately licensed teacher. If the program contracted with was in existence on July 1, 1989, oversight of the program shall be provided by the district. If the program contracted with was not in existence on July 1, 1989, the director of the program shall be a licensed teacher and the director shall provide program oversight. Any director of a program contract-

ed with by a school district under this section who is not a licensed teacher is required to register with the department of education.

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 protect and increase physical well-being with attention given to experiences relating to the development of life skills and human growth and development. A kindergarten teacher shall be licensed to teach in kindergarten. An accredited 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 grades one through six: English-language arts, social studies, mathematics, science, health, human growth and development, physical education, traffic safety, music, and visual art. The health curriculum shall include the characteristics of communicable diseases including acquired immune deficiency syndrome. The state board as part of accreditation standards shall adopt curriculum definitions for implementing the elementary program.

4. The following shall be taught in grades seven and eight: English-language arts; social studies; mathematics; science; health; human growth and development, family, consumer, career, and technology education; physical education; music; and visual art. The health curriculum shall include the characteristics of sexually transmitted diseases and acquired immune deficiency syndrome. The state board as part of accreditation standards shall adopt curriculum definitions for implementing the program in grades seven and eight. However, family, consumer, career, and technology education are not required to be taught in nonpublic schools which do not offer vocational education programs.

5. In grades nine through twelve, a unit of credit consists of a course or equivalent related components or partial units taught throughout the academic year. The minimum program to be offered and taught for grades nine through twelve is:

a. Five units of science including physics and chemistry; the units of physics and chemistry may be taught in alternate years.

b. Five units of the social studies 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 times when these machines or sample ballots are not in use for their recognized purpose.

c. Six units of English-language arts.

d. Four units of a sequential program in mathematics.

e. Two units of general mathematics.

f. Four sequential units of one foreign language other than American sign language. Provision of instruction in American sign language shall be in addition to and not in lieu of provision of instruction in other foreign languages. The department may waive the third and fourth years of the foreign language requirement on an annual basis 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 licensed 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 they are enrolled in school except as otherwise provided in this paragraph. A minimum of one-eighth unit each semester is required. 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 cooperative 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 or be seeking to be excused in order to enroll in academic courses not otherwise available to the student.

Students in grades nine through eleven may be excused from the physical education requirement in order to enroll in academic courses not otherwise available to the student if the board of directors of the school district in which the school is located, or the authorities in charge of the school, if the school is a nonpublic school, determine that students from the school may be permitted to be excused from the physical education requirement. A student may be excused by the principal of the school in which the student is enrolled, in consultation with the student's counselor, for up to one semester, trimester, or the equivalent of a semester or trimester, per year if the parent or guardian of the student requests in writing that the student be excused from the physical education requirement. The student seeking to be excused from the physical education requirement must, at some time during the period for which the excuse is sought, be a participant in an organized and supervised athletic program which requires at least as much time of participation per week as one-eighth unit of physical education.

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. A minimum of three sequential units in at least four of the following six vocational service areas: agriculture, business or office occupations, health occupations, consumer and family sciences or home economics occupations, industrial technology or trade and industrial education, and marketing education. Instruction shall be competency-based, articulated with postsecondary programs of study, and include field, laboratory, or on-the-job training. Each sequential unit shall include instruction in a minimum set of competencies established by the department of education that relate to the following: new and emerging technologies; job-seeking, job-adaptability, and other employment, self-employment and entrepreneurial skills that reflect current industry standards and labor-market needs; and reinforcement of basic academic skills. The instructional programs shall also comply with the provisions of chapter 258 relating to vocational education. However, this subsection does not apply to nonpublic schools which do not offer vocational education programs.

The department of education shall permit school districts, in meeting the requirements of this section, to use vocational core courses in more than one vocational service area and to use multi-occupational courses to complete a sequence in more than one vocational service area.

i. Three units in the fine arts which shall include at least two of the following: dance, music, theatre, and visual art.

j. One unit of health education which shall include personal health; food and nutrition; environmental health; safety and survival skills; consumer health; family life; human growth and development; substance abuse and nonuse; emotional and social health; health resources; and prevention and control of disease, including sexually transmitted diseases and acquired immune deficiency syndrome.

The state board as part of accreditation standards shall adopt curriculum standards for implementing the program in grades nine through twelve.

6. A pupil is not 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.

7. Programs that meet the needs of each of the following:

a. Pupils requiring special education.

b. Gifted and talented pupils.

c. Programs for at-risk students. Rules adopted by the state board to implement this paragraph shall be based upon the definition of at-risk student developed by the child coordinating council established in section 256A.2 and the department of education, and the state board shall consider the recommendations of the child coordinating council and the department in developing the rules.

8. Upon request of the board of directors of a public school district or the authorities in charge of a nonpublic school, the director may, for a number

of years to be specified by the director, grant the district board or the authorities in charge of the nonpublic school exemption from one or more of the requirements of the educational program specified in subsection 5. The exemption may be renewed. Exemptions shall be granted only if the director deems that the request made is an essential part of a planned innovative curriculum project which the director 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 5.

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.
- g. The estimated cost of the project.

9. a. Effective July 1, 1989, through June 30, 1992, to facilitate the implementation and economical operation of the educational program defined in subsections 4 and 5, each school offering any of grades seven through twelve, except a school which offers grades one through eight as an elementary school, shall meet the media center requirements specified in section 256.11, subsection 9, paragraph "a", Code Supplement 1987.

b. Effective July 1, 1990, unless a waiver has been obtained under section 256.11A, each school or school district shall have a qualified school media specialist who shall meet the licensing standards prescribed by the board of educational examiners and shall be responsible for supervision of the media centers. Each school or school district shall establish a media center, in each attendance center, which shall be accessible to students throughout the school day. However, in determining the requirements for nonpublic schools, the department shall evaluate the schools on a school system basis rather than on an individual school basis.

9A. Each school or school district shall provide an articulated sequential guidance program for grades kindergarten through twelve. Until July 1, 1992, a school or school district may obtain a waiver from meeting the requirements of this subsection pursuant to section 256.11A. The guidance counselor shall meet the licensing standards of the board of educational examiners. However, in determining the requirements for nonpublic schools, the department shall evaluate the schools on a school system basis rather than on an individual school basis.

10. The state board shall establish an accreditation process for school districts and nonpublic

schools seeking accreditation pursuant to this subsection and subsections 11 and 12. As required in section 256.17,* by July 1, 1989, all school districts shall meet standards for accreditation. For the school year commencing July 1, 1989 and school years thereafter, the department of education shall use a two-phase process for the continued accreditation of schools and school districts.

Phase I consists of annual monitoring by the department of education of all accredited schools and school districts for compliance with accreditation standards adopted by the state board of education as provided by section 256.17.* The phase I monitoring requires that accredited school districts and schools annually complete accreditation compliance forms adopted by the state board and file them with the department of education. In addition, employees of the department of education shall complete at least biennial on-site visits to each accredited school and school district to review the educational programs and the information included in the compliance forms.

Phase II requires the use of an accreditation committee, appointed by the director of the department of education, to conduct an on-site visit to an accredited school or school district if any of the following conditions exist:

- a. When either the annual monitoring or the biennial on-site visit of phase I indicates that a school or school district is deficient and fails to be in compliance with accreditation standards.
- b. In response to a petition filed with the director requesting such a committee visitation that is signed by twenty percent or more of the registered voters of a school district.
- c. In response to a petition filed with the director requesting such a committee visitation that is signed by twenty percent or more of the parents or guardians who have children enrolled in the school or school district.
- d. At the direction of the state board of education.

The number and composition of the membership of an accreditation committee shall be determined by the director and may vary due to the specific nature or reason for the visit. In all situations, however, the chairperson and a majority of the committee membership shall be from the instructional and administrative program specialty staff of the department of education. Other members may include instructional and administrative staff from school districts, area education agencies, institutions of higher education, local board members and the general public. An accreditation committee visit to a nonpublic school requires membership on the committee from nonpublic school instructional or administrative staff or board members. A member of a committee shall not have a direct interest in the nonpublic school or school district being visited.

Rules adopted by the state board may include provisions for coordination of the accreditation process under this section with activities of accreditation associations.

Prior to a visit to a school district or nonpublic school, members of the accreditation committee shall have access to all annual accreditation report information filed with the department by that nonpublic school or school district.

After visiting the school district or nonpublic school, the accreditation committee shall determine whether the accreditation standards have been met and shall make a report to the director, together with a recommendation whether the school district or nonpublic school shall remain accredited. The accreditation committee shall report strengths and weaknesses, if any, for each standard and shall advise the school or school district of available resources and technical assistance to further enhance strengths and improve areas of weakness. A school district or nonpublic school shall be provided with the opportunity to respond to the accreditation committee's report.

11. The director shall review the accreditation committee's report, and the response of the school district or nonpublic school, and provide a report and recommendation to the state board along with copies of the accreditation committee's report, the response to the report, and other pertinent information. The state board shall determine whether the school district or nonpublic school shall remain accredited. If the state board determines that a school district or nonpublic school should not remain accredited, the director, in cooperation with the board of directors of the school district, or authorities in charge of the nonpublic school, shall establish a plan prescribing the procedures that must be taken to correct deficiencies in meeting the standards, and shall establish a deadline date for completion of the procedures. The plan is subject to approval of the state board.

12. During the period of time specified in the plan for its implementation by a school district or nonpublic school, the school or school district remains accredited. The accreditation committee shall revisit the school district or nonpublic school and shall determine whether the deficiencies in the standards have been corrected and shall make a report and recommendation to the director and the state board. The state board shall review the report and recommendation, may request additional information, and shall determine whether the deficiencies have been corrected. If the deficiencies have not been corrected, the state board shall merge the territory of the school district with one or more contiguous school districts. Division of assets and liabilities of the school district shall be as provided in sections 275.29 through 275.31. Until the merger is completed, the school district shall pay tuition for its resident students to an accredited school district under section 282.24.

13. Notwithstanding subsections 1 through 12 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 ma-

triculation at accredited four-year or equivalent liberal arts, scientific, or technological colleges or universities shall be placed on a special accredited list of college preparatory schools, which list shall signify accreditation of the school for that express purpose only, if:

a. The school complies with minimum standards established by the Code other than this section, and rules adopted under the Code, applicable to:

- (1) Courses comprising the limited program.
- (2) Health requirements for personnel.
- (3) Plant facilities.

(4) Other environmental factors affecting the programs.

b. At least eighty percent of those graduating from the school within the four most recent 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.

c. A school claiming to be a private college preparatory school which fails to comply with the requirement of paragraph "b" of this subsection shall be placed on the special accredited list of college preparatory schools probationally if the school complies with the requirements of paragraph "a" of this subsection, but a probational accreditation shall not continue for more than four successive years.

14. Notwithstanding subsections 1 through 13 and as an exception to their requirements, a nonpublic grade school which is reopening is accredited even if it does not have a complete grade one through grade six program. However, the nonpublic grade school must comply with other minimum standards established by law and administrative rules adopted pursuant to the law and the nonpublic grade school must show progress toward reaching a grade one through grade six program.

89 Acts, ch 278, §1, 2 SF 449, 90 Acts, ch 1272, §32 SF 2423, 91 Acts ch 104, §1 SF 313, 91 Acts, ch 193, §1 SF 23

*Reference is to §256.17, Code 1989

1989 and 1990 amendments to subsection 4 and subsection 5 paragraph h, effective July 1, 1992, 89 Acts, ch 278, §9

Study of functions school districts are required to perform to receive aid or remain accredited, 91 Acts, ch 104, §2 SF 313

Subsection 4 amended

Subsection 5 paragraphs f and h amended

Subsection 10 amended

256.18 Modified block scheduling. Repealed by 91 Acts, ch 126, § 5. SF 473

256.19 Pilot projects to improve instructional programs.

For fiscal years in which moneys are appropriated by the general assembly for the purpose of conducting pilot projects as approved by the state board of education to improve school district instructional programs, the state board of education shall notify the department of revenue and finance of the amounts necessary for each pilot project in order to reimburse the school districts for costs related to the approved pilot projects.

91 Acts, ch 126, §2 SF 473

Section amended

256.34 Conservation education program board.

1. A conservation education program board is created in the department. The board shall have five members appointed as follows:

- a. One member appointed by the director of the department of education.
- b. One member appointed by the director of the department of natural resources.
- c. One member appointed by the president of the Iowa association of county conservation boards.
- d. One member appointed by the president of the Iowa association of naturalists.
- e. One member appointed by the president of the Iowa conservation education council.

Section 69.16 does not apply to appointments made pursuant to this subsection.

2. The duties of the board are to revise and produce conservation education materials and to specify stipends to Iowa educators who participate in innovative conservation education programs approved by the board. The board shall allocate the funds provided for under section 455A.19, subsection 1, for the educational materials and stipends.

3. The department shall administer the funds allocated to the conservation education program as provided in this section.

91 Acts, ch 146, §1-3 SF 323
 Subsection 1, unnumbered paragraph 1 amended
 Subsection 1, NEW paragraphs d and e
 Subsection 1, NEW unnumbered paragraph 2

256.36 Math and science grant program.

1. The department shall establish a math and science education grant program to provide for the allocation of grant moneys to public school corporations and to contract for the development of statewide program models and recommendations in keeping with the goals stated in this section. A public school corporation desiring to receive grant moneys under the program may submit plans and a proposed budget to the department for approval. The department shall review each plan and its proposed budget and award grants, which may be matching funds grants, for approved plans by July 1 of the calendar year in which the approved plans were submitted. Provision of matching funds from institutional private sources shall be considered by the department in reviewing plans and proposed budgets and awarding grant moneys.

However, for the first school year for which program funds are appropriated, a board of directors of a public school corporation may submit a proposed plan and budget not later than January 1 of that school year and the department shall notify public school corporations by February 15 of that same school year that their plans have been approved or disapproved by the department.

In addition to awarding grants, and if the activity does not violate federal matching funds requirements for an Iowa math and science grant program, the department may expend funds to contract with

a public or private nonprofit education organization, association, or laboratory for the development of models or recommendations with statewide applications to further the goals of this section.

2. The department shall make recommendations for, and the state board shall adopt, rules relating to program goals and program administration. The goals of the math and science education program may include, but are not limited to, the development of a model multidisciplinary science curricula that will serve as the framework for the development of individual teaching modules; the design and implementation of a statewide model for staff development in science and math education; the development of specific recommendations and rationale for changes in school standards that will facilitate improvements in math and science education and provide outcomes that serve as a standard of successful learning; provision of a sequence of competencies and instructional strategies for inclusion in teacher preparation programs for those entering math and science programs in Iowa teacher preparation institutions; development and implementation of a new statewide assessment program that is consistent with the materials and approaches envisioned; and the development and implementation strategies for recruitment and retention of females and minorities in math and science education.

The board of educational examiners may develop recommendations for specific changes in the licensing requirements for math and science teachers.

Program administration rules shall include, but are not limited to, development of standard formats and procedures for the submission and assessment of grant applications.

3. There is established in the state treasury a math and science education account that is under the control of and administered by the department of education. The department may accept gifts, grants, bequests, and other private contributions, as well as state or federal funds, and shall deposit the moneys in the account to be used for distribution as grant award moneys under the math and science education program. Moneys in the account are appropriated and may be used for the purposes of this section. The department shall not commingle federal, state, and private funds within the account. Not more than six percent of any state funds appropriated for the program may be used for administrative purposes. State funds appropriated and any interest earned on the state funds but not expended for the first two years of the program shall not revert to the general fund under section 8.33, but shall remain available for expenditure until June 30 of the third year of the program. In subsequent years, state funds and any interest earned on the state funds which are appropriated, but not expended by June 30 of the school year shall revert to the general fund as provided under section 8.33. Receipt of funds during the first year of the program shall not affect eligibility to receive funds during any subsequent years.

91 Acts, ch 71, §1 HF 485
 NEW section

256.37 through 256.39 Reserved

256.41 Youth 2000 coordinating council created.

A youth 2000 coordinating council is created within the department of education. The council consists of the following persons:

- 1 The director of the department of education, or the director's designee
- 2 The administrator of the division of job training and entrepreneurship assistance of the department of economic development, or the administrator's designee
- 3 The administrator of the division of child and family services in the department of human services, or the administrator's designee
- 4 The administrator of the division of substance

abuse of the Iowa department of public health, or the administrator's designee

5 The administrator of the division of criminal and juvenile justice planning in the department of human rights, or the administrator's designee

6 The administrator of the division of children and youth programs within the department of human services, or the administrator's designee

7 The president of the Iowa association of school boards, or the president's designee

8 The president of the Iowa state education association, or the president's designee

9 The drug enforcement and abuse prevention coordinator shall serve as an ex officio and nonvoting member

91 Acts ch 109 §4 SF 479
Subsection 3 amended

CHAPTER 256A

CHILD DEVELOPMENT ASSISTANCE

256A.2 Child development coordinating council established.

A child development coordinating council is established to promote the provision of child development services to at-risk three-year- and four-year-old children. The council shall consist of the following members:

- 1 The administrator of the division of child and family services of the department of human services or the administrator's designee
- 2 The director of the department of education or the director's designee
- 3 The director of human services or the director's designee
- 4 The director of the department of public health or the director's designee
- 5 An early childhood specialist of an area education agency selected by the area education agency administrators
- 6 The dean of the college of family and consum-

er sciences at Iowa State University of science and technology or the dean's designee

7 The dean of the college of education from the University of Northern Iowa or the dean's designee

8 The professor and head of the department of pediatrics at the University of Iowa or the professor's designee

9 A resident of this state who is a parent of a child who is or has been served by a federal head start program

Staff assistance for the council shall be provided by the department of education. Members of the council shall be reimbursed for actual and necessary expenses incurred while engaged in their official duties and shall receive per diem compensation at the level authorized under section 7E 6, subsection 1, paragraph "a"

91 Acts ch 109 §5 6 SF 479
Subsection 1 amended
Unnumbered paragraph 2 (last paragraph) amended

CHAPTER 257

FINANCING SCHOOL PROGRAMS

257.1 State school foundation program — state aid.

1. *Program established.* A state school foundation program is established for the school year commencing July 1, 1991, and succeeding school years.

2. *State school foundation aid — foundation base.* For a budget year, each school district in the state is entitled to receive foundation aid, in an amount per pupil equal to the difference between the amount per pupil of foundation property tax in the district, and the combined foundation base per pupil or the combined district cost per pupil, whichever is less. However, if the amount of foundation aid received by a school district under this chapter is less than three hundred dollars per pupil, the district is entitled to receive three hundred dollars per pupil unless the receipt of three hundred dollars per pupil plus the per pupil amount raised by the foundation property tax exceeds the combined district cost per pupil of the district for the budget year. In that case, the district is entitled to receive an amount per pupil equal to the difference between the per pupil amount raised by the foundation property tax for the budget year and the combined district cost per pupil for the budget year.

For the budget year commencing July 1, 1991, and for each succeeding budget year the regular program foundation base per pupil is eighty-three percent of the regular program state cost per pupil, except that the regular program foundation base per pupil for the portion of weighted enrollment that is additional enrollment because of special education is seventy-nine percent of the regular program state cost per pupil. For the budget year commencing July 1, 1991, and for each succeeding budget year the special education support services foundation base is seventy-nine percent of the special education support services state cost per pupil. The combined foundation base is the sum of the regular program foundation base and the special education support services foundation base.

3. *Computations rounded.* In making computations and payments under this chapter, except in the case of computations relating to funding of special education support services, media services, and educational services provided through the area education agencies, the department of management shall round amounts to the nearest whole dollar.

91 Acts, ch 267, §517 HF 479
Subsection 2, unnumbered paragraph 2 amended

1. *“Allowable growth”* means the amount by which state cost per pupil and district cost per pupil will increase from one budget year to the next.

2. *“Base year”* means the school year ending during the calendar year in which a budget is certified.

3. *“Budget adjustment”* means an adjustment to the regular program district cost of a school district for school districts in which the regular program district cost for a year would be less than the regular program district cost for the previous year.

4. *“Budget year”* means the school year beginning during the calendar year in which a budget is certified.

5. *“Combined district cost per pupil”* is an amount determined by adding together the regular program district cost per pupil for a year and the special education support services district cost per pupil for that year as calculated under section 257.10.

6. *“Combined state cost per pupil”* is a per pupil amount determined by adding together the regular program state cost per pupil for a year and the special education support services state cost per pupil for that year as calculated under section 257.9.

7. *“Committee”* means the school budget review committee.

8. *“Expenditures”* means the total amounts paid from the general fund of a school district.

9. *“Miscellaneous income”* means the receipts deposited to the general fund of the school district but not including any of the following:

a. Foundation aid.

b. Revenue obtained from the foundation property tax.

c. Revenue obtained from the additional property tax under section 257.4.

10. *“Property tax adjustment”* means state aid distributed to those school districts in which the property tax revenues generated under this chapter would be higher than the revenues generated under chapter 442, Code 1991.

11. *“School district”* means a school corporation organized under chapter 274.

12. *“State percent of growth”* means a percent of economic growth determined under this chapter which is based upon an averaging of state and federal growth indicators, and which is used in determining the allowable growth.

91 Acts, ch 267, §518 HF 479
Subsection 12 stricken and former subsection 13 renumbered as 12

257.2 Definitions.

As used in this chapter:

257.3 Foundation property tax.

1. *Amount of tax.* Except as provided in sub-

section 2, a school district shall cause to be levied each year, for the school general fund, a foundation property tax equal to five dollars and forty cents per thousand dollars of assessed valuation on all taxable property in the district. The county auditor shall spread the foundation levy over all taxable property in the district.

2. *Tax for reorganized and dissolved districts.*

Notwithstanding subsection 1, a reorganized school district shall cause a foundation property tax of four dollars and forty cents per thousand dollars of assessed valuation to be levied on all taxable property which, in the year preceding a reorganization, was within a school district affected by the reorganization as defined in section 275.1, or in the year preceding a dissolution was a part of a school district that dissolved if the dissolution proposal has been approved by the director of the department of education pursuant to section 275.55. In the year preceding the reorganization or dissolution, the school district affected by the reorganization or the school district that dissolved must have had a certified enrollment of fewer than six hundred in order for the four-dollar-and-forty-cent levy to apply. In succeeding school years, the foundation property tax levy on that portion shall be increased twenty cents per year until it reaches the rate of five dollars and forty cents per thousand dollars of assessed valuation.

For purposes of this section, a reorganized school district is one which absorbed at least thirty percent of the enrollment of the school district affected by a reorganization or dissolved during a dissolution and in which action to bring about a reorganization or dissolution was initiated by a vote of the board of directors or jointly by the affected boards of directors prior to November 30, 1990, and the reorganization or dissolution takes effect on or after July 1, 1991, and on or before July 1, 1993. Each district which initiated, by a vote of the board of directors or jointly by the affected boards, action to bring about a reorganization or dissolution by November 30, 1990, shall certify the date and the nature of the action taken to the department of education by September 1, 1991.

The reduced property tax rates of reorganized school districts that met the requirements of section 442.2, Code 1991, prior to July 1, 1991, shall continue to increase as provided in that section until they reach five dollars and forty cents.

3. *Railway corporations.* For purposes of section 257.1, the "amount per pupil of foundation property tax" does not include the tax levied under subsection 1 or 2 on the property of a railway corporation, or on its trustee if the corporation has been declared bankrupt or is in bankruptcy proceedings.

91 Acts, ch 178, §1 HF 583
Subsection 2 stricken and rewritten

257.4 Additional property tax.

1. *Computation of tax.* A school district shall cause an additional property tax to be levied each year. The rate of the additional property tax levy in

a school district shall be determined by the department of management and shall be calculated to raise the difference between the combined district cost for the budget year and the sum of the products of the regular program foundation base per pupil times the weighted enrollment in the district and the special education support services foundation base per pupil times the special education support services weighted enrollment in the district.

2. *Supplemental aid.* However, if the rate of the additional property tax levy determined under subsection 1 with the application of section 257.15 for a budget year for a reorganized school district is higher than the rate of additional property tax levy determined under subsection 1 with the application of section 257.15 for the year previous to the reorganization for a school district that had a certified enrollment of less than six hundred and that was within the school districts affected by the reorganization as defined in section 275.1, the department of management shall reduce the rate of the additional property tax levy in the portion of the reorganized district where the new rate is higher, to the rate that was levied in that portion of the district during the year preceding the reorganization, for a five-year period. The department of management shall include in the state aid payments made to each reorganized school district under section 256.16 during each of the first five years of existence of the reorganized district as supplemental aid, moneys equal to the reduction in property tax revenues made under this subsection. For the budget year beginning July 1, 1991, the base year calculation shall be made using chapter 442, Code 1991.

For purposes of this section, a reorganized school district is one in which action to bring about a reorganization was initiated by a vote of the board of directors or jointly by the affected boards of directors prior to November 30, 1990, and the reorganization will take effect on or after July 1, 1991, and on or before July 1, 1993. Each district which initiated, by a vote of the board of directors or jointly by the affected boards, action to bring about a reorganization or dissolution by November 30, 1990, shall certify the date and the nature of the action taken to the department of education by September 1, 1991.

3. *Application of tax.* No later than May 1 of each year, the department of management 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. A county auditor shall spread the additional property tax levy for each school district in the county over all taxable property in the district.

91 Acts, ch 178, §2 HF 583
NEW subsection 2 and former subsection 2 renumbered as 3

257.5 Continuation of supplemental aid.

A reorganized school district, as defined in section 257.4, subsection 2, receiving supplemental aid prior to July 1, 1991, under section 442.9A, Code 1991,

shall continue to receive supplemental aid as provided in that section for the five-year period specified in that section.

There is appropriated from the general fund of the state to the department of management for each fiscal year an amount sufficient to pay the supplemental aid to school districts under this section. Supplemental aid shall be paid in the manner provided in section 257.16.

For the purpose of the department of management's determination of the portion of a school district's budget that was property tax and the portion that was state aid under section 257.36, supplemental aid shall be considered property tax.

91 Acts, ch 178, §3 HF 583
Unnumbered paragraph 1 stricken and unnumbered paragraph 2 stricken and rewritten

257.12 Supplementary weighting and school reorganization.

In determining weighted enrollment under section 257.6, if the board of directors of a school district has approved a contract for sharing under section 442.39, subsection 2 or 4, Code 1991, or section 257.11 and the school district has initiated an action prior to November 30, 1990, to bring about a reorganization, the reorganized school district shall include, for a period of five years following the effective date of the reorganization, additional pupils added by the application of the supplementary weighting plan, equal to the pupils added by the application of the supplementary weighting plan in the year preceding the reorganization. However, the weighting shall be reduced by the supplementary weighting added for a pupil whose residency is not within the reorganized district. For purposes of this section, a reorganized district is one in which the reorganization was approved in an election pursuant to sections 275.18 and 275.20 and takes effect on or after July 1, 1991, and on or before July 1, 1993. Each district which initiated, by a vote of the board of directors or jointly by the affected boards, action to bring about a reorganization or dissolution by November 30, 1990, shall certify the date and the nature of the action taken to the department of education by September 1, 1991.

A reorganized school district in which eligible pupils were added under section 442.39A, Code 1991, shall continue to have pupils added, subject to the changes in weighting made under section 257.11, until the expiration of the five-year period provided in section 442.39A, Code 1991.

91 Acts, ch 178, §4 HF 583
Section stricken and rewritten

257.15 Property tax adjustment.

1. *Property tax adjustment for 1991-1992.* For the budget year beginning July 1, 1991, the department of management shall calculate for each district the difference between the sum of the revenues generated by the foundation property tax and the additional property tax in the district calculated under this chapter and the revenues that would have been

generated by the foundation property tax and the additional property tax in that district for that budget year calculated under chapter 442, Code 1989, if chapter 442 were in effect, except that the revenues that would have been generated by the additional property tax levy under chapter 442 shall not include revenues generated for the school improvement program. However in making the calculation of the difference in revenues under this subsection, the department shall not include the revenues generated under section 257.37 and under chapter 442, Code 1989, for funding media and educational services through the area education agencies. If the property tax revenues for a district calculated under this chapter exceed the property tax revenues for that district calculated under chapter 442, Code 1989, the department of management shall reduce the revenues raised by the additional property tax levy in that district under this chapter by that difference and the department of education shall pay property tax adjustment aid to the district equal to that difference from moneys appropriated for property tax adjustment aid.

For purposes of this subsection, in computing the amount of revenues generated by the foundation property tax and the additional property tax under chapter 442, Code 1989, the computation shall be based on a regular program foundation base per pupil of eighty-three percent of the regular program state cost per pupil except that for the portion of weighted enrollment that is additional enrollment because of special education the regular program foundation base per pupil shall be seventy-nine percent of the regular program state cost per pupil. The special education support services foundation base shall be seventy-nine percent of the special education support services state cost per pupil.

2. *Property tax adjustment aid for 1992-1993 and succeeding years.* For the budget year beginning July 1, 1992, and succeeding budget years, the department of education shall pay property tax adjustment aid to a school district equal to the amount paid to the district for the base year less an amount equal to the product of the percent by which the taxable valuation in the district increased, if the taxable valuation increased, from January 1 of the year prior to the base year to January 1 of the base year and the property tax adjustment aid. The department of management shall adjust the rate of the additional property tax accordingly and notify the department of education of the amount of aid to be paid to each district from moneys appropriated for property tax adjustment aid.

3. *Property tax adjustment aid appropriation.* There is appropriated from the general fund of the state to the department of education, for each fiscal year, an amount necessary to pay property tax adjustment aid to school districts under this section. Property tax adjustment aid shall be paid to school districts in the manner provided in section 257.16.

91 Acts, ch 6, §1 SF 141, 91 Acts, ch 267, §519 HF 479
Subsection 1 amended, and NEW unnumbered paragraph 2 added

257.16 Appropriations.

There is appropriated each year from the general fund of the state an amount necessary to pay the foundation aid and supplementary aid under section 257.4, subsection 2.

All state aids paid under this chapter, unless otherwise stated, shall be paid in monthly installments beginning on September 15 of a budget year and ending on June 15 of the budget year and the installments shall be as nearly equal as possible as determined by the department of management, taking into consideration the relative budget and cash position of the state resources. However, the state aid paid to school districts under section 257.13 shall be paid in monthly installments beginning on December 15 and ending on June 15 of a budget year.

All moneys received by a school district from the state under this chapter shall be deposited in the general fund of the school district, and may be used for any school general fund purpose.

91 Acts, ch 178, §5 HF 583
Unnumbered paragraph 1 amended

257.19 Instructional support funding.

The additional funding for the instructional support program for a budget year is limited to an amount not exceeding ten percent of the total of regular program district cost for the budget year and moneys received under section 257.14 as a budget adjustment for the budget year. Moneys received by a district for the instructional support program are miscellaneous income and may be used for any general fund purpose. However, moneys received by a district for the instructional support program shall not be used as, or in a manner which has the effect of, supplanting funds authorized to be received under sections 257.41, 257.46, 298.2, and 298.4, or to cover any deficiencies in funding for special education instructional services resulting from the application of the special education weighting plan under section 281.9.

Certification of a board's intent to participate for a budget year, the method of funding, and the amount to be raised shall be made to the department of management not later than March 15 of the base year. Funding for the instructional support program shall be obtained from instructional support state aid and from local funding using either an instructional support property tax or a combination of an instructional support property tax and an instructional support income surtax.

The board of directors shall determine whether the instructional support property tax or the combination of the instructional support property tax and instructional support income surtax shall be used for the local funding. Subject to the limitation specified in section 298.14, if the board elects to use the combination of the instructional support property tax and instructional support income surtax, for each budget year the board shall determine the percent of income surtax that will be imposed, expressed as full percentage points, not to exceed twenty percent.

91 Acts, ch 126, §3 SF 473
1991 amendment to unnumbered paragraph 1 not applicable to funds re

ceived for instructional support program as result of levy authorized prior to May 7, 1991 91 Acts, ch 126, §6, 7 SF 473
Unnumbered paragraph 1 amended

257.20 Instructional support state aid appropriation.

In order to determine the amount of instructional support state aid and the amount of local funding for the instructional support program for a district, the department of management shall divide the total assessed valuation in the state by the total budget enrollment for the budget year in the state to determine a state assessed valuation per pupil and shall divide the assessed valuation in each district by the district's budget enrollment for the budget year to determine the district assessed valuation per pupil. The department of management shall multiply the ratio of the state's valuation per pupil to the district's valuation per pupil by twenty-five hundredths and subtract that result from one to determine the portion of the instructional support program budget that is local funding. The remaining portion of the budget shall be funded by instructional support state aid.

There is appropriated for each fiscal year from the general fund of the state to the department of education, an amount necessary to pay instructional support state aid as provided in this section. Instructional support state aid shall be paid at the same time and in the same manner as foundation aid is paid under section 257.16.

Appropriation limited for 1991 1992 fiscal year, property tax restriction, see 91 Acts, ch 267, §507 HF 479
Footnote added, section not amended

257.21 Computation of instructional support amount.

The department of management shall establish the amount of instructional support property tax to be levied and the amount of instructional support income surtax to be imposed by a district in accordance with the decision of the board under section 257.19 for each school year for which the instructional support program is authorized. The department of management shall determine these amounts based upon the most recent figures available for the district's valuation of taxable property, individual state income tax paid, and budget enrollment in the district, and shall certify to the district's county auditor the amount of instructional support property tax, and to the director of revenue and finance the amount of instructional support income surtax to be imposed if an instructional support income surtax is to be imposed.

The instructional support income surtax shall be imposed on the state individual income tax for the calendar year during which the school's budget year begins, or for a taxpayer's fiscal year ending during the second half of that calendar year and after the date the board adopts a resolution to participate in the program or the first half of the succeeding calendar year, and shall be imposed on all individuals residing in the school district on the last day of the ap-

pliable tax year. As used in this section, "state individual income tax" means the taxes computed under section 422.5, less the credits allowed in sections 422.11A, 422.11B, 422.11C, 422.12, and 422.12B.

91 Acts ch 159 §1 SF 356
1991 amendment to unnumbered paragraph 2 retroactive to January 1 1990
for tax years beginning on or after that date, 91 Acts ch 159 §30 SF 356
Unnumbered paragraph 2 amended

257.31 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 direct the director of the department of education or the director of the department of management 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. Not later than January 1, 1992, the committee shall adopt recommendations relating to the implementation by school districts and area education agencies of procedures pertaining to the preparation of financial reports in conformity with generally accepted accounting principles and submit those recommendations to the state board of education. The state board shall consider the recommendations and adopt rules under section 256.7 specifying procedures and requiring the school districts and area education agencies to conform to generally accepted accounting principles commencing with the school year beginning July 1, 1996.

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 education for the use of the school budget review committee for the purposes of this subsection, 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 initial staffing problems.

d The closing of a nonpublic school, wholly or in part.

e Substantial reduction in miscellaneous income due to circumstances beyond the control of the district.

f Unusual necessity for additional funds to permit continuance of a course or program which provides substantial benefit to pupils.

g Unusual need for a new course or program which will provide substantial benefit to pupils, if the district establishes the need and the amount of necessary increased cost.

h Unusual need for additional funds for special education or compensatory education programs.

i 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.

j Unusual need to continue providing a program or other special assistance to non-English speaking pupils after the expiration of the three-year period specified in section 280.4.

k Circumstances caused by unusual demographic characteristics.

l Any unique problems of school districts.

6 The committee shall establish a modified allowable growth for a district by increasing its allowable growth when the district submits evidence that it requires additional funding for removal, management, or abatement of environmental hazards due to a state or federal requirement. Environmental hazards shall include but are not limited to the presence of asbestos, radon, or the presence of any other hazardous material dangerous to health and safety.

The district shall include a budget for the actual cost of the project that may include the costs of inspection, reinspection, sampling, analysis, assessment, response actions, operations and maintenance, training, periodic surveillance, developing of management plans, recordkeeping requirements, and encapsulation or removal of the hazardous material.

7. The committee may authorize a district to spend a reasonable and specified amount from its unexpended cash balance for either of the following purposes:

a 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 the tax levy provided in section 298.2.

b The costs associated with the demolition of an unused school building, or the conversion of an unused school building for community use, in a school district involved in a dissolution or reorganization under chapter 275, if the costs are incurred within three years of the dissolution or reorganization.

Other expenditures, including but not limited to

expenditures for salaries or recurring costs, are not 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 the amount 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 through 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 department of education.

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 is justification for the committee to instruct the director of the department of management 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 director of the department of education relating to the special education weighting plan, and shall establish a weighting plan for each school year pursuant to section 281.9, and report the plan to the director of the department of education.

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. 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 director of the department of management.

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 under section 8.31.

a. If the amount certified for a school district to the director of the department of management under this subsection for the base year is positive, the director of the department of management 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 excess on a quarterly basis prior to June 30 of the budget year to the director of the department of management from other funds received by the district. The director of the department of management shall determine the amount of the positive balance that came from 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 257.4 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 director of the department of management under this subsection for the base year is negative, the director of the department of management 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.

There is appropriated from the general fund of the state to the school budget review committee for each fiscal year an amount equal to the state aid portion of five percent of the receipts for special education instruction programs in all districts that has a positive balance determined under paragraph "a" for the base year, or the state aid portion of all of the positive balances determined under paragraph "a" for the base year, whichever is less, to be used for supplemental aid payments to school districts. Except as otherwise provided in this lettered paragraph, supplemental aid paid to a district is equal to the state aid portion of the district's negative balance. The school budget review committee shall direct the director of the department of management to make the payments to school districts under this lettered paragraph.

A school district is only 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 notify the school budget review committee to instruct the director of the department of management 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 under this subsection. The director of the department of management 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 lettered paragraph is insufficient to make the supplemental aid payments under this subsection, the director of the department of management 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 the 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 director of the department of management to reduce that district's tax levy computed under section 257.4 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.

16. The committee shall perform the duties assigned to it under chapter 286A and section 257.32.

91 Acts, ch 267, §520 HF 479

Subsection 6 stricken and former subsections 7-10 renumbered as 6-9

Subsection 11 stricken and former subsections 12-18 renumbered as 10-16

257.37 Funding media and educational services.

Media services and educational services provided through the area education agencies shall be funded, to the extent provided, by an addition to the combined district cost of each school district, determined as follows:

1. For the budget year beginning July 1, 1991, and succeeding budget years, the total amount funded in each area for media services shall be computed as provided in this subsection. For the budget year beginning July 1, 1991, the total amount funded in each area for media services in the base year, including the cost for media resource material which shall only be used for the purchase or replacement of material required in section 273.6, subsection 1, paragraphs "a", "b", and "c", shall be divided by the enrollment served in the base year to provide an area media services cost per pupil in the base year, and the department of management shall compute the state media services cost per pupil in the base year which is equal to the average of the area media services costs per pupil in the base year. For the budget year beginning July 1, 1991, and succeeding budget years, the department of management shall compute the allowable growth for media services in the budget year by multiplying the state media services cost per pupil in the base year times the state percent of growth for the budget year, and the total amount funded in each area for media services cost in the budget year equals the area media services cost per pupil in the base year plus the allowable growth for media services in the budget year times the enrollment served in the budget year. Funds shall be paid to area education agencies as provided in section 257.35.

2. Thirty percent of the budget of an area for media services shall be expended for media resource material which shall only be used for the purchase or replacement of material required in section 273.6, subsection 1. Funds shall be paid to area education agencies as provided in section 257.35.

3. For the budget year beginning July 1, 1991, and succeeding budget years, the total amount funded in each area for educational services shall be computed as provided in this subsection. For the budget year beginning July 1, 1991, the total amount funded in each area for educational services in the base year shall be divided by the enrollment served in the area in the base year to provide an area educational services cost per pupil in the base year, and the department of management shall compute the state educational services cost per pupil in the base year, which is equal to the average of the area educational services costs per pupil in the base year. For the budget year beginning July 1, 1991, and succeeding budget years, the department of management shall compute the allowable growth for educational services by multiplying the state educational services cost per pupil in the base year times the state percent of growth for the budget year, and the total amount funded in each area for educational services for the budget year equals the area educational services cost per pupil for the base year plus the allowable growth for educational services in the budget year times the enrollment served in the area in the budget year. Funds shall be paid to area education agencies as provided in section 257.35.

4. "Enrollment served" means the basic enrollment plus the number of nonpublic school pupils served with media services or educational services, as applicable, except that if a nonpublic school pupil or a pupil attending another district under a whole-grade sharing agreement or open enrollment receives services through an area other than the area of the pupil's residence, the pupil shall be deemed to be served by the area of the pupil's residence, which shall by contractual arrangement reimburse the area through which the pupil actually receives services. Each school district shall include in the third Friday in September enrollment report the number of nonpublic school pupils within each school district for media and educational services served by the area.

5. If an area education agency does not serve nonpublic school pupils in a manner comparable to services provided public school pupils for media and educational services, as determined by the state board of education, the state board shall instruct the department of management to reduce the funds for media services and educational services one time by an amount to compensate for such reduced services. The media services budget shall be reduced by an amount equal to the product of the cost per pupil in basic enrollment for the budget year for media services times the difference between the enrollment served and the basic enrollment recorded for the area. The educational services budget shall be reduced by an amount equal to the product of the cost

per pupil in basic enrollment for the budget year for educational services times the difference between the enrollment served and the basic enrollment recorded for the area.

This subsection applies only to media and educational services which cannot be diverted for religious purposes.

Notwithstanding this subsection, an area educa-

tion agency shall distribute to nonpublic schools media materials purchased wholly or partially with federal funds in a manner comparable to the distribution of such media materials to public schools as determined by the director of the department of education.

91 Acts, ch 6, §2 SF 141, 91 Acts, ch 267, §228 HF 479
NEW section
Subsection 2 stricken and rewritten

CHAPTER 258

VOCATIONAL EDUCATION

258.4 Duties of director.

The director of the department of education shall:

1. Co-operate with the federal board for vocational education in the administration of the Act of Congress.

2. Provide for making studies and investigations relating to prevocational and vocational training in agricultural, industrial, and commercial subjects, and home economics.

3. Promote and aid in the establishment in local communities and public schools of departments and classes giving instruction in subjects listed in subsection 2.

4. Co-operate with local communities in the maintenance of schools, departments, and classes.

5. Make recommendations to the board of educational examiners relating to the enforcement of rules prescribing standards for teachers of subjects listed in subsection 2 in accredited schools, departments, and classes.

6. Co-operate in the maintenance of practitioner preparation schools, departments, and classes, supported and controlled by the public, for the training of teachers and supervisors of subjects listed in subsection 2.

7. Annually review at least twenty percent of the approved vocational programs as a basis for continuing approval to ensure that the programs are compatible with educational reform efforts, are capable of responding to technological change and innovation, and meet the educational needs of students and the employment community. The review shall include an assessment of the extent to which the competencies in the program are being mastered by the students enrolled, the costs are proportionate to educational benefits received, the vocational curriculum is articulated and integrated with other curricular offerings required of all students, the programs would permit students with vocational education backgrounds to pursue other educational interests in a postsecondary institutional setting, and the pro-

grams remove barriers for both traditional and non-traditional students to access educational and employment opportunities.

8. Establish a minimum set of competencies and core curriculum for approval of a vocational program sequence that addresses the following: new and emerging technologies; job-seeking, job-keeping, and other employment skills, including self-employment and entrepreneurial skills, that reflect current industry standards, leadership skills, entrepreneurial, and labor-market needs; and the strengthening of basic academic skills.

9. Establish a regional planning process to be implemented by regional planning boards, which utilizes the services of local school districts, community colleges, and other resources to assist local school districts in meeting vocational education standards while avoiding unnecessary duplication of services.

10. Enforce rules prescribing standards for approval of vocational education programs in schools, departments, and classes.

11. Notwithstanding the accreditation process contained in section 256.11, permit school districts, which provide a program which does not meet the standards for accreditation for vocational education, to cooperate with the regional planning boards and contract for an approved program under this chapter without losing accreditation. A school district which fails to cooperate with the regional planning boards and contract for an approved program shall, however, be subject to section 256.11.

89 Acts, ch 278, §3 SF 449
1989 amendment to subsection 7 effective July 1, 1992, 89 Acts, ch 278, §9 SF 449
Subsection 7 stricken and rewritten

258.16 Regional vocational education planning boards established — duties.

1. Regional planning boards are established to assist school corporations in providing an effective, efficient, and economical means of delivering sequential vocational educational programs for stu-

dents in grades seven through fourteen, which use both local school district services and merged area school services.

2. A regional planning board shall be established in each merged area, as determined by the state board for vocational education. Each regional planning board shall have as members persons who are representatives from the merged area school board of directors, the area education agency board of directors, the local councils on vocational education, the local school districts' boards of directors, and vocational education certificated instructional personnel.

3. The regional planning boards shall do all of the following:

a. Provide for the participation of merged area schools and the local school districts in the delivery of vocational education in the region, as well as for the participation of representatives of the business and industry community.

b. Determine the occupational needs of students based on labor-market, entrepreneurial, and self-employment opportunities and demand within the region, the state, the nation, and in other countries.

c. Provide for development of a five-year plan addressing the delivery of quality vocational education instructional programs pursuant to section 256.11, subsection 4, and subsection 5, paragraph "h", and section 280A.23, subsection 1. The plan shall be updated annually.

d. Implement the procedures and contract, at the request of the director of the board of vocational education, for the delivery of vocational education programs and services pursuant to section 256.11, subsection 4, and subsection 5, paragraph "h", and section 280A.23, subsection 1.

89 Acts, ch 278, §5 SF 449

Effective July 1, 1992, 89 Acts, ch 278, §9 SF 449

Authority to establish area vocational consortia, 91 Acts, ch 267, §216 HF 479

NEW section

CHAPTER 260

BOARD OF EDUCATIONAL EXAMINERS

260.20 National certification.

The board of educational examiners shall review the standards for teacher's certificates adopted by the national board for professional teaching standards, a nonprofit corporation created as a result of recommendations of the task force on teaching as a profession of the Carnegie forum on education and the economy. In those cases in which the standards required by the national board for an Iowa endorse-

ment or license meet or exceed the requirements contained in rules adopted under this chapter for that endorsement or license, the board of educational examiners shall issue endorsements or licenses to holders of certificates issued by the national board who request the endorsement or license.

91 Acts, ch 51, §1 HF 486

NEW section

CHAPTER 260A

EDUCATIONAL EXCELLENCE PROGRAM — PROJECTS

Chapter 260A repealed effective July 1, 1991, 89 Acts ch 135, § 134

CHAPTER 261

COLLEGE STUDENT AID COMMISSION

Credit hour prerequisites inapplicable to displaced workers
who meet financial need criteria, 91 Acts, ch 267, § 217 HF 479

261.1 Commission created.

There is hereby created a commission to be known as the “*College Student 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 director of the department of education.

3. A member of the senate to be appointed by the president of the senate, after consultation with the majority leader and the minority leader 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.

4. 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.

5. Eight additional members to be appointed by the governor. One of the members shall be selected to represent private colleges, private universities and private junior colleges located in the state of Iowa. When appointing this 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 of the members shall be selected to represent community colleges located in the state of Iowa. When appointing this member, the governor shall give careful consideration to any person or persons nominated or recommended by any organization or association of Iowa community colleges. One member shall be enrolled as a student at a board of regents institution, community college, or accredited private institution. One member shall be a representative of a lending institution located in this state. One member shall be a representative of the Iowa student loan liquidity corporation. The other three members, none of whom shall be official board members or trustees of an institution of higher learning or of an association of institutions of higher learning, 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.

91 Acts, ch 61, § 1, 2 SF 78

Former subsection 3 stricken and subsections 4-6 renumbered as 3-5
Subsection 5, unnumbered paragraph 1 amended

261.9 Definitions.

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

1. “*Tuition grant*” means an award by the state of Iowa to a qualified student under this division.

2. “*Financial need*” means the difference between the student’s financial resources available, including those available from the student’s parents as determined by a completed parents’ confidential statement, and the student’s anticipated expenses while attending the accredited private institution. Financial need shall be redetermined at least annually.

3. “*Full-time resident student*” means an individual resident of Iowa who is enrolled at an accredited private institution in a course of study including at least twelve semester hours or the trimester equivalent of twelve semester hours. “*Course of study*” does not include correspondence courses.

4. “*Qualified student*” means a resident student who has established financial need and who is making satisfactory progress toward graduation.

5. “*Accredited private institution*” means an institution of higher learning located in Iowa which is operated privately and not controlled or administered by any state agency or any subdivision of the state, except for county hospitals as provided in paragraph “c” of this subsection, and which meets at least one of the following criteria:

a. Which is accredited by the north central association of colleges and secondary schools accrediting agency based on their requirements, or

b. Which has been certified by the north central association of colleges and secondary schools accrediting agency as a candidate for accreditation by that agency, or

c. Which is a school of nursing accredited by the national league for nursing and approved by the board of nurse examiners, including such a school

operated, controlled, and administered by a county public hospital.

d. Which was eligible to participate in the tuition grant program during the school year beginning July 1, 1986, which is making satisfactory progress to achieve accreditation from the north central association of colleges and secondary schools accrediting agency, and which attains full accreditation under a time period established by the north central association.

e. Which promotes equal opportunity and affirmative action efforts in the recruitment, appointment, assignment, and advancement of personnel at the institution. In carrying out this responsibility the institution shall do all of the following:

(1) Designate a position as the affirmative action coordinator.

(2) Adopt affirmative action standards.

(3) Gather data necessary to maintain an ongoing assessment of affirmative action efforts.

(4) Monitor accomplishments with respect to affirmative action remedies identified in affirmative action plans.

(5) Conduct studies of preemployment and postemployment processes in order to evaluate employment practices and develop improved methods of dealing with all employment issues related to equal employment opportunity and affirmative action.

(6) Establish an equal employment committee to assist in addressing affirmative action needs, including recruitment.

(7) Address equal opportunity and affirmative action training needs by:

(a) Providing appropriate training for managers and supervisors.

(b) Insuring that training is available for all staff members whose duties relate to personnel administration.

(c) Investigating means for training in the area of career development.

(8) Require development of equal employment opportunity reports, including the initiation of the processes necessary for the completion of the annual EEO-6 reports required by the federal equal employment opportunity commission.

(9) Address equal opportunity and affirmative action policies with respect to employee benefits and leaves of absence.

(10) File annual reports with the college aid commission of activities under this paragraph.

f. Which adopts a policy that prohibits unlawful possession, use, or distribution of controlled substances by students and employees on property owned or leased by the institution or in conjunction with activities sponsored by the institution. Each institution shall provide information about the policy to all students and employees. The policy shall include a clear statement of sanctions for violation of the policy and information about available drug or alcohol counseling and rehabilitation programs. In carrying out this policy, an institution shall provide

substance abuse prevention programs for students and employees.

6. "Commission" means the college student aid commission.

7. "Part-time resident student" means an individual resident of Iowa who is enrolled at an accredited private institution in a course of study including at least three semester hours or the trimester or quarter equivalent of three semester hours. "Course of study" does not include correspondence courses.

91 Acts, ch 180, §1 HF 423

Subsection 5, unnumbered paragraph 1, and paragraphs a, b, and d amended

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 student 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, 1989, and for each following fiscal year, two thousand six hundred fifty dollars.

2. The amount of a tuition grant to a qualified part-time student enrolled in a course of study including at least three semester hours but fewer than twelve semester hours for the fall and spring semesters, or the trimester or quarter equivalent, shall be equal to the amount of a tuition grant that would be paid to a full-time student times a number which represents the number of hours in which the part-time student is actually enrolled divided by twelve semester hours, or the trimester or quarter equivalent.

91 Acts, ch 10, §1 SF 218, 91 Acts, ch 258, §39 HF 709

See Code editor's note to §15 287

Subsection 2 amended

261.19A Osteopath forgivable loan program.

There is established a forgivable loan program, to be administered by the college student aid commission for students enrolled at the university of osteopathic medicine and health sciences. A student from the university of osteopathic medicine is eligible for loan forgiveness if the student is a resident of the state of Iowa and if the student:

1. Graduates from the university of osteopathic medicine and health sciences.

2. Has completed a residency program.

3. Practices in the state of Iowa.

4. Has received a loan from moneys appropriated to the college student aid commission for this program.

An eligible student is eligible for loan forgiveness in the amount of three thousand dollars per year of practice in the state of Iowa for up to a maximum of four years. If a student fails to complete a year of practice in the state, as practice is defined by the college student aid commission, the loan amount for that year shall not be forgiven. Forgivable loans to eligible students shall not become due, for repayment purposes, until after the student has completed the student's residency.

91 Acts ch 180 §2 HF 423 91 Acts ch 267, §230 HF 479
Unnumbered paragraphs 1 and 2 amended

261.25 Appropriations — standing limited — minority student and faculty information.

1. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of thirty-two million four hundred eighty 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 eight hundred thirteen 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 one million three hundred fifteen thousand 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.

5. For the fiscal year beginning July 1, 1989, and in succeeding years, the institutions of higher education that enroll recipients of Iowa tuition grants shall transmit to the Iowa college student aid commission information about the numbers of minority students enrolled and minority faculty members employed at the institution, and existing or proposed plans for the recruitment and retention of minority students and faculty as well as existing or proposed plans to serve nontraditional students. The Iowa college student aid commission shall compile and report the enrollment and employment information and plans to the chairpersons and ranking members of the house and senate education committees, members of the joint education appropriations subcommittee, the governor, and the legislative fiscal bureau by December 15 of each year.

91 Acts ch 180 §3 HF 423 91 Acts, ch 260, §908 HF 173, 91 Acts, ch 267, §218 HF 479

Subsections 1 2 and 3 amended

Subsection 5 unnumbered paragraph 2 stricken

261.38 Loan reserve account.

1. The commission shall establish a loan reserve account from which any default on a guaranteed student loan shall be paid. The commission shall credit to this account all moneys designated exclusively for the reserve fund by the United States, the state of Iowa or any of their agencies, departments or instrumentalities, as well as any funds accruing to the program which are not required for current administrative expenses. The department of management shall

determine the actuarially sound reserve requirement for the amount of guaranteed loans outstanding.

2. The general assembly shall appropriate moneys from the loan reserve account of the commission to the college student aid commission for operating costs of the guaranteed loan program. Moneys appropriated from the loan reserve account for operating costs of the guaranteed loan program that are unencumbered or unobligated on June 30 of a fiscal year shall revert to the loan reserve account of the commission.

3. The payment of any funds for the default on a guaranteed student loan shall be solely from the loan reserve account. The general assembly shall not be obligated to appropriate any moneys to pay for any defaults or to appropriate any moneys to be credited to the loan reserve account. The commission shall not give or lend the credit of the state of Iowa.

4. Funds on deposit in the loan reserve account or in the administrative account shall not revert to the state general fund at the close of any fiscal year.

5. The treasurer of state shall invest any funds, including those in the loan reserve account, and the interest income earned shall be credited back to the loan reserve account.

6. The commission may exceed the full-time equivalent positions authorized and may expend moneys in the loan reserve account in excess of the amounts appropriated to the commission under subsection 2, if additional positions or funding are needed to meet federal regulatory requirements or mandates or if previous contract costs or loan guarantee volume estimates are exceeded, in order to maintain loan guarantee operations. At least two weeks prior to a full-time equivalent position authorization adjustment or to a transfer of additional moneys from the reserve account, the commission shall notify the chairpersons and ranking members of the standing appropriations committees of the general assembly and the co-chairpersons and ranking members of the education appropriations subcommittee of the proposed adjustment or transfer. The notice shall include specific information concerning the amount of, and reason for, the adjustment or transfer. The chairpersons and ranking members shall have at least two weeks' time to review and comment on the proposed adjustment or transfer before the adjustment or transfer is made.

7. The commission may expend funds in the reserve account to enter into agreements which increase access for students to a loan program for guaranteed loans which are not subsidized by the federal government.

91 Acts, ch 180 §4 5 HF 423
NEW subsections 6 and 7

261.40 Repayment of state appropriations.
Repealed by 91 Acts, ch 180, § 9. HF 423

261.50 Physician loan payments.

A physician is eligible for reimbursement payments under the guaranteed loan payment program if the physician meets all of the following conditions:

1. Is licensed to practice medicine under chapter 148 or 150A.
2. Has never defaulted on a loan guaranteed by the commission.
3. Agrees to practice in an eligible community of fewer than five thousand population for a minimum period of four consecutive years or is practicing in a federally approved community health center or health manpower shortage area.
4. Has an outstanding debt with an eligible lender under the Iowa guaranteed student loan program or the Iowa supplemental loans for students program, has parents with an outstanding debt with an eligible lender under the Iowa PLUS loan program, or has an outstanding debt under the Stafford loan program, the supplemental loans for students program, or the PLUS loan program.

The maximum annual reimbursement payment to an eligible physician during a year for loans qualifying under subsection 4 is five thousand dollars or the remainder of the loan, whichever is less. Total payments for an eligible physician are limited to a four-year period and shall not exceed a total of twenty thousand dollars.

If a physician fails to practice in an eligible community for a year or portion of a year during the four-year period, the individual shall not be reimbursed for payments made during that year.

For purposes of this section, an "*eligible community*" means a community which agrees to provide an eligible physician with a first year income guarantee, malpractice insurance coverage for four years, family health insurance, reimbursement for moving expenses, two weeks of vacation for each of the first four years, and one week of continuing medical education per year for four years.

The commission may sign contracts with eligible students at or after the time of loan origination to assure loan repayment.

91 Acts, ch 267, §232 HF 479
Subsection 3 amended

261.71 Forgivable loan program. Repealed by 91 Acts, ch 180, § 9. HF 423

261.72 Forgivable loan administration. Repealed by 91 Acts, ch 180, § 9. HF 423

261.73 Interest and principal payment. Repealed by 91 Acts, ch 180, § 9. HF 423

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, and the part-time or full-time summer employment of students registered for classes at Iowa postsecondary institutions during the

succeeding school year, 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 or the commission and the agency or organization. An eligible postsecondary institution that is allocated fifty thousand dollars or more for the work-study program by the commission shall allocate at least ten percent of the funds received for public interest student employment in a public agency or private nonprofit organization that is approved for off-campus employment under the federal college work-study program or is part of the Iowa heritage corps established in section 261.81A. The work shall not result in the displacement of employed workers or impair or affect existing contracts for services. Moneys used by an institution for the work-study program shall supplement and not supplant jobs and existing financial aid programs provided for students through the institution.

91 Acts, ch 180, §6 HF 423
Section amended

261.85 Appropriation.

There is appropriated from the general fund of the state to the commission for each fiscal year the sum of three million eighty-five thousand dollars for the work-study program.

From moneys appropriated in this section, one million five hundred thousand dollars shall be allocated to institutions of higher education under the state board of regents and community colleges and the remaining dollars appropriated in this section shall be allocated by the commission on the basis of need as determined by the portion of the federal formula for distribution of work study funds that relates to the current need of institutions.

91 Acts, ch 260, §909 HF 173, 91 Acts, ch 267, §219 HF 479
Unnumbered paragraph 1 amended

261.88 Iowa work for college program.

An Iowa work for college program is established to be administered jointly by the college student aid commission and the department of human services. The program shall be administered under the following conditions:

1. The commission, with the assistance of the department, shall contract with public or nonprofit entities to provide work opportunities for eligible volunteers. The commission, the department, and the public or nonprofit entities may be allotted up to two percent of the funds appropriated for administrative purposes and expenses of the program. The commission shall adopt rules and forms, as needed, for the administration of the program.

2. The commission shall establish guidelines and procedures for application and acceptance to the

program. Guidelines established shall be based on a person's financial need, the person's inability to attend college without acceptance into the program, or the likelihood that the person would incur heavy debt repayment obligations if the person attended college, given the person's anticipated financial assistance alternatives.

3. Program volunteers shall receive monthly stipends equivalent to full-time employment at a rate which is at least equal to the minimum wage stated in section 91D.1, subsection 1, paragraph "a", for each month of work completed under the program. The employer shall also contribute one hundred dollars per month to the education trust fund created pursuant to section 261.90. The volunteer may elect to defer receipt of the employer's stipend contribution and receive a single lump sum stipend amount upon completion of the period of service under the program.

4. Upon completion of the service, the volunteer shall receive vouchers entitling the volunteer to educational benefits. Each voucher shall have a value equal to the cost of the volunteer's attendance for one academic semester at an eligible higher education institution. The volunteer participant shall receive four vouchers for each year of service completed. The vouchers may be redeemed at an eligible higher education institution. Only one voucher may be redeemed per semester of attendance by a program participant. Vouchers must be redeemed within ten years of the date of issuance and are not transferable.

5. Volunteers may be assigned work for any public or nonprofit entity for a period of either one or two years. The volunteers shall agree to make a full-

time commitment to a work assignment as approved by the commission and the department. The volunteers shall be available to work at least forty hours per week without regard to regular working hours and at all times during their periods of work, except for authorized periods of leave. The work assignments shall not be made to replace regular employees or for participation in religious or political activities.

6. The public or nonprofit entity to which an individual is assigned shall supervise and direct that individual in the same manner as other employees and shall pay for all necessary work materials, supplies, and transportation costs. The volunteers are exempt from chapter 96, under section 96.19, subsection 6, paragraph "a", subparagraph (6), subparagraph subdivision (e), and are exempt from chapters 19A, 97B, and 400.

91 Acts, ch 180, §7, 8 HF 423
Subsections 3 and 6 amended

261.93A Appropriation — percentages.

Of the funds appropriated to the college student aid commission to be allocated for the Iowa grant program for each fiscal year, thirty-seven and six-tenths percent shall be reserved for students attending regents' institutions, twenty-five and nine-tenths percent shall be reserved for students attending community colleges, and thirty-six and five-tenths percent shall be reserved for students attending private colleges and universities. Funds appropriated for the Iowa grant program shall be used to supplement, not supplant, funds appropriated for other existing programs at the eligible institutions.

91 Acts, ch 267, §233 HF 479
NEW section

CHAPTER 261C

POSTSECONDARY ENROLLMENT OPTIONS

261C.3 Definitions.

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

1. "Eligible postsecondary institution" means an institution of higher learning under the control of the state board of regents, a community college established under chapter 280A, or an accredited private institution as defined in section 261.9, subsection 5.

2. "Eligible pupil" means a pupil classified by the board of directors of a school district or the authorities in charge of an accredited nonpublic school as an eleventh or twelfth grade pupil during the period the pupil is participating in the enrollment option pro-

vided under this chapter. A pupil attending an accredited nonpublic school shall be counted as a shared-time student in the school district in which the nonpublic school of attendance is located for state foundation aid purposes.

91 Acts, ch 126, §4 SF 473
Subsection 2 amended

261C.4 Authorization.

An eligible pupil may make application to an eligible institution to allow the eligible pupil to enroll for academic or vocational-technical credit in a nonsecular course offered at that eligible institution. A comparable course, as defined in rules made by the

board of directors of the public school district, must not be offered by the school district or accredited nonpublic school in which the pupil is enrolled. If an eligible institution accepts an eligible pupil for enrollment under this section, the institution shall send written notice to the pupil, the pupil's school district or accredited nonpublic school, and the department of education. The notice shall list the course, the clock hours the pupil will be attending the course, and the number of hours of postsecondary academic or vocational-technical credit that the eligible pupil will receive from the eligible institution upon successful completion of the course.

91 Acts, ch 123, §1 SF 138
Section amended

261C.5 High school credits.

A school district or accredited nonpublic school shall grant high school academic or vocational-technical credit to an eligible pupil enrolled in a course under this chapter if the eligible pupil successfully completes the course as determined by the

eligible institution. Eligible pupils, who have completed the eleventh grade but who have not yet completed the requirements for graduation, may take up to seven semester hours of credit during the summer months when school is not in session and receive credit for that attendance, if the pupil pays the cost of attendance of those summer credit hours. The board of directors of the school district or authorities in charge of an accredited nonpublic school shall determine the number of high school credits that shall be granted to an eligible pupil who successfully completes a course.

The high school credits granted to an eligible pupil under this section shall count toward the graduation requirements and subject area requirements of the school district of residence or accredited nonpublic school of the eligible pupil. Evidence of successful completion of each course and high school credits and postsecondary academic or vocational-technical credits received shall be included in the pupil's high school transcript.

91 Acts, ch 123, §2 SF 138
Section amended

CHAPTER 262

STATE BOARD OF REGENTS

262.9 Powers and duties.

The board shall:

1. Each even-numbered year elect, from its members, a president of the board, who shall serve for two years and until a successor is elected and qualified.
2. Elect a president of each of the institutions of higher learning; a superintendent of each of the other institutions; a treasurer and a secretarial officer for each institution annually; professors, instructors, officers, and employees; and fix their compensation. Sections 279.12 through 279.19 and section 279.27 apply to employees of the Iowa braille and sight saving school and the state school for the deaf, who are licensed pursuant to chapter 260. In following those sections in chapter 279, the references to boards of directors of school districts shall be interpreted to apply to the board of regents.
3. Make rules for admission to and for the government of said institutions, not inconsistent with law.
4. Manage and control the property, both real and personal, belonging to the institutions. The board shall purchase or require the purchase of, when the price is reasonably competitive and the quality as intended, and in keeping with the schedule established in this subsection, soybean-based inks

and starch-based plastics, including but not limited to starch-based plastic garbage can liners.

- a. By July 1, 1989, a minimum of fifty percent of the purchases of inks which are used for newsprint paper for printing services performed internally or contracted for by the board shall be soybean-based. The percentage of purchases by the board of soybean-based inks used for newsprint printing services shall increase by July 1, 1991, to one hundred percent of the total purchases of inks used for newsprint printing services.
- b. By July 1, 1991, a minimum of twenty-five percent of the purchases of inks, other than inks which are used for newsprint printing services, and which are used internally or contracted for by the board shall be soybean-based to the extent formulations for such inks are available. The percentage of purchases by the board of the soybean-based inks, to the extent formulations for such inks are available, shall increase by July 1, 1992, to fifty percent of the total purchases of the inks, and shall increase by July 1, 1993, to one hundred percent of the total purchases of the inks.
- c. By July 1, 1989, a minimum of fifteen percent of the purchases of garbage can liners made by the board shall be starch-based plastic garbage can liners. The percentage purchased shall increase by five

percent annually until fifty percent of the purchases of garbage can liners are purchases of starch-based plastic garbage can liners.

d. The board shall report to the general assembly on February 1 of each year, the following:

(1) Plastic products which are regularly purchased by the board for which starch-based product alternatives are available. The report shall also include the cost of the plastic products purchased and the cost of the starch-based product alternatives.

(2) Information relating to soybean-based inks and starch-based garbage can liners regularly purchased by the board. The report shall include the cost of purchasing soybean-based inks and starch-based garbage can liners, the percentage of inks purchased which are soybean-based and the percentage of liners purchased which are starch-based.

e. The department of natural resources shall review the procurement specifications currently used by the board to eliminate, wherever possible, discrimination against the procurement of products manufactured with starch-based plastics and soybean-based inks.

f. The department of natural resources shall assist the board in locating suppliers of starch-based plastics and soybean-based inks and collecting data on starch-based plastic and soybean-based ink purchases.

g. The board, in conjunction with the department of natural resources, shall adopt rules to carry out the provisions of this section.

h. The department of natural resources shall cooperate with the board in all phases of implementing this section.

5. In conjunction with the recommendations made by the department of natural resources, purchase and use recycled printing and writing paper, with the exception of specialized paper when no recyclable product is available, in accordance with the schedule established in section 18.18; establish a wastepaper recycling program by January 1, 1990, for all institutions governed by the board in accordance with recommendations made by the department of natural resources and the requirements of section 18.20; comply with, and the institutions governed by the board shall also comply with the recycling goal, recycling schedule, and ultimate termination of purchase and use of polystyrene products for the purpose of storing, packaging, or serving food for immediate consumption pursuant to section 455D.16; and shall, in accordance with the requirements of section 18.6, require product content statements, the provision of information regarding on-site review of waste management in product bidding and contract procedures, and compliance with requirements regarding procurement specifications.

6. With the approval of the executive council, acquire real estate for the proper uses of said institutions, and dispose of real estate belonging to said institutions when not necessary for their purposes. A disposal of such real estate shall be made upon such terms, conditions and consideration as the board

may recommend and subject to the approval of the executive council. If real estate subject to sale hereunder has been purchased or acquired from appropriated funds, the proceeds of such sale shall be deposited with the treasurer of state and credited to the general fund of the state. There is hereby appropriated from the general fund of the state a sum equal to the proceeds so deposited and credited to the general fund of the state to the state board of regents which, with the prior approval of the executive council, may be used to purchase other real estate and buildings, and for the construction and alteration of buildings and other capital improvements. All transfers shall be by state patent in the manner provided by law.

7. Accept and administer trusts and may authorize nonprofit foundations acting solely for the support of institutions governed by the board to accept and administer trusts deemed by the board to be beneficial. Notwithstanding the provisions of section 633.63, the board and such nonprofit foundations may act as trustee in such instances.

8. Direct the expenditure of all appropriations made to said institutions, and of any other moneys belonging thereto, but in no event shall the perpetual funds of the Iowa State University of science and technology, nor the permanent funds of the University of Iowa derived under Acts of Congress, be diminished.

9. Collect the highest rate of interest, consistent with safety, obtainable on daily balances in the hands of the treasurer of each institution.

10. With the approval of the executive council, publish, from time to time, and distribute, such circulars, pamphlets, bulletins, and reports as may be in its judgment for the best interests of the institutions under its control, the expense of which shall be paid out of any funds in the treasury not otherwise appropriated.

11. With consent of the inventor and in the discretion of the board, secure letters patent or copyright on inventions of students, instructors and officials, or take assignment of such letters patent or copyright and may make all necessary expenditures in regard thereto. That the letters patent or copyright on inventions when so secured shall be the property of the state, and the royalties and earnings thereon shall be credited to the funds of the institution in which such patent or copyright originated.

12. Perform all other acts necessary and proper for the execution of the powers and duties conferred by law upon it.

13. Grant leaves of absence with full or partial compensation to staff members to undertake approved programs of study, research, or other professional activity which in the judgment of the board will contribute to the improvement of the institutions. Any staff member granted such leave shall agree either to return to the institution granting such leave for a period of not less than two years or to repay to the state of Iowa such compensation as the staff member shall have received during such leave.

14. Lease properties and facilities, either as lessor or lessee, for the proper use and benefit of said institutions upon such terms, conditions, and considerations as the board deems advantageous, including leases with provisions for ultimate ownership by the state of Iowa, and to pay the rentals from funds appropriated to the institution for operating expenses thereof or from such other funds as may be available therefor.

15. In its discretion employ or retain attorneys or counselors when acting as a public employer for the purpose of carrying out collective bargaining and related responsibilities provided for under chapter 20. This subsection shall supersede the provisions of section 13.7.

The state board of regents may make payment to an attorney or counselor for services rendered prior to July 1, 1978 to the state board of regents in connection with its responsibilities as a public employer pursuant to chapter 20.

16. In its discretion, adopt rules relating to the classification of students enrolled in institutions of higher education under the board who are residents of Iowa's sister states as residents or nonresidents for fee purposes.

17. In issuing bonds or notes under this chapter, chapter 262A, chapter 263A, or other provision of law, select and fix the compensation for, through a competitive selection procedure, attorneys, accountants, financial advisors, banks, underwriters, insurers, and other employees and agents which in the board's judgment are necessary to carry out the board's intention. Prior to the initial selection, the board shall establish a procedure which provides for a fair and open selection process including, but not limited to, the opportunity to present written proposals and personal interviews. The board shall maintain a list of firms which have requested to be notified of requests for proposal. The selection criteria shall take into consideration, but are not limited to, compensation, expenses, experience with similar issues, scheduling, ability to provide the services of individuals with specific knowledge in the relevant subject matter and length of engagement. The board may waive the requirements for a competitive selection procedure for any specific employment upon adoption of a resolution of the board stating why the waiver is in the public interest and shall provide the executive council with written notice of the granting of any such waiver.

18. Not less than thirty days prior to action by the board on any proposal to increase tuition, fees, or charges at one or more of the institutions of higher education under its control, send written notification of the amount of the proposed increase including a copy of the proposed tuition increase docket memorandum prepared for its consideration to the presiding officers of the student government organization of the affected institutions. The final decision on an increase in tuition or mandatory fees charged to all students at an institution for a fiscal year shall be made no later than the regular meeting

held in November of the preceding fiscal year and shall be reflected in a final docket memorandum that states the estimated total cost of attending each of the institutions of higher education under the board's control. The regular meeting held in November shall be held in Ames, Cedar Falls, or Iowa City and shall not be held during the period in which classes have been suspended for Thanksgiving vacation.

19. Adopt policies and procedures for the use of telecommunications as an instructional tool at its institutions. The policies and procedures shall include but not be limited to policies and procedures relating to programs, educational policy, practices, staff development, use of pilot projects, and the instructional application of the technology.

20. Establish a hall of fame for distinguished graduates at the Iowa braille and sight-saving school and at the Iowa school for the deaf.

21. Assist a nonprofit organization located in Sioux City in the creation of a tristate graduate center, comparable to the quad cities graduate center, located in the quad cities in Iowa. The purpose of the Sioux City graduate center shall be to create graduate education opportunities for students living in northwest Iowa.

22. Direct the administration of the Iowa minority academic grants for economic success program as established in section 261.101 for the institutions under its control.

23. Develop a policy and adopt rules relating to the establishment of tuition rates which provide a predictable basis for assessing and anticipating changes in tuition rates.

24. By July 1, 1991, develop a policy which requires oral communication competence of persons who provide instruction to students attending institutions under the control of the board. The policy shall include a student evaluation mechanism which requires student evaluation of persons providing instruction at the end of each academic period.

25. By July 1, 1991, develop a policy relating to the teaching proficiency of teaching assistants which provides a teaching proficiency standard, instructional assistance to, and evaluation of persons who provide instruction to students at the higher education institutions under the control of the board.

26. Explore, in conjunction with the department of education, the need for coordination between school districts, area education agencies, state board of regents' institutions, and community colleges for purposes of delivery of courses, use of telecommunications, transportation, and other similar issues. Coordination may include, but is not limited to, coordination of calendars, programs, schedules, or telecommunications emissions. The state board shall develop recommendations which shall be submitted in a report to the general assembly by February 15, 1991.

91 Acts, ch 29, §1 SF 146, 91 Acts, ch 97, §36 HF 198
Subsection 4, unnumbered paragraph 1 amended
Subsection 18 amended

262.9A Prohibition of controlled substances.

The state board of regents shall adopt a policy that prohibits unlawful possession, use, or distribution of controlled substances by students and employees on property owned or leased by an institution or in conjunction with activities sponsored by an institution governed by the board. Each institution shall provide information about the policy to all students and employees. The policy shall include a clear statement of sanctions for violation of the policy and information about available drug or alcohol counseling and rehabilitation programs. In carrying out this policy, the institutions shall provide substance abuse prevention programs for students and employees.

91 Acts, ch 267, §235 HF 479
NEW section

262.21 Annuity contracts.

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 employees from any company the employee chooses that is authorized to do business in this state, or the board may arrange for the purchase of an individual mutual fund contract from any company the employee chooses from a broker-dealer, salesperson, or mutual fund registered in this state, for retirement or other purposes, and may make payroll deductions in accordance with the 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 under section 403b of the Internal Revenue Code, as defined in section 422.3. The employee's rights under the annuity contract are 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 commissioner of insurance, and to the agent's or representative's own company at least thirty days prior to any action. Each required letter of intent shall be sent 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.

91 Acts, ch 40, §2 SF 520
Section amended

262.25A Purchase of automobiles.

1. Institutions under the control of the state board of regents shall purchase only new automobiles which have at least the fuel economy required for purchase of new automobiles by the state vehicle dispatcher under section 18.115, subsection 4. This subsection does not apply to automobiles purchased for law enforcement purposes.

2. A motor vehicle purchased by the institutions

shall not operate on gasoline other than gasoline blended with at least ten percent ethanol. A state-issued credit card used to purchase gasoline shall not be valid to purchase gasoline other than gasoline blended with at least ten percent ethanol. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on gasoline blended with ethanol.

91 Acts, ch 254, §15 SF 545
Section amended

262.43 Students residing on state-owned land.

The state board of regents shall pay to the local school boards the tuition payments and transportation costs, as otherwise authorized by statutes for the elementary or high school education of students residing on land owned by the state and under the control of the state board of regents. Such payments for the three institutions of higher learning, the state University of Iowa, the Iowa State University of science and technology and the University of Northern Iowa, shall be made from the funds of the respective institutions other than state appropriations, and for the two noncollegiate institutions, the Iowa braille and sight saving school and the state school for the deaf, the payments and costs shall be paid from moneys appropriated to the state board of regents.

91 Acts, ch 267, §236 HF 479
Section amended

262.71 Center for early development education.

The board of regents shall develop a center for early development education at one of the regents' institutions specified in section 262.7, subsections 1 through 3. The center's programs shall be conducted in a laboratory school setting to serve as a model for early childhood education. The programs shall include, but not be limited to, programs designed to accommodate the needs of at-risk children. The teacher education programs at all three state universities shall cooperate in developing the center and its programs. The center's programs shall take a holistic approach and the center shall, in developing its programs, consult with representatives from each of the following agencies, institutions, or groups:

1. The University of Northern Iowa.
2. Iowa State University.
3. The University of Iowa.
4. The division of child and family services of the department of human services.
5. The department of public health.
6. The department of human services.
7. An early childhood development specialist from an area education agency.
8. A parent of a child in a head start program.
9. The department of education.
10. The child development coordinating council.

91 Acts, ch 109, §7 SF 479
Subsection 4 amended

CHAPTER 262A

STATE UNIVERSITIES BUILDINGS, FACILITIES AND SERVICES — REVENUE BONDS

262A.3 Five-year program and two-year bond proposal submitted each year.

The board shall prepare and submit to the general assembly for approval or rejection a proposed five-year building program for each institution, including an estimate of the maximum amount of bonds which the board expects to issue under the provisions of this chapter during each year of the ensuing biennium. The program and estimate shall be submitted no later than seven days after the convening of each regular annual session of the general assembly. The building program shall contain a list of the buildings and facilities which the board deems necessary to further the educational objectives of the institutions. This list shall be revised annually, but no project shall be eliminated from the list when bonds have previously been issued by the board to pay the cost of the project. Each list shall contain an estimate of the cost of each of the buildings and facilities referred to in the list. If the general assembly rejects or fails to approve any proposed five-year building program, this action or inaction shall not affect the status or legality of any project previously or subsequently authorized by the general assembly as provided in section 262A.4.

91 Acts, ch 268, §609 SF 529
Section amended

262A.6A Iowa college super savings plan.

1. The board shall issue bonds authorized under section 262A.4 by the Seventy-second General Assembly in an amount not exceeding nineteen million dollars; and from the forty-one million three hundred thousand dollars authorized by 1990 Iowa Acts, chapter 1273, in an amount not exceeding fifteen million dollars; in the form of capital appreciation bonds as provided in this section rather than the form prescribed in sections 262A.5 and 262A.6. The capital appreciation bonds shall be designed to be marketed primarily to Iowans to facilitate savings for future higher education costs.

2. Bonds issued under this section shall be sold by the board at private sale without published notice of any kind or the taking of competitive bids in a manner and upon terms as may be provided in the resolution of the board authorizing the issuance of the bonds. Chapter 75 does not apply to bonds issued under this section, but the bonds shall be sold upon terms of not less than ninety-seven percent of par plus accrued interest. Bonds issued to refund other bonds issued under this section may either be sold at public or private sale in the manner specified in this

section and the proceeds applied to the payment of the obligations being refunded, or the refunding bonds may be exchanged for and in payment and discharge of the obligations being refunded. The refunding bonds may be sold or exchanged in installments at different times or an entire issue or series may be sold or exchanged at one time. An issue or series of refunding bonds may be exchanged in part or sold in parts in installments at different times or at one time. The refunding bonds may be sold or exchanged at any time on, before, or after the maturity of the outstanding bonds or other obligations to be refinanced and may be issued for the purpose of refunding a like or greater principal amount of bonds, except that the principal amount of the refunding bonds may exceed the principal amount of the bonds to be refunded to the extent necessary to pay any premium due on the call of the bonds to be refunded or to fund interest in arrears or which is to become due.

Bonds issued under this section are payable solely and only from and shall be secured by an irrevocable pledge of a sufficient portion of the student fees and charges and institutional income received by the particular institution. Bonds issued under this section have all the qualities of a negotiable investment security under the laws of this state.

3. The bonds may bear a date or dates, may bear interest at a rate or rates, payable at a time or times, may mature at a time or times, may be in a form and denominations, may carry registration privileges, may be payable at a place or places, may be subject to terms of redemption prior to maturity with or without premium, if so stated on their face, and may contain terms and covenants, including the establishment of reserves, all as may be provided by the resolution of the board authorizing the issuance of the bonds. In addition to the estimated cost of construction, including site costs, the cost of the project may include interest upon the bonds during construction and for six months after the estimated completion date, the compensation of a fiscal agent or adviser, engineering, architectural, administrative and legal expenses and provision for contingencies. The bonds shall be executed by the president of the state board of regents and attested by the executive secretary, secretary or other official of the state board performing the duties of secretary, and the coupons attached to the bonds shall be executed with the original or facsimile signatures of the president, executive secretary, secretary or other official. The facsimile signatures of the officers executing the

bonds may be imprinted on the face of the bonds in lieu of the manual signature of the officer, but at least one of the signatures appearing on the face of each bond shall be a manual signature. Bonds bearing the signatures of officers in office on the date of the signing are valid and binding for all purposes, notwithstanding that before delivery any or all of the persons whose signatures appear have ceased to be officers. Each bond shall state upon its face the name of the institution on behalf of which it is issued, that it is payable solely and only from the student fees and charges and institutional income received by the institution, and that it does not constitute a debt of or charge against the state of Iowa within the meaning or application of a constitutional or statutory limitation or provision. The issuance of these bonds shall be recorded in the office of the treasurer of the institution on behalf of which the bonds are issued, and a certificate by the treasurer to this effect shall be printed on the back of each bond.

4. In negotiating a private sale of the bonds

under this section the board shall assign preference to a syndicate of underwriters which is led by an Iowa domiciled underwriting firm to facilitate selling the marketing of the bonds to Iowans within the plan for the bonds. The plan shall include:

a. Provisions for advertisements in Iowa newspapers which precede, by at least two weeks, the date the bonds will go on sale to the public.

b. The advertisements shall include the date the bonds will go on sale and a list of offices where investors may purchase the bonds.

c. The bond issue shall be structured so that at least fifty percent of the bonds are sold at a price to the initial purchaser, not including an underwriter or bond house, of one thousand dollars or less. The board shall make a report of sale to the general assembly within ninety days of sale date. The report shall specify the terms and conditions of the sale as well as the placement of the bonds by denomination and by county.

91 Acts, ch 97, §37 HF 198
Subsection 1 amended

CHAPTER 263

UNIVERSITY OF IOWA

263.8C Advanced placement summer program.

An advanced placement summer program is established at the state university of Iowa for purposes of training advanced placement instructors at the secondary level and of providing intensive course work for secondary students. The state university of Iowa shall be responsible for the development of appropriate curricula, course offerings, provision of qualified instructors, and the selection of participants for the program. If funds are appropriated for the program,

those funds shall be used to pay for the cost of providing instructors, counselors, room and board for students and teachers attending the program, materials, and for the cost of the development of a summer advanced placement exam. If funds are appropriated and those funds are not sufficient to meet program participation demands, the university shall give priority to the needs of students or teachers from schools which do not have advanced placement programs.

91 Acts, ch 115, §1 HF 518
NEW section

CHAPTER 266

IOWA STATE UNIVERSITY OF SCIENCE AND TECHNOLOGY

266.39C The Iowa energy center.

1. The Iowa energy center is established at Iowa state university of science and technology. The center shall strive to increase energy efficiency in all areas of Iowa energy use. The center shall serve as a model for state efforts to decrease dependence on imported fuels and to decrease reliance on energy production from nonrenewable, resource-depleting fuels. The center shall conduct and sponsor research on energy efficiency and conservation that will improve the environmental, social, and economic well-being of Iowans, minimize the environmental impact of existing energy production and consumption, and reduce the need to add new power plants.

The center shall assist Iowans in assessing technology related to energy efficiency and alternative energy production systems and shall support educational and demonstration programs that encourage implementation of energy efficiency and alternative energy production systems.

The center shall also conduct and sponsor research to develop alternative energy systems that are based upon renewable sources and that will reduce the negative environmental and economic impact of energy production systems.

2. An advisory council is established consisting of the following members:

- a. One person from Iowa state university of science and technology, appointed by its president.
- b. One person from the university of Iowa, appointed by its president.
- c. One person from the university of northern Iowa, appointed by its president.
- d. One representative of private colleges and universities within the state, to be nominated by the Iowa association of independent colleges and universities, and appointed by the Iowa coordinating council for post-high school education.
- e. One representative of community colleges, appointed by the state board for community colleges.
- f. One representative of the energy and geological resources division of the department of natural resources, appointed by the director.
- g. One representative of the state department of transportation, appointed by the director.
- h. One representative of the office of consumer advocate, appointed by the consumer advocate.
- i. One representative of the utilities board, appointed by the utilities board.
- j. One representative of the rural electric cooperatives, appointed by the governing body of the Iowa association of electric cooperatives.
- k. One representative of municipal utilities, ap-

pointed by the governing body of the Iowa association of municipal utilities.

l. Two representatives from investor-owned utilities, one representing gas utilities, appointed by the Iowa utility association, and one representing electric utilities, appointed by the Iowa utility association.

The terms of the members shall begin and end as provided in section 69.19 and any vacancy shall be filled by the original appointing authority. The terms shall be for four years and shall be staggered as determined by the president of Iowa state university of science and technology.

3. Iowa state university of science and technology shall employ a director for the center, who shall be appointed by the president of Iowa state university of science and technology. The director of the center shall employ necessary research and support staff. The director and staff shall be employees of Iowa state university of science and technology. No more than five hundred thousand dollars of the funds made available by appropriation from state revenues in any one year shall be expended by the center for the salaries and benefits of the employees of the center, including the salary and benefits of the director. The remainder of the funds appropriated from state funds shall be used to sponsor research grants and projects submitted on a competitive basis by Iowa colleges and universities and private nonprofit agencies and foundations. The center may also solicit additional grants and funding from public and private nonprofit agencies and foundations.

The director shall prepare an annual report.

4. The advisory council shall provide the president of Iowa state university of science and technology with a list of three candidates from which the director shall be selected. The council shall provide an additional list of three candidates if requested by the president. The council shall advise the director in the development of a budget, on the policies and procedures of the center, in the funding of research grant proposals, and regarding program planning and review.

5. The Iowa energy center shall develop a program to provide assistance to rural residents for energy efficiency efforts.

6. The Iowa energy center, in cooperation with the state department of transportation, shall conduct a feasibility study of the development and implementation of a "rail through rural Iowa" program to provide interstate passenger rail service connections. The center shall submit a report to the governor and the general assembly by January 1992 re-

garding the feasibility of such a program. Funding for the center derived from the assessment on the revenues of utilities pursuant to section 476.10A shall not be expended to fulfill the requirements of this subsection.

7. The Iowa energy center shall cooperate with

the state board of education in developing a curriculum which promotes energy efficiency and conservation.

91 Acts, ch 253, §13 SF 508
NEW subsections 5 7

CHAPTER 267

LIVESTOCK HEALTH ADVISORY COUNCIL

267.8 Livestock disease research fund.

There is created a fund in the office of the treasurer of state to be known as the livestock disease fund, and for the purpose of establishing and maintaining said fund for each fiscal year, there is appropriated from funds in the general fund, not otherwise appro-

priated, the sum of three hundred thousand dollars. Any balance in said fund on June 30 of each fiscal year shall revert to the general fund.

Appropriation limited for 1991 1992 fiscal year, 91 Acts, ch 267, §507 HF 479
Footnote added, section not amended

CHAPTER 268

UNIVERSITY OF NORTHERN IOWA

268.5 Iowa academy of science appropriation limitations.

The university shall use no more than twenty percent of the funds allocated to the university for the Iowa academy of science for administrative purposes for the Iowa academy of science or for publication of the Iowa academy of science journal. The university shall expend the remainder of the moneys appropri-

ated for research projects and studies awarded by the Iowa academy of science. The Iowa academy of science shall permit all grant recipients to publish the results of the recipients' research projects and studies in the Iowa academy of science journal at no cost to the grant recipient.

91 Acts, ch 267, §238 HF 479
NEW section

CHAPTER 270

SCHOOL FOR THE DEAF

270.5 Certification to director of revenue and finance.

The superintendent shall, on the first days of June and December of each year, certify to the director of revenue and finance the amounts due from counties pursuant to sections 270.4 and 270.6, and the direc-

tor of revenue and finance shall credit the amounts due to the general fund of the state, and charge the amount to the proper county.

91 Acts ch 267 §521 HF 479
Section amended

CHAPTER 273

AREA EDUCATION AGENCY

Authority to establish area vocational consortia 91 Acts ch 267 § 216 HF 479

273.9 Funding.

1. School districts shall pay for the programs and services provided through the area education agency and shall include expenditures for the programs and services in their budgets, in accordance with this section.

2. School districts shall pay the costs of special education instructional programs with the moneys available to the districts for each child requiring special education, by application of the special education weighting plan in section 281.9. Special education instructional programs shall be provided at the local level if practicable, or otherwise by contractual arrangements with the area education agency board as provided in section 273.3, subsection 5, but in each case the total money available through section 281.9 and chapter 257 because of weighted enrollment for each child requiring special education instruction shall be made available to the district or agency which provides the special education instructional program to the child, subject to adjustments for transportation or other costs which may be paid by the school district in which the child is enrolled. Each district shall co-operate with its area education agency to provide an appropriate special education instructional program for each child who requires special education instruction, as identified and counted within the certification by the area director of special education or as identified by the area director of special education subsequent to the certification, and shall not provide a special education instructional program to a child who has not been so identified and counted within the certification or identified subsequent to the certification.

3. The costs of special education support services provided through the area education agency shall be funded as provided in chapter 257. Special education support services shall not be funded until the program plans submitted by the special education directors of each area education agency as required by section 273.5 are modified as necessary and approved by the director of the department of education according to the criteria and limitations of chapters 257 and 281.

4. The costs of media services provided through the area education agency shall not be funded until the program plans submitted by the administrators of each area education agency as required by section 273.4 are modified as necessary and approved by the director of the department of education according to the criteria of section 273.6.

The state board of education shall adopt rules under chapter 17A relating to the approval of program plans under this section.

91 Acts ch 97 §38 HF 198
Subsection 4 amended and subsection 5 stricken

273.12 Funds — use restricted.

Funds generated for educational services shall not be expended by an area education agency for the purpose of assisting either a public employer or employee organization in collective bargaining negotiations under chapter 20 if the public employer is a school district, or the employee organization consists of employees of a school district, located within the boundaries of the area education agency.

91 Acts ch 97 §39 HF 198
Section amended

CHAPTER 275

REORGANIZATION OF SCHOOL DISTRICTS

275.27 Community school districts — part of area education agency.

School districts created or enlarged under this chapter are community school districts and are part of the area education agency in which the greatest number of qualified electors of the district reside at the time of the special election called for in section 275.18, and sections of the Code applicable to the common schools generally are applicable to these districts in addition to the powers and privileges conferred by this chapter. If a school district, created or enlarged under this chapter and assigned to an

area education agency under this section, can demonstrate that students in the district were utilizing a service or program prior to the formation of the new or enlarged district that is unavailable from the area education agency to which the new or enlarged district is assigned, the district may be reassigned to the area education agency which formerly provided the service or program, upon an affirmative majority vote of the boards of the affected area education agencies to permit the change.

91 Acts, ch 44, §1 HF 334
Section amended

CHAPTER 279

DIRECTORS — POWERS AND DUTIES

Department of education study of functions school districts are required to perform to receive aid or remain accredited, 91 Acts, ch 104, §2 SF 113
Authority to establish area vocational consortia, 91 Acts, ch 267, §216 HF 479

279.7A Interest in public contracts prohibited — exception.

A member of the board of directors of a school corporation shall not have an interest, direct or indirect, in a contract for the purchase of goods, including materials and profits, and the performance of services for the director's school corporation. A contract entered into in violation of this section is void. This section does not apply to contracts for the purchase of goods or services, which benefit a director, if the benefit to the director does not exceed one thousand five hundred dollars in a fiscal year, and contracts made by a school board, upon competitive bid in writing, publicly invited and opened.

91 Acts, ch 258, §40 HF 709
Section amended

279.15 Notice of termination — request for hearing.

1. The superintendent or the superintendent's designee shall notify the teacher not later than April 15 that the superintendent will recommend in writing to the board at a regular or special meeting of the board held not later than April 30 that the teacher's continuing contract be terminated effective at the end of the current school year. However, if the dis-

trict is subject to reorganization under chapter 275, the notification shall not occur until after the first organizational meeting of the board of the newly formed district.

2. Notification of recommendation of termination of a teacher's contract shall be in writing and shall be personally delivered to the teacher, or mailed by certified mail. The notification shall be complete when received by the teacher. The notification and the recommendation to terminate shall contain a short and plain statement of the reasons, which shall be for just cause, why the recommendation is being made. The notification shall be given at or before the time the recommendation is given to the board.

As a part of the termination proceedings, the teacher's complete personnel file of employment by that board shall be available to the teacher, which file shall contain a record of all periodic evaluations between the teacher and appropriate supervisors.

Within five days of the receipt of the written notice that the superintendent is recommending termination of the contract, the teacher may request, in writing to the secretary of the board, a private hearing with the board. The private hearing shall not be subject to chapter 21 and shall be held no sooner

than ten days and no later than twenty days following the receipt of the request unless the parties otherwise agree. The secretary of the board shall notify the teacher in writing of the date, time, and location of the private hearing, and at least five days before the hearing shall also furnish to the teacher any documentation which may be presented to the board at the private hearing and a list of persons who may address the board in support of the superintendent's recommendation at the private hearing. At least three days before the hearing, the teacher shall provide any documentation the teacher expects to present at the private hearing, along with the names of any persons who may address the board on behalf of the teacher. This exchange of information shall be at the time specified unless otherwise agreed.

91 Acts, ch 174, §7 SF 501
Subsection 1 amended

279.34 Motor vehicles required to operate on ethanol-blended gasoline.

A motor vehicle purchased by or used under the direction of the board of directors to provide services to a school corporation shall not, on or after January 1, 1993, operate on gasoline other than gasoline blended with at least ten percent ethanol. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on gasoline blended with ethanol.

91 Acts, ch 254, §16 SF 545
NEW section

279.43 Optional funding of asbestos removal or encapsulation. Repealed effective July 1, 1991, by 89 Acts, ch 135, § 136. HF 535 See § 279.52, 279.53.

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 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 state board of education, pursuant to section 256.7, subsections 13 and 14, or the department of human services, pursuant to section 237A.12, subsection 1.

The board may establish a fee for the cost of participation in a before and after school program. The fee shall be established pursuant to a sliding fee schedule based upon staffing costs and other expenses and a family's ability to pay. If a fee is established, the parent or guardian of a child participating in a program shall be responsible for payment of any

agreed upon fee. The board may require the parent or guardian to furnish transportation of the child.

The board may utilize or make application for program subsidies from any existing day care funding streams.

Programs established under this section for before and after school child day care shall include, but are not limited to, parental involvement in program design and direction, activities designed to further children's physical, mental, and emotional development, and a parental education component to educate parents about the physical, mental, and emotional development of children.

89 Acts, ch 206, §10 SF 223
1989 amendment effective January 1, 1992, 89 Acts, ch 206, §13 SF 223
Section stricken and rewritten

279.50 Human growth and development instruction.

1. Each board of directors of a public school district shall appoint a resource committee composed of representatives of the following groups: Parents, teachers, school administrators, pupils, health care professionals, members of the clergy, members of the business community, and other residents of the school district deemed appropriate. The resource committee shall study the provision of instruction to pupils in grades kindergarten through twelve appropriate to the pupils' grade level, age, and level of maturity, in topics related to human growth and development in order to promote accurate and comprehensive knowledge in this area, to foster responsible decision making, based on cause and effect, and to support and enhance the efforts of parents to provide moral guidance to their children. The resource committee shall address and make recommendations to the board concerning the school district's curriculum on each of the following topics of instruction:

- a. Self-esteem, responsible decision making, and personal responsibility and goal setting.
 - b. Interpersonal relationships.
 - c. Discouragement of premarital adolescent sexual activity.
 - d. Family life and parenting skills.
 - e. Human sexuality, reproduction, contraception and family planning, prenatal development including awareness of mental retardation and its prevention, childbirth, adoption, available prenatal and postnatal support, and male and female responsibility.
 - f. Sex stereotypes.
 - g. Behaviors to prevent sexual abuse or sexual harassment.
 - h. Sexually transmitted diseases, including acquired immune deficiency syndrome, and their causes and prevention.
 - i. Substance abuse treatment and prevention.
 - j. Suicide prevention.
 - k. Stress management.
2. The resource committee shall make its recommendations regarding the implementation of human

growth and development instruction for the school district, including the instructional topics specified in subsection 1, paragraphs "a" through "k", to the school board at least every three years and shall provide written notification to the state department of education.

3. The school board may designate the advisory committee appointed pursuant to section 280.12, subsection 2, as the resource committee to perform the duties required by this section, provided the advisory committee appointed under section 280.12, subsection 2, meets the resource committee composition requirements in subsection 1 of this section.

4. Each school board shall provide instruction in kindergarten which gives attention to experiences relating to life skills and human growth and development as required in section 256.11.

Each school board shall provide instruction in human growth and development including instruction regarding human sexuality, self-esteem, stress management, interpersonal relationships, domestic abuse, and acquired immune deficiency syndrome as required in section 256.11, in grades one through twelve. Each school board shall annually provide to a parent or guardian of any pupil enrolled in the school district, information about the human growth and development curriculum used in the pupil's grade level and the procedure for inspecting the instructional materials prior to their use in the classroom. A pupil shall not be required to take instruction in human growth and development if the pupil's parent or guardian files with the appropriate principal a written request that the pupil be excused from the instruction. Notification that the written request may be made shall be included in the information provided by the school district.

Each school board or community college which offers general adult education classes or courses shall periodically offer an instructional program in parenting skills and in human growth and development for parents, guardians, prospective biological and adoptive parents, and foster parents.

5. The state department of education shall make available model human growth and development curricula for grades kindergarten through twelve which shall include the instructional topics specified in subsection 1, paragraphs "a" through "k". The department of education shall distribute the model curricula to each school board, to the authorities in charge of each accredited nonpublic school, and to each resource committee appointed pursuant to subsection 1, and shall provide technical assistance to school boards and resource committees in the use or adaptation of the curricula.

6. Each area education agency shall periodically offer a staff development program for teachers who provide instruction in human growth and development.

7. The department of education shall identify and disseminate information about early intervention programs for students who are at the greatest risk of suffering from the problem of dropping out of

school, substance abuse, adolescent pregnancy, or suicide.

91 Acts, ch 218, §19 SF 444
Subsections 1 through 3 and 5 are stricken effective July 1, 1992, 88 Acts, ch 1018, §§5, 6
Subsection 4, unnumbered paragraph 2 amended

279.51 Programs for at-risk children.

1. There is appropriated from the general fund of the state to the department of education for the fiscal year beginning July 1, 1990, the sum of eight million seven hundred thousand dollars. For the fiscal year beginning July 1, 1991, and each succeeding fiscal year, there is appropriated the sum of eleven million two hundred thousand dollars plus an additional amount equal to the state percent of growth as calculated in section 257.8 multiplied by the amount appropriated the previous fiscal year.

The moneys shall be allocated as follows:

a. Two hundred seventy-five thousand dollars of the funds appropriated shall be allocated to the area education agencies to assist school districts in developing program plans and budgets under this section and to assist school districts in meeting other responsibilities in early childhood education.

b. For the fiscal year beginning July 1, 1990, four million six hundred twenty-five thousand dollars, and for each fiscal year thereafter, six million one hundred twenty-five thousand dollars of the funds appropriated shall be allocated to the child development coordinating council established in chapter 256A for the purposes set out in subsection 2 of this section and section 256A.3.

c. For each of the fiscal years during the fiscal period beginning July 1, 1990, and ending June 30, 1994, eight hundred thousand dollars of the funds appropriated shall be allocated for the school-based youth services education program established in subsection 3. Subject to the approval of the state board of education, the allocation made in this paragraph may be renewed for additional four-year periods of time.

d. For the fiscal year beginning July 1, 1990, three million dollars, and for each fiscal year thereafter, four million dollars of the funds appropriated shall be allocated as grants to school districts that have elementary schools that demonstrate the greatest need for programs for at-risk students with preference given to innovative programs for the early elementary school years. The grant allocations made in this paragraph may be renewed for additional periods of time. Of the amount allocated under this paragraph for each fiscal year, seventy-five thousand dollars shall be allocated to school districts which have an actual student population of ten thousand or less and have an actual non-English speaking student population which represents greater than five percent of the total actual student population for grants to elementary schools in those districts.

e. Additional funds available under this subsection as a result of additional growth provided to the appropriation in subsection 1 shall be distributed equally between paragraphs "b" and "d".

f. Not later than January 15, 1991, the department of education shall submit a report to the general assembly listing the moneys allocated under each of the paragraphs of this section and anticipated funding needed for the remainder of the fiscal year for each of those paragraphs. If the moneys appropriated under this section are insufficient to fund the grants under paragraphs "b" and "d", the department of education shall certify that information in the report and it is the intent of the general assembly that moneys shall be appropriated for the fiscal year beginning July 1, 1990, to supplement the appropriation in this section in an amount sufficient to fund grants under paragraphs "b" and "d", but not greater than two million five hundred thousand dollars.

Notwithstanding section 256A.3, subsection 6, of the amount appropriated for the fiscal year beginning July 1, 1990, less the amount allocated under paragraph "a", three and thirty-three hundredths percent may be used for administrative costs.

In succeeding fiscal years, notwithstanding section 256A.3, subsection 6, of the amount appropriated for a fiscal year, less the amount allocated under paragraph "a", three and thirty-three hundredths percent may be used for administrative costs. However, if the amount appropriated for the fiscal year, less the amount allocated under paragraph "a", times three and thirty-three hundredths percent is greater than the amount received for use for administrative costs during the fiscal year beginning July 1, 1990, then the amount to be used for administrative costs shall be reduced to equal the amount received during the fiscal year beginning July 1, 1990.

2. Funds allocated under subsection 1, paragraph "b", shall be used by the child development coordinating council for the following:

a. To continue funding for programs previously funded by grants awarded under section 256A.3 and to provide additional grants under section 256A.3. The council shall seek to provide grants on the basis of the location within the state of children meeting at-risk definitions.

b. At the discretion of the child development coordinating council, award grants for the following:

(1) To school districts to establish programs for three-year, four-year, and five-year old at-risk children which are a combination of preschool and full-day kindergarten.

(2) To provide grants to provide educational support services to parents of at-risk children age birth through three years.

3. A school-based youth services education program is established. The department of education, in consultation with the department of human services, the department of employment services, the Iowa department of public health, and the division of job training and entrepreneurship assistance of the department of economic development, shall develop a four-year demonstration grant program that commences in the fiscal year beginning July 1, 1990. The department shall provide grants to individual middle schools or high schools to establish school-based

youth services programs based upon program plans filed by the board of directors of the school district. Priority shall be given to schools with student populations characterized by high rates of a number of the following: school dropout and absenteeism; teenage pregnancy; juvenile court involvement; unemployment; teenage suicide; and teenage mental health, substance abuse, and other health problems. The department shall evaluate proposed programs based upon the department's analysis of effectiveness in reducing these rates within the schools.

Additional objectives of the programs shall be: to increase the ability of existing agencies within the community to address the multiple problems of teenagers and to coordinate their activities, to provide an accessible and attractive center for teenagers in or near school that they are most likely to use, and to facilitate joint planning to make the most economic and innovative use of community resources. Programs shall at a minimum provide job training and employment services, mental health and family counseling services, and primary health care services that include but are not limited to physical examinations, immunizations, hearing and vision screening, and preventive and primary health care services, in the context of the educational needs of the students. Programs shall not include abortion counseling or the dispensing of contraceptives. The department shall give additional consideration to program proposals that provide access to the center after school, in the evening and on weekends, and during the summer; that provide a twenty-four hour telephone hotline or similar service; and that provide access to day care or on-site day care.

The plan shall include the appointment by the board of a local advisory board for each proposed program, which at a minimum shall include a representative of the private industry council serving the area, parents of children enrolled in the school, a teacher recommended by the local teachers association, a representative from the health and mental health community in the area, teenagers enrolled in the school and recommended by the school student government, a representative from the nonprofit provider community, and a representative from the juvenile court system serving the area. Management of the program shall be by the school or by a nonprofit youth service organization. As used in this subsection, "youth service" means recreational services, employment services, civic services, or juvenile treatment services.

Program proposals shall include a written commitment from the school principal and the board of directors that the school will work to coordinate and integrate existing school services and activities with the center and shall include letters of support for the proposal from the local teachers association; parent-teacher organizations; community organizations; nonprofit agencies providing social services, health, or employment services in the area; and the area private industry council.

Grants for the program shall not be used to con-

struct a new facility, but up to ten percent of the grant may be used to renovate an existing structure. In addition, up to ten percent of the grant funds may be used to provide each of the following service categories: day care, transportation, and recreation.

Program proposals shall include a contribution of at least twenty percent of the total costs of the program, which can include “*in-kind*” services. Partnerships between the public and private sectors to provide employment and training opportunities for youth served by the program are particularly encouraged. The budget for a proposed program shall not exceed two hundred thousand dollars per year.

4. The department shall seek assistance from the first in the nation in education foundation established in chapter 257A and other foundations and public and private agencies in the evaluation of the programs funded under this section, and in the provision of support to school districts in developing and implementing the programs funded under this section.

5. The state board of education shall adopt rules under chapter 17A for the administration of this section.

91 Acts, ch 267, §239, 240 HF 479
 Appropriations, see 91 Acts, ch 267, §205 HF 479
 Subsection 1, paragraph d amended
 Subsection 1, paragraph f, NEW unnumbered paragraph 3

279.55 Teacher exchange program.

If funds are appropriated by the general assembly, an Iowa teacher exchange program is established to permit school districts to exchange licensed instructional personnel with other districts in order to promote the exchange and enhancement of instructional methods and materials and encourage the educational development of Iowa’s teachers.

91 Acts, ch 84, §3 HF 516
 NEW section

279.56 Board participation.

If funds are appropriated by the general assembly, the board of directors of a school district may obtain permission to participate in the teacher exchange program by making application in writing to the department of education, on forms provided by the de-

partment, by November 1 of the school year preceding the year that the district wishes to participate. Each district participating in the program shall prescribe standards and procedures explaining the district’s expectations and requirements for each participating teacher. The district’s standards and procedures shall also prescribe the method and form by which teachers within the district may apply to the board for permission to participate in the program. Each participating district shall continue to compensate the program participant at the same rate that the participant would be compensated if the participant had continued the participant’s instructional or other duties within the home district. Each participating district shall report to the department the number and performance of exchange teachers from other districts that are included in the district’s instructional staff during the relevant periods during the school year. The department shall summarize the information and include it in the report submitted under section 256.9, subsection 28.

Each participating teacher shall submit a report of the teacher’s experiences in the exchange program to the teacher’s employing district at the conclusion of the exchange period.

91 Acts, ch 84, §4 HF 516
 NEW section

279.57 Period of exchange.

Teachers may be exchanged for one quarter, one semester, or one school year under the program. Expenses incurred by a teacher participant may be reimbursed by application to the department of education. Reimbursable expenses shall include, but are not limited to, mileage for travel to and from the new school district and the teacher’s residence, the cost incurred for meals consumed as a result of travel to and from the new school district and the teacher’s residence, the difference between the cost for living quarters incurred by the teacher in the teacher’s district of residence and the cost for similar quarters in the new district, and cost of additional educational materials required to be provided by instructional personnel in the new district.

91 Acts, ch 84, §5 HF 516
 NEW section

CHAPTER 280

UNIFORM SCHOOL REQUIREMENTS

Department of education study of functions school districts are required to perform to receive aid or remain accredited, 91 Acts, ch 104, § 2 SF 313

280.2 Definitions.

The term “public school” means any school directly supported in whole or in part by taxation. The term “nonpublic school” means any other school which is accredited or which uses licensed practitioners as instructors.

91 Acts, ch 200, §1 HF 455
Section amended

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 and an attendance policy which shall require each child to attend school for at least one hundred forty-eight days, to be met by attendance for at least thirty-seven days each school quarter, for the schools under their jurisdictions. The minimum educational program shall be the curriculum set forth in section 256.11, 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 education. The authorities in charge of the nonpublic school shall file with the director of the department of education 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 director, 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 director, 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 director of the department of education with the approval of the state board of education. The testing or evaluation, if required, shall be accomplished prior to sub-

mission of the request for renewal of the exemption. Renewal requests shall be filed with the director 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. Public school kindergarten programs shall and public and nonpublic school 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.

91 Acts, ch 200, §2 HF 455
Unnumbered paragraph 1 amended

280.4 Medium of instruction — special instruction.

The medium of instruction in all secular subjects taught in both public and nonpublic schools shall be the English language, except when the use of a foreign language is deemed appropriate in the teaching of any subject or when the student is non-English-speaking. When the student is non-English-speaking, both public and nonpublic schools shall provide special instruction, which shall include but need not be limited to either instruction in the English language or a transitional bilingual program, until the student demonstrates a functional ability to speak, write, read and understand the English language. As used in this section, “non-English-speaking student” means a student whose native language is not English and whose inability or limited ability to speak, write or read English significantly impedes educational progress. As used in this section, “foreign language” means spoken and written languages other than the English language, and includes American sign language.

1. The board of directors of a school district may submit an application to the school budget review committee for funds provided by 1982 Iowa Acts, chapter 1260, section 47, for instruction in the English language, a transitional bilingual, or other special instruction program when support for the program from other federal, state or local sources is not

available or is inadequate. The department of education shall review all applications for funding and provide recommendations to the school budget review committee regarding their disposition. The school budget review committee shall not grant funds to a public school for instruction in the English language, a transitional bilingual or other special instruction program unless the program offered by the public school is available to nonpublic school students in the district.

2. The department of education shall promulgate rules relating to the identification of non-English-speaking students who require special instruction under this section and to application procedures for funds available under this section.

3. Grants made to a school pursuant to this section shall not exceed four hundred dollars for each student in the program. A public school may receive funds for nonpublic school students attending the program offered by the public school. However, the amount granted for each nonpublic school student in a program shall not exceed the amount granted for each public school student in the program.

4. In order to provide funds for the excess costs of instruction of non-English-speaking students above the costs of instruction of pupils in a regular curriculum, students identified as non-English-speaking are assigned an additional weighting that shall be included in the weighted enrollment of the school district of residence for a period not exceeding three years. However, the school budget review committee may grant supplemental aid or modified allowable growth, to a school district to continue funding a program for students after the expiration of the three-year period. The school budget review committee shall calculate the additional amount for the weighting to the nearest one-hundredth of one so that, to the extent possible, the moneys generated by the weighting will be equivalent to the moneys generated by the two-tenths weighting provided prior to July 1, 1991.

91 Acts, ch 193, §2 SF 23
Unnumbered paragraph 1 amended

280.15 Joint employment and sharing.

1. 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 re-

quirements of section 275.1 relating to the maintenance of kindergarten and twelve grades by a school district. If students attend classes in another school district under this section under an agreement that provides for whole grade sharing, the boards of directors of districts entering into these agreements shall provide for sharing the costs and expenses as provided in sections 282.10 through 282.12. Sharing agreements shall provide that any person who is not an employee at the time an agreement is signed shall not be employed in any professional position, under the terms of the agreement, for which a current employee of any of the districts involved in the agreement holds an appropriate license, unless the professional position is an administrator position or the professional position is first offered to the current employee.

2. When a special education personnel pooling agreement, which has been entered into between an area education agency and a public school district pursuant to section 273.5, is terminated, the public school district shall assume the contractual obligations for any teachers assigned to the district under the agreement. Teachers, for whom the contractual obligations are assumed by a district, shall be given credit for completion of any probationary status under section 279.19, be placed on the salary schedule and retain all leaves, benefits, and seniority rights accumulated as if the teacher had been originally employed under the agreement which exists between the public school district and the district's collective bargaining unit, consistent with the teacher's education and experience.

A teacher who is employed under a pooling agreement and assigned to special education facilities that are separate from and not part of local school district facilities shall, if the teacher's employment terminates upon termination of the pooling agreement, be offered any teaching position that is similar to the position previously held by the teacher under the pooling agreement, which is vacant in any of the local school districts which participated in the pooling agreement, provided that the teacher possesses the appropriate license for the position. Teachers employed by a local school district under this paragraph shall have the same rights, privileges, and protection as teachers whose contractual obligations are assumed by a district to which the teacher previously had been assigned under a special education personnel pooling agreement.

91 Acts, ch 117, §1 HF 593
Section amended

CHAPTER 280A

MERGED AREAS — COMMUNITY COLLEGES

Authority to establish area vocational consortia, 91 Acts, ch 267, § 216 HF 479

280A.19A Motor vehicles required to operate on ethanol-blended gasoline.

A motor vehicle purchased by or used under the direction of the board of directors to provide services to a merged area shall not, on or after January 1, 1993, operate on gasoline other than gasoline blended with at least ten percent ethanol. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on gasoline blended with ethanol.

91 Acts, ch 254, §17 SF 545
NEW section

280A.23 Authority of directors.

The board of directors of each community college shall:

1. Determine the curriculum to be offered in such school or college subject to approval of the state board and ensure that all vocational offerings are competency-based, provide any minimum competencies required by the department of education, comply with any applicable requirements in chapter 258, and are articulated with local school district vocational education programs. If an existing private educational or vocational institution within the merged area has facilities and curriculum of adequate size and quality which would duplicate the functions of the area school, the board of directors shall discuss with the institution the possibility of entering into contracts to have the existing institution offer facilities and curriculum to students of the merged area. The board of directors shall consider any proposals submitted by the private institution for providing such facilities and curriculum. The board of directors may enter into such contracts. In approving curriculum, the state board shall ascertain that all courses and programs submitted for approval are needed and that the curriculum being offered by an area school does not duplicate programs provided by existing public or private facilities in the area. In determining whether duplication would actually exist, the state board shall consider the needs of the area and consider whether the proposed programs are competitive as to size, quality, tuition, purposes, and area coverage with existing public and private educational or vocational institutions within the merged area. If the board of directors of the merged area chooses not to enter into contracts with private institutions under this subsection, the board shall submit a list of reasons why contracts to avoid

duplication were not entered into and an economic impact statement relating to the board's decision.

2. Have authority to determine tuition rates for instruction. Tuition for residents of Iowa shall not exceed the lowest tuition rate per semester, or the equivalent, charged by an institution of higher education under the state board of regents for a full-time resident student. However, except for students enrolled under chapter 261C, if a local school district pays tuition for a resident pupil of high school age, the limitation on tuition for residents of Iowa shall not apply, the amount of tuition shall be determined by the board of directors of the community college with the consent of the local school board, and the pupil shall not be included in the full-time equivalent enrollment of the community college for the purpose of computing general aid to the community college. Tuition for nonresidents of Iowa shall not be less than the marginal cost of instruction of a student attending the college. A lower tuition for nonresidents may be permitted under a reciprocal tuition agreement between a merged area and an educational institution in another state, if the agreement is approved by the state board. The board may designate that a portion of the tuition moneys collected from students be used for student aid purposes.

3. Have the powers and duties with respect to community colleges, not otherwise provided in this chapter, which are prescribed for boards of directors of local school districts by chapter 279 except that the board of directors is not required to prohibit the use of tobacco and the use or possession of alcoholic liquor or beer by any student of legal age under the provisions of section 279.9.

4. Have the power to enter into contracts and take other necessary action to insure a sufficient curriculum and efficient operation and management of the college and maintain and protect the physical plant, equipment, and other property of the college.

5. Establish policy and make rules, not inconsistent with law and administrative rules, regulations, and policies of the state board, for its own government and that of the administrative, teaching, and other personnel, and the students of the college, and aid in the enforcement of such laws, rules, and regulations.

6. Have authority to sell a student-constructed building and the property on which the student-constructed building is located or any article resulting from any vocational program or course offered at

a community college by any procedure which may be adopted by the board. Governmental agencies and governmental subdivisions of the state within the merged areas shall be given preference in the purchase of such articles. All revenue received from the sale of any article shall be credited to the funds of the board of the merged area.

7. With the consent of the inventor, and in the discretion of the board, secure letters patent or copyright on inventions of students, instructors, and officials of any community college of the merged area, or take assignment of such letters patent or copyright and make all necessary expenditures in regard thereto. Letters patent or copyright on inventions when so secured shall be the property of the board of the merged area and the royalties and earnings thereon shall be credited to the funds of the board.

8. Set the salary of the area superintendent. In setting the salary, the board shall consider the salaries of administrators of educational institutions in the merged area and the enrollment of the community college.

9. 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 employees from any company the employee chooses that is authorized to do business in this state and through an Iowa-licensed insurance agent that the employee selects, for retirement or other purposes, and may make payroll deductions in accordance with the 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 under section 403(b) of the Internal Revenue Code, as defined in section 422.3. The employee's rights under the annuity contract are non-forfeitable except for the failure to pay premiums. If 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 by registered mail to the company being replaced, to the insurance commissioner of the state of Iowa, and to the agent's or representative's own company at least thirty days prior to any action. This letter of intent shall contain the policy number and description of the contract being replaced and a description of the replacement contract.

10. Make necessary rules to provide for the policing, control, and regulation of traffic and parking of vehicles and bicycles on the property of the community college. The rules may provide for the use of institutional roads, driveways, and grounds; registration of vehicles and bicycles; the designation of parking areas; the erection and maintenance of signs designating prohibitions or restrictions; the installation and maintenance of parking control devices except parking meters; and assessment, enforcement, and collection of reasonable penalties for the violation of the rules.

Rules made under this subsection may be enforced under procedures adopted by the board of directors.

Penalties may be imposed upon students, faculty, and staff for violation of the rules, including, but not limited to, a reasonable monetary penalty which may be deducted from student deposits and faculty or staff salaries or other funds in possession of the community college or added to student tuition bills. The rules made under this subsection may also be enforced by the impoundment of vehicles and bicycles parked in violation of the rules, and a reasonable fee may be charged for the cost of impoundment and storage prior to the release of the vehicle or bicycle to the owner. Each community college shall establish procedures for the determination of controversies in connection with the imposition of penalties. The procedures shall require giving notice of the violation and the penalty prescribed and providing the opportunity for an administrative hearing.

11. Be authorized to issue to employees of community colleges school credit cards to use for payment of authorized expenditures incurred in the performance of work-related duties.

12. During the second week of August of each year, publish by one insertion in at least one newspaper published in the merged area a summarized statement verified by affidavit of the secretary of the board showing the receipts and disbursements of all funds of the community college for the preceding fiscal year. The statement of disbursements shall show the names of the persons, firms, or corporations, and the total amount paid to each during the fiscal year. The board is not required to make the publications and notices required under sections 279.34, 279.35, and 279.36.

13. Adopt policies and procedures for the use of telecommunications as an instructional tool at the community college. The policies and procedures shall include but not be limited to policies and procedures relating to programs, educational policy, practices, staff development, use of pilot projects, and the instructional application of the technology.

14. In its discretion, adopt rules relating to the classification of students enrolled in the community college who are residents of Iowa's sister states as residents or nonresidents for tuition and fee purposes.

15. By July 1, 1991, develop a policy which requires oral communication competence of persons who provide instruction to students attending institutions under the control of the board. The policy shall include a student evaluation mechanism which requires student evaluation of persons providing instruction at the end of each academic period.

16. By July 1, 1991, develop a policy relating to the teaching proficiency of teaching assistants which provides a teaching proficiency standard, instructional assistance to, and evaluation of persons who provide instruction to students at the higher education institutions under the control of the board.

17. Commencing July 1, 1994, provide for an alternative retirement benefits system, which is issued by or through a nonprofit corporation issuing retirement annuities exclusively to educational institu-

tions and their employees, for persons employed by the community college who are members of the Iowa public employees' retirement system on July 1, 1994, or who are new employees, and who elect coverage under the alternative retirement benefits system pursuant to section 97B.42, in lieu of continuing or commencing contributions to the Iowa public employees' retirement system. The system for employee and employer contributions under the alternative system shall be substantially the same as provided by the state board of regents under the teachers insurance annuity association-college retirement equities fund, and the employer's contribution shall not exceed the employer's contribution rate established for employees of the state board of regents who are under that system.

18. Provide for an alternative retirement benefits system, which is issued by or through a nonprofit corporation issuing retirement annuities exclusively to educational institutions and their employees, for persons newly employed after July 1, 1990, who are already members of the alternative system and who elect coverage under that system pursuant to section 97B.42, in lieu of coverage under the Iowa public employees' retirement system. The system for employee and employer contributions under the alternative system shall be substantially the same as provided by the state board of regents under the teachers insurance annuity association-college retirement equities fund, and the employer's contribution rate shall not exceed the employer's contribution rate established for employees of the state board of regents who are under that system.

89 Acts, ch 278, §6 SF 449

1989 amendment to subsection 1 effective July 1, 1992, 89 Acts, ch 278, §9 SF 449

Subsection 1 amended

280A.34 Uses of funds.

Funds obtained pursuant to section 280A.17; subsections 3, 4, and 5 of section 280A.18; section 280A.19; and section 280A.22 shall not be used for the construction or maintenance of athletic buildings or grounds but may be used for a project under section 280A.56.

91 Acts, ch 267, §241 HF 479

Section amended

280A.39 Combining merged areas — election.

Any merged area may combine with any adjacent merged area after a favorable vote by the electors of each of the areas involved. If the boards of directors of two or more merged areas agree to a combination, the question shall be submitted to the electors of each area at a special election to be held on the same day in each area. The special election shall not be held within thirty days of any general election. Prior to the special election, the board of each merged area shall notify the county commissioner of elections of the county in which the greatest proportion of the merged area's taxable base is located who shall publish notice of the election according to section 49.53.

The two respective county commissioners of elections shall conduct the election pursuant to the provisions of chapters 39 to 53. The votes cast in the election shall be canvassed by the county board of supervisors and the county commissioners of elections who conducted the election shall certify the results to the board of directors of each merged area.

If the vote is favorable in each merged area, the boards of each area shall proceed to transfer the assets, liabilities, and facilities of the areas to the combined merged area, and shall serve as the acting board of the combined merged area until a new board of directors is elected. The acting board shall submit to the director of the department of education a plan for redistricting the combined merged area, and upon receiving approval from the director, shall provide for the election of a director from each new district at the next regular school election. The directors elected from each new district shall determine their terms by lot so that the terms of one-third of the members, as nearly as may be, expire each year. Election of directors for the combined merged area shall follow the procedures established for election of directors of a merged area. A combined merged area is subject to all provisions of law and rules governing merged areas.

Any merged area which combines with another merged area under this section for purposes of combining community colleges under the control of the boards shall be eligible to receive additional state funds from the community college excellence 2000 account under section 286A.14A in an amount which equals ten percent of the state general aid received by each of the colleges during the first year of merger, in addition to any state general aid received, based upon the availability of funds. Community colleges which intend to merge under this section shall submit applications to the department describing the merger proposal and plans developed to implement the merger. Any application which results in a merger of colleges shall be subject to the review and approval of the department before the merger is eligible to receive funds for the merger.

In years succeeding the first year of merger, the merged colleges shall receive additional funds in an amount which is two percent less than the percent received during the previous year.

The terms of employment of personnel, for the academic year following the effective date of the agreement to combine the merged areas shall not be affected by the combination of the merged areas, except in accordance with the procedures under sections 279.15 to 279.18 and section 279.24, to the extent those procedures are applicable, or under the terms of the base bargaining agreement. The authority and responsibility to offer new contracts or to continue, modify, or terminate existing contracts pursuant to any applicable procedures under chapter 279, shall be transferred to the acting, and then to the new, board of the combined merged area upon certification of a favorable vote to each of the merged areas affected by the agreement. The collective bar-

gaining agreement of the merged area with the largest number of contact hours eligible for general aid, as defined under section 286A.2, shall serve as the base agreement for the combined merged area and the employees of the merged areas which combined to form the new combined merged area shall automatically be accreted to the bargaining unit from that former merged area for purposes of negotiating the contracts for the following years without further action by the public employment relations board. If only one collective bargaining agreement is in effect among the merged areas which are combining under this section, then that agreement shall serve as the base agreement, and the employees of the merged areas which are combining to form the new combined merged area shall automatically be accreted to the bargaining unit of that former merged area for purposes of negotiating the contracts for the following years without further action by the public employment relations board. The board of the combined merged area, using the base agreement as its existing contract, shall bargain with the combined employees of the merged areas that have agreed to combine for the academic year beginning with the effective date of the agreement to combine merged areas. The bargaining shall be completed by March 15 prior to the academic year in which the agreement to combine merged areas becomes effective or within one hundred eighty days after the organization of the acting board of the new combined merged area, whichever is later. If a bargaining agreement was already concluded in the former merged area which has the collective bargaining agreement that is serving as the base agreement for the new combined merged area, between the former merged area board and the employees of the former merged area, that agreement is void, unless the agreement contained multiyear provisions affecting academic years subsequent to the effective date of the agreement to form a combined merged area. If the base collective bargaining agreement contains multiyear provisions, the duration and effect of the agreement shall be controlled by the terms of the agreement. The provisions of the base agreement shall apply to the offering of new contracts, or the continuation, modification, or termination of existing contracts between the acting or new board of the combined merged area and the combined employees of the new combined merged area.

91 Acts, ch 117, §2 HF 593
NEW unnumbered paragraph 5

280A.40 Prohibition of controlled substances.

Each merged area school shall adopt a policy that prohibits unlawful possession, use, or distribution of controlled substances by students and employees on property owned or leased by the merged area school or in conjunction with activities sponsored by a merged area school. Each merged area school shall provide information about the policy to all students and employees. The policy shall include a clear state-

ment of sanctions for violation of the policy and information about available drug or alcohol counseling and rehabilitation programs. In carrying out this policy, the merged area school shall provide substance abuse prevention programs for students and employees.

91 Acts, ch 267, §242 HF 479
NEW section

280A.56 Definitions.

As used in this division:

1. *"Board"* means a board of directors of a community college.
2. *"Bonds or notes"* means revenue bonds or revenue notes which are payable solely from net rents, profits, and other income derived from the operation of residence halls, dormitories, incidental facilities, and additions.
3. *"Institution"* means a community college organized under this chapter.
4. *"Project"* means the acquisition by purchase, lease in accordance with section 280A.38, or construction of buildings for use as student residence halls and dormitories, including dining and other incidental facilities therefor, and additions to such buildings, the reconstruction, completion, equipment, improvement, repair or remodeling of residence halls, dormitories, or additions or incidental facilities, and the acquisition of property of every kind and description, whether real, personal, or mixed, by gift, purchase, lease, condemnation, or otherwise and the improvement of the property.

91 Acts, ch 267, §243, 244 HF 479
NEW subsection 2 and former subsections 2 and 3 renumbered as 3 and 4
Subsection 4 amended

280A.58 Bonds or notes.

To pay all or any part of the cost of carrying out any project at any institution the board is authorized to borrow money and to issue and sell negotiable bonds or notes and to refund and refinance bonds or notes issued for any project or for refunding purposes at a lower rate, the same rate, or a higher rate or rates of interest and from time to time as often as the board shall find it to be advisable and necessary so to do. Bonds or notes issued by the board for residence hall or dormitory purposes at any institution, including dining or other facilities and additions, or issued for refunding purposes, may either be sold in the manner specified for the selling of certificates under section 280B.6 and the proceeds applied to the payment of the obligations being refunded, or the refunding bonds or notes may be exchanged for and in payment and discharge of the obligations being refunded. A finding by the board in the resolution authorizing the issuance of the refunding bonds or notes, that the bonds or notes being refunded were issued for a purpose specified in this division and constitute binding obligations of the board, shall be conclusive and may be relied upon by any holder of any refunding bond or note issued under the provisions of this division. The refunding bonds or notes may be sold or exchanged in installments at different

times or an entire issue or series may be sold or exchanged at one time. Any issue or series of refunding bonds or notes may be exchanged in part or sold in parts in installments at different times or at one time. The refunding bonds or notes may be sold or exchanged at any time on, before, or after the maturity of any of the outstanding notes, bonds or other obligations to be refinanced thereby and may be issued for the purpose of refunding a like or greater principal amount of bonds or notes, except that the principal amount of the refunding bonds or notes may exceed the principal amount of the bonds or notes to be refunded to the extent necessary to pay any premium due on the call of the bonds or notes to be refunded, to fund interest in arrears or about to become due, or to allow for sufficient funding of the escrow account on the bonds to be refunded.

All bonds or notes issued under the provisions of this division shall be payable from and shall be secured by an irrevocable first lien pledge of a sufficient portion of the following: the net rents, profits and income derived from the operation of residence halls, dormitories, dining or other incidental facilities and additions, including necessary real and personal property, acquired or improved in whole or in part with the proceeds of such bonds or notes, regardless of the manner of such acquisition or improvement; and the net rents, profits and income not pledged for other purposes derived from the operation of any other residence halls or dormitories, including dining or other incidental facilities and additions, at the particular institution. In addition, the board may secure any bonds or notes issued by borrowing money, by mortgaging any real estate or improvements erected on real estate, or by pledging rents, profits, and income received from property for the discharge of mortgages. All bonds or notes issued under the provisions of this division shall have all the qualities of negotiable instruments under the laws of this state.

91 Acts, ch 267, §245 HF 479
Unnumbered paragraph 1 amended

280A.59 Rates and terms of bonds or notes.

The bonds or notes may bear a date or dates, may bear interest at such rate or rates, may mature at such time or times, may be in such form, carry such registration privileges, may be payable at such place or places, may be subject to such terms of redemption prior to maturity with or without premium, if so stated on the face of the bonds, and may contain any terms and covenants as may be provided by the resolution of the board authorizing the issuance of the bonds or notes. In addition to the estimated cost of construction, the cost of the project shall be deemed to include interest upon the bonds or notes during construction and for six months after the estimated completion date, the compensation of a fiscal agent or adviser, any underwriter discount, and engineer-

ing, administrative and legal expenses. The bonds or notes shall be executed by the president of the board of trustees and attested by the secretary. Any bonds or notes bearing the signatures of officers in office on the date of the signing shall be valid and binding for all purposes, notwithstanding that before delivery of the bonds or notes any or all persons whose signatures appear on the bonds or notes shall have ceased to be officers. Each bond or note shall state upon its face the name of the institution on behalf of which it is issued, that it is payable solely and only from the net rents, profits and income derived from the operation of residence halls or dormitories, including dining and other incidental facilities, at the institution named, and that it does not constitute a charge against the state of Iowa within the meaning or application of any constitutional or statutory limitation or provision. The issuance of bonds or notes shall be recorded in the office of the treasurer of the institution on behalf of which the bonds or notes are issued, and a certificate by such treasurer to this effect shall be printed on the back of each such bond or note.

91 Acts, ch 267, §246 HF 479
Section amended

280A.60 Issuance resolution.

Upon the determination by the board to undertake and carry out any project or to refund outstanding bonds or notes, the board shall adopt a resolution generally describing the contemplated project and setting forth the estimated cost, or describing the obligations to be refunded, fixing the amount of bonds or notes to be issued, the maturity or maturities, the interest rate or rates and all details of the project. The resolution shall contain any covenants as may be determined by the board as to the issuance of additional bonds or notes that may be issued payable from the net rents, profits and income of the residence halls or dormitories, the amendment or modification of the resolution authorizing the issuance of any bonds or notes, the manner, terms and conditions and the amount or percentage of assenting bonds or notes necessary to effectuate the amendment or modification, and any other covenants as may be deemed necessary or desirable. In the discretion of the board any bonds or notes issued under the terms of this division may be secured by a trust indenture by and between the board and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the boundaries of the state of Iowa. The provisions of this division and of any resolution or other proceedings authorizing the issuance of bonds or notes and providing for the establishment and maintenance of adequate rates, fees or rentals and the application of the proceeds thereof shall constitute a contract with the holders of the bonds or notes.

91 Acts, ch 267, §247 HF 479
Section amended

CHAPTER 280C

IOWA SMALL BUSINESS NEW JOBS TRAINING ACT

280C.6 Job training fund.

1. There is established for the community colleges a community college job training fund under the supervision of the treasurer of state. The community college job training fund consists of moneys appropriated for the fiscal year beginning July 1, 1987, and for succeeding fiscal years for the purposes of this chapter plus the interest and principal from repayment of advances made to employers for program costs and interest earned from moneys in the community college job training fund. Moneys in this fund shall be used to provide advances to employers for program costs upon the request of boards of directors of the community colleges.

2. To provide funds for the present payment of the costs of a new jobs training program by the employer, the community college 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 job training fund established in subsection 1, the community college shall submit an application to the department of economic development. The amount of the advance shall not exceed fifty 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 tax exempt certificates issued by community colleges pursuant to chapter 280B for the previous twelve months. The rate shall be computed by the Iowa department of economic development.

91 Acts, ch 2, § 1, 2 SF 90
 Subsection 1 stricken and rewritten
 Subsection 2 amended

280C.8 Appropriations. Repealed by 91 Acts, ch 2, § 3. SF 90

CHAPTER 281

EDUCATION OF CHILDREN REQUIRING SPECIAL EDUCATION

281.9 Weighting plan — audits — evaluations — expenditures.

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.

Effective July 1, 1991, this paragraph also applies to children requiring special education who require specially designed instruction while assigned to a regular classroom for basic instructional purposes.

c. Children requiring special education who re-

quire 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.

Effective July 1, 1991, this paragraph also applies to children requiring special education who require substantial modifications, adaptations, or special education accommodations in order to benefit from instruction in an integrated classroom.

d. Children requiring special education who are severely handicapped or who have multiple handicaps are assigned a weighting of four and four-tenths for the school year commencing July 1, 1975.

Effective July 1, 1991, this paragraph also applies to children requiring special education who are severely and profoundly handicapped.

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 257.

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, 1987, and no later than December 1 every two years thereafter, for the school year commencing the following July 1, the director of the department of education 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 director of the department of education 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, 1987, and shall report the plan to the director of the department of education. Commencing December 1, 1990, the school budget review committee may establish weights to the nearest hundredth. 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 education shall adopt 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 director of the department of management the correct total enrollment of each school district in the state, determined by applying the appropriate pupil weighting index to each child requiring special edu-

cation, 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. The costs of special education instructional programs include the costs of purchase of transportation equipment to meet the special needs of children requiring special education with the approval of the director of the department of education. The state board of education shall adopt rules under chapter 17A for the purchase of transportation equipment pursuant to this section.

8. 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.

9. Funds generated for special education instructional programs under this chapter and chapter 257 shall not be expended for modifications of school buildings to make them accessible to children requiring special education.

91 Acts, ch 39, §1 SF 378
Subsection 1, paragraphs b, c and d amended

281.15 Reimbursement for special education services.

1. The state board of education in conjunction with the department of education shall develop a program to utilize federally funded health care programs, except the federal medically needy program for individuals who have a spend-down, to share in the costs of services which are provided to children requiring special education.

2. The department of education shall designate an area education agency to develop a system for collecting the information necessary to implement procedures for billing and collecting the costs of the services. The area education agency shall begin to develop the system immediately. The area education agency shall consult with and work jointly with state

agencies and federal agencies to determine procedures and standards which shall be initiated by all area education agencies to qualify for receipt of benefits under federal programs.

3. The department of education, in conjunction with the area education agency, shall determine those specific services which are covered by federally funded health care programs, which shall include, but not be limited to, physical therapy, audiology, speech language therapy, and psychological evaluations. The department shall also determine which other special services may be subject to reimbursement and the qualifications necessary for personnel providing those services. If it is determined that services are required from other service providers, these providers shall be reimbursed for those services.

4. All services referred to in subsection 1 shall be initially funded by the area education agency and shall be provided regardless of subsequent subrogation collections. The area education agency shall make a claim for reimbursement to federally funded health care programs.

5. Not later than July 1, 1988, the area education agency designated by the department of education shall have developed the program for collecting for the services provided. The program shall be distributed to all of the area education agencies in the state. All area education agencies shall begin collecting the information on July 1, 1988.

6. Effective November 1, 1988, all area education agencies in the state shall participate in the program and begin billing for and collecting for the covered services and shall bill for services provided retroactive to July 1, 1988. Retroactive Title XIX billing is contingent upon state plan approval. Nothing contained in this section shall be construed to allow non-licensed individuals to perform services which other-

wise require licenses under the laws of this state or to allow licensed providers to perform services outside their scope of practice.

7. Except as otherwise provided in this subsection, all reimbursements received by the area education agencies for eligible services shall be paid annually to the treasurer of state. The area education agencies shall, after determining the administrative costs associated with the implementation of medical assistance reimbursement for the eligible services, be permitted to retain up to twenty-five percent of the total amount reimbursed to pay for the administrative costs. Funds received under this subsection shall not be considered or included as part of the area education agencies' budgets when calculating funds that are to be received by area education agencies during a fiscal year. Except as otherwise provided in this subsection, the treasurer of state shall credit all receipts received under this subsection to the general fund of the state.

8. Students or their parents or guardians covered by a federal health care program shall provide health care information to an area education agency or local school district.

9. The department of education and the department of human services shall adopt rules to implement this section to be effective immediately upon filing with the administrative rules coordinator, or at a stated date prior to indexing and publication, or at a stated date less than thirty-five days after filing, indexing, and publication.

10. The department of human services shall offer assistance to the area education agencies in the identification of children eligible for reimbursement for services under this section.

91 Acts, ch 125, §1, 2 SF 314
Subsection 7 amended
NEW subsection 10

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 accredited 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 por-

tion of a district so designated shall be contiguous to the accredited 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. The boards of directors enter-

ing into an agreement under this section shall provide for sharing the costs and expenses as provided in sections 282.10 through 282.12. The agreement shall provide for transportation and authority and liability of the affected boards.

2. If the vocational program offered by a school district does not meet the state board of vocational education's standards for program approval, the district shall be granted one year to meet the standards for approval. If a district chooses to waive the one-year grace period, or the district fails to meet the approval standards after one year, the director of the board of vocational education shall delegate the authority to the regional planning board established pursuant to section 258.16 to direct the district to contract with another school district or a merged area school which has an approved program, for the provision of vocational education for students of the district. The district that has waived the one-year grace period or has failed to meet the approval standards shall pay to the district or merged area school that has an approved program an amount equal to the percent of the school day in which a pupil is receiving vocational education in the approved program times the district cost per pupil of the district of residence of the pupil. The regional planning board established pursuant to section 258.16 shall contract with an approved program for delivery of vocational education in the district which has failed to meet the approval standards or has waived the one-year grace period. Transportation to and from the approved program shall be provided by the school district that has waived the one-year grace period or has failed to meet approval standards. Reasonable effort shall be made to conduct the approved program at an attendance center in the district that has failed to meet the approval standards or has waived the one-year grace period.

3. Notwithstanding sections 28E.9 and 282.8, a school district may negotiate an agreement under subsection 1 for attendance of its pupils in a school district located in a contiguous state subject to a reciprocal agreement by the two state boards in the manner provided in this subsection. Prior to negotiating an agreement with the school district in the contiguous state, the board of directors shall file a written request with the state board of education for a determination whether the school district in the contiguous state meets requirements substantially similar to those required for accredited or approved school districts in this state and the school district receives or has available services equivalent to those that would be provided in this state by an area education agency. The school district shall also obtain approval by the department of education of the sharing proposal, before the agreement becomes effective. Six months before making the request for approval, the district shall request a feasibility study from the department of education. If the state board of this state and the corresponding state board in the contiguous state agree that the school districts of their respective states meet substantially similar re-

quirements and have substantially similar services available to the school district, and if the Iowa department of education approves the proposed contract, the two state boards may sign a reciprocal agreement for attendance of their pupils in the school district of the other state, subject to the agreement signed between the boards of directors of the two districts. A school district that negotiates an agreement with a school district in a contiguous state under this subsection is not eligible for supplementary weighting under section 257.11 as a result of that agreement.

89 Acts, ch 278, §7 SF 449
1989 amendment to subsection 2 effective July 1, 1992, 89 Acts, ch 278, §9 SF 449

Authority to establish area vocational consortia, 91 Acts, ch 267, §216 HF 479

Subsection 2 stricken and rewritten

282.18 Open enrollment.

1. It is the goal of the general assembly to permit a wide range of educational choices for children enrolled in schools in this state and to maximize ability to use those choices. It is therefore the intent that this section be construed broadly to maximize parental choice and access to educational opportunities which are not available to children because of where they live.

For the school year commencing July 1, 1989, and each succeeding school year, a parent or guardian residing in a school district may enroll the parent's or guardian's child in a public school in another school district in the manner provided in this section.

2. By October 30 of the preceding school year, the parent or guardian shall send notification to the district of residence and to the department of education on forms prescribed by the department of education that the parent or guardian intends to enroll the parent's or guardian's child in a public school in another school district. The parent or guardian shall describe the reason for enrollment in the receiving district. If a parent or guardian fails to file a notification that the parent intends to enroll the parent's or guardian's child in a public school in another district by the deadline of October 30 of the previous year, and good cause exists for the failure to meet the deadline or if the request is to enroll a child in kindergarten in a public school in another district, the parent or guardian shall be permitted to enroll the child in the other district in the same manner as if the deadline had been met.

The board of the district of residence shall take action on the request no later than November 30 of the preceding school year and shall transmit any approved request within five days after board action on the request. The parent or guardian may withdraw the request during November of the preceding school year unless the board of the receiving district has acted on the request. The board of the receiving district shall take action to approve or disapprove the request no later than December 31 of the preceding school year. If the request is granted, the board shall transmit a copy of the form to the school district of residence within five days after board action.

3. During the 1990-1991 school year, if the board of the district of residence determines that transmission of the request will result in a loss of greater than five percent of the district's certified enrollment as compared with the district's certified enrollment for the 1988-1989 school year, the board of the district of residence may deny the request for the 1990-1991 school year. During the 1991-1992 school year, if the board of the district of residence determines that transmission of the request will result in a loss of greater than ten percent of the district's certified enrollment as compared to the district's certified enrollment for the 1988-1989 school year, the board of the district of residence may deny the request for the 1991-1992 school year. If, however, a failure to transmit a request will result in enrollment of pupils from the same nuclear family in different school districts, the request shall be transmitted to the receiving district for enrollment.

4. The board of each school district shall adopt a policy relating to the order in which requests for enrollment in other districts shall be considered.

The board of the receiving school district shall enroll the pupil in a school in the receiving district for the following school year unless the receiving district does not have classroom space for the pupil.

In all districts involved with volunteer or court-ordered desegregation, minority and nonminority pupil ratios shall be maintained according to the desegregation plan or order. The superintendent of a district subject to volunteer or court-ordered desegregation may deny a request for transfer under this section if the superintendent finds that enrollment or release of a pupil will adversely affect the district's implementation of the desegregation order or plan. If, however, a transfer request would facilitate a voluntary or court-ordered desegregation plan, the district shall give priority to granting the request over other requests.

5. A parent or guardian, whose request has been denied because of a desegregation order or plan, may appeal the decision of the superintendent to the board of the district in which the request was denied. The board may either uphold or overturn the superintendent's decision. A decision of the board to uphold the denial of the request is subject to appeal under section 290.1.

If, however, a request to enroll a child in another district is denied by the board of the child's district of residence for failure to show good cause for not meeting the request deadline, the parent or guardian shall be permitted to appeal the decision of the board either directly to the director of the department of education or to the state board under chapter 290, but not to both. If the matter is to be heard by the director, or the director's designee, the matter shall be heard de novo in accordance with the procedures contained in chapter 17A. If a designee of the director hears the matter, the findings of the director's designee shall be reviewed by and are subject to the approval of the director.

6. Each district shall provide notification to the

parent or guardian relating to the transmission or denial of the request. A district of residence shall provide for notification of transmission or denial to a parent or guardian within three days of board action on the request. A receiving district shall provide notification to a parent or guardian, within fifteen days of board action on the request, of whether the pupil will be enrolled in that district or whether the request is to be denied.

7. A request under this section is for a period of not less than four years unless the pupil will graduate, the pupil's family moves to another school district, or the parent or guardian petitions the receiving district by October 30 of the previous school year for permission to enroll the pupil in a different district, which may include the district of residence, within the four-year period. If the parent or guardian requests permission of the receiving district to enroll the pupil in a different district within the four-year period, the receiving district school board may act on the request to transfer to the other school district within five days of the receipt of the request. The new receiving district shall enroll the pupil in a school in the district unless there is insufficient classroom space in the district or unless enrollment of the pupil would adversely affect court-ordered or voluntary desegregation orders affecting a district. A denial of a request to change district enrollment within the four-year period is subject to appeal under section 290.1.

8. A pupil participating in open enrollment shall be counted, for state school foundation aid purposes, in the pupil's district of residence. A pupil's residence, for purposes of this section means a residence under section 282.1. The board of directors of the district of residence shall pay to the receiving district the lower district cost per pupil of the two districts, plus any moneys received for the pupil as a result of non-English speaking weighting under section 442.4, subsection 6, for each school year. The district of residence shall also transmit the phase III moneys allocated to the district for the full-time equivalent attendance of the pupil, who is the subject of the request, to the receiving district specified in the request for transfer.

9. If a request filed under this section is for a child requiring special education under chapter 281, the request to transfer to the other district shall only be granted if the receiving district maintains a special education instructional program which is appropriate to meet the child's educational needs and the enrollment of the child in the receiving district's program would not cause the size of the class in that special education instructional program in the receiving district to exceed the maximum class size in rules adopted by the state board of education for that program. For children requiring special education, the board of directors of the district of residence shall pay to the receiving district the actual costs incurred in providing the appropriate special education.

10. If a parent or guardian of a child, who is participating in open enrollment under this section,

moves to a different school district during the course of either district's academic year, the child's first district of residence shall be responsible for payment of the cost per pupil plus weightings or special education costs to the receiving school district for the balance of the school year in which the move took place. The new district of residence shall be responsible for the payments during succeeding years.

If a request to transfer is due to a change in family residence, change in the state in which the family residence is located, a change in a child's parents' marital status, a guardianship proceeding, placement in foster care, adoption, participation in a foreign exchange program, or participation in a substance abuse or mental health treatment program, and the child, who is the subject of the request, is not currently using any provision of open enrollment, the parent or guardian of the child shall have the option to have the child remain in the child's original district of residence under open enrollment with no interruption in the child's educational program. If a parent or guardian exercises this option, the child's new district of residence is not required to pay the lower of the two district costs per pupil or other costs to the receiving district until the start of the first full year of enrollment of the child.

Quarterly payments shall be made to the receiving district.

If the transfer of a pupil from one district to another results in a transfer from one area education agency to another, the sending district shall forward a copy of the request to the sending district's area education agency. The receiving district shall forward a copy of the request to the receiving district's area education agency. Any moneys received by the area education agency of the sending district for the pupil who is the subject of the request shall be forwarded to the receiving district's area education agency.

A district of residence may apply to the school budget review committee if a student was not included in the resident district's enrollment count during the fall of the year preceding the student's transfer under open enrollment.

11. Notwithstanding section 285.1 relating to transportation of nonresident pupils, the parent or guardian is responsible for transporting the pupil without reimbursement to and from a point on a regular school bus route of the receiving district. A receiving district shall not send school vehicles into the district of residence of the pupil using the open enrollment option under this section, for the purpose of transporting the pupil to and from school in the receiving district. If the pupil meets the economic eligibility requirements established by the department and state board of education, the sending district is responsible for providing transportation or paying the pro rata cost of the transportation to a parent or guardian for transporting the pupil to and from a point on a regular school bus route of a contiguous receiving district unless the cost of providing transportation or the pro rata cost of the transportation to a parent or guardian exceeds the average trans-

portation cost per pupil transported for the previous school year in the district. If the cost exceeds the average transportation cost per pupil transported for the previous school year, the sending district shall only be responsible for that average per pupil amount. A sending district which provides transportation for a pupil to a contiguous receiving district under this subsection may withhold from the district cost per pupil amount, that is to be paid to the receiving district, an amount which represents the average or pro rata cost per pupil for transportation, whichever is less.

12. A pupil, whose parent or guardian has submitted a request to enroll the pupil in a public school in another district, shall, if the request has resulted in the enrollment of the pupil in the other district, attend school in the other district which is the subject of the request. This requirement does not apply, however, if the pupil's family moves out of the district of residence.

13. Every school district shall adopt a policy which defines the term "*insufficient classroom space*" for that district.

14. The board of directors of a school district subject to volunteer or court-ordered desegregation may vote not to participate in open enrollment under this section during the school year commencing July 1, 1990, and ending June 30, 1991. If a district chooses not to participate in open enrollment under this paragraph, the district shall develop a policy for implementation of open enrollment in the district for that following school year. The policy shall contain objective criteria for determining when a request would adversely impact the desegregation order or plan and criteria for prioritizing requests that do not have an adverse impact on the order or plan.

15. A pupil who participates in open enrollment for purposes of attending a grade in grades ten through twelve in a school district other than the district of residence is not eligible to participate in interscholastic athletic contests and athletic competitions during the first year of enrollment under this section except the pupil may participate in an interscholastic sport in which the district of residence and the other school district jointly participate, when the sport in which the pupil wishes to participate is not offered in the district of residence, if the pupil chooses to use open enrollment to attend school in another school district because the district in which the student previously attended school was dissolved and merged with one or more contiguous school districts under section 256.11, subsection 12, if the pupil participates in open enrollment because the pupil's district of residence has entered into a whole grade sharing agreement with another district for the pupil's grade, or if the parent or guardian of the pupil participating in open enrollment is an active member of the armed forces and resides in permanent housing on government property provided by a branch of the armed services. However, a pupil who has paid tuition and attended school, or has at-

tended school pursuant to a mutual agreement between the two districts, in a district other than the pupil's district of residence for at least one school year prior to March 10, 1989, is eligible to participate in interscholastic athletic contests and athletic competitions under this section, but only as a member of a team from the district that pupil had attended.

16. If a pupil, for which a request to transfer has been filed with a district, has been suspended or expelled in the district, the child shall not be permitted to transfer until the pupil has been reinstated in the sending district. Once the child has been reinstated, however, the child shall be permitted to transfer in the same manner as if the child had not been suspended by the sending district. If a child, for whom a request to transfer has been filed with a district, is expelled in the district, the child shall be permitted to transfer to a receiving district under this section if the child applies for and is reinstated in the sending district. However, if the child applies for reinstatement but is not reinstated in the sending district, the receiving district may deny the request to transfer. The parent or guardian of the child shall be permitted to appeal the decision of the receiving district to the director of the department of education. If the director rules in favor of permitting the transfer, the child shall be permitted to transfer, but the transfer shall be conditioned upon the expiration of the expulsion period without the student incurring a new violation.

17. If a request under this section is for transfer to a laboratory school, as described in chapter 265, the student, who is the subject of the request, shall not be included in the basic enrollment of the student's district of residence, and the laboratory school shall report the enrollment of the student directly to the department of education, unless the number of students from the district attending the laboratory school during the current school year, as a result of open enrollment under this section, exceeds the number of students enrolled in the laboratory school from that district during the 1989-1990 school year. If the number of students enrolled in the laboratory school from a district during the current year exceeds the number of students enrolled from that district during the 1989-1990 school year, those students who represent the difference between the current and the 1988-1989 school year enrollment figures shall be included in the basic enrollment of the students' districts of residence and the districts

shall retain any moneys received as a result of the inclusion of the student in the district enrollment. The total number of students enrolled at a laboratory school during a school year shall not exceed six hundred seventy students. The regents' institution operating the laboratory school and the board of directors of the school district in the community in which the regents' institution is located shall develop a student transfer policy designed to protect and promote the quality and integrity of the teacher education program at the laboratory school, the viability of the education program of the local school district in which the regents' institution is located, and to indicate the order in which and reasons why requests to transfer to a laboratory school shall be considered. A laboratory school may deny a request for transfer under the policy. A denial of a request to transfer under this paragraph is not subject to appeal under section 290.1.

18. For purposes of this section, "good cause" means a change in a child's residence due to a change in family residence, a change in the state in which the family residence is located, a change in a child's parents' marital status, a guardianship proceeding, placement in foster care, adoption, participation in a foreign exchange program, or participation in a substance abuse or mental health treatment program, or a similar set of circumstances consistent with the definition of good cause; a change in the status of a child's resident district, such as the failure of negotiations for a whole-grade sharing, reorganization, dissolution agreement or the rejection of a current whole-grade sharing agreement, or reorganization plan, or a similar set of circumstances consistent with the definition of good cause. If the good cause relates to a change in status of a child's school district of residence, however, action by a parent or guardian must be taken to file the notification within forty-five days of the last board action or within thirty days of the certification of the election, whichever is applicable to the circumstances.

19. The director of the department of education shall recommend rules to the state board of education for the orderly implementation of this section. The state board shall adopt rules as needed for the implementation of this section.

91 Acts, ch 97, §62 HF 198, 91 Acts, ch 202, §1 SF 184

Amendment to subsection 15 in 91 Acts, ch 202, §1, applicable to pupils participating in open enrollment as a result of whole grade sharing agreements entered into on or after July 1, 1990, 91 Acts, ch 202, §2 SF 184

Subsection 15 amended

CHAPTER 285

STATE AID FOR TRANSPORTATION

285.2 Payment of claims for nonpublic school pupil transportation.

Boards of directors of school districts shall be required to provide transportation services to nonpublic school pupils as provided in section 285.1 when the general assembly appropriates funds to the department of education for the payment of claims for transportation costs submitted by the school district.

There is appropriated from the general fund of the state to the department of education funds sufficient to pay the approved claims of public school districts for transportation services to nonpublic school pupils as provided in this section. The portion of the amount appropriated for approved claims under section 285.1, subsection 3, shall be determined under section 285.3.

The costs of providing transportation to nonpublic school pupils as provided in section 285.1 shall not be included in the computation of district cost under chapter 257, but shall be shown in the budget as an expense from miscellaneous income. Any transportation reimbursements received by a local school district for transporting nonpublic school pupils shall not affect district cost limitations of chapter 257. The reimbursements provided in this section are miscellaneous income as defined in section 257.2.

Claims for reimbursement shall be made to the department of education by the public school district providing transportation or transportation reimbursement during a school year on a form prescribed by the department, and the claim shall state the services provided and the actual costs incurred. A claim shall not exceed the average transportation costs of the district per pupil transported except as otherwise provided. If transportation is provided under section 285.1, subsection 3, the amount of a claim shall be determined under section 285.3 regardless of the av-

erage transportation costs of the district per pupil transported.

Claims shall be accompanied by an affidavit of an officer of the public school district affirming the accuracy of the claim. By February 1 and by July 15 of each year, the department shall certify to the department of revenue and finance the amounts of approved claims to be paid, and the department of revenue and finance shall draw warrants payable to school districts which have established claims. Claims shall be allowed where practical, and at the option of the public school district of the pupil's residence, subject to approval by the area education agency of the pupil's residence, under section 285.9, subsection 3, the public school district of the pupil's residence may transport a pupil to a school located in a contiguous public school district outside the boundary lines of the public school district of the pupil's residence. The public school district of the pupil's residence may contract with the contiguous public school district or with a private contractor under section 285.5 to transport the pupils to the school of attendance within the boundary lines of the contiguous public school district. The public school district in which the pupil resides may contract with the contiguous public school district or with a private contractor under section 285.5 to transport the pupil from the pupil's residence or from designated school bus collection locations to the school located within the boundary lines of the contiguous public school district, subject to the approval of the area education agency of the pupil's residence. The public school district of the pupil's residence may utilize the reimbursement provisions of section 285.1, subsection 3.

Appropriation limited for 1991-1992 fiscal year, proration, 91 Acts, ch 267, §507 HF 479

Footnote added, section not amended

CHAPTER 286A

STATE FUNDING FOR AREA SCHOOLS (NOW COMMUNITY COLLEGES)

Appropriations, see 91 Acts, ch 267, § 201-204 HF 479

286A.11 State general aid amount.

The amount of state general aid to which an area school is entitled for a budget year under this chapter is equal to the sum of the following:

1. An amount equal to the difference between the total of foundation support levels for the five instructional cost centers and the five noninstructional functions, and the amount raised by the tax levy under section 280A.17.

2. An amount for operation of a public radio station if one has been established for the area school and has been funded by the state. The amount is the amount for operation of the radio station for the base year plus an amount equal to the cost of operation for the base year multiplied by the state percent of growth for the budget year.

3. Fifty thousand dollars if the area school has fewer than one million contact hours. The department of education shall calculate the difference between the amount of state general aid each area school that has fewer than one million contact hours would receive if a foundation support level of seventy percent were used in lieu of the sixty-five percent plus any additional percentage amounts added to the sixty-five percent foundation level after July 1, 1991, as specified in this chapter and the amount the area school would receive under this chapter. The area school shall receive that difference in lieu of the fifty thousand dollars granted under this subsection if the difference is greater than fifty thousand dollars.

4. An amount equal to the general allocation of the area school as determined under section 405A.2.

5. Thirty-eight thousand dollars if the northwest Iowa technical college has filed a request with the department of education for the lease, purchase, or lease-purchase of equipment for the heavy equipment program.

91 Acts, ch 267, §248 HF 479
NEW subsection 5

286A.14A Community college excellence 2000 account.

The department of education shall provide for the establishment of a community college excellence 2000 account in the office of the treasurer of state for deposit of moneys appropriated to the account for purposes of funding quality instructional centers and program and administrative sharing agreements

under sections 280A.45 and 280A.46. There is appropriated from the general fund of the state to the department of education for the fiscal year beginning July 1, 1992, an amount equal to two and five-tenths percent of the total state general aid generated for all community colleges during the budget year under this chapter for deposit in the community college excellence 2000 account. In the next succeeding two fiscal years, the percent multiplier shall be increased in equal increments until the multiplier reaches seven and one-half percent of the total state general aid generated for all community colleges during the budget year.

Of the moneys in the community college excellence 2000 account, fifty percent shall be reserved for purposes of awarding funds to approved quality instructional centers, forty percent shall be reserved for purposes of awarding funds to community colleges for approved program sharing agreements, and ten percent shall be reserved for purposes of awarding funds to community colleges for approved administrative sharing agreements. Notwithstanding the reservation of moneys in the account, funds not awarded under this section may be used for purposes of allocating funds to community colleges for approved mergers under section 280A.39. Funds received under section 280A.39 and this section shall be in lieu of receipt of funds for other programs funded under this section.

The department of education shall notify the department of management of approval of claims against the account under sections 280A.45, 280A.46, and this section and the department of revenue and finance shall make the payments to community colleges.

Unencumbered funds remaining in the account at the end of a fiscal year shall revert to the general fund of the state under section 8.33.

It is the intent of the general assembly that the general assembly enact legislation by July 1, 1995, that will increase the maximum percent multiplier established in this section from seven and five-tenths percent to ten percent.

91 Acts, ch 267, §249 HF 479
Unnumbered paragraph 1 amended

286A.19 Guarantee. Repealed by 91 Acts, ch 267, § 256. HF 479

CHAPTER 294A

EDUCATIONAL EXCELLENCE PROGRAM — TEACHERS

294A.11 Reports. Repealed effective July 1, 1991, by 89 Acts, ch 135, § 136. HF 535

294A.24 Collective bargaining. Repealed effective July 1, 1991, by 89 Acts, ch 135, § 136. HF 535

CHAPTER 297

SCHOOLHOUSES AND SCHOOLHOUSE SITES

297.5 Tax. Repealed effective July 1, 1991, by 89 Acts, ch 135, § 136. HF 535 See § 298.2, 298.3.

CHAPTER 298

SCHOOL TAXES AND BONDS

298.17 Judgment levy. Repealed effective July 1, 1991, by 89 Acts, ch 135, § 136. HF 535 See § 298.16.

CHAPTER 299

COMPULSORY EDUCATION

299.1 Attendance requirements.

Except as provided in section 299.2, the parent, guardian, or legal or actual custodian of a child who is of compulsory attendance age, shall cause the child to attend some public school, an accredited nonpublic school, or competent private instruction in accordance with the provisions of chapter 299A, during a school year, as defined under section 279.10. The

board of directors of a public school district or the governing body of an accredited nonpublic school shall set the number of days of required attendance for the schools under its control.

The board of directors of a public or the governing body of an accredited nonpublic school may, by resolution, require attendance for the entire time when the schools are in session in any school year and

adopt a policy or rules relating to the reasons considered to be valid or acceptable excuses for absence from school.

91 Acts, ch 200, §3 HF 455
Section amended

299.1A Compulsory attendance age.

A child who has reached the age of six and is under sixteen years of age by September 15 is of compulsory attendance age.

91 Acts, ch 200, §4 HF 455
NEW section

299.2 Exceptions.

Section 299.1 shall not apply to any child:

1. Who has completed the requirements for graduation in an accredited school or has obtained a high school equivalency diploma under chapter 259A.
2. Who is excused for sufficient reason by any court of record or judge.
3. While attending religious services or receiving religious instructions.
4. Who is attending a private college preparatory school accredited or probationally accredited under section 256.11, subsection 13.
5. Who has been excused under section 299.22.
6. Who is exempted under section 299.24.

91 Acts, ch 200, §5 HF 455
Section amended

299.3 Reports from accredited nonpublic schools.

Within ten days from receipt of notice from the secretary of the school district within which an accredited nonpublic school is conducted, the principal of the accredited nonpublic school shall, once during each school year, and at any time when requested in individual cases, furnish to the secretary of the public school district, within which the accredited nonpublic school is located, a certificate and report in duplicate on forms provided by the public school district of the names, ages, and number of days attendance of each pupil of the accredited nonpublic school who is of compulsory attendance age and the course of study pursued by the pupil, during the preceding year and from the time of the last preceding report to the time at which a report is required. The secretary shall retain one of the reports and file the other with the secretary of the area education agency.

91 Acts, ch 200, §6 HF 455
Section amended

299.4 Reports as to private instruction.

The parent, guardian, or legal or actual custodian of a child who is of compulsory attendance age, who places the child under competent private instruction under chapter 299A, not in an accredited school, shall furnish a report in duplicate on forms provided by the public school district, to the district by the earliest starting date specified in section 279.10, subsection 1. The secretary shall retain and file one copy

and forward the other copy to the district's area education agency. The report shall state the name and age of the child, the period of time during which the child has been or will be under competent private instruction for the year, an outline of the course of study, texts used, and the name and address of the instructor. The parent, guardian, or legal or actual custodian of a child, who is placing the child under competent private instruction, for the first time, shall also provide the district with evidence that the child has had the immunizations required under section 139.9. The term "*outline of course of study*" shall include subjects covered, lesson plans, and time spent on the areas of study.

91 Acts, ch 200, §7 HF 455
Section amended

299.5 Proof of mental or physical condition.

The parent, guardian, or legal or actual custodian of a child who is of compulsory attendance age, who is physically or mentally unable to attend school, or whose presence in school would be injurious to the health of other pupils, shall furnish proofs by certificate under sections 281.6 and 281.7 as to the physical or mental condition of the child.

91 Acts, ch 200, §8 HF 455
Section amended

299.5A Mediation.

If a child is truant as defined in section 299.8, school officers shall attempt to find the cause for the child's absence and use every means available to the school to assure that the child does attend. If the parent, guardian, or legal or actual custodian, or child refuses to accept the school's attempt to assure the child's attendance or the school's attempt to assure the child's attendance is otherwise unsuccessful, the truancy officer shall refer the matter to the county attorney for mediation or prosecution.

If the matter is referred for mediation, the county attorney shall cause a notice of the referral to be sent to the parent, guardian, or legal or actual custodian and designate a person to serve as mediator in the matter. If mediation services are available in the community, those services may be used as the designated mediation service. If mediation services are not available in the community, mediation shall be provided by the county attorney or the county attorney's designee. The mediator shall contact the school, the parent, guardian, or legal or actual custodian, and any other person the mediator deems appropriate in the matter and arrange meeting dates and times for discussion of the child's nonattendance. The mediator shall attempt to ascertain the cause of the child's nonattendance, attempt to cause the parties to arrive at an agreement relative to the child's attendance, and initiate referrals to any agencies or counseling that the mediator believes to be appropriate under the circumstances.

If the parties reach an agreement, the agreement shall be reduced to writing and signed by a school officer, parent, guardian, or legal or actual custodian,

and the child. The mediator, the school, and the parent, guardian, or legal or actual custodian shall each receive a copy of the agreement, which shall set forth the settlement of the issues and future responsibilities of each party.

The school district shall be responsible for monitoring any agreements arrived at through mediation. If a parent, guardian, or legal or actual custodian refuses to engage in mediation or violates a term of the agreement, the matter shall be rereferred to the county attorney for prosecution under section 299.6. The county attorney's office or the mediation service shall require the parent, guardian, or legal or actual custodian and the school to pay a fee to help defray the administrative cost of mediation services. The county attorney's office or the mediation service shall establish a sliding scale of fees to be charged parents, guardians, and legal or actual custodians based upon ability to pay. A parent, guardian, or legal or actual custodian shall not be denied the services of a mediator solely because of inability to pay the fee.

91 Acts, ch 200, §9 HF 455
NEW section

299.6 Violations — community service or fine or imprisonment.

Any person who violates a mediation agreement under section 299.5A, who is referred for prosecution under section 299.5A and is convicted of a violation of any of the provisions of sections 299.1 through 299.5, who violates any of the provisions of sections 299.1 through 299.5, or who refuses to participate in mediation under section 299.5A, for a first offense, is guilty of a simple misdemeanor.

A first offense conviction is punishable by imprisonment not exceeding ten days or a fine not exceeding one hundred dollars. The court may order the person to perform not more than forty hours of unpaid community service instead of any fine or imprisonment. A person convicted of a second violation is guilty of a serious misdemeanor.

A second offense conviction is punishable by imprisonment not exceeding twenty days or a fine not exceeding five hundred dollars, or both a fine and imprisonment. The court may order the person to perform unpaid community service instead of any fine or imprisonment.

A third or subsequent offense is a serious misdemeanor and a conviction is punishable by imprisonment not exceeding thirty days or a fine not exceeding one thousand dollars, or both a fine and imprisonment. The court may order the person to perform unpaid community service instead of any fine or imprisonment.

If community service is imposed as part of a sentencing order, the court may require that part or all of the service be performed for a public school district or nonpublic school if the court finds that service in the school is appropriate under the circumstances.

If a parent, guardian, or legal or actual custodian

of a child who is truant, has made reasonable efforts to comply with the provisions of sections 299.1 through 299.5, but is unable to cause the child to attend school, the parent, guardian, or legal or actual custodian may file an affidavit listing the reasonable efforts made by the parent, guardian, or legal or actual custodian to cause the child's attendance and the parent, guardian, or legal or actual custodian shall not be criminally liable for the child's nonattendance.

91 Acts, ch 200, §10 HF 455
Section amended

299.8 "Truant" defined.

Any child of compulsory attendance age who fails to attend school as provided in this chapter, or as required by the school board's or school governing body's attendance policy, or who fails to attend competent private instruction under chapter 299A, without reasonable excuse for the absence, shall be deemed to be a truant. A finding that a child is truant, however, shall not by itself mean that the child is a child in need of assistance within the meaning of chapter 232 and shall not be the sole basis for a child in need of assistance petition.

91 Acts, ch 200, §11 HF 455
Section amended

299.9 Truants — rules for punishment.

The board of directors of a public school district or the authorities in charge of an accredited nonpublic school shall prescribe reasonable rules for the punishment of truants.

91 Acts, ch 200, §12 HF 455
Section amended

299.10 Truancy officers — appointment.

The board of each school district may appoint a truancy officer. The board of each school district, which does not appoint a truancy officer for the district, shall designate a suitable person to collect information on the numbers of children in the district who are truant.

The board may appoint a member of the police force, marshal, teacher, school official, or other suitable person to serve as the district truancy officer.

91 Acts, ch 200, §13 HF 455
Section amended

299.11 Duties of truancy officer.

The truancy officer may take into custody without warrant any apparently truant child and place the child in the charge of the school principal, or the principal's designee, designated by the board of directors of the school district in which the child resides, or of any nonpublic school designated by the parent, guardian, or legal or actual custodian; but if it is other than a public school, the instruction and maintenance of the child shall be without expense to the school district. If a child is taken into custody under this section, the truancy officer shall make every reasonable attempt to immediately notify the parent, guardian, or legal or actual custodian of the child's location.

The truancy officer shall promptly institute proceedings against any person violating any of the provisions of sections 299.1 through 299.5A.

91 Acts, ch 200, §14 HF 455
Section amended

299.13 Incurrigibles. Repealed by 91 Acts, ch 200, § 31. HF 455

299.14 Discharge from truant school. Repealed by 91 Acts, ch 200, § 31. HF 455

299.16 Failure to attend — report.

School officers shall ascertain the number of children who are of compulsory attendance age, in their respective districts, the number of those children who are truant under section 299.8 or who have accumulated fifteen unexcused absences during a three-year period, and so far as possible the cause of the failure to attend. School officers shall, until July 1, 1999, biennially report this information to the department of education on forms provided by the department. The department shall attach a summary of the reports, an analysis of the data, and policy recommendations based on the data analysis, along with the department's annual report under section 256.9, subsection 28.

91 Acts, ch 200, §15 HF 455
Section amended

299.18 Education of certain deaf, blind, or severely handicapped children.

Children who are of compulsory attendance age and who are so deaf or blind or severely handicapped as to be unable to obtain an education in the public or accredited nonpublic schools shall be sent to the appropriate state-operated school, or shall receive appropriate special education under chapter 281, unless exempted, and any person having such a child under the person's control or custody shall see that the child attends the state-operated school or special education program during the scholastic year.

91 Acts, ch 200, §16 HF 455
Section amended

299.19 Proceeding against parent.

Upon the failure of a person having the custody and control of a deaf, blind, or severely handicapped child to require the child's attendance as provided in section 299.18, the state board of regents may make application to the district court or the juvenile court of the county in which the person resides for an order requiring the person to compel the attendance of the child at the proper state-operated school.

91 Acts, ch 200, §17 HF 455
Section amended

299.20 Order.

Upon the filing of the application mentioned in section 299.19, the time of hearing shall be determined by the juvenile court or the district court. If, upon hearing, the court determines that the person required to appear has the custody and control of a child who should be required to attend a state-operated school under section 299.18, the court shall make an order requiring the person to keep the child in attendance at the state-operated school.

91 Acts, ch 200, §18 HF 455
Section amended

299.22 When deaf and blind children excused.

Attendance at the state-operated school may be excused when the superintendent of the state-operated school certifies that an interdisciplinary staffing team has determined, pursuant to the requirements of chapter 281, that the child is efficiently taught for the scholastic year in an accredited nonpublic or other school devoted to the instruction, by a private tutor, in the public schools, or is shown to be physically or mentally unable to attend school under section 299.5.

91 Acts, ch 200, §19 HF 455
Section amended

CHAPTER 299A

PRIVATE INSTRUCTION

299A.1 Private instruction.

The parent, guardian, or legal custodian of a child of compulsory attendance age who places the child under private instruction shall provide, unless otherwise exempted, competent private instruction in accordance with this chapter. A parent, guardian, or legal custodian of a child of compulsory attendance age who places the child under private instruction

which is not competent private instruction, or otherwise fails to comply with the requirements of this chapter, is subject to the provisions of sections 299.1 through 299.4 and the penalties provided in section 299.6.

For purposes of this chapter, "*competent private instruction*" means private instruction provided on a daily basis for at least one hundred forty-eight days

during a school year, to be met by attendance for at least thirty-seven days each school quarter, by or under the supervision of a licensed practitioner in the manner provided under section 299A.2, or other person under section 299A.3, which results in the student making adequate progress.

For purposes of this chapter and chapter 299, “*private instruction*” means instruction using a plan and a course of study in a setting other than a public or organized accredited nonpublic school.

91 Acts, ch 200, §20 HF 455
NEW section

299A.2 Competent private instruction by licensed practitioner.

If a licensed practitioner provides competent instruction to a child of compulsory attendance age, the practitioner shall possess a valid license or certificate which has been issued by the state board of educational examiners under chapter 260 and which is appropriate to the ages and grade levels of the children to be taught. Competent private instruction may include, but is not limited to, instruction or instructional supervision offered through an accredited nonpublic school or public school district by a teacher, who is employed by the accredited nonpublic school or public school district, who assists and supervises a parent, guardian, or legal custodian in providing instruction to a child. If competent private instruction is provided through a public school district, the child shall be enrolled and included in the basic enrollment of the school district. Sections 299A.3 through 299A.7 do not apply to competent private instruction provided by a licensed practitioner under this section.

91 Acts, ch 200, §21 HF 455
NEW section

299A.3 Private instruction by nonlicensed person.

A parent, guardian, or legal custodian of a child of compulsory attendance age providing competent private instruction to the child shall meet all of the following requirements:

1. Complete and send, in a timely manner, the report required under section 299.4 to the school district of residence of the child.
2. Ensure that the child under the parent’s, guardian’s, or legal custodian’s instruction is evaluated annually to determine whether the child is making adequate progress, as defined in section 299A.6.
3. Ensure that the results of the child’s annual evaluation are reported to the school district of residence of the child and to the department of education by a date not later than June 30 of each year in which the child is under private instruction.

91 Acts, ch 200, §22 HF 455
NEW section

299A.4 Annual achievement tests — requirements and procedure.

1. Each child of compulsory attendance age who is receiving competent private instruction shall ei-

ther be evaluated annually by May 1, using a nationally recognized standardized achievement test or other assessment tool developed or recognized by the department of education chosen by the child’s parent, guardian, or legal custodian from a list of approved tests or assessment tools provided by the department of education or be evaluated annually in the manner provided in subsection 7. The department shall provide information on the cost of and the administration time required for each of the approved tests. The department shall provide, as part of approval procedures for tests to be used under this section, a mechanism which permits the introduction and approval of new or alternate methods of educational assessment which meet the requirements of this chapter.

2. A child, who is seven years of age and is receiving competent private instruction or who is placed under competent private instruction for the first time, shall be administered a test for purposes of obtaining educational baseline data.

3. The director of the department of education, or the director’s designee, which may include a school district or an area education agency, shall conduct the evaluations required under subsections 1 and 2 for children under competent private instruction. Evaluation shall occur at a time and a place to be determined by the person responsible for conducting the evaluation. Persons conducting the evaluations shall make every reasonable effort to conduct the evaluations at times and places which are convenient for the parent, guardian, or legal custodian.

4. The parent, guardian, or legal custodian of a child receiving competent private instruction may be present when the child is evaluated, but only if both the parent, guardian, or legal custodian and the child are under the supervision of the test administrator.

5. The conducting of evaluations shall include, but is not limited to, purchasing of evaluation materials, giving the evaluations, scoring and interpreting the evaluations, and reporting the evaluation results.

6. Except when a child has been enrolled in a public school district under section 299A.8, the parent, guardian, or legal custodian of the child being evaluated shall reimburse the entity conducting the evaluation for no more than the actual cost of evaluation required by this chapter. However, the parent, guardian, or legal custodian is not required to reimburse the evaluating entity for costs incurred as a result of evaluation under section 299A.9.

7. In lieu of annual achievement tests, a parent, guardian, or legal custodian of a child may submit, as evidence of adequate academic progress, all of the following:

a. A book of lesson plans, a diary, or other written record indicating the subjects taught and activities in which the child has been engaged.

b. A portfolio of the child’s work, including but not limited to, an outline of the curriculum used by the child, copies of homework completed in conjunction with the curriculum and instruction, and copies

of tests completed by the child which have been produced by the parent, guardian, or legal custodian.

c. Completed assessment tests, other than the annual achievement test, if assessment tests are administered to a pupil as part of the competent private instruction by the parent, guardian, or legal custodian.

If a parent, guardian, or legal custodian submits evidence under this section, the information shall be reviewed by a qualified, licensed, Iowa practitioner selected as the evaluator by the parent, guardian, or legal custodian and approved by the superintendent of the local school district or the superintendent's designee. The evaluator shall prepare a report based on a review of the child's work submitted, which shall include an assessment of the child's achievement or academic progress levels, and submit a copy of the report to the child's parent, guardian, or legal custodian, the school district of residence of the child, and the department of education. If the evidence demonstrates, in the evaluator's opinion, that the child is achieving adequate progress, the report shall create a presumption that the child is making adequate progress.

91 Acts, ch 200, §23 HF 455
State board to adopt rules for alternative assessment mechanism by July 1, 1993. 91 Acts, ch 200, §30 HF 455
NEW section

299A.5 Reporting of test results.

The results of tests administered to children of compulsory attendance age who are under competent private instruction shall be reported by the test administrator to the child's parent, guardian, or legal custodian, the school district of residence of the child, and the department of education. Personally identifiable information relating to or contained in the test scores is confidential and shall not be released without the prior consent of the child's parent, guardian, or custodian except as otherwise permitted by law.

91 Acts, ch 200, §24 HF 455
NEW section

299A.6 Failure to make adequate progress.

If the results of evaluations, administered to a child of compulsory attendance age who is under competent private instruction, indicate that the student has failed to make adequate progress, the parent, guardian, or legal custodian shall cause the child to attend an accredited public or nonpublic school at the beginning of the next school year unless, before the beginning of the next school year, the child retakes the same evaluation and the results indicate that adequate progress has been made, the child has demonstrated adequate performance in the opinion of an evaluator and documented in a report under section 299A.4, subsection 7, or the director of the department of education, or the director's designee, grants approval for competent private instruction to continue under a plan for remediation.

A child who is required to attend an accredited public or nonpublic school under this section shall

continue attendance at an accredited public or nonpublic school until the child achieves adequate progress.

For purposes of this chapter, "adequate progress" means, for children in all grade levels of competent private instruction, evaluation scores which are above the thirtieth percentile, nationally normed, in each of the areas of reading, mathematics, and language arts, and which indicate either that the child has made six months' progress from the previous evaluation results or that the child is at or above grade level for the child's age. For children in grade levels six and above, "adequate progress" also means that the child has achieved evaluation scores in both science and social studies which are above the thirtieth percentile, nationally normed, and which either indicate that the child has made six months' progress from the previous evaluation results or that the child is at or above grade level for the child's age.

91 Acts, ch 200, §25 HF 455, 91 Acts, ch 258, §41 HF 709
NEW section

299A.7 Notice to parents — remediation.

If a child is placed under competent private instruction and the child fails to make adequate progress under competent private instruction, the director of the department of education, or the director's designee, shall notify the parent, guardian, or custodian of the child that the child is required to attend an accredited public or nonpublic school, unless approval for competent private instruction under a remediation plan is granted. The director, or the director's designee, may provisionally approve continued competent private instruction under an approved remediation plan designed to improve instruction for up to one year.

91 Acts, ch 200, §26 HF 455
NEW section

299A.8 Dual enrollment.

If a parent, guardian, or legal custodian of a child who is receiving competent private instruction under this chapter submits a request, the child shall also be registered in a public school for dual enrollment purposes. If the child is enrolled in a public school district for dual enrollment purposes, the child shall be permitted to participate in any academic activities in the district and shall also be permitted to participate on the same basis as public school children in any extracurricular activities available to children in the child's grade or group, and the parent, guardian, or legal custodian shall not be required to pay the costs of any annual testing under this chapter. If the child is enrolled for dual enrollment purposes, the child shall be included in the public school's basic enrollment under sections 442.4* and 257.6 and shall be counted as one pupil.

91 Acts, ch 200, §27 HF 455
*Section 442.4 repealed effective June 30, 1991, 87 Acts, ch 224, §81, corrective legislation is pending
NEW section

299A.9 Children requiring special education.

A child of compulsory attendance age who is identified as requiring special education under chapter 281 is eligible for placement under competent private instruction with prior approval of the placement by the director of special education of the area education agency of the child's district of residence.

A child who has been placed under competent private instruction, whose performance indicates that the child may require special education, shall be referred for evaluation under chapter 281 and the rules of the state board of education. Evaluation shall occur at a time and a place to be determined by the

person responsible for conducting the evaluation. Persons conducting the evaluations shall make every reasonable effort to conduct the evaluations at times and places which are convenient for the parent, guardian, or legal custodian.

91 Acts, ch 200, §28 HF 455
NEW section

299A.10 Rulemaking.

The department of education shall develop and recommend and the state board shall adopt rules to implement this chapter.

91 Acts, ch 200, §29 HF 455
NEW section

CHAPTER 303

DEPARTMENT OF CULTURAL AFFAIRS

303.1 Department of cultural affairs.

1. The department of cultural affairs is created. The department is under the control of a director who shall be appointed by the governor, subject to confirmation by the senate, and shall serve at the pleasure of the governor. The salary of the director shall be set by the governor within a range set by the general assembly.

2. The department has primary responsibility for development of the state's interest in the areas of the arts, history, libraries, and other cultural matters. In fulfilling this responsibility, the department will be advised and assisted by the state library commission, the state historical society and its board of trustees, the Iowa arts council, the Terrace Hill commission, and the Iowa public broadcasting board.

The department shall:

a. Develop a comprehensive, co-ordinated, and efficient policy to preserve, research, interpret, and promote to the public an awareness and understanding of local, state, and regional history.

b. Stimulate and encourage educational radio and television and other educational communications services as necessary to aid in accomplishing the educational objectives of the state.

c. Stimulate and encourage throughout the state the study and presentation of the performing and fine arts and public interest and participation in them.

d. Implement tourism-related art and history projects as directed by the general assembly.

e. Design a comprehensive, statewide, long-range plan with the assistance of the Iowa arts council to develop the arts in Iowa. The department is designated as the state agency for carrying out the plan.

f. Meet the informational needs of the three branches of state government.

g. Provide for the improvement of library services to all Iowa citizens and foster development and cooperation among libraries.

3. The department shall consist of the following:

a. Historical division.

b. Library division.

c. Arts division.

d. Public broadcasting division.

e. Other divisions created by rule.

f. Administrative section.

4. The director may create, combine, eliminate, alter or reorganize the organization of the department by rule except for those matters prescribed by sections 303.75 through 303.85.

5. The department by rule may establish advisory groups necessary for the receipt of federal funds or grants or the administration of any of the department's programs.

6. The divisions shall be administered by administrators who shall be appointed by the director and serve at the director's pleasure. However, the administrator of the public broadcasting division shall be appointed by and serve at the pleasure of the public broadcasting board and the administrator of the library division shall be appointed by and serve at the pleasure of the library commission. The administrators shall:

a. Organize the activities of the division.

b. Submit a biennial report to the governor on the activities and an evaluation of the division and its programs and policies.

c. Control all property of the division.

d. Perform other duties imposed by law.

91 Acts, ch 120, §1 HF 639, 91 Acts, ch 157, §9 SF 268
Subsection 2, paragraphs h and i stricken

303.2 Division responsibilities.

1 The administrative services section shall provide administrative, accounting, public relations and clerical services for the department, report to the director and perform other duties assigned to it by the director, except for those matters prescribed by sections 303 75 through 303 85 The administrative services section may provide services to the public broadcasting division

2 The historical division shall

a Administer and care for historical sites under the authority of the division, and maintain collections within these buildings

Except for the state board of regents, a state agency which owns, manages, or administers a historical site must enter into an agreement with the department of cultural affairs under chapter 28E to insure the proper management, maintenance, and development of the site For the purposes of this section, "historical site" is defined as any district, site, building, or structure listed on the national register of historic sites or identified as eligible for such status by the state historic preservation officer or that is identified according to established criteria by the state historic preservation officer as significant in national, state, and local history, architecture, engineering, archaeology, or culture

b Encourage and assist local county and state organizations and museums devoted to historical purposes

c Develop standards and criteria for the acquisition of historic properties and for the preservation, restoration, maintenance, operation, and interpretation of properties under the jurisdiction of the division The administrator of the division shall serve as the state historic preservation officer, certified by the governor, pursuant to federal requirements

d Administer the archives of the state as defined in section 303 12

e Identify and document historic properties

f Prepare and maintain a state register of historic places, including those listed on the national register of historic places

g Conduct historic preservation activities pursuant to federal and state requirements

h Publish matters of historical value to the public, and pursue historical, architectural, and archaeological research and development which may include but are not limited to continuing surveys, excavation, scientific recording, interpretation, and publication of the historical, architectural, archaeological, and cultural sites, buildings, and structures in the state

i Buy or receive by other means historical materials including, but not limited to, artifacts, art, books, manuscripts, and images Such materials are not personal property under section 18 12 and shall be received and cared for under the rules of the department The historical division may sell or otherwise dispose of those materials according to the rules of the department and be credited for any revenues credited by the disposal less the costs incurred

j Administer the historical resource development program established in section 303 16

3 The library division

a 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

b Shall determine policy for providing information service to the three branches of state government and to the legal and medical communities in this state

c 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

d Shall establish and administer a program for the collection and distribution of state publications to depository libraries

e 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 division shall establish a long-range planning committee to review and evaluate progress and report findings and recommendations to the division and to the trustees of the Iowa regional library system at an annual meeting

f 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

g Shall establish and administer a statewide continuing education program for librarians and trustees

h 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

i 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

j Shall establish and administer certification guidelines for librarians not covered by other accrediting agencies

4 The arts division shall

a Make surveys as deemed advisable of existing artistic and cultural programs and activities within the state, including but not limited to music, theatre, dance, painting, sculpture, architecture, and allied arts and crafts

b Administer the program of agreements for indemnification by the state in the event of loss of or damage to special exhibit items established by sections 304A 21 through 304A 30

c Submit a report to the governor and to the general assembly not later than ten calendar days following the commencement of each first session of the general assembly concerning the studies undertaken during the biennium and recommending legislation and other action as necessary for the im-

plementation and enforcement of this subsection and subchapter VI of this chapter.

91 Acts, ch 157, §10 SF 268
Subsection 4, paragraph d stricken

303.3 Cultural grant programs.

1. The department shall establish a grant program for cities and nonprofit, tax-exempt community organizations for the development of community programs that provide local jobs for Iowa residents and also promote Iowa's historic, ethnic, and cultural heritages through the development of festivals, music, drama, cultural programs, or tourist attractions. A city or nonprofit, tax-exempt community organization may submit an application to the department for review. The department shall establish criteria for the review and approval of grant applications. The amount of a grant shall not exceed fifty percent of the cost of the community program. Each application shall include information demonstrating that the city or nonprofit, tax-exempt community organization will provide matching funds of fifty percent of the cost of the program. The matching funds requirement may be met by substituting in-kind services, based on the value of the services, for actual dollars.

2. The department shall establish a grant program which provides general operating budget support to major, multidisciplinary cultural organizations which demonstrate cultural and managerial excellence on a continuing basis to the citizens of Iowa. Applicant organizations must be incorporated under chapter 504A, be exempt from federal taxation, and not be attached or affiliated with an educational institution. Eligible organizations shall be operated on a year-round basis and employ at least one full-time, paid professional staff member. The department shall establish criteria for review and approval of grant applications. Criteria established shall include, but are not limited to, a matching funds requirement. The matching funds requirement shall permit an applicant to meet the matching requirement by demonstrating that the applicant's budget contains funds, other than state and federal funds, in excess of the grant award.

3. Notwithstanding section 8.33, moneys committed to grantees under contract that remain unexpended on June 30 of any fiscal year shall not revert but shall be available for expenditure for purposes of the contract until June 30 of the succeeding fiscal year.

91 Acts, ch 120, §2 HF 639
Subsection 3 stricken and rewritten

303.16 Historical resource development program.

1. The historical division shall administer a program of grants and loans for historical resource development throughout the state, subject to funds for such grants and loans being made available through the appropriations process or otherwise provided by law.

2. The purpose of the historical resource development program is to preserve, conserve, interpret, and enhance historical resources that will encourage and support the economic and cultural health and development of the state and the communities in which the resources are located. For this purpose, the division may make grants and loans as otherwise provided by law with funds as may be made available by applicable law.

3. The following persons are eligible to receive historical resource grants and loans:

- a. County and city governments.
- b. Nonprofit corporations.
- c. Private corporations and businesses.
- d. Individuals.
- e. State agencies.
- f. Governments and traditional tribal societies of recognized resident American Indian tribes in Iowa.
- g. Other units of government.

4. Grants and loans may be made for the following purposes:

- a. Acquisition and development of historical resources.
- b. Preservation and conservation of historical resources.
- c. Interpretation of historical resources.
- d. Professional training and educational programs on the acquisition, development, preservation, conservation, and interpretation of historical resources.

5. Grants and loans shall be awarded in each of the following categories:

- a. Museums.
- b. Documentary collections.
- c. Historic preservation.

Not less than twenty percent and not more than sixty percent of the program's funds appropriated in one fiscal year shall be allocated to any single category.

6. Grants and loans are subject to the following restrictions:

- a. Not more than twenty percent of the total grant moneys combined shall be given to or received by state agencies and institutions, or their representatives or agents.
- b. A portion of the applicant's operating expenses may be used as a cash match or in-kind match as specified by the division's rules.
- c. Grant or loan funds shall not be used to support public relations or marketing expenses.
- d. Not more than one hundred thousand dollars or twenty percent of the annual appropriation, whichever is more, shall be granted and loaned to recipients within a single county in any given grant cycle.

e. Not more than one hundred thousand dollars or ten percent of the annual appropriation, whichever is more, shall be granted and loaned to any single recipient or its agent within a single fiscal year.

f. Grants under this program may be given only after review and recommendation by the state historical society board of trustees. The division may

contract with lending institutions chartered in this state to act as agents for the administration of loans under the program, in which case, the lending institution may have the right of final approval of loans, subject to the division's administrative rules. If the division does not contract with a lending institution, loans may be made only after review and recommendation by the state historical society board of trustees.

g. The division shall not award grants or loans to be used for goods or services obtained outside the state, unless the proposed recipient demonstrates that it is neither feasible nor prudent to obtain the goods or services within the state.

h. Grant or loan funds shall not be awarded to a city or county government for a project in the historic preservation category unless the city or county government has been approved as a certified local government by the state historic preservation officer.

7. For each dollar of grant funds the following recipients must provide the following matching cash and in-kind resources:

a. All units of government and nonprofit corporations, fifty cents, of which at least twenty-five cents must be in cash.

b. For other private corporations and businesses, one dollar of which at least seventy-five cents must be in cash.

c. For individuals, seventy-five cents of which at least fifty cents must be in cash.

8. The division may use ten percent of the annual appropriation to the division, but in no event more than seventy-five thousand dollars for administration of the grant and loan program.

9. a. The division may establish a historical resource grant and loan fund composed of any money appropriated by the general assembly for that purpose, funds allocated pursuant to section 455A.19, and of any other moneys available to and obtained or accepted by the division from the federal government or private sources for placement in that fund. Each loan made under this section shall be for a period not to exceed ten years, shall bear interest at a rate determined by the state historical board, and shall be repayable to the 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 are eligible for not more than one hundred thousand dollars in loans outstanding at any time under this program. A single lending institution contracting with the division pursuant to this section shall not hold more than five hundred thousand dollars worth of outstanding loans under the program.

Any applicant, who is otherwise eligible, who receives a direct or indirect appropriation from the general assembly for a project or portion of a project is ineligible for a historical resources development grant for that same project during the fiscal year for which the appropriation is made. For purposes of

this paragraph, "project" includes any related activities, including, but not limited to, construction, restoration, supplies, equipment, consulting, or other services.

b. The division may:

(1) Contract and adopt administrative rules necessary to carry out the provisions of this section, but the division shall not in any manner directly or indirectly pledge the credit of the state of Iowa.

(2) Authorize payment from the historical resource grant and 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.

91 Acts, ch 73, §1-7 SF 336

Subsection 3, paragraph a amended and NEW paragraphs e, f, and g
Subsection 6, paragraph a amended, paragraph b stricken and rewritten, and
NEW paragraph h

Subsection 7, paragraph a stricken and rewritten

Subsection 9, paragraph a, NEW unnumbered paragraph 2

303.79 Powers — facilities — rules.

1. The board may purchase, lease, and improve property, equipment, and services for educational telecommunications including the broadcast and narrowcast systems, and may dispose of property and equipment when not necessary for its purposes. The board and division administrator may arrange for joint use of available services and facilities.

2. The board shall apply for channels, frequencies, licenses, and permits as necessary for the performance of the board's duties.

3. This section does not prohibit institutions under the state board of regents and community colleges under the department of education from owning, operating, improving, maintaining, and restructuring educational radio and television stations and transmitters now in existence or other educational narrowcast telecommunications systems and services. The institutions and schools may enter into agreements with the board for the lease or purchase of equipment and facilities.

4. The board may locate its administrative offices and production facilities outside the city of Des Moines.

5. The board shall adopt and update a design plan for educational telecommunications systems and services in this state. Not later than January 1, 1988, the board shall transmit to the general assembly a progress report concerning the development of the design plan. The design plan shall be adopted by the board not later than January 1, 1989, and shall be updated at least every two years thereafter. Copies of the design plan and updated design plan shall be made available to the governor and members of the general assembly upon request. The plan shall include a list of public utilities and private telecommunications companies being utilized by the educational telecommunications system; the cost of the

system; the fees or charges established for the system; and information on areas where construction is required because facilities are not available from private telecommunications companies.

6. The board shall establish guidelines for and may impose and collect fees and charges for services. Fees and charges collected by the board for services shall be deposited to the credit of the division. Any interest earned on these receipts, and revenues generated under subsection 7, shall be retained and may be expended by the division subject to the approval of the board.

7. The board may make and execute agreements, contracts, and other instruments with any public or private entity and may retain revenues generated from these contracts. State departments and agencies, other public agencies, and governmental subdivisions and private entities including but not limited to institutions of higher education and nonpublic schools may enter into contracts and otherwise cooperate with the board.

8. The board may contract with engineers, attorneys, accountants, financial experts, and other advisors upon the recommendation of the administrator. The board may enter into contracts or agreements for such services with local, state, or federal governmental agencies.

9. The board may adopt rules to implement and administer the programs of the division.

10. The decision of the board is final agency action under chapter 17A.

11. Notwithstanding section 18.136, the board may allocate not more than two hundred fifty thousand dollars from the state communications network fund for each of the fiscal years beginning July 1, 1990, and July 1, 1991, to be used to activate existing ITFS narrowcast towers.

91 Acts, ch 264, §611 SF 532
Subsection 11 amended

303.87 Duties of council.

The arts council shall:

1. Advise the director with respect to policies, programs, and procedures for carrying out the administrator's functions, duties, or responsibilities.

2. Review programs to be supported and make recommendations on the programs to the director.

91 Acts, ch 157, §11 SF 268
Subsection 3 stricken

303.89 Iowa arts and culture challenge grant foundation established. Repealed by 91 Acts, ch 157, § 13. SF 268 See ch 303C.

303.90 Fund created and transfer of monies. Repealed by 91 Acts, ch 157, § 13. SF 268 See ch 303C.

303.94 State library — medical, law, and patents libraries.

The state library includes, but is not limited to, a medical library, a law library, and a patents depository library.

1. The medical library shall be headed by a medical librarian, appointed by the director, subject to chapter 19A. The medical librarian shall:

a. Operate the medical library which shall always be available for free use by the residents of Iowa under rules the department 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 division.

2. The law library shall be headed by a law librarian, appointed by the director with the approval of the Iowa supreme court, subject to chapter 19A. The law librarian shall:

a. Operate the law library 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 department 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 states and the government of the United States.

d. Perform other duties imposed by law or by the rules of the department.

91 Acts, ch 267, §254 HF 479
Unnumbered paragraph 1 amended

CHAPTER 303C

ARTS AND CULTURAL ENHANCEMENT AND ENDOWMENT

Legislative intent, 91 Acts, ch 157, § 1 SF 268

SUBCHAPTER I
DEFINITIONS AND FINANCING**303C.1 Definitions.**

For the purposes of this chapter, the following definitions apply:

1. “*Arts*” means music, dance, theater, opera and music theater, visual arts, literature, design arts, media arts, and folk and traditional arts.

2. “*Culture*” or “*cultural*” means programs and activities which explore past and present human experience.

3. “*Department*” means the department of cultural affairs.

4. “*Endowment account*” means the arts and cultural endowment account established in section 303C.2, which consists of funds received from private sources, and which may include funds appropriated by the general assembly.

5. “*Endowment program*” means the arts and cultural endowment program established in section 303C.7.

6. “*Enhancement account*” means the arts and cultural enhancement account established in section 303C.2, which consists, upon the making of an appropriation by the general assembly, of public funds.

7. “*Enhancement program*” means the arts and cultural enhancement program created in section 303C.3.

8. “*Foundation*” means the arts and cultural endowment foundation established in section 303C.7.

91 Acts, ch 157, § 2 SF 268
NEW section

303C.2 Iowa arts and cultural enhancement and endowment accounts established.

The Iowa arts and cultural enhancement account and the Iowa arts and cultural endowment account are established in the office of the treasurer of state. The moneys deposited in each account shall be invested by the treasurer of state in investments authorized for the Iowa public employees’ retirement fund in section 97B.7. Interest earned on each account shall be transferred to the credit of that account. The provisions of section 8.33 do not apply to the accounts.

1. *Enhancement account.* The enhancement account shall be administered by the arts division of the department for purposes of the enhancement program described in section 303C.3.

Upon the making of an appropriation by the general assembly for deposit in the enhancement ac-

count, funds in the enhancement account shall be used as follows: eighty percent shall be available for distribution on a matching basis to nonprofit organizations pursuant to section 303C.4; fifteen percent shall be available for distribution as block grants to qualified organizations pursuant to section 303C.5; and five percent shall be available to the arts division for the administration of the regional conferences and the statewide caucus on arts and cultural enhancement pursuant to section 303C.6 and for the administration of the enhancement program.

2. *Endowment account.* The endowment account shall be administered by the endowment foundation established in section 303C.7, subsection 2, for purposes of the endowment program established in section 303C.7, subsection 1.

Beginning in 1993, the endowment foundation shall, annually, on July 1, certify to the department of management and the legislative fiscal bureau, the amount of funds received from private sources for use in the endowment program. The general assembly may appropriate funds to the endowment account. However, the use of funds in the endowment account described in this subsection is not contingent upon the making of an appropriation by the general assembly.

Only the interest on the funds in the endowment account is available for use for the endowment program, and shall be allocated as follows: ninety-five percent for distribution for grants, fellowships, and scholarships to nonprofessional, professional, and student artists pursuant to section 303C.7, subsection 1; and five percent to the endowment foundation established in section 303C.7, subsection 2, for the administration of the endowment program.

91 Acts, ch 157, § 3 SF 268
NEW section

SUBCHAPTER II
ENHANCEMENT PROGRAM**303C.3 Arts and cultural enhancement program created.**

The arts and cultural enhancement program is created within the department and administered by the arts division. Upon the making of an appropriation by the general assembly, funds in the enhancement account established in section 303C.2, subsection 1, are available for the purposes of this subchapter. The enhancement program consists of the following:

1. Matching funds provided to nonprofit organizations.
2. Block grants provided to qualified organizations.
3. Regional conferences and statewide caucus held on arts and cultural enhancement.

91 Acts, ch 157, §4 SF 268
NEW section

303C.4 Matching funds provided to nonprofit organizations.

Enhancement account funds shall be available, upon certification by the department of the availability of matching funds from private sources, to nonprofit organizations for the purposes of education, outreach, and enhancement. An organization proposing a program must have available funds from private sources in order to receive an equal amount of public funds contained in the enhancement account. The department shall consider the recommendations of the caucus on arts and cultural enhancement made pursuant to section 303C.6, and the recommendations of the advisory council created in section 303C.5, and shall adopt rules pursuant to chapter 17A governing the distribution of funds to organizations. Proposed programs shall do at least one of the following:

1. *Education.* Provide for the development or expansion of essential nonrevenue producing arts or cultural educational programs which would supplement an existing curriculum.
2. *Outreach.* Provide for one or more of the following:
 - a. *Rural access.* Allow cultural resources to be available to small communities which lack arts and cultural resources.
 - b. *Social awareness.* Assist in programs enabling arts organizations to participate in and encourage a healthy community environment.
 - c. *Cultural diversity.* Increase the awareness and acceptance of cultural diversity through arts and culture.
 - d. *Serving special populations.* Provide programs and innovative projects for the following, including but not limited to: at-risk youth, talented and gifted persons, underserved persons, disabled persons, senior citizens, or other special needs persons.
3. *Enhancement.* Provide for one or more of the following:
 - a. *Program enhancement.* Allow arts and cultural organizations to improve or enhance the quality of programs currently offered.
 - b. *Artist and arts educators enhancement.* Fund projects which would increase and support professional and student artists, and arts educators.

91 Acts, ch 157, §5 SF 268
NEW section

303C.5 Block grants provided to qualified organizations.

1. Enhancement account funds shall be available for distribution to qualified organizations for the purposes of enhancing the quality of local arts and cultural programs. In order to qualify for a block grant, an organization must represent at least seventy percent of its defined membership. The department shall adopt rules pursuant to chapter 17A governing the distribution of block grants.

2. An advisory council consisting of organizations funded by the department pursuant to this section, and representatives of the Iowa assembly for local arts agencies, Iowa alliance for arts education, Iowa arts coalition, the Iowa museum association, the chairperson of the statewide caucus, the department of education, and the Iowa humanities board is established. The advisory council shall review and advise the department regarding the awarding of funds pursuant to section 303C.4.

91 Acts, ch 157, §6 SF 268
NEW section

303C.6 Regional conferences and statewide caucus on arts and cultural enhancement.

1. The department shall administer the regional conferences and statewide caucus on arts and cultural enhancement. The purpose of the conferences and caucus is to guide the development of the arts and cultural enhancement program by identifying opportunities for programs regarding education, outreach, and enhancement, by reviewing any recommended changes in enhancement program policies, programs, and funding, and by making recommendations to the department regarding distribution of matching funds to nonprofit organizations pursuant to section 303C.4.

2. Biennially, during odd-numbered years, the department shall convene a statewide caucus on arts and cultural enhancement. The caucus shall be held for one day during the month of June in the capitol complex, Des Moines.

a. Prior to a caucus, the department shall make arrangements to hold a conference in each of six regions of the state as defined by the Iowa arts council. The department shall promote attendance of interested persons at each conference. A designee of the department shall call each conference to order and serve as temporary chairperson until persons attending elect a chairperson. The department shall provide persons attending with current information regarding cultural enhancement programs and expenditures. Persons attending shall identify opportunities for programs in the areas of education, outreach, and enhancement and review recommended changes in enhancement account policies, programs, and funding, and make recommendations in the form of a resolution. The persons attending each conference shall elect six persons to serve as delegates to the caucus, and one person to serve as chairperson of the region. The selection of persons at each conference to serve as delegates to the caucus shall conform to the gender balance requirements of section 69.16A.

b. A designee of the department shall call the caucus to order and serve as temporary chairperson until persons attending the caucus elect a chairperson. Persons attending the caucus shall discuss the recommendations of the regional conferences and decide upon recommendations to be made to the department. Elected chairpersons of the regional conferences shall meet with representatives of the department and present the recommendations of the caucus.

3. The expenses of the department in making the arrangements for and the conducting of the conferences and the caucus, and the expenses of the delegates at the caucus shall be paid from funds in the enhancement account designated for purposes of the regional conferences and caucus.

91 Acts, ch 157, §7 SF 268
NEW section

SUBCHAPTER III
ENDOWMENT PROGRAM

303C.7 Arts and cultural endowment program established; arts and cultural endowment foundation established.

1. The arts and cultural endowment program is established. The arts and cultural endowment foundation established in this section shall administer the endowment program and shall adopt rules pursu-

ant to chapter 17A to fulfill the purposes of this section. Interest on the funds in the endowment account established in section 303C.2, subsection 2, is available for the purposes of this section. The endowment foundation shall establish criteria for the awarding of grants, fellowships, and scholarships to nonprofessional, professional, and student artists to develop, encourage, and enhance the arts and cultural programs in the state, upon submission of a proposal by the artist. The artist shall request no more than twenty-five thousand dollars in the proposal.

2. The arts and cultural endowment foundation is established. The exercise of the powers granted to the endowment foundation in this chapter is an essential governmental function. The administrative functions of the endowment foundation shall be performed by persons appointed in equal number by the department and the Iowa humanities board. The persons appointed shall elect the officers of the endowment foundation. The endowment foundation shall be located in the department's offices. The endowment foundation may solicit and accept gifts, grants, donations, bequests, and in-kind contributions for deposit in the endowment account. The endowment foundation shall, to the extent possible, use gifts, donations, and bequests in accordance with the expressed desires of the person making the gift, donation, or bequest.

91 Acts, ch 157, §8 SF 268
NEW section

CHAPTER 305A

STATE ARCHAEOLOGIST

305A.7 Ancient remains.

The state archaeologist has the primary responsibility for investigating, preserving, and reinterring discoveries of ancient human remains. For the purposes of this section, ancient human remains are those remains found within the state which are more than one hundred fifty years old. The state archaeologist shall make arrangements for the services of a forensic osteologist in studying and interpreting ancient burials and may designate other qualified ar-

chaeologists to assist the state archaeologist in recovering physical and cultural information about the ancient burials. The state archaeologist shall file with the Iowa department of public health a written report containing both physical and cultural information regarding the remains at the conclusion of each investigation.

91 Acts, ch 97, §41 HF 198
Section amended

CHAPTER 306

ESTABLISHMENT, ALTERATION, AND VACATION OF HIGHWAYS

306.19 Right-of-way — access — notice.

1. In the maintenance, relocation, establishment, or improvement of any road, including the extension of such road within cities, the agency having jurisdiction and control of such road shall have authority to purchase or to institute and maintain proceedings for the condemnation of the necessary right of way therefor. Such agency shall likewise have power to purchase or institute and maintain proceedings for the condemnation of land necessary for highway drainage, or land containing gravel or other suitable material for the improvement or maintenance of highways, together with the necessary road access or right of access thereto.

2. Whenever the agency condemns or purchases property access rights or alters by lengthening any existing driveway to a road from abutting property, except during the time required for construction and maintenance of the road or highway, the agency shall:

a. Compensate the owner for any diminution in the market value of the property by the denial or alteration by lengthening the driveway; however, in computing such diminution in value no consideration shall be given to the additional maintenance expense for maintaining the additional length of driveway, but in lieu thereof, both in condemnation proceedings or negotiated purchases, the agency shall pay to the owner the sum of five dollars for every lineal foot of additional length of driveway located on said owner's property. This payment shall represent just compensation to said property owner for the additional driveway maintenance caused by reason of the highway or road project.

b. If in the opinion of the agency it would be more economical to purchase the entire tract of the property owner than to provide and pay the maintenance expense required under the provisions of this section, proceed with the acquisition of the entire tract of land; or

c. If mutually agreeable, move buildings from an existing location to a location requiring an equal or lesser length of driveway and provide an adequate driveway to a public road.

3. None of the foregoing requirements shall prohibit the property owner and the agency from entering into a mutually acceptable agreement for the replacement, relocation, construction, or maintenance of any alternate driveway on the owner's property.

4. Compensation for any property rights taken in the establishment of any alternative temporary or permanent access shall be paid as in any other pur-

chase or condemnation of property. Proceedings for the condemnation of land for any highway shall be under the provisions of chapter 471 and chapter 472. Provided that, in the condemnation of right of way for secondary roads, the board of supervisors may proceed as provided in sections 306.28 to 306.37.

5. a. The department may notify a city or county that a road under the jurisdiction or control of the department will be established, improved, relocated, or maintained and that the department may need to acquire additional right-of-way or property rights within an area described by the department. The notice shall include a depiction of the area on a map provided by the city, county, or the department. This notice shall be valid for a period of three years from the date of notification to the city or county and may be refiled by the department for an additional three-year period. Within seven days of filing the notice, the department shall publish in a newspaper of public record a description and map of the area and a description of the potential restrictions applied to the city or county with respect to the granting of building permits, approving of subdivision plats, or zoning changes within the area.

b. The city or county shall notify the department of an application for a building permit for construction valued at twenty-five thousand dollars or more, of the submission of a subdivision plat, or of a proposed zoning change within the area at least thirty days prior to granting the proposed building permit, approving the subdivision plat, or changing the zoning.

c. If the department, within the thirty-day period, notifies the city or county that the department is proceeding to acquire all or part of the property or property rights affecting the area, the city or county shall not issue the building permit, approve the subdivision plat, or change the zoning. The department may apply to the city or county for an extension of the thirty-day period. After a public hearing on the matter, the city or county may grant an additional sixty-day extension of the period.

d. The department shall begin the process of acquiring property or property rights from affected persons within ten days of the department's written notification of intent to the city or county.

6. For the purposes of this section, the term "driveway" shall mean a way of ingress and egress located entirely on private property, consisting of a lane or passageway leading from a residence to a public roadway or highway.

91 Acts, ch 114, §1 HF 491

NEW subsection 5 and former subsection 5 renumbered as 6

CHAPTER 306A

CONTROLLED-ACCESS HIGHWAYS

306A.3 Authority to establish controlled-access facilities — utility accommodation policy.

Cities and highway authorities having jurisdiction and control over the highways of the state, as provided by chapter 306, acting alone or in co-operation with each other or with any federal, state, or local agency or any other state having authority to participate in the construction and maintenance of highways, are hereby authorized to plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled-access facilities for public use wherever such authority or authorities are of the opinion that traffic conditions, present or future, will justify such special facilities; provided, that within cities such authority shall be subject to such municipal consent as may be provided by law. Said cities and highway authorities, in addition to the specific powers granted in this chapter, shall also have and may exercise, relative to controlled-access facilities, any and all additional authority now or hereafter vested in them relative to highways or streets within their respective jurisdictions. Said cities and highway authorities may regulate, restrict, or prohibit the use of such controlled-access facilities by the various classes of vehicles or traffic in a manner consistent with section 306A.2.

The department shall adopt rules, pursuant to chapter 17A, embodying a utility accommodation policy which imposes reasonable restrictions on placements occurring on or after the effective date of the rules, on primary road rights-of-way. The rules may require utilities to give notice to the department prior to installation of a utility system on a primary road right-of-way and obtain prior permission from the department for the proposed installation. The rules shall recognize emergency situations and the need for immediate installation of service extensions subject to the standards adopted by the department and the utilities board. The rules shall be no less stringent than the standards adopted by the utilities board pursuant to chapters 478, 479, and 479A. This paragraph shall not be construed as granting the department authority which has been expressly granted to the utilities board to determine the route of utility installations. If the department requires a utility company permit, the department shall be required to act upon the permit application within thirty days of its filing. In cases of federal-aid highway projects on nonprimary highways, the local authority with jurisdiction over the highway and the department shall comply with all federal regulations and statutes regarding utility accommodation.

91 Acts, ch 147, §1 SF 329
NEW unnumbered paragraph 2

CHAPTER 306C

IOWA JUNKYARD BEAUTIFICATION AND BILLBOARD CONTROL

306C.18 Permit required.

The owner of every advertising device regulated by this chapter, except signs and advertising devices excepted by section 306C.11, subsections 1, 2 and 5, shall be required to make application to the department for a permit.

1. The application for a permit shall be on a form provided by the department and shall contain the name and address of the owner of the advertising device and the name and address of the owner of the real property on which it is located; the date of its erection; a description of its location; its dimensions; and such other information required by the depart-

ment, together with a permit fee as provided in this section.

2. After July 1, 1972, no new advertising device for which an application for a permit is required may be erected without first obtaining a permit from the department, except in the case of advertising devices lawfully in existence in areas adjacent to any highway made an interstate, freeway primary, or primary highway after July 1, 1972. The owner shall be required to make application for a permit as provided for in this section within thirty days after the date the said highway acquired said designation.

3. Upon receipt of an application containing all

the required information in due form and properly executed together with the fee required, the department shall issue a permit to be affixed to the advertising device if the advertising device will not violate any provision of this division or chapter 306B, or any rule promulgated by the department, provided that in the case of advertising devices to be acquired pursuant to section 306C.15, a provisional permit shall be issued.

4. The fee for both types of permits shall be fifty dollars for the initial fee and ten dollars for each an-

nual renewal. The fees collected for the above permits shall be credited to a special account entitled the "highway beautification fund" and all salaries and expenses incurred in administering this chapter shall be paid from this fund or from specific appropriations for this purpose, except that surveillance of, and removal of, advertising devices performed by regular maintenance personnel are not to be charged against the account.

91 Acts, ch 176, §1 HF 483
Section amended

CHAPTER 307

DEPARTMENT OF TRANSPORTATION

Department studies and recommendations relating to energy efficiency,

90 Acts, ch 1252, § 49-51, 91 Acts, ch 253, § 27

Light rail system feasibility study, 91 Acts, ch 66, § 1, 2

307.10 Duties of commission.

The commission shall:

1. Develop and co-ordinate a comprehensive transportation policy for the state not later than January 1, 1975, which shall be submitted to the general assembly for its approval, and develop a comprehensive transportation plan by January 1, 1976, to be submitted to the governor and the general assembly, and to update the transportation policy and plan annually.

2. Promote the co-ordinated and efficient use of all available modes of transportation for the benefit of the state and its citizens including, but not limited to, the designation and development of multimodal public transfer facilities if carriers or other private businesses fail to develop such facilities.

3. Identify the needs for city, county and regional transportation facilities and services in the state and develop programs appropriate to meet these needs.

4. Identify methods of improving transportation safety in the state and develop programs appropriate to meet these needs.

5. Approve or amend and approve the budget of the department prepared by the director, prior to submission of the budget to the governor and the general assembly.

6. Consider the energy and environmental issues in transportation development.

7. Enter into such contracts and agreements as provided in this chapter.

8. Promote the efforts of political subdivisions in developing energy efficient public transit systems including bus and rail systems.

9. Promote the development of rural bus systems.

10. Develop and implement a bus system subsidization program.

11. Act as a resource and referral source for van poolers in the state.

12. Conduct a comprehensive transportation planning study to examine pedestrian accessibility in new commercial development.

13. Establish transit accessibility impact guidelines by July 1, 1992, to be used in evaluating proposals for the construction or acquisition of publicly financed facilities.

14. Develop statistical measures to ascertain the impact of public transit systems on the minimization of motor vehicle accidents and reduction in fuel utilization by July 1, 1992, and the impact of public transit systems on the reduction of hazardous emissions of mobile sources, as identified pursuant to Title II of the federal Clean Air Act of 1990, Pub. L. No. 101-549, by July 1, 1993.

15. By July 1, 1992, create a statewide transit services marketing steering committee which includes providers, consumer advocates, and public relations representatives. The committee shall develop criteria for the evaluation of the adequacy and public awareness of transit service delivery by January 1, 1993.

91 Acts, ch 253, §14 SF 508
NEW subsections 8-15

307.12 Duties of the director.

The director shall:

1. Manage the internal operations of the department and establish guidelines and procedures to promote the orderly and efficient administration of the department.

2. Employ personnel as necessary to carry out the duties and responsibilities of the department, consistent with chapter 19A.

3. Assist the commission in developing state transportation policy and a state transportation plan.

4. Establish temporary advisory boards of a size the director deems appropriate to advise the department.

5. Prepare a budget for the department, subject to the approval of the commission, and prepare reports required by law.

6. Appoint the deputy director of transportation and the administrators of the department.

7. Review and submit legislative proposals necessary to maintain current state transportation laws.

8. Enter into reciprocal agreements relating to motor vehicle inspections with authorized officials of any other state, subject to approval by the commission. The director may exempt or impose requirements upon nonresident motor vehicles consistent with those imposed upon vehicles of Iowa residents operated in other states.

9. Adopt rules in accordance with chapter 17A as the director deems necessary for the administration of the department and the exercise of the director's and department's powers and duties.

10. Reorganize the administration of the department as needed to increase administrative efficiency.

11. Provide for the receipt or disbursement of federal funds allocated to the state and its political subdivisions for transportation purposes.

12. Include in the department's annual budget all estimated federal funds to be received or allocated to the department.

13. Adopt, after consultation with the department of natural resources and the department of public safety, rules relating to enforcement of the rules regarding transportation of hazardous wastes adopted by the department of natural resources. The department and the division of the highway safety patrol of the department of public safety shall carry out the enforcement of the rules.

14. Prepare and submit a report to the general assembly on or before January 15 of each fiscal year describing the prior fiscal year's highway construction program, actual expenditures of the program, and contractual obligations of the program.

If in the interest of the state, the director may allow a subsistence expense to an employee under the supervision of the department's administrator for highways for continuous stay in one location while on duty away from established headquarters and place of domicile for a period not to exceed forty-five days; and allow automobile expenses in accordance with section 18.117, for moving an employee and the employee's family from place of present domicile to new domicile, and actual transportation expense for moving of household goods. The household goods for which transportation expense is allowed shall not include pets or animals.

91 Acts, ch 268, §510 SF 529
NEW subsection 14

307.14 Official Iowa map.

The department shall publish a map of the state of Iowa. At the request of a citizen of a particular city or town, the department shall add the city or town to the existing map of Iowa and identify the main road leading into the city or town if the city or town meets two or more of the following criteria:

1. Has a zip coded post office in the city or town.
2. Has a population of twenty-five or more.
3. Has a building on the national register of historic places in the city or town.
4. Has an association with a public recreation area managed by the department of natural resources in the city or town.
5. Has a high school, grade school, private school, church, or cemetery in the city or town.
6. Has a retail business in the city or town.
7. Has an annual festival or celebration.

91 Acts, ch 139, §1 HF 385
Applicable to maps published in 1993 and thereafter
NEW section

307.15 through 307.20 Repealed by 86 Acts, ch 1245, § 1969.

307.21 Administrative services.

The department's administrator of administrative services shall:

1. Provide for the proper maintenance and protection of the grounds, buildings and equipment of the department, in co-operation with the department of general services.

2. Establish, supervise and maintain a system of centralized electronic data processing for the department, in co-operation with the department of general services.

3. Assist the director in preparing the departmental budget.

4. *a.* Provide centralized purchasing services for the department, in co-operation with the department of general services. The administrator shall, when the price is reasonably competitive and the quality as intended, purchase soybean-based inks and starch-based plastics, including but not limited to starch-based garbage can liners, and shall purchase these items in accordance with the schedule established in section 18.18. However, the administrator need not purchase garbage can liners in accordance with the schedule if the liners are utilized by a facility approved by the environmental protection commission created under section 455A.6, for purposes of recycling.

b. The administrator shall do all of the following:

(1) Purchase and use recycled printing and writing paper in accordance with the schedule established in section 18.18 and in conjunction with recommendations made by the department of natural resources.

(2) Establish a wastepaper recycling program by January 1, 1990, in accordance with recommendations made by the department of natural resources and the requirements of section 18.20.

(3) Comply with the recycling goal, recycling schedule, and ultimate termination of purchase and use of polystyrene products for the purpose of storing, packaging, or serving food for immediate consumption pursuant to section 455D.16.

(4) Require in accordance with section 18.6 product content statements, the provision of information regarding on-site review of waste management in product bidding and contract procedures, and compliance with requirements regarding procurement specifications.

c. The department shall report to the general assembly by February 1 of each year, the following:

(1) Plastic products which are regularly purchased by the board for which starch-based product alternatives are available. The report shall also include the cost of the plastic products purchased and the cost of the starch-based product alternatives.

(2) Information relating to soybean-based inks and starch-based garbage can liners regularly purchased by the department. The report shall include the cost of purchasing soybean-based inks and starch-based garbage can liners, the percentage of inks purchased which are soybean-based and the percentage of liners purchased which are starch-based.

d. A motor vehicle purchased by the administrator shall not operate on gasoline other than gasoline blended with at least ten percent ethanol. A state-issued credit card used to purchase gasoline shall not be valid to purchase gasoline other than gasoline blended with at least ten percent ethanol. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on gasoline blended with ethanol.

5. Assist the director in employing the professional, technical, clerical and secretarial staff for the department and maintain employee records, in cooperation with the department of personnel and provide personnel services, including but not limited to training, safety education and employee counseling.

6. Assist the director in co-ordinating the responsibilities and duties of the various divisions within the department.

7. Carry out all other general administrative duties for the department.

8. Perform such other duties and responsibilities as may be assigned by the director.

The administrator of administrative services may purchase items from the department of general services and may co-operate with the director of general services by providing centralized purchasing services for the department of general services.

91 Acts, ch 97, §42 HF 198, 91 Acts, ch 254, §18 SF 545
Subsection 4, paragraph a amended and NEW paragraph d

307.45 State-owned lands — assessment.

Cities and counties may assess the cost of a public improvement against the state when the improvement benefits property owned by the state and under the jurisdiction and control of the department's administrator of highways. The director shall pay from the primary road fund the portion of the cost of the improvement which would be legally assessable against the land if privately owned.

Assessments against property under the jurisdiction of the department's administrator of highways shall be made in the same manner as those made against private property, except that the city or county making the assessment shall cause a copy of the public notice of hearing to be mailed to the director by certified mail.

Assessments against property owned by the state and not under the jurisdiction and control of the department's administrator of highways shall be made in the same manner as those made against private property and payment shall be made by the executive council from any funds of the state not otherwise appropriated.

However, an assessment in excess of sixty thousand dollars in effect on or after December 1, 1990, is not valid unless it is provided for or contained within a capital appropriation by the general assembly.

91 Acts, ch 268, §511 SF 529
Standing appropriation superseded for 1991-1992 fiscal year, 91 Acts, ch 267, §507 HF 479
Unnumbered paragraph 4 stricken and rewritten

CHAPTER 307B

RAILWAY FINANCE AUTHORITY

307B.23 Special railroad facility fund.

1. There is created in the office of the state treasurer a "special railroad facility fund". This fund shall include moneys which by law may be credited to the special railroad facility fund. The moneys in the special railroad facility fund are 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, are not 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 in this section. 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 the 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 authori-

ty 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.

2. Moneys received from repayment from heartland rail corporation as provided in 1983 Iowa Acts, chapter 198, section 32, as amended by 1987 Iowa Acts, chapter 232, section 28, and 1988 Iowa Acts, chapter 1211, section 6, shall be deposited in a separate account within the special railroad facility fund and shall be used by the authority only for debt service or rehabilitation on branch rail lines whose total projected traffic is at least fifty percent agricultural products.

3. Notwithstanding the provisions of section 307B.7, subsection 14, and section 307B.26 and other provisions of law directing that moneys be deposited into the special railroad facility fund and directing that moneys in the fund be appropriated for purposes of the authority, for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, all moneys directed to be deposited in the fund shall be deposited into the general fund of the state and during that period moneys received under subsection 2 are appropriated to the authority for purposes of subsection 2 and other moneys appropriated to the authority may be used for purposes of this section.

91 Acts, ch 260, §1222 HF 173

Restrictions on use of moneys deposited in state general fund, see 91 Acts, ch 263, §38 SF 209, 91 Acts, ch 268, §508 SF 529

NEW subsection 3

CHAPTER 309

SECONDARY ROADS

309.10 Use of farm-to-market road fund.

Notwithstanding section 310.4, if the board of supervisors of a county does not plan to utilize its farm-to-market road fund allocation for the succeeding fiscal year for farm-to-market projects, the board may annually, by stipulation in the secondary road construction program and secondary road budget submitted to the department in accordance with sections 309.22 and 309.93, determine an amount of the unobligated portion of its allocation, up to a maxi-

mum of fifty percent of its anticipated total annual allocation, for the construction and reconstruction of local secondary roads. However, moneys from the farm-to-market road fund shall not be so used if the moneys are needed to match federal funds available for farm-to-market road projects.

A county shall not use farm-to-market road funds as described in this section unless the total funds that the county transferred or provided during the prior fiscal year pursuant to section 331.429, subsec-

tion 1, paragraphs "a", "b", "d", and "e", are at least seventy-five percent of the sum of the following:

1. From the general fund of the county, the dollar equivalent of a tax of sixteen and seven-eighths cents per thousand dollars of assessed value on all taxable property in the county.

2. From the rural services fund of the county, the dollar equivalent of a tax of three dollars and three-eighths of a cent per thousand dollars of assessed value on all taxable property not located within the corporate limits of a city in the county.

91 Acts ch 258, §42 HF 709
Unnumbered paragraph 2 amended

309.40 Advertisement and letting.

All contracts for road or bridge construction work

and materials for which the engineer's estimate exceeds fifty thousand dollars, except surfacing materials obtained from local pits or quarries, shall be advertised and let at a public letting.

91 Acts ch 53 §1 SF 337
Section amended

309.42 Review of road, bridge or culvert contracts.

Contracts for road, bridge or culvert construction work which, according to the engineer's estimate, involve a cost of more than fifty thousand dollars in the aggregate shall be first reviewed by the department to assure compliance with this chapter before the contracts are effective.

91 Acts ch 53 §2 SF 337
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-seven and one-half percent.

2. To the secondary road fund of the counties, twenty-four and one-half percent.

3. To the farm-to-market road fund, eight percent.

4. To the street construction fund of the cities, twenty 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 hundredths 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 307.45, 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, ex-

cept 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 a county for the secondary road fund by the 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 sum of the following:

a. From the general fund of the county, the dollar equivalent of a tax of sixteen and seven-eighths cents per thousand dollars of assessed value on all taxable property in the county.

b. From the rural services fund of the county, the dollar equivalent of a tax of three dollars and three-eighths of a cent per thousand dollars of assessed value on all taxable property not located within the corporate limits of a city in the county.

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 director of the department of management 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 living roadway trust fund created under section 314.21 one hundred fifty thousand dollars from the road use tax fund.

10. 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.

11. 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.

12. The treasurer of state, before making the allotments provided for in this section, shall credit annually to the living roadway trust fund created under section 314.21 one hundred thousand dollars from the road use tax fund.

13. The treasurer of state, before making the allotments provided for in this section, shall credit annually to the department of justice from revenues credited to the road use tax fund under section 423.24, subsection 1, paragraph "c", an amount equal to twenty-five cents on each title issuance for motor

vehicle fraud law enforcement and prosecution purposes including, but not limited to, the enforcement of state and federal odometer laws.

Notwithstanding the provisions of this subsection directing that twenty-five cents on each title issuance be annually credited to the department of justice for deposit into the motor vehicle fraud account, for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, the twenty-five cents on each title issuance shall be deposited into the general fund of the state.

14. 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 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 except aviation gasoline, the amount of excise tax collected from one and eleven-twentieths cents per gallon.

b. From the excise tax on special fuel for diesel engines, the amount of excise tax collected from one and eleven-twentieths cents per gallon.

14A. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the secondary road fund the revenue accruing to the road use tax fund in the amount equal to 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, except aviation gasoline, the amount of excise tax collected from nine-twentieths cent per gallon.

b. From the excise tax on special fuel for diesel engines, the amount of excise tax collected from nine-twentieths cent per gallon.

15. 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, from revenue credited to the road use tax fund under section 423.24, subsection 1, paragraph "c", an amount equal to one-twentieth of the revenue credited to the road use tax fund under section 423.24, subsection 1, paragraph "c".

Notwithstanding the provisions of this subsection directing that one-twentieth of the revenue credited to the road use tax fund under section 423.24, subsection 1, paragraph "c", be deposited into the public transit assistance fund, for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, such amount shall be deposited into the general fund of the state. There is appropriated from the general fund of the state for each fiscal year to the state department of transportation the amount of revenues credited to the general fund of the state during the fiscal year under this subsection to be used for purposes of public transit assistance under chapter 601J.

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 state department of transportation for county, city and state traffic safety improvement projects an amount equal to one-half of one percent of moneys credited to the road use tax fund.

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 motorcycle rider education fund established in section 321.189, subsection 9, an amount equal to one dollar per year of license validity for each issued or renewed motor vehicle license which is valid for the operation of a motorcycle. Moneys credited to the motorcycle rider education fund under this subsection shall be taken from moneys credited to the road use tax fund under section 423.24.

18. The treasurer of state, before making the allotments provided for in this section, shall credit annually from the revenue to be credited to the road use tax fund under section 423.24, subsection 1, paragraph "b", the sum of one million dollars to the state department of transportation for the purpose of acquiring, constructing, and improving recreational trails within the state. Unobligated portions of this allotment shall remain available to the state department of transportation for the purposes for which the funds are originally allocated. The state department of transportation shall adopt rules under chapter 17A to establish procedures for the expenditure of the funds allotted under this subsection.

19. *a.* The treasurer of state, before making the allotments provided for in this section, for the fiscal year beginning July 1, 1990, and each succeeding fiscal year, credit from the road use tax fund two million dollars to the county bridge construction fund, which is hereby created. Moneys credited to the county bridge construction fund shall be allocated to counties by the department for bridge construction and reconstruction based on needs in accordance with rules adopted by the department.

b. The treasurer of state, before making the allotments provided for in this section, for the fiscal year beginning July 1, 1990, and each succeeding fiscal year, credit from the road use tax fund five hundred thousand dollars to the city bridge construction fund, which is hereby created. Moneys credited to the city bridge construction fund shall be allocated to cities by the department for bridge construction and reconstruction based on needs in accordance with rules adopted by the department.

20. Subsection repealed by its terms on July 1, 1991.

21. The treasurer of state, before making the allotments provided for in this section, shall credit annually from the road use tax fund to the state department of transportation the sum of six hundred fifty thousand dollars for the purpose of providing county treasurers with data processing equipment and support for vehicle registration and titling. Notwithstanding section 8.33, unobligated funds credited

under this subsection remaining on June 30 of the fiscal year shall not revert but shall remain available for expenditure for purposes of this subsection in subsequent fiscal years.

22. The treasurer of state, before making the allotments provided for in this section shall, for the fiscal year beginning July 1, 1991, credit from the revenues otherwise to be credited to the road use tax fund under section 423.24, subsection 1, paragraph "c", the sum of seven hundred fifty thousand dollars to the state department of transportation to be used for providing assistance for the restoration, conservation, improvement, and construction of railroad main lines, branch lines, switching yards, and sidings as required in section 327H.18, for use by the railway finance authority as provided in chapter 307B, for airport engineering studies and improvement projects as provided for in chapter 328, and for essential air service airports. However, the amount transferred shall not be used unless authorized by the transportation commission. All unexpended funds from this appropriation shall revert to the road use tax fund. To authorize any such use, the commission must find that one or more of the following conditions exist as sole and sufficient justification for use of this appropriation:

a. The funds may be used to match federal funds that cannot otherwise be matched due to lack of available state matching moneys, when such federal funds are or may be made available to the state. Notwithstanding the provisions of section 8.33, all funds obligated for match of federal funds shall remain available until expended or no longer needed for matching purposes, at which time they shall be reverted in accordance with the provisions of this section.

b. Unforeseen emergencies or circumstances arise, after the transportation commission has adopted an annual program of projects, that would require the elimination of an approved project, provided that such projects would otherwise be eligible for expenditure.

91 Acts, ch 258, §43 HF 709, 91 Acts, ch 260, §1223, 1224 HF 173, 91 Acts, ch 264, §906 SF 532, 91 Acts, ch 268, §512, 513 SF 529

Restrictions on use of moneys deposited in state general fund, see 91 Acts, ch 263, §38 SF 209

See Code editor's note

Subsections 8 and 13 amended

Subsection 15, NEW unnumbered paragraph 2

NEW subsections 21 and 22

312.3 Apportionment to counties and cities.

The treasurer of state shall, on the first day of each month:

1. Apportion among the counties in the ratio that the needs of the secondary roads of each county bear to the total needs of the secondary roads of the state for each fiscal year based upon the total needs of secondary roads of the state as shown in the latest quadrennial need study report developed by the state department of transportation, and which is on record at the department, seventy percent of the allocation from road use tax funds which is credited to the secondary road fund of the counties, and appor-

tion among the counties in the ratio that the area of each county bears to the total area of the state, thirty percent of the allocation from road use tax funds which is credited to the secondary road fund of the counties. However, in a fiscal year each county is guaranteed a hold harmless base year amount. The amount in the secondary road fund of the counties in each fiscal year in excess of the sum of the hold harmless base year amounts allocated to all counties shall be distributed proportionally based on the relative needs and area factors to only those counties entitled to receive more than the hold harmless base year amount.

For the purposes of this subsection

a "Base period" means the three-year period ending June 30, 1989

b "Local effort" means the ratio expressed as a percent of the total funds that the county transferred or provided during the base period pursuant to section 331.429, subsection 1, paragraphs "a", "b", "d", and "e", to the sum of the following

(1) From the general fund of the county, the dollar equivalent of a tax of sixteen and seven-eighths cents per thousand dollars of assessed value on all taxable property in the county

(2) From the rural services fund of the county, the dollar equivalent of a tax of three dollars and three-eighths of a cent per thousand dollars of assessed value on all taxable property not located within the corporate limits of a city in the county

c "Old formula amount" means the amount of moneys the county would receive if the apportionment to the county under this section was apportioned among the counties in the ratio that the needs of the secondary roads of each county bear to the total needs of the secondary roads of the state as shown by the latest quadrennial need study by the state department of transportation, and which is on record at the department, sixty percent of the allocation from road use tax funds which is credited to the secondary road fund of the counties, and apportioned among the counties in the ratio that the area of each county bears to the total area of the state, forty percent of the allocation from road use tax funds which is credited to the secondary road fund of the counties

d (1) The "hold harmless base year amount" for a county for the fiscal year commencing July 1, 1990, is determined by the county's local effort in accordance with the following table

LOCAL EFFORT		COUNTY'S HOLD HARMLESS BASE YEAR AMOUNT
At least 96%	but less than unlimited	100% of old formula amount
92%	96%	96% of old formula amount
88%	92%	92% of old formula amount
84%	88%	88% of old formula amount
Less than 84%		\$0

(2) The "hold harmless base year amount" for a county for the fiscal year commencing July 1, 1991, and for each succeeding fiscal year, is the product of the county's hold harmless base year amount in the immediately preceding fiscal year times the sum of one plus one-half of the estimated increase in secondary road fund moneys in the fiscal year expressed as a fraction. Prior to June 30 of each year, the department shall prepare and deliver to the treasurer of state an estimate of the increase of secondary road fund moneys for the next fiscal year to be used in determining the hold harmless base year amount under this subsection

2 Apportionment among the cities of the state, in the ratio which the population of each city, as shown by the latest available federal census, bears to the total population of all such cities in the state, the percentage of the road use tax funds which is credited to the street fund of the cities, and shall remit to the city clerk of each such city the amount so apportioned to such city. 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

3 In any case where a city has been incorporated since the latest available federal census the mayor and council shall certify to the state treasurer the actual population of such incorporated city as of the 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 certificate for any period after said corporation has been dissolved

4 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

5 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

91 Acts ch 258 §44 HF 709
 Subsection 1 paragraph b amended

312.5 Division of farm-to-market road funds.

1 The road use tax funds credited to the farm-to-market road fund and federal aid secondary road funds received by the state by the treasurer of state are hereby divided as follows, and are to be known respectively as

a Need allotment farm-to-market road funds, seventy percent, and

b Area allotment farm-to-market road funds, thirty percent

2 All farm-to-market road funds, except funds which under section 310 20 come from any county's allotment of the road use tax funds, shall be allotted among the counties by the department

3 Area allotment farm-to-market road funds shall be allotted among all the counties of the state in the ratio that the area of each county bears to the total area of the whole state

4 Need allotment farm-to-market road funds shall be allotted among the counties in the ratio that the needs of the farm-to-market roads in each county bear to the total needs of the farm-to-market roads in the state for each fiscal year based upon the total needs of the farm-to-market roads in the state as shown in the latest quadrennial need study report developed by the state department of transportation, and which is on record at the department

5 Notwithstanding subsections 1 through 4, in a fiscal year each county is guaranteed a hold harmless base year amount. The amount of farm-to-market road funds in each fiscal year in excess of the sum of the hold harmless base year amounts allocat-

ed to all counties shall be distributed proportionally based on the relative needs and area factors to only those counties entitled to receive more than the hold harmless base year amount

For the purposes of this subsection

a "Base period" means the three-year period ending June 30, 1989

b "Local effort" means the ratio expressed as a percent of the total funds that the county transferred or provided during the base period pursuant to section 331 429, subsection 1, paragraphs "a", "b", "d", and "e", to the sum of the following

(1) From the general fund of the county, the dollar equivalent of a tax of sixteen and seven-eighths cents per thousand dollars of assessed value on all taxable property in the county

(2) From the rural services fund of the county, the dollar equivalent of a tax of three dollars and three-eighths of a cent per thousand dollars of assessed value on all taxable property not located within the corporate limits of a city in the county

c "Old formula amount" means the amount of moneys the county would receive if the apportionment to the county under this section was apportioned among the counties with the federal aid secondary road funds being apportioned by one hundred percent area allotment and the road use tax funds credited to the farm-to-market road fund apportioned to the counties with a sixty percent need allotment and forty percent area allotment

d (1) The "hold harmless base year amount" for a county for the fiscal year commencing July 1, 1990, is determined by the county's local effort in accordance with the following table

LOCAL EFFORT		COUNTY'S HOLD HARMLESS BASE YEAR AMOUNT
At least 96%	but less than unlimited	100% of old formula amount
92%	96%	96% of old formula amount
88%	92%	92% of old formula amount
84%	88%	88% of old formula amount
Less than 84%		\$0

(2) The “hold harmless base year amount” for a county for the fiscal year commencing July 1, 1991, and for each succeeding fiscal year, is the product of the county’s hold harmless base year amount in the immediately preceding fiscal year times the sum of one plus one-half of the estimated increase in the farm-to-market road fund moneys in the fiscal year expressed as a fraction. Prior to June 30 of each year

the department shall prepare and deliver to the treasurer of state an estimate of the increase of the farm-to-market road fund moneys for the next fiscal year to be used in determining the hold harmless base year amount under this subsection.

91 Acts ch 258 §45 HF 709
 Subsection 5 paragraph b amended

CHAPTER 313

IMPROVEMENT OF PRIMARY ROADS

313.2A Commercial and industrial highways.

1. *Purpose* It is the purpose of this section to enhance opportunities for the development and diversification of the state’s economy through the identification and improvement of a network of commercial and industrial highways. The network shall consist of interconnected routes which provide long distance route continuity. The purpose of this highway network shall be to improve the flow of commerce; to make travel more convenient, safe, and efficient; and to better connect Iowa with regional, national, and international markets. The commission shall concentrate a major portion of its annual construction budget on this network of commercial and industrial highways. In order to ensure the greatest possible availability of funds for the improvement of the network, primary highway funds shall not be spent beyond continuing maintenance for improvements to route segments that will be bypassed by the relocation of portions of the commercial and industrial highway network.

2. *Network selection* The commission shall identify, within the primary road system, a network of commercial and industrial highways. The commission shall consider all of the following factors in the identification of this network:

a The connection by the most direct routes feasible of major urban areas and regions of the state to each other and to the national system of interstate and defense highways and priority routes in adjacent states.

b The existence of high volumes of total traffic and commercial traffic.

c Long distance traffic movements.

d Area coverage and balance of spacing with service to major growth centers within the state.

e Metropolitan area bypasses consistent with metropolitan or regional area plans established through cooperation by the department and local officials.

The network of commercial and industrial highways shall not exceed two thousand five hundred miles including municipal extensions of these highways.

3. *Standards* The department shall establish standards pertaining to the specific location, design, and access control for each segment of the commercial and industrial highways.

4. *Network development* In establishing priorities for improvement projects, the department shall take into consideration the following additional criteria: urban area bypasses that improve urban or regional accessibility or improve corridor travel; projects consistent with regional or metropolitan transportation plans established through cooperation by the department and local officials; and the willingness of local officials to provide financial or other assistance for the development of projects.

91 Acts ch 268 §514 515 SF 529
 Subsection 2 NFW paragraph e
 NEW subsection 4

CHAPTER 314

GENERAL ADMINISTRATIVE PROVISIONS FOR HIGHWAYS

314.21 Living roadway trust fund.

1. The living roadway trust fund is created in the office of the treasurer of state. The moneys in this fund shall be used exclusively for the development and implementation of integrated roadside vegetation plans. Except as provided in subsections 2 and 3, the moneys shall only be expended for areas on or adjacent to road, street, and highway right-of-ways. The state department of transportation in consultation with the department of natural resources shall establish standards relating to the type of projects available for assistance. For the fiscal period beginning July 1, 1988, and ending March 31, 1990, the moneys in the fund shall be expended as follows: fifty-six percent on state department of transportation projects; thirty percent on county projects; and fourteen percent on city projects.

A city or county which has a project which qualifies for the use of these funds shall submit a request for the funds to the state department of transportation. A city or county may, at its option, apply moneys allocated for use on city or county projects under this subsection toward qualifying projects on the primary system. The state department of transportation in consultation with the department of natural resources shall determine which projects qualify for the funds and which projects shall be funded if the requests for the funds exceed the availability of the funds. In ranking applications for funds, the department shall consider the proportion of political subdivision matching funds to be provided, if any, and the proportion of private contributions to be provided, if any. In considering the proportion of political subdivision matching funds provided, the department shall consider only those moneys which are in addition to those which the political subdivision has historically provided toward such projects. Funds allocated to the cities, the counties, and the department which are not programmed by the end of each fiscal year shall be available for redistribution to any eligible applicant regardless of the original allocation of funds. Such funds shall be awarded for eligible projects based upon their merit in meeting the program objectives established by the department under section 314.22. The department shall submit a report of all projects funded in the previous fiscal year to the governor and to the general assembly on January 15 of each year.

Beginning April 1, 1990, the moneys in the living roadway trust fund shall be allocated between the state, counties, and cities in the same proportion that the road use tax funds are allocated under section 312.2, subsections 1, 2, 3, and 4. However, after

April 1, 1990, a city or county shall not be eligible to receive moneys from the living roadway trust fund unless the city or county has an integrated roadside vegetation management plan in place consistent with the objectives in section 314.22.

2. a. The department may authorize projects which provide grants or loans to local governments and organizations which are developing community entryway enhancement and other planting demonstration projects. Planning, public education, installation, and initial maintenance planning and development may be determined by the department to be eligible activities for funding under this paragraph. Projects approved under this paragraph require a local match or contribution toward the overall project cost.

b. The department may authorize projects which provide grants or loans to local governments for the purchase of specialized equipment and special staff training for the establishment of alternative forms of roadside vegetation. Projects approved under this paragraph require a local match or contribution toward the overall project cost.

c. The department, in order to create greater visual effect, shall investigate alternatives for concentrating plantings at strategic locations to gain a greater visual impact and appeal as well as stronger scenic value. Equal attention shall be given to providing safe and effective habitats for wildlife which can coexist with highways.

d. The department may authorize projects which provide grants or loans to local jurisdictions for increased protection through the use of easements, fee title acquisition, covenants, zoning ordinances, or other provisions for protection of vegetation and desirable environment adjacent to the right-of-way. Off-right-of-way projects shall emphasize vegetation protection or enhancement, scenic and wildlife values, erosion control and enhancement of vegetation management projects within the right-of-ways.

3. a. Moneys allocated to the state under subsection 1 shall be expended as follows:

(1) Fifty thousand dollars annually to the department for the services of the integrated roadside vegetation management coordinator and support.

(2) One hundred thousand dollars annually for education programs, research and demonstration projects, and vegetation inventories and strategies, under section 314.22, subsections 5, 6, and 8.

(3) All remaining moneys for the gateways program under section 314.22, subsection 7.

b. Moneys allocated to the counties under subsection 1 shall be expended as follows:

(1) For the fiscal period beginning July 1, 1989, and ending June 30, 1993, fifty thousand dollars in each fiscal year to the university of northern Iowa to maintain the position of the state roadside specialist and to continue its integrated roadside vegetation management pilot program providing research, education, training, and technical assistance.

(2) All remaining money for grants or loans under subsection 2, paragraph "a".

c. Moneys allocated to the cities shall be expended for grants or loans under subsection 2, paragraph "a".

91 Acts, ch 268, §516 SF 529
Subsection 3, paragraph b, subparagraph (1) amended

CHAPTER 317

WEEDS

317.25 Teasel, multiflora rose, and purple loosestrife prohibited — exceptions.

A person shall not sell, offer for sale, or distribute teasel (*Dipsacus*) biennial, the multiflora rose (*rosa multiflora*), purple loosestrife (*lythrum salicaria*), or seeds of them in any form in this state. However, this section does not prohibit the sale, offer for sale, or distribution of the multiflora rose (*rosa multiflora*) used for understock for either cultivated roses or ornamental shrubs in gardens. This section also does not prohibit the sale, offer for sale, or distribution of varieties of the purple loosestrife (*lythrum virgatum*) when used for ornamental gardens, and which are

sterile or nonaggressive according to a list published by the state weed commissioner pursuant to chapter 17A. A person engaged in the business of selling purple loosestrife shall keep accurate records, as specified by the department of agriculture and land stewardship, of each variety of purple loosestrife sold, offered for sale, or distributed. The person shall allow the department of agriculture and land stewardship to inspect the records during regular business hours. Any person violating the provisions of this section is subject to a fine of not exceeding one hundred dollars.

91 Acts, ch 5, §1 SF 34, 91 Acts, ch 258, §46 HF 709
Section amended

CHAPTER 319

OBSTRUCTIONS IN HIGHWAYS

319.14 Permit required.

A person shall not excavate, fill, or make a physical change within the right-of-way of a public road or highway without obtaining a permit from the highway authority having jurisdiction of the public road or highway. Work performed under the permit shall be performed in conformity with the specifications prescribed by the highway authority. If the excavation, fill, or physical change within the right-of-way of a public road or highway does not conform to the specifications that accompany the permit the person shall be notified to make such conforming changes.

If after twenty days the changes have not been made, the public road or highway authority may make the necessary changes and immediately send a statement of the cost to the responsible person. If within thirty days after sending the statement the cost is not paid, the highway authority may institute proceedings in the district court to collect the cost of correction. Except as provided in section 306A.3, utility companies are exempted from the provisions of this section.

91 Acts, ch 147, §2 SF 329
Section amended

CHAPTER 321

MOTOR VEHICLES AND LAW OF THE ROAD

Surcharge imposed on certificate fees under § 321 20, 321 23, 321 42, 321 46, 321 47, 321 48, 321 50, and 321 52, § 321 52A

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 "secondhand motor vehicle" or "used car" 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. "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 for a distance not to exceed one hundred miles 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 from a farm site or a retail seller or to a retail seller from a farm site; or

(3) From one farm site to another farm site.

For the purpose of this subsection and sections 321.383 and 321.453, "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 vehicles.

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. (1) Portable tanks, nurse tanks, trailers, and bulk spreaders which are not self-propelled and which have gross weights of not more than twelve tons and are used for the transportation of fertilizer and chemicals used for farm crop production.

(2) Other types of equipment than those listed in subparagraph (1) which are used primarily for the application of fertilizers and chemicals in farm fields or for farm storage.

f. 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, but not including road construction or maintenance machinery and ditch-digging apparatus. This description does not exclude other vehicles which are within the general terms of this subsection.

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. a. "Gross weight" means the empty weight of a vehicle plus the maximum load to be carried by the vehicle. 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.

b. "Unladen weight" means the weight of a vehicle or vehicle combination without load.

c. "Gross vehicle weight rating" means the weight specified by the manufacturer as the loaded weight of a single vehicle.

25. a. "Combined gross weight" means the gross weight of a combination of vehicles.

b. "Gross combination weight rating" means the combined weights specified by the manufacturer as the loaded weight of each vehicle in a combination of vehicles. In the absence of a weight specified by the manufacturer for a towed vehicle, the gross vehicle weight rating of the towed vehicle shall be its gross weight.

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. "Hazardous material" means a substance or material which has been determined by the United States secretary of transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.

32. "Commercial vehicle" means a vehicle or combination of vehicles designed principally to transport passengers or property of any kind if any of the following apply:

a. The vehicle or any combination of vehicles has a gross weight or combined gross weight of ten thousand one or more pounds.

b. The vehicle or any combination of vehicles has a gross vehicle weight rating or gross combination weight rating of ten thousand one or more pounds.

c. The vehicle is designed to transport sixteen or more persons, including the driver.

d. The vehicle is used in the transportation of hazardous material of a type or quantity requiring vehicle placarding.

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 a person engaged in the business of delivering vehicles of a type required to be registered or titled in this state who has received authority to make delivery as specified by rules adopted by the department.

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 complet-

ed 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.

"*Final stage manufacturer*" means a person who performs such manufacturing operations on an incomplete vehicle that it becomes a completed vehicle. A final stage manufacturer shall furnish to the department a document which identifies that the vehicle was incomplete prior to that manufacturing operation. The identification shall include the name of the incomplete vehicle manufacturer, the date of manufacture, and the vehicle identification number to ascertain that the document applies to a particular incomplete vehicle.

"*Incomplete vehicle*" means an assemblage, as a minimum, consisting of a frame and chassis structure, power train, steering system, suspension system, and braking system, to the extent that those systems are to be a part of the completed vehicle, that requires further manufacturing operations, other than 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*" or "*driver*" means every person 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 a motor truck which has a gross vehicle weight rating exceeding sixteen thousand pounds. A person is not a chauffeur when the operation of the motor vehicle, other than a truck tractor, by the owner or operator is occasional and merely incidental to the owner's 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 ser-

vices is not a chauffeur when transporting the inmates, probationers, parolees, or work releasees.

A farmer or the farmer's hired help is not a chauffeur when operating a truck, other than a truck tractor, owned by the farmer and used exclusively in connection with the transportation of the farmer's own products or property.

If authorized to transport patients or clients by the director of the department of human services or the director's designee, an employee of the department of human services is not a chauffeur when transporting the patients or clients in an automobile.

44. Reserved.

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 intersec-

tions, 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.

60A. "Rural residence district" means an unincorporated area established by a county board of supervisors which is contiguous to and including a secondary highway, not comprising a business district, where forty percent or more of the frontage of the highway for a distance of three hundred feet or more is occupied by dwellings or by dwellings and buildings in use for business. For purposes of this subsection, farm houses and farm buildings are not to be considered.

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 ninety-six inches apart.

70. "Guaranteed arrest bond certificate" means

any printed, unexpired certificate issued by an auto mobile 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 or truck tractor not used for hire with a gross weight registration of six through thirty two 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. A "special truck" does not include a truck tractor operated more than seventy-five hundred miles annually.

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 a driver's, commercial driver's, temporary restricted, or temporary license and an instruction, chauffeur's instruction, commercial driver's instruction, temporary restricted, or temporary permit.

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.

87. "Rescue vehicle" means a motor vehicle which is equipped with rescue, fire, or life support equipment used to assist and rescue persons in emergencies or support emergency personnel in the performance of their duties.

88. "Fire vehicle" means a motor vehicle which is equipped with pumps, tanks, hoses, nozzles, ladders, generators, or other fire apparatus used to transport fire personnel, fight fires, and respond to emergencies.

89. "Stinger-steered automobile transporter" means any vehicle combination designed and used specifically for the transport of assembled highway vehicles, recreational vehicles, or boats in which the fifth wheel is located on a drop frame located below and behind the rearmost axle of the power unit.

90. "Conviction" means a final conviction or an unvacated forfeiture of bail or collateral deposited to secure a person's appearance in court.

91. "Endorsement" means an authorization to a person's motor vehicle license required to permit the person to operate certain types of motor vehicles or to transport certain types or quantities of hazardous materials.

92. For purposes of administering and enforcing the commercial driver's license provisions:

a. "Commercial driver" means the operator of a commercial motor vehicle.

b. "Commercial driver's license" means a motor vehicle license valid for the operation of a commercial motor vehicle.

c. "Commercial driver's license information system" means the national information system established to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

d. "Commercial motor vehicle" means a motor vehicle or combination of vehicles used to transport passengers or property if any of the following apply:

(1) The combination of vehicles has a gross combination weight rating of twenty-six thousand one or more pounds provided the towed vehicle has a gross vehicle weight rating of ten thousand one or more pounds.

(2) The motor vehicle has a gross vehicle weight rating of twenty-six thousand one or more pounds.

(3) The motor vehicle is designed to transport sixteen or more persons, including the operator, or is of a size and design to transport sixteen or more persons, including the operator, but is redesigned or modified to transport less than sixteen handicapped persons.

(4) The motor vehicle is used in the transportation of hazardous material of a type or quantity requiring vehicle placarding.

e. "Foreign jurisdiction" means a jurisdiction outside the fifty United States, the District of Columbia, and Canada.

f. "Nonresident commercial driver's license" means a commercial driver's license issued to a person who is not a resident of the United States or Canada.

g. "Tank vehicle" means a commercial motor vehicle that is designed to transport liquid or gaseous materials within a tank having a rated capacity of one thousand one or more gallons that is either permanently or temporarily attached to the vehicle or chassis.

93. "Tourist-oriented directional sign" means a sign providing identification and directional information for a tourist attraction.

94. "Tourist attraction" means a business, activity, service, or site where a major portion of the product or service provided is tourist oriented.

91 Acts, ch 56, §1 HF 254, 91 Acts, ch 219, §14 SF 496
Subsection 17 amended
Subsection 43, unnumbered paragraph 3 amended

321.18A Records of implements of husbandry.

A person selling at retail new implements of husbandry with a retail list price in excess of five thousand dollars upon which the manufacturer has affixed a vehicle identification number, shall maintain for ten years a record of the number, the name and address of the purchaser, and the date of sale.

91 Acts, ch 97, §43 HF 198
Formerly codified at §321.100, see that section in Code 1991
NEW section

321.24 Issuance of registration and certificate of title.

Upon receipt of the application for title and payment of the required fees for a motor vehicle, trailer, or semitrailer, the county treasurer or the department shall, when satisfied as to the application's genuineness and regularity, and, in the case of a mobile home, that taxes are not owing under chapter 135D, issue a certificate of title and, except for a mobile home, a registration receipt, and shall file the application, the manufacturer's or importer's certificate, the certificate of title, or other evidence of ownership, as prescribed by the department. The registration receipt shall be delivered to the owner and shall contain upon its face the date issued, the name and address of the owner, the registration number assigned to the vehicle, the title number assigned to the owner of the vehicle, the amount of the fee paid, the amount of tax paid pursuant to section 423.7, the type of fuel used, and a description of the vehicle as determined by the department, and upon the reverse side a form for notice of transfer of the vehicle.

The county treasurer shall maintain in the county record system information contained on the registration receipt. The information shall be accessible by registration number and shall be open for public inspection during reasonable business hours. Copies the department requires shall be sent to the department in the manner and at the time the department directs.

The certificate of title shall contain upon its face the identical information required upon the face of the registration receipt. In addition, the certificate of title shall contain a statement of the owner's title, the amount of tax paid pursuant to section 423.7, the name and address of the previous owner, and a statement of all security interests and encumbrances as shown in the application, upon the vehicle described, including the nature of the security interest, date of notation, and name and address of the secured party. If the prior certificate of title was a salvage, rebuilt, or junking certificate of title in any other state, or if the prior certificate of title in any other state indicates that the vehicle was salvaged, rebuilt, or junked, the new certificate of title shall contain the same information together with the name of the state issuing the prior salvage, rebuilt, or junking certificate of title and a salvage, rebuilt, or junking designation together with the name of the state issuing the prior salvage, rebuilt, or junking certificate of title shall be retained on all subsequent Iowa certificates of title for the vehicle, except as provided in section 321.52. In the event a vehicle which previously had a salvage certificate of title from another state is repaired and a regular certificate of title is to be issued for it pursuant to section 321.52 without the designation rebuilt, the regular certificate of title shall indicate the state which had issued the prior salvage certificate of title in the same location in which Iowa certificates of title show the designation salvage or rebuilt, in addition to the name and address of the previous owner, in lieu of the salvage designation. The name of the state which had issued the prior salvage certificate of title shall remain in that location on every Iowa certificate of title issued thereafter for the vehicle. The department shall adopt rules to determine how other states' designations are to be indicated on Iowa titles.

The certificate shall bear the seal of the county treasurer or of the department, and the signature of the county treasurer, the deputy county treasurer, or the department director or deputy designee. The certificate shall provide space for the signature of the owner. The owner shall sign the certificate of title in the space provided with pen and ink upon its receipt. The certificate of title shall contain upon the reverse side a form for assignment of title or interest and warranty by the owner, for reassignments by a dealer licensed in this state or in another state if the state in which the dealer is licensed permits Iowa licensed dealers to similarly reassign certificates of title. Attached to the certificate of title shall be an application for a new certificate of title by the transferee as provided in this chapter. However, titles for mobile homes shall not be reassigned by licensed dealers. All certificates of title shall be typewritten or printed by other mechanical means. Notwithstanding section 321.1, subsection 38, as used in this paragraph "dealer" means every person engaged in the business of buying, selling, or exchanging vehicles of a type required to be registered under this chapter.

The original certificate of title shall be delivered to

the owner if no security interest or encumbrance appears on the certificate. Otherwise the certificate of title shall be delivered by the county treasurer or the department to the person holding the first security interest or encumbrance as shown in the certificate.

The county treasurer or the department shall maintain in the county or department records system information contained on the certificate of title. The information shall be accessible by title certificate number for a period of three years from the date of notification of cancellation of title or that a new title has been issued as provided in this chapter. Copies the department requires shall be sent to the department in the manner and at the time the department directs. The department shall designate a uniform system of title numbers to indicate the county of issuance.

A vehicle shall be registered for the registration year. A vehicle registered for the first time in this state shall be registered for the remaining unexpired months of the registration year and pay a registration fee prorated for the remaining unexpired months of the registration year.

If the county treasurer or department is not satisfied as to the ownership of the vehicle or that there are no undisclosed security interests in it, or a junking certificate has been issued for the vehicle but a certificate of title will not be reissued under section 321.52, subsection 3, the county treasurer or department may register the vehicle but shall as a condition of issuing a certificate of title and registration receipt, require the applicant to file with the department a bond in the form prescribed by the department and executed by the applicant, and either accompanied by the deposit of cash with the department or also executed by a person authorized to conduct a surety business in this state. The bond shall be in an amount equal to one and one-half times the current value of the vehicle as determined by the department and conditioned to indemnify any prior owner and secured party and any subsequent purchaser of the vehicle or person acquiring any security interest in it, and their respective successors in interest, against any expense, loss or damage, including reasonable attorney's fees, by reason of the issuance of the certificate of title of the vehicle or on account of any defect in or undisclosed security interest upon the right, title and interest of the applicant in and to the vehicle. Any such interested person has a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond, and any deposit accompanying it, shall be returned at the end of three years or prior thereto if the vehicle is no longer registered in this state and the currently valid certificate of title is surrendered to the department, unless the department has been notified of the pendency of an action to recover on the bond.

91 Acts, ch 142, §1 HF 625

1991 amendment to unnumbered paragraph 8 retroactively applicable to all junking certificates for which certificates of title have not been reissued, 91 Acts, ch 142, §4 HF 625

Unnumbered paragraph 8 amended

321.32 Registration card carried and exhibited.

A vehicle's registration card shall at all times be carried in the vehicle to which it refers and shall be shown to any peace officer upon the officer's request.

91 Acts, ch 27, §1 HF 307
Section amended

321.34 Plates or validation sticker furnished — retained by owner — special plates.

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 or a six-year period for trailers and semitrailers licensed under chapter 326 upon payment of the appropriate registration fee. Fees from three-year and six-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 or travel trailer registered in this state, personalized registration plates marked with up to seven initials, letters, or combination of numerals and letters requested by the owner. However, personalized registration plates for motorcycles and motorized bicycles shall be marked with no more than six initials, letters, or combinations of numerals and letters. 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. A person renewing a personalized registration plate within one month following the time requirements under section 321.40 may renew the personalized plate without paying the additional registration fee under paragraph "a" but shall pay the five-dollar fee in addition to the regular registration fee and any penalties subject to regular registration plate holders for late renewal.

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 person, or who is the parent or guardian of a child who resides with the parent or guardian owner and who is a handicapped person, as defined in section 321L.1, may, upon written application to the department, order handicapped registration plates designed by the department bearing the international symbol of accessibility. The handicapped registration plates shall only be issued if the application is accompanied with a statement from a physician licensed under chapter 148, 149, 150, or 150A, or a chiropractor licensed under chapter 151, written on the physician's or chiropractor's stationery, stating the nature of the applicant's or the applicant's child's handicap and such additional information as required by rules adopted by the department, including proof of residency of a child who is a handicapped person. If the application is approved by the department the handicapped registration plates shall be issued to the applicant in exchange for the previous registration plates issued to the person. The fee for the handicapped plates is five dollars which is in addition to the regular annual registration fee. The department shall validate the handicapped plates in the same manner as regular registration plates are validated under this section at the regular annual registration fee. However, the handicapped plates shall not be renewed without the applicant furnishing evidence to the department that the owner of the motor vehicle or the owner's child is still a handicapped person as defined in section 321L.1, unless the applicant has previously provided satisfactory evidence to the department that the owner of the vehicle or the owner's child is permanently handicapped in which case the furnishing of additional evidence shall not be required for renewal. However, an owner who has a child who is a handicapped person shall provide satisfactory evidence to the department that the handicapped child continues to reside with the owner. The handicapped registration plates shall be surrendered in exchange for regular registration plates when the owner of the motor vehicle or the owner's child no longer qualifies as a handicapped person as defined in section 321L.1 or when the owner's child who is a handicapped person no longer resides with the owner.

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.

10. *Collegiate plates.*

a. Upon application and payment of the proper fees, the director may issue to the owner of a motor vehicle, trailer, or travel trailer registered in this state, collegiate registration plates. Upon receipt of the collegiate registration plates, the applicant shall surrender the regular registration plates to the county treasurer.

b. Collegiate registration plates shall be designed for each of the three state universities. The collegiate registration plates shall be designated as follows:

(1) The letters "ISU" followed by a four-digit number all in cardinal on a gold background for Iowa State University of science and technology.

(2) The letters "UNI" followed by a four-digit number all in purple on a gold background for the University of Northern Iowa.

(3) The letters "UI" followed by a four-digit number all in black on a gold background for the state University of Iowa.

(4) In lieu of the letter number designation provided under subparagraphs (1) through (3), the collegiate registration plates may be designated in the manner provided for personalized registration plates under subsection 5, paragraph "a", in the colors designated for the respective universities under subparagraphs (1) through (3).

c. The fees for a collegiate registration plate are as follows:

- (1) A registration fee of twenty-five dollars.
- (2) A special collegiate registration fee of twenty-five dollars.

These fees are in addition to the regular annual registration fee. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited by the treasurer of state to the road use tax fund. Notwithstanding section 423.24 and prior to the application of section 423.24, subsection 1, paragraph "b", the treasurer of state shall credit monthly from revenues derived from the operation of section 423.7, respectively, to Iowa State University of science and technology, the University of Northern Iowa, and the state University of Iowa, the amount of the special collegiate registration fees collected in the previous month for collegiate registration plates designed for the university. The moneys credited are appropriated to the respective universities to be used for scholarships for students attending the universities.

d. The county treasurer shall validate collegiate 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.

e. A collegiate registration plate shall not be issued if its combination of alphanumeric characters are identical to those contained on a current personalized registration plate issued under subsection 5. However, the owner of a motor vehicle who has a personalized registration plate issued for the motor vehicle may, after proper application and payment of fees, be issued a collegiate registration plate containing the same alphanumeric characters as those on the personalized plate. Upon receipt of the collegiate registration plates, the owner shall surrender the personalized registration plates to the county treasurer.

11. *Congressional medal of honor 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 has been awarded the congressional medal of honor may, upon written application to the department, order special registration plates which shall be red, white, and blue in color and shall bear an emblem of the congressional medal of honor and an identifying number. 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 and the special registration plates shall be issued to the applicant in exchange for the regis-

tration plates previously issued to the person. The special plates 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. The department shall not issue special registration plates until service organizations in the state have furnished the department either the special dies or the cost of the special dies necessary for the manufacture of the special registration plate.

12. *Pearl Harbor plates.* Effective January 1, 1990, 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 at Pearl Harbor, Hawaii, as a member of the armed services of the United States on December 7, 1941, may, upon written application to the department, order special registration plates. The special registration plates shall bear the notation or emblem reading "PEARL HARBOR SURVIVOR, DECEMBER 7, 1941" followed by four identifying letters or numbers. Each applicant applying for special registration plates under this subsection may purchase only one set of registration plates. The application is subject to approval by the department. Upon receipt of the special registration plates, the applicant shall surrender the regular registration plates to the county treasurer. The fee for the issuance of the special registration plates is twenty-five dollars which shall be in addition to the regular annual registration fee. Seriously disabled veterans who are exempted from payment of the annual registration fee under section 321.105, shall pay only the twenty-five dollar fee for issuance of the special registration plates. The county treasurer shall validate the special registration plates in the same manner as regular registration plates are validated under this section with no additional registration fee being required other than the regular annual registration fee.

13. *Purple heart 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 was awarded a purple heart medal by the United States government for wounds received in military or naval combat against an armed enemy of the United States, may upon written application to the department and presentation of satisfactory proof of the award of the purple heart medal, order special registration plates. The design of the plates shall include a representation of a purple heart medal and ribbon centered on the left side of the plate and the words "Combat Wounded" centered on the bottom of the plate. The plates shall be numbered in sequence beginning with 00001. The application is subject to approval by the department in consultation with the adjutant general. 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 purple heart plates shall be twenty-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.

14. *Sesquicentennial plates*

a Upon application and payment of the proper fees, the director may issue sesquicentennial plates to the owner of a motor vehicle subject to registration under section 321.109, subsection 1, light delivery truck, panel delivery truck, pickup, motor home, multipurpose vehicle, or travel trailer.

b In lieu of the letter number designation, the sesquicentennial plates may be designated in the manner provided for personalized registration plates under subsection 5, paragraph "a" A sesquicentennial plate shall not be issued if its combination of alphanumeric characters is identical to those contained on a current personalized registration plate issued under subsection 5, or a personalized collegiate registration plate issued under subsection 10. However, the owner of a motor vehicle who has either personalized registration plates or personalized collegiate registration plates issued for a vehicle may, after proper application and payment of fees, be issued a sesquicentennial registration plate containing the same alphanumeric characters as those on the personalized registration plates or personalized collegiate registration plates.

c The special sesquicentennial fee for letter number designated sesquicentennial plates is fifteen dollars. The fee for personalized sesquicentennial plates is twenty-five dollars which shall be paid in addition to the special sesquicentennial fee of fifteen dollars. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.24, and prior to the application of section 423.24, subsection 1, paragraph "b", the treasurer of state shall credit monthly from the revenues derived from the operation of section 423.7 to the sesquicentennial fund established in section 7G.1, the amount of the special sesquicentennial fees collected in the previous month for the sesquicentennial plates.

d Upon receipt of the special registration plates, the applicant shall surrender the current registration receipt and plates to the county treasurer. The county treasurer shall validate the special registration plates in the same manner as regular registration plates are validated under this section. The annual special sesquicentennial fee for letter number designated plates is ten dollars which shall be paid in addition to the regular annual registration fee. The annual fee for personalized sesquicentennial plates is five dollars which shall be paid in addition to the annual special sesquicentennial fee and the regular annual registration fee. The annual special sesquicentennial fee shall be credited as provided under paragraph "c"

e The sesquicentennial plate series shall not be available to new applicants or renewable after January 1, 1997. Upon the expiration of the series, the owner of a motor vehicle who has personalized sesquicentennial plates may, after proper application

and payment of fees, be issued either personalized registration plates or personalized collegiate registration plates containing the same alphanumeric characters as those on the personalized sesquicentennial plates.

91 Acts ch 49 §1 2 SF 231 91 Acts ch 58 §1 HF 426 91 Acts ch 259 §3 HF 710

Subsection 14 effective January 1 1992 91 Acts ch 259 §4 HF 710
1991 amendments to subsection 10 effective December 1 1991 91 Acts ch 49 §3 SF 231

Subsection 10 paragraph b NFW subparagraph (4)

Subsection 10 NEW paragraph e

Subsection 12 amended

NEW subsection 14

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 shall indicate the name of the county in which the vehicle was last registered and the registration expiration date. The transferee shall be required to list a motor vehicle license number.

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. However, no title fee shall be charged to a mobile home dealer applying for a certificate of title for a used mobile home, titled in Iowa, as required under section 321.45, subsection 4. 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. Mobile homes titled under chapter 448 that have been subject under section 446.18 to a public bidder sale in a county, shall be titled in the county's name, with no fee and the county treasurer shall issue the title.

3. The applicant shall be entitled to a credit for that portion of the registration fee of the vehicle sold, traded, or junked 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 ten 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 has made claim to receive a refund 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. If the credit allowed exceeds the amount of the registration fee for the vehicle acquired, the owner may claim a refund under section 321.126, subsection 6, for the balance of the credit.

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 regis-

tration year of the former owner computed from the date the vehicle was transferred, computed to the nearest whole dollar. The credit may 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 ten dollars, the credit shall be disallowed. The credit shall not be sold, transferred, or assigned to any other person.

91 Acts ch 191, §6 HF 687
Surcharge imposed, §321.52A
1991 amendment to subsection 2 effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Subsection 2 amended

321.47 Transfers by operation of law.

In the event of the transfer of ownership of a vehicle by operation of law as upon inheritance, devise or bequest, order in bankruptcy, insolvency, replevin, foreclosure or execution sale, abandoned vehicle sale, or when the engine of a motor vehicle is replaced by another engine, or a vehicle is sold to satisfy an artisan's lien as provided in chapter 577, a landlord's lien as provided in chapter 570, or a storage lien as provided in chapter 579, or repossession is had upon default in performance of the terms of a security agreement, the county treasurer in the transferee's county of residence, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof to the county treasurer of ownership and right of possession to the vehicle and upon payment of a fee of ten dollars and the presentation of an application for registration and certificate of title, may issue to the applicant a registration card for the vehicle and a certificate of title to it. The persons entitled under the laws of descent and distribution of an intestate's property to the possession and ownership of a vehicle owned in whole or in part by a decedent, upon filing an affidavit stating the name and date of death of the decedent, the right to possession and ownership of the persons filing the affidavit, and that there has been no administration of the decedent's estate, which instrument shall also contain an agreement to indemnify creditors of the decedent who would be entitled to levy execution upon the motor vehicle to the extent of the value of the motor vehicle, are entitled upon fulfilling the other requirements of this chapter, to the issuance of a registration card for the interest of the decedent in the vehicle and a certificate of title to it. If a decedent dies testate, and either the will is not probated or is admitted to probate without administration, the persons entitled to the possession and ownership of a vehicle owned in whole or in part by the decedent may file an affidavit, and upon fulfilling the other requirements of this chapter, are entitled to the issuance of a registration card for the interest of the decedent in the vehicle and a certificate of title to the vehicle. The affidavit shall contain the same information and indemnity agreement as is required in cases of intestacy pursuant to this section. No requirement of chapter 450 or 451 shall be considered satisfied by the filing of the affi-

davit provided for in this section. If, from the records in the office of the county treasurer, there appear to be any liens on the vehicle, the certificate of title shall contain a statement of such liens unless the application is accompanied by proper evidence of their satisfaction or extinction. Evidence of extinction may consist of, but is not limited to, an affidavit of the applicant stating that a security interest was foreclosed as provided in Uniform Commercial Code, chapter 554, article 9, part 5.

Whenever ownership of a vehicle is transferred under the provisions of this section the registration plates shall be removed and forwarded to the county treasurer of the county where the vehicle is registered or to the department if the vehicle is owned by a nonresident. Upon transfer the vehicle shall not be operated upon the highways of this state until the person entitled to possession of the vehicle applies for and obtains registration for the vehicle.

91 Acts, ch 119, §1 HF 602
Surcharge imposed, §321 52A
Unnumbered paragraph 1 amended

321.52 Out-of-state sales — junked, dismantled, wrecked, or salvage 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 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 except as provided in subsection 3. 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 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 make application for a certificate of title under the bonding procedure as provided in section 321.24, or the person may seek judicial review as provided under sections 17A.19 and 17A.20.

4. a. 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 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 or printed on the face of the title in a manner prescribed by the department. A salvage certificate of title may be as-

signed to any person. 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. However, a vehicle that has major damage to four or more component parts as defined in paragraph "b" shall receive a junking certificate of title and shall not thereafter be granted a regular certificate of title.

b. When a wrecked or salvage vehicle has been repaired, the owner may apply for a regular certificate of title by paying the appropriate fees and surrendering the salvage certificate of title and a properly executed salvage theft examination certificate. The county treasurer shall issue a regular certificate of title which, commencing September 1, 1988, if the wrecked or salvage vehicle is five model years old or less, shall bear the word "REBUILT" stamped or printed on the face of the title. The rebuilt designation shall be included on every Iowa certificate of title issued thereafter for the vehicle. However, if ownership of a stolen vehicle has been transferred to an insurer organized under the laws of this state or admitted to do business in this state, or if the transfer was the result of a settlement with the owner of the vehicle arising from damage to or the unrecovered theft of the vehicle, and if the insurer certifies to the county treasurer on a form approved by the department that the cost of repairs to all damage to the vehicle is less than three thousand dollars, the county treasurer shall issue the regular certificate of title without the rebuilt designation. The county treasurer shall issue a regular certificate of title without the "REBUILT" designation if, before repairs are made, a component parts review has been conducted by a peace officer who has been specially certified and recertified when required by the Iowa law enforcement academy to do salvage theft examinations. The Iowa law enforcement academy shall determine standards for training and certification, conduct training, and may approve alternative training programs which satisfy the academy's standards for training and certification. For the purpose of this section, a wrecked or salvage vehicle shall be considered to have component part damage if there is major damage requiring repairs or replacement of more than two of the vehicle's component parts. A "component part" means the rear clip, cowl, frame or inner structure forward of the cowl, body, cab, front end assembly, front clip, or such other parts which are critical to the safety of the vehicle as determined by rules adopted by the department. The owner shall pay a fee of thirty-five dollars upon the completion of the prerepair component parts review. The agency performing the examinations shall retain twenty-five dollars of the fee and shall pay five dollars of the fee to the department and five dollars of the fee to the Iowa law enforcement academy to provide for

the special training, certification, and recertification of officers as required by this subsection. The peace officer conducting the review shall maintain a record of the review and shall forward a copy of the review to the department. The department shall maintain a record of all reviews. If a vehicle does not have component damage as determined in this subsection, the officer conducting the review shall issue a certificate to the owner to that effect. The certificate shall be surrendered to the county treasurer at the time of application for a regular certificate of title and the treasurer shall forward the certificate to the department.

The provision of this subsection requiring a component parts review by a peace officer specially certified or recertified by the Iowa law enforcement academy to do salvage theft examinations shall become effective July 1, 1990. Component parts reviews conducted before July 1, 1990, shall be made by peace officers authorized to do so by the state department of transportation or the department of public safety who are qualified, as determined by those agencies, to conduct component parts reviews. The state department of transportation shall adopt rules in accordance with chapter 17A to carry out this section, including transition rules allowing for component parts reviews prior to July 1, 1990.

Notwithstanding the provisions of this lettered paragraph directing that five dollars of each fee be paid to the Iowa law enforcement academy, for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, such five dollars shall be deposited into the general fund of the state.

c. A salvage theft examination shall be made by a peace officer who has been specially certified and recertified when required by the Iowa law enforcement academy to do salvage theft examinations. The Iowa law enforcement academy shall determine standards for training and certification, conduct training, and may approve alternative training programs which satisfy the academy's standards for training and certification. The owner of the salvage vehicle shall make the vehicle available for examination at a time and location designated by the peace officer doing the examination. The owner may obtain a permit to drive the vehicle to and from the examination location by submitting a repair affidavit to the agency performing the examination stating that the vehicle is reasonably safe for operation and listing the repairs which have been made to the vehicle. The owner must be present for the examination and have available for inspection the salvage title, bills of sale for all essential parts changed, and the repair affidavit. The examination shall be for the purposes of determining whether the vehicle or repair components have been stolen. The examination is not a safety inspection and a signed salvage theft examination certificate shall not be construed by any court of law to be a certification that the vehicle is safe to be operated. There shall be no cause of action against the peace officer or the agency conducting the examination or the county treasurer for failure

to discover or note safety defects. If the vehicle passes the theft examination, the peace officer shall indicate that the vehicle passed examination on the salvage theft examination certificate and, with regard to a vehicle which is required to bear the word "*REBUILT*" stamped or printed on the face of the title, shall permanently identify the vehicle as "*rebuilt*" on the driver's door jamb or other area on the vehicle as designated by the department. A removal or alteration of this rebuilt identification is a violation of section 321.92. The repair affidavit, permit, and salvage theft examination certificate shall be on controlled forms prescribed and furnished by the department. The owner shall pay a fee of thirty dollars upon completion of the examination. The agency performing the examinations shall retain twenty dollars of the fee and shall pay five dollars of the fee to the department and five dollars of the fee to the Iowa law enforcement academy to provide for the special training, certification, and recertification of officers as required by this subsection.

The provision of this subsection requiring a salvage theft examination by a peace officer specially certified or recertified by the Iowa law enforcement academy to do salvage theft examinations shall become effective July 1, 1989. Salvage theft examinations conducted before July 1, 1989, shall be made by peace officers authorized to do so by the state department of transportation or the department of public safety who are qualified, as determined by those agencies, to conduct salvage theft examinations. The state department of transportation shall adopt rules in accordance with chapter 17A to carry out this section, including transition rules allowing for salvage theft examinations prior to July 1, 1989.

Notwithstanding the provisions of this lettered paragraph directing that five dollars of each fee be paid to the Iowa law enforcement academy, for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, such five dollars shall be deposited into the general fund of the state.

d. For purposes of this subsection a "*wrecked or salvage vehicle*" means a damaged vehicle subject to registration and having a gross vehicle weight rating of less than thirty thousand pounds, for which the cost of repair exceeds fifty percent of the fair market value of the vehicle, as determined in accordance with rules adopted by the department, before it became damaged.

e. A person who titled the person's motor vehicle before May 1, 1989, may have a title issued on that motor vehicle to the person without the "*REBUILT*" designation, if the person can show adequate proof that the wrecked or salvage motor vehicle was inspected by a peace officer prior to being repaired prior to September 1, 1988, and show proof through receipts of used parts and photos of the damage to the wrecked or salvage motor vehicle that the motor vehicle did not have major damage requiring repairs or replacement of more than two of the vehicle's component parts. Upon proper application and payment of a two dollar fee, the county treasurer shall

issue to the person the title to the person's motor vehicle without the "*REBUILT*" designation.

91 Acts, ch 142, §2, 3 HF 625, 91 Acts, ch 260, §1225, 1226 HF 173
1991 amendments to subsection 2 and subsection 3, unnumbered paragraph 2, retroactively applicable to all junking certificates for which certificates of title have not been reissued 91 Acts, ch 142, §4 HF 625

Restrictions on use of moneys deposited in state general fund, see 91 Acts ch 263, §38 SF 209

Surcharge imposed, §321 52A

Subsection 2 amended

Subsection 3, unnumbered paragraph 2 amended

Subsection 4, paragraph b, NEW unnumbered paragraph 3

Subsection 4, paragraph c, NEW unnumbered paragraph 3

321.52A Certificate of title surcharge.

In addition to the fee required for the issuance of a certificate of title under section 321.20, 321.23, 321.42, 321.46, 321.47, 321.48, 321.50, or 321.52, a surcharge of five dollars shall be required. Of each surcharge collected under those sections, the county treasurer shall remit five dollars to the office of treasurer of state for deposit in the general fund of the state.

91 Acts ch 267, §607 HF 479

NEW section

321.100 False evidences of registration.

It is a fraudulent practice for any person to commit any of the following acts:

1. To alter with a fraudulent intent any certificate of title, manufacturer's or importer's certificate, registration card, registration plate, manufacturer's vehicle identification plate, or permit issued by the department or county treasurer.

2. To forge or counterfeit any such document or plate.

3. To hold or use any such document or plate knowing the same to have been so altered, forged, or falsified.

4. To hold or use any certificate of title, manufacturer's or importer's certificate, registration card, registration plate, manufacturer's vehicle identification plate, or permit issued by the department or county treasurer, for any vehicle to which such document or plate is not legally assigned.

5. To transfer in any manner or to offer to transfer in any manner a certificate of title, manufacturer's or importer's certificate to any vehicle on which a salvage certificate of title or junking certificate is required under section 321.52, with knowledge or reason to believe that the certificate will be used for a vehicle other than the vehicle for which the certificate is issued. "*Transfer*" for the purposes of this subsection means to sell, exchange, change possession or ownership or convey in any manner.

91 Acts, ch 97, §44 HF 198

Former last paragraph stricken and recodified as §321 18A

321.118 Corn shellers and feed grinders.

Repealed by 91 Acts, ch 56, §2. HF 254

321.152 Fee for county.

A county treasurer may retain for deposit in the county general fund the following:

1. Four and one-quarter percent of the total col-

lection for each annual or semiannual vehicle registration and each duplicate registration card or plate issued.

2. Two dollars and fifty cents from each fee collected for certificates of title.

3. Forty percent of all fees collected for certified copies of certificates of title.

4. Sixty percent of all fees collected for notation of security interests.

The moneys retained shall be deducted, and reported to the department when the county treasurer transfers the money collected under this chapter. However, a deduction is not lawful unless the county treasurer has complied with sections 321.24 and 321.153.

91 Acts, ch 267, §608 HF 479
Subsections 1 and 2 amended

321.178 Driver education — restricted license — reciprocity.

1. *Approved course.* An approved driver education course as programmed by the department of education shall consist of at least thirty clock hours of classroom instruction, and six or more clock hours of laboratory instruction of which at least three clock hours shall consist of street or highway driving. An approved course shall include a minimum of two hours of classroom instruction concerning substance abuse as part of its curriculum. After the student has completed three clock hours of street or highway driving and has demonstrated to the instructor an ability to properly operate a motor vehicle and upon written request of a parent or guardian, the instructor may waive the remaining required laboratory instruction.

Every public school district in Iowa shall offer or make available to all students residing in the school district or Iowa students attending a nonpublic school in the district an approved course in driver education. The courses may be offered at sites other than at the public school, including nonpublic school facilities within the public school districts. An approved course offered during the summer months, on Saturdays, after regular school hours during the regular terms or partly in one term or summer vacation period and partly in the succeeding term or summer vacation period, as the case may be, shall satisfy the requirements of this section to the same extent as an approved course offered during the regular school hours of the school term. A student who successfully completes and obtains certification in an approved course in driver education or an approved course in motorcycle education may, upon proof of such fact, be excused from any field test which the student would otherwise be required to take in demonstrating the student's ability to operate a motor vehicle.

"Student," for purposes of this section, means a person between the ages of fourteen years and twenty-one years who resides in the public school district and who satisfies the preliminary licensing requirements of the department.

Any person who successfully completes an ap-

proved driver education course at a private or commercial driver education school licensed by the department, shall likewise be eligible for a driver's license at the age of sixteen years, providing the instructor in charge of the student's training has satisfied the educational requirements for a teaching certificate at the secondary level and holds a valid certificate to teach driver education in the public schools of Iowa.

2. Restricted license.

a. Any person between sixteen and eighteen years of age who is not in attendance at school or who is in attendance in a public or private school where an approved driver's education course is not offered or available, may be issued a restricted license only for travel to and from work or to transport dependents to and from temporary care facilities, if necessary for the person to maintain the person's present employment without having completed an approved driver's education course. The restricted license shall be issued by the department only upon confirmation of the person's employment and need for a restricted license to travel to and from work or to transport dependents of temporary care facilities if necessary to maintain the person's employment and upon receipt of a written statement from the public or private school that an approved course in driver's education was not offered or available to the person, if applicable. The employer shall notify the department if the employment of the person is terminated before the person attains the age of eighteen. The person shall not have a restricted license revoked or suspended upon re-entering school prior to age eighteen provided the student enrolls in and completes the classroom portion of an approved driver's education course as soon as a course is available.

b. The department may suspend a restricted license issued under this section upon receiving a record of the person's conviction for one violation and shall revoke the license upon receiving a record of conviction for two or more violations of a law of this state or a city ordinance regulating the operation of motor vehicles on highways, other than parking violations as defined in section 321.210. After revoking a license under this section the department shall not grant an application for a new license or permit until the expiration of one year or until the person attains the age of eighteen whichever is the longer period.

3. Driver's license reciprocity.

a. The department may issue a class C or M driver's license to a person who is sixteen or seventeen years of age and who is a current resident of the state, but who has been driving as a resident of another state for at least one year prior to residency within the state.

b. The following criteria must be met prior to issuance of a driver's license pursuant to this subsection:

(1) The minor must reside with a parent or guardian.

(2) The minor must have driven under a valid

driver's license for at least one year in the prior state of residence. Six months of the one year computation may include driving with an instruction permit.

(3) The minor must have had no moving traffic violations on the minor's driving record.

(4) The minor must pass the written and driving skills tests as required by the department, but is not required to have taken a driver's education class.

91 Acts, ch 128, §1, 2 HF 297
Subsection 2, paragraph a amended
NEW subsection 3

321.195 Duplicate motor vehicle licenses and nonoperator's identification cards.

If a motor vehicle license or nonoperator's identification card issued under this chapter is lost or destroyed, the person to whom the license or card was issued may, upon payment of a fee of three dollars for a motor vehicle license or nonoperator's identification card, obtain a duplicate, or substitute, upon furnishing proof satisfactory to the department that the motor vehicle license or nonoperator's identification card has been lost or destroyed. A fee of one dollar shall be charged for the voluntary replacement of a motor vehicle license or nonoperator's identification card.

91 Acts, ch 27, §2 HF 307
Section amended

321.251 Rights of owners of real property — mobile home parks.

1. This chapter shall not be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner and not as matter of right from prohibiting such use, or from requiring other or different or additional conditions than those specified in this chapter, or otherwise regulating such use as may seem best to such owner.

2. *a.* The owner of real property upon which a mobile home park is located may elect to have the vehicular traffic provisions of this chapter, or the ordinances, rules, or regulations of the local authority where the real property is located, apply to the real property and any persons located on the real property by granting authority to any peace officer to enforce the vehicular traffic provisions of this chapter, or the ordinances, rules, or regulations of the local authority as well as any regulations or conditions imposed on the real property pursuant to subsection 1. An election made pursuant to this subsection shall not create a higher priority for the enforcement of traffic laws on real property upon which a mobile home is located than exists for the enforcement of traffic laws on public property.

b. A written notice of election shall be filed with the designated officials of the local authority whose ordinances, rules, or regulations will govern the vehicular traffic. The appropriate officials shall be the city clerk and chief of police of the city in which the real property is located and the county sheriff and the county recorder of the county in which the real property is located. The notice shall include the legal

description of the real property, the street address, if any, and the date and time when the owner wishes the election to become effective. The notice shall be signed by every titleholder of the real property and acknowledged by a notary public.

c. An election shall terminate fourteen days following the filing of a written notice of withdrawal with the designated officials of the local authority whose ordinances, rules, or regulations will govern.

d. For purposes of this subsection, "titleholder of real property" means the person or entity whose name appears on the documents of title filed in the official county records as the owner of the real property upon which a mobile home park is located.

91 Acts, ch 91, §1 SF 331
Section amended

321.260 Interference with devices, signs, or signals — unlawful possession.

1. *a.* A person who willfully and intentionally, without lawful authority, attempts to or in fact alters, defaces, injures, knocks down, or removes an official traffic-control device, an authorized warning sign or signal or barricade, whether temporary or permanent, a railroad sign or signal, an inscription, shield or insignia on any of such devices, signs, signals, or barricades, or any other part thereof, shall, upon conviction, be guilty of a serious misdemeanor and shall be required to make restitution to the affected jurisdiction.

b. A person who is convicted under paragraph "a" of an act relating to a stop sign or a yield sign may be required to complete community service in addition to making restitution to the affected jurisdiction.

2. It shall be unlawful for any person to have in the person's possession any official traffic-control device except by legal right or authority. Any person convicted of unauthorized possession of any official traffic-control device shall upon conviction be guilty of a serious misdemeanor.

91 Acts, ch 131, §1 SF 97
Section amended

321.372 Discharging pupils — regulations.

1. The driver of a school bus used to transport children to and from a public or private school shall, when stopping to receive or discharge pupils, turn on flashing warning lamps at a distance of not less than three hundred feet nor more than five hundred feet from the point where the pupils are to be received or discharged from the bus. At the point of receiving or discharging pupils the driver of the bus shall bring the bus to a stop, turn off the amber flashing warning lamps, turn on the red flashing warning lamps, and extend the stop arm. After receiving or discharging pupils, the bus driver shall turn off all flashing warning lamps, retract the stop arm and proceed on the route. Except to the extent that reduced visibility is caused by fog, snow or other weather conditions, a school bus shall not stop to receive or discharge pupils unless there is at least three hundred feet of un-

obstructed vision in each direction. However, the driver of a school bus is not required to use flashing warning lamps and the stop arm when receiving or discharging pupils at a designated loading and unloading zone at a school attendance center or at extracurricular or educational activity locations where students exiting the bus do not have to cross the street or highway.

If a school district contracts with an urban transit system to transport children to and from a public or private school, the school bus which is provided by the urban transit system shall not be required to be equipped with flashing warning lights and a stop arm. If the school bus provided by an urban transit system is equipped with flashing warning lights and a stop arm, the driver of the school bus shall use the flashing warning light and stop arm as required by law.

A school bus, when operating on a highway with four or more lanes shall not stop to load or unload pupils who must cross the highway, except at designated stops where pupils who must cross the highway may do so at points where there are official traffic control devices or police officers.

A school bus shall, while carrying passengers, have its headlights turned on.

2 All pupils shall be received and discharged from the right front entrance of every school bus and if said pupils must cross the highway, they shall be required to pass in front of the bus, look in both directions, and proceed to cross the highway only on signal from the bus driver.

3 The driver of a vehicle, including the driver of a vehicle operating on a private road or driveway, when meeting a school bus with flashing amber warning lamps shall reduce the vehicle's speed to not more than twenty miles per hour, and shall bring the vehicle to a complete stop when the school bus stops and the stop signal arm is extended. The vehicle shall remain stopped until the stop signal arm is retracted after which time the driver may proceed with due caution.

The driver of a vehicle, including the driver of a vehicle operating on a private road or driveway, overtaking a school bus shall not pass a school bus when red or amber warning signal lights are flashing. The driver shall bring the vehicle to a complete stop no closer than fifteen feet from the school bus when it is stopped and the stop arm is extended, and the vehicle shall remain stopped until the stop arm is retracted and the school bus resumes motion.

4 The driver of a vehicle upon a highway providing two or more lanes in each direction need not stop upon meeting a school bus which is traveling in the opposite direction even though the school bus is stopped.

91 Acts ch 70 §1 HF 419
Subsection 3 amended

321.376 License — permit — instruction requirement.

1 The driver of a school bus shall hold a school

bus driver's permit issued annually by the department of education and a driver's license issued by the department valid for the operation of the school bus. The department of education shall charge a fee for the issuance of a school bus driver's permit in the amount of five dollars, which shall be deposited in the general fund of the state. A person holding a temporary restricted license issued under chapter 321J shall be prohibited from operating a school bus. The department shall revoke or refuse to issue a permit to any person who, after notice and opportunity for hearing, is determined to have committed any of the acts proscribed under section 321.375, subsection 2. The department of education shall recommend, and the state board of education shall adopt under chapter 17A, rules and procedures for the revocation and issuance of permits to persons. Rules and procedures adopted shall include, but are not limited to, provisions for the revocation of, or refusal to issue, permits to persons who are determined to have committed any of the acts proscribed under section 321.375, subsection 2.

2 A person applying for employment or employed as a school bus driver shall successfully complete a department of education approved course of instruction for school bus drivers before or within the first six months of employment and at least every twenty four months thereafter. If an employee fails to provide an employer with a certificate of completion of the required school bus driver's course, the driver's employer shall report the failure to the department of education and the employee's school bus driver's permit shall be revoked. The department of education shall send notice of the revocation of the employee's permit to both the employee and the employer. A person whose school bus driver's permit has been revoked under this section shall not be issued another school bus driver's permit until certification of the completion of an approved school bus driver's course is received by the department of education.

3 The department of education shall submit an annual budget request, separately from the department's annual operating budget request, in an amount not to exceed the amount collected by the department for the issuance of annual school bus driver permits. Funds requested shall be designated for purposes of establishing and conducting approved courses of instruction for school bus drivers and for school bus passenger safety programs. The department shall recommend rules for adoption by the state board of education relating to the assessment and collection of funds from the school bus driver fee and relating to distribution of funds for approved courses of instruction.

91 Acts ch 201 §1 HF 698
Section amended

321.423 Flashing lights.

1 *Definitions* As used in this section, unless the context otherwise requires
a "Advanced emergency medical care provider" means as defined in section 147A.1

b “Basic emergency medical care provider” means as defined in section 147.1.

c “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.

d “Member” means a person who is a member in good standing of a fire department or a person who is an advanced or basic emergency medical care provider employed by an ambulance, rescue, or first responder service.

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.

f A flashing white light is permitted on a vehicle pursuant to subsection 7.

g A white flashing strobe light mounted on a school bus as permitted under section 321.373, subsection 7.

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 of an ambulance, rescue, or first responder service or when the member has used the blue or white 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 or white light except in any of the following circumstances:

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.

c When the authorized vehicle is at the scene of an emergency.

d The use of the blue or white 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.

7. *Flashing white light* Except as provided in section 321.373, subsection 7, and subsection 2, paragraph “c” of this section, a flashing white light shall only be used on a vehicle in the following circumstances:

a On a vehicle owned or exclusively operated by an ambulance, rescue, or first responder service.

b On a vehicle authorized by the director of public health when all of the following apply:

(1) The vehicle is owned by a member of an ambulance, rescue, or first responder service.

(2) The request for authorization is made by the member on forms provided by the Iowa department of public health.

(3) Necessity for authorization is demonstrated in the request.

(4) The head of an ambulance, rescue, or first responder service certifies that the member is in good standing and recommends that the authorization be granted.

c On an authorized emergency vehicle.

The Iowa department of public health shall adopt rules to establish issuance standards, including allowing local emergency medical service providers to issue certificates of authorization, and shall adopt rules to establish certificate of authorization revocation procedures.

91 Acts ch 131 §2 4 SF 97

Subsection 1 paragraph d stricken and former paragraph e relettered as d

Subsection 2 paragraph f amended

Subsection 7 unnumbered paragraph 1 amended

321.450 Hazardous materials transportation regulations.

A person shall not transport or have transported or shipped within this state any hazardous material except in compliance with rules adopted by the department under chapter 17A. The rules shall be consistent with the federal hazardous materials regulations promulgated under United States Code, Title 49, and found in 49 C.F.R. §§ 107, 171 to 173, 177, 178, and 180. However, rules adopted under this section concerning tank specifications shall not apply to cargo tank motor vehicles with a capacity of four thousand gallons or less used to transport gasoline in intrastate commerce, which were manufactured between 1950 and 1989, were domiciled in Iowa prior to July 1, 1991, and are in compliance with the American society of mechanical engineers specifications in effect at the time of manufacture.

Notwithstanding other provisions of this section, rules adopted under this section concerning physical and medical qualifications for drivers of commercial vehicles engaged in intrastate commerce shall not be construed as disqualifying any individual who was employed as a driver of commercial vehicles engaged in intrastate commerce prior to January 1, 1988.

Notwithstanding other provisions of this section, or the age requirements under section 321.449, the age requirements under section 321.449 and the rules adopted under this section pertaining to compliance with regulations adopted under U.S.C., Title 49, and found in 49 C.F.R. § 177.804, shall not apply to retail dealers of fertilizers, petroleum products, and pesticides and their employees while delivering fertilizers, petroleum products, and pesticides to farm customers within a one-hundred-mile radius of their retail place of business. Notwithstanding contrary provisions of this chapter, motor vehicles registered for a maximum gross weight of five tons or less shall be exempt from the requirements of placarding and of carrying hazardous materials shipping papers if the hazardous materials which are transported are clearly labeled.

91 Acts, ch 127, § 1 HF 252

1991 amendment to unnumbered paragraph 1 is repealed July 1, 1994, on that date, section returns to language shown in 1991 Code, 91 Acts, ch 127, § 2 HF 252

Unnumbered paragraph 1 amended

321.457 Maximum length.

1. A combination of four vehicles is not allowed on the highways of this state, except for power units saddle mounted on other power units which shall be restricted to a maximum overall length of sixty-five feet unless subject to the maximum length provisions of subsection 3.

2. The maximum length of any motor vehicle or combination of vehicles operated on the highways of this state, unless subject to the maximum length provisions of subsection 3, are as follows:

a. A single truck, unladen or with load, shall not have an overall length, inclusive of front and rear bumpers, in excess of forty feet.

b. A single bus, unladen or with load, shall not

have an overall length, inclusive of front and rear bumpers, in excess of forty feet, except that buses constructed so as to contain a flexible part allowing articulation shall not exceed sixty-one feet.

c. Except for combinations of vehicles, provisions for which are otherwise made in this chapter, no combination of a truck tractor and a semitrailer coupled together or a motor truck and a trailer or semitrailer coupled together unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of sixty feet.

d. However, a mobile home not in excess of forty-eight feet in length may be drawn by any motor vehicle, except a motor truck, provided that the mobile home and its towing unit are not in excess of an overall length of sixty feet. For the purposes of this subsection, a light delivery truck, panel delivery truck or "pickup" is not a motor truck. A portable livestock loading chute not in excess of a length of thirteen feet including its hitch or tongue may be drawn by any vehicle or combination of vehicles, provided that the vehicle or combination of vehicles drawing the loading chute is not in excess of the legal length provided for such vehicles or combinations.

e. Combinations of vehicles coupled together which are used exclusively for the transportation of passenger vehicles, light delivery trucks, panel delivery trucks, pickup trucks, recreational vehicle chassis, and boats shall not exceed sixty-five feet in overall length. However, the load carried on a truck-semitrailer combination may extend up to three feet beyond the front bumper and up to four feet beyond the rear bumper.

f. A combination of three vehicles coupled together one of which is a motor vehicle, unladen or with load, shall not have an overall length, inclusive of front and rear bumpers, in excess of sixty feet.

g. A motor vehicle or combination of vehicles may be operated upon the highways of this state, irrespective of the length and weight limitations imposed by the laws of this state, if the motor vehicle or combination of vehicles is operated within the corporate limits of a city abutting a border of this state and such operations have been approved by ordinance of the city council and if the length and weight of the motor vehicle or combination of vehicles is in conformity with the laws relating to length and weight of the abutting state on July 1, 1974. If a city council has authorized such operation upon highways within the corporate limits, then the limit of travel for such motor vehicles or combination of vehicles within the state is extended to the commercial zones as described by federal regulations concerning interstate commerce, 49 code of federal regulations, paragraphs 1048.10, 1048.38, and 1048.101 as they exist on July 1, 1974.

h. A semitrailer shall not have a distance between the kingpin and the center of its rearmost axle in excess of forty feet, except a semitrailer used principally for hauling livestock, a semitrailer used exclusively for hauling self-propelled industrial and construction equipment, or a semitrailer used exclusively for the

purposes described in paragraph e of this subsection. A semitrailer which is a 1980 or older model having a distance between the kingpin and center of the rear-most axle of more than forty feet may be operated on the highways of this state if a special overlength permit is obtained from the department for the vehicle. The special overlength permit shall be valid until the semitrailer is inoperable.

3. The maximum length of any motor vehicle or combination of vehicles operated on the highways of this state which are designated by the transportation commission shall be as follows:

a A trailer or semitrailer, laden or unladen, shall not have an overall length in excess of fifty-three feet when operating in a truck tractor-semitrailer combination.

b A trailer or semitrailer, laden or unladen, shall not have an overall length in excess of twenty-eight feet six inches when operating in a truck tractor-semitrailer-trailer combination or truck tractor-semitrailer-semitrailer combination. When the semitrailers in a truck tractor-semitrailer-semitrailer combination are connected by a rigid frame extension including a fifth-wheel connection point attached to the rear frame of the first semitrailer, the length of the frame extension shall not be included when determining the overall length of the first semitrailer.

c Power units designed to carry cargo, when used in combination with a trailer or semitrailer shall not exceed sixty-five feet in overall length for the combination.

d In a combination of vehicles used principally for hauling livestock or a stinger-steered automobile transporter operating under this subsection and section 321.454, subsection 2, the combination of vehicles used principally for hauling livestock or the stinger-steered automobile transporter may depart from the designated highway system by the most direct route to points of pickup and delivery. Vehicles operating under this paragraph are not exempt from posted size and weight restrictions on highway structures.

e A stinger-steered automobile transporter shall not have an overall length exceeding seventy-five feet, except that the load may extend up to three feet beyond the front bumper and up to four feet beyond the rear bumper.

f Power units saddle mounted or full mounted on other power units shall not exceed seventy-five feet in overall length.

The commission shall adopt rules to designate the highways. The rules adopted by the department under this paragraph are exempt from chapter 17A, the Iowa administrative procedure Act.

4. Fire fighting apparatus and vehicles operated during daylight hours when transporting poles, pipe, machinery, or other objects of a structural nature which cannot be readily disassembled when required for emergency repair of public service facilities or properties are not subject to the limitations on overall length of vehicles and combinations of vehicles imposed under this section. However, for operation during nighttime hours, these vehicles and the load

being transported shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps at the extreme ends of the projecting load to clearly mark the dimensions of the load. A member of the state highway safety patrol shall also be notified prior to the operation of the vehicle.

91 Acts ch 31 §1 2 HF 309
Subsection 1 amended
Subsection 3 NEW paragraph f

321.461 Trailers and towed vehicles.

When one vehicle is towing another the drawbar or other connection shall not exceed fifteen feet from one vehicle to the other except the connection between any two vehicles transporting poles, pipe, machinery, or other objects of structural nature which cannot readily be dismembered.

If the towing vehicle is a motor truck and the towed vehicle is a single trailer with a single point of articulation at the hitch connection, the drawbar or other connection shall not exceed twenty-one feet. The length of the drawbar or other connection shall be measured from the centerline of the hitch assembly on the towing vehicle to the front of the body of the towed vehicle. A vehicle which has a drawbar or other connection which measures between fifteen and twenty-one feet in length shall have at least one yellow reflector visible on each vertical face of the drawbar or other connection, located near the midpoint between the towing and the towed vehicle. A vehicle which has a drawbar or other connection which measures between fifteen and twenty-one feet in length shall have affixed to the rear of the towed vehicle a sign indicating that the vehicle is a towed vehicle.

91 Acts ch 31 §3 HF 309
NEW unnumbered paragraph 2

321.475 Liability for damage — rules.

Any person driving any vehicle, object, or contrivance upon any highway or highway structure shall be liable for all damage which said highway or structure may sustain as a result of any illegal operation, driving, or moving of such vehicle, object, or contrivance, or as a result of operation, driving, or moving any vehicle, object, or contrivance weighing in excess of the maximum weight in this chapter but authorized by a special permit issued as provided in this chapter.

Whenever such driver is not the owner of such vehicle, object, or contrivance, but is so operating, driving, or moving the same with the express or implied permission of said owner, then said owner and driver shall be jointly and severally liable for any such damage. Such damage may be recovered in a civil action brought by the authorities in control of such highway or highway structure.

The department shall adopt rules pursuant to chapter 17A, stating the department's policy for recovery of damages to highways or highway structures pursuant to this section. The policy shall exclude from recoverable damages the costs of traffic control at the scene of an accident.

91 Acts ch 67 §1 HF 275
Filing date for rules 91 Acts ch 67 §2 HF 275
NEW unnumbered paragraph 3

CHAPTER 321E

MOVEMENT OF VEHICLES OF EXCESSIVE SIZE AND WEIGHT

321E.8 Annual permits.

Subject to the discretion and judgment provided for in section 321E.1, annual permits shall be issued in accordance with the following provisions:

1. Vehicles with indivisible loads having an overall width not to exceed twelve feet five inches or mobile homes including appurtenances not to exceed twelve feet five inches and an overall length not to exceed seventy-five feet zero inches may be moved for unlimited distances. The vehicle and load shall not exceed the height of thirteen feet ten inches and the total gross weight as prescribed in section 321.463.

2. Vehicles with indivisible loads, including mobile homes and factory-built structures, having an overall width not to exceed sixteen feet zero inches and an overall length not to exceed one hundred feet zero inches may be moved under an annual or all-systems permit and must have a route specified by the issuing authority prior to the movement. However, vehicles with indivisible loads, including mobile homes and factory-built structures, with an overall width not exceeding fourteen feet six inches may exceed fifty miles under an annual and all-systems permit when prior approval for trip routing is obtained from the issuing authority. The vehicle and load shall not exceed the height as prescribed in section 321.456 and the total gross weight as prescribed in section 321.463.

3. Vehicles with indivisible loads having an overall length not to exceed one hundred feet zero inches shall be restricted to trip distances not to exceed fifty highway and street miles in total aggregate. The vehicle and load shall not exceed the width as prescribed in section 321.454, the height as prescribed in section 321.456 and the total gross weight as prescribed in section 321.463.

4. All movements of mobile homes and other vehicles the width of which, including any load, exceeds the roadway lane width of the street or highway being traversed, shall be under escort.

91 Acts, ch 133, §1 SF 338
Subsection 2 amended

321E.9 Single-trip permits.

Subject to the discretion and judgment provided for in section 321E.1, single-trip permits shall be issued in accordance with the following provisions:

1. Vehicles with indivisible loads having an overall width not to exceed forty feet, zero inches, an overall length not to exceed one hundred twenty feet, zero inches, or a total gross weight not to exceed one hundred thousand pounds may be moved, provided

the gross weight on any one axle shall not exceed the maximum prescribed in section 321.463, pursuant to rules adopted pursuant to chapter 17A. The height of the vehicles and loads shall be limited only to height limitations of underpasses, bridges, power lines and other established height restrictions on the specified route.

2. Vehicles with indivisible loads exceeding the width, length, and total gross weight provided in subsection 1, may be moved in special or emergency situations, provided the gross weight on any one axle shall not exceed the maximum prescribed in section 321.463. The vehicle and load shall be accompanied by an escort as required by rules adopted pursuant to chapter 17A. The issuing authority may impose any special restrictions as deemed necessary on movements by permit under this subsection.

3. Vehicles or combinations of vehicles consisting of construction machinery being temporarily moved on streets, roads, and highways with a maximum total gross weight limitation and a single axle weight limitation prescribed in section 321E.7, an overall width not to exceed fourteen feet, an overall length not to exceed eighty feet, may be moved for unlimited distances over specified routes when accompanied by an escort as required by rules adopted pursuant to chapter 17A. The height of the vehicle or combination of vehicles shall be limited only to the height limitations of underpasses, bridges, power lines, and other established height restrictions on the specified route.

91 Acts, ch 133, §2 SF 338
Subsection 1 amended

321E.14 Fees for permits.

The department or local authorities issuing the permits shall charge a fee of twenty-five dollars for an annual permit and a fee of ten dollars for a single-trip permit and shall determine charges for special permits issued pursuant to section 321E.29 by rules adopted pursuant to chapter 17A. Fees for the movement of buildings, parts of buildings, or unusual vehicles or loads may be increased to cover the costs of inspections by the issuing authority. A fee not to exceed two hundred fifty dollars per day or a prorated fraction of that fee per person and car for escort service may be charged when requested or when required under this chapter. Proration of escort fees between state and local authorities when more than one governmental authority provides or is required to provide escort for a movement during the period of a day shall be determined by rule under section 321E.15. The department and local authorities may

charge a permit applicant for the cost of trimming trees and removal and replacement of natural obstructions or official signs and signals or other public or private property required to be removed during the movement of a vehicle and load. In addition to the fees provided in this section, the annual fee for a permit for special mobile equipment, as defined in section 321.1, subsection 17, operated pursuant to section 321E.7, subsection 2, with a combined gross weight up to and including eighty thousand pounds shall be twenty-five dollars and for a combined gross weight exceeding eighty thousand pounds, fifty dollars.

In addition to the fees provided in this section, the annual fee for a permit for a trailer transporting soil conservation equipment operated under section 321E.7, subsection 3, shall be one hundred dollars.

The annual fee for an all-system permit is one hundred twenty dollars which shall be deposited in the road use tax fund.

91 Acts, ch 133 §3 SF 338
Unnumbered paragraph 1 amended

321E.28 Single-trip and annual permits for mobile homes or factory-built structures.

The department and local authorities may, upon application and with good cause shown, issue single-trip or annual permits for the movement of mobile

homes or factory-built structures of widths including appurtenances exceeding twelve feet five inches subject to the following conditions:

1. Permits shall be issued only when the movement can be safely accomplished without causing unnecessary traffic congestion.

2. Permits issued under this section shall specify the route over which the mobile home or factory-built structure shall be moved, and wherever possible, the department and local authorities shall specify highways having a roadway at least twenty-four feet in width.

3. Single-trip permits may be issued by the department or local authorities contingent upon favorable road and weather conditions.

4. A permit may be issued to allow the movement of a mobile home or factory-built structure on a fully controlled-access, divided, multilaned highway at a speed exceeding forty miles per hour but not exceeding forty-five miles per hour.

For the purposes of this section, “*factory-built structure*” means a structure which is wholly or in substantial part, made, fabricated, formed, or assembled in manufacturing facilities for installation or assembly and installation on a building site and which is temporarily moved on its own axles.

91 Acts, ch 133 §4 SF 338
Subsection 1 stricken and former sections 2 5 renumbered as 1 4

CHAPTER 321G

SNOWMOBILES AND ALL-TERRAIN VEHICLES

321G.1 Definitions.

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

1. “*All-terrain vehicle*” means a motorized flotation-tire vehicle with not less than three low pressure tires, but not more than six low pressure tires, that is limited in engine displacement to less than eight hundred cubic centimeters and in total dry weight to less than seven hundred fifty pounds and that has a seat or saddle designed to be straddled by the operator and handlebars for steering control.

2. “*‘A’ scale*” means the physical scale marked “A” graduated in decibels on a sound level meter which meets the requirements of the American national standards institute, incorporated, publication S1.4-1961, general purpose sound level meters.

3. “*Commission*” means the natural resource commission of the department.

4. “*Dealer*” means a person engaged in the business of buying, selling, or exchanging all-terrain vehicles or snowmobiles required to be registered

under this chapter and who has an established place of business for that purpose in this state.

5. “*Department*” means the department of natural resources.

6. “*Established place of business*” means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where the books and records are kept and the dealer’s or manufacturer’s business is primarily transacted.

7. “*Manufacturer*” means a person engaged in the business of constructing or assembling all-terrain vehicles or snowmobiles required to be registered under this chapter and who has an established place of business for that purpose in this state.

8. “*Measurable snow*” means one-tenth of one inch of snow.

9. “*Nonambulatory person*” means an individual with paralysis of the lower half of the body with the involvement of both legs, usually caused by disease of or injury to the spinal cord, or caused by the loss of both legs or the loss of a part of both legs.

10 *"Operate"* means to ride in or on, other than as a passenger, use, or control the operation of an all-terrain vehicle or snowmobile in any manner, whether or not the all-terrain vehicle or snowmobile is moving

11 *"Operator"* means a person who operates or is in actual physical control of an all-terrain vehicle or snowmobile

12 *"Owner"* means a person, other than a lienholder, having the property right in or title to an all-terrain vehicle or snowmobile. The term includes a person entitled to the use or possession of an all-terrain vehicle or snowmobile subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security

13 *"Person"* means an individual, partnership, firm, corporation, association, and the state, its agencies, and political subdivisions

14 *"Railroad right of way"* shall mean the full width of property owned, leased or subject to easement for railroad purposes and shall not be limited to those areas on which tracks are located

15 *"Roadway"* means that portion of a highway improved, designed, or ordinarily used for vehicular travel

16 *"Safety certificate"* means an all-terrain vehicle or snowmobile safety certificate issued by the commission to a qualified applicant who is twelve years of age or more

17 *"Snowmobile"* means a motorized vehicle weighing less than one thousand pounds which uses sled-type runners or skis, endless belt-type tread, or any combination of runners, skis, or tread, and is designed for travel on snow or ice

18 *"Special event"* means an organized race, exhibition, or demonstration of limited duration which is conducted according to a prearranged schedule and in which general public interest is manifested

19 *"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 travel, except in public areas in which the boundary shall be thirty-three feet each side of the center line of the roadway

91 Acts ch 236 §1 HF 289

NEW subsection 9 and former subsections 9 18 renumbered as 10 19

321G.6 Registration — renewal — transfer.

Every all-terrain vehicle or snowmobile registration certificate and number issued expires at midnight December 31, and renewals expire every two years thereafter unless sooner terminated or discontinued in accordance with this chapter. After the first day of September each even-numbered year, an unregistered all-terrain vehicle or snowmobile and renewals may be registered for the subsequent biennium beginning January 1. An all-terrain vehicle or snowmobile registered between January 1 and Sep-

tember 1 of even-numbered years shall be registered for a fee of ten dollars for the remainder of the registration period

After the first day of September in even-numbered years an unregistered all-terrain vehicle or snowmobile may be registered for the remainder of the current registration period and for the subsequent registration period in one transaction. The fee shall be five dollars for the remainder of the current period, in addition to the registration fee of twenty dollars for the subsequent biennium beginning January 1, and a writing fee. Registration certificates and numbers may be renewed upon application of the owner in the same manner as provided in securing the original registration. The all-terrain vehicle or snowmobile registration fee is in lieu of personal property tax for each year of the registration.

An expired all-terrain vehicle or snowmobile registration may be renewed for the same fee as if the owner is securing the original registration plus a penalty of five dollars and a writing fee

All all-terrain vehicles used on public land must be registered within six months following January 1, 1990, unless otherwise exempt

When a person, after registering an all-terrain vehicle or snowmobile, moves from the address shown on the registration certificate, the person shall, within ten days, notify the county recorder in writing of the move and the person's new address

Upon the transfer of ownership of an all-terrain vehicle or snowmobile, the owner shall complete the form on the back of a current registration certificate and shall deliver it to the purchaser or transferee at the time of delivering the all-terrain vehicle or snowmobile. The purchaser or transferee shall, within five days, file a new application form with the county recorder with a fee of one dollar and the writing fee, and a transfer of number shall be awarded in the same manner as provided in an original registration

All registrations must be valid for the current registration period prior to the transfer of any registration, including assignment to a dealer

Duplicate registrations may be issued upon application therefor and the payment of the same fees collected for the transfer of registrations

A motorcycle, as defined in section 321.1, subsection 3, paragraph "a", may be registered as an all-terrain vehicle as provided in this section. A motorcycle registered as an all-terrain vehicle may participate in all programs established for all-terrain vehicles under this chapter except for the safety instruction and certification program

91 Acts ch 236 §2 HF 289

NEW unnumbered paragraph 9

321G.13 Unlawful operation.

A person shall not drive or operate an all-terrain vehicle or snowmobile

1 At a rate of speed greater than reasonable or proper under all existing circumstances

2 In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage thereto

3. While under the influence of intoxicating liquor or narcotics or habit-forming drugs.

4. Without a lighted headlight and taillight from sunset to sunrise and at such other times when conditions provide insufficient lighting to render clearly discernible persons and vehicles at a distance of five hundred feet ahead.

5. In any tree nursery or planting in a manner which damages or destroys growing stock.

6. On any public land, ice, or snow, in violation of official signs of the commission prohibiting such operation in the interest of safety for persons, property, or the environment. Any officer appointed by the commission may post an official sign in an emergency for the protection of persons, property, or the environment.

7. In or on any park or fish and game areas except on designated all-terrain vehicle or snowmobile trails.

8. Upon an operating railroad right of way. An all-terrain vehicle or snowmobile may be driven directly across a railroad right of way only at an established crossing and, notwithstanding any other provisions of law, may, if necessary, use the improved portion of the established crossing after yielding to all oncoming traffic. This subsection does not apply to a law enforcement officer or railroad employee in the lawful discharge of the officer's or employee's duties.

9. On any public road or street without a bright colored pennant or flag displayed at least sixty inches above the ground. Said pennant or flag shall be a minimum of six inches by nine inches, shall be orange and shall provide a fluorescent effect.

10. On public land without a measurable snow cover except as provided in section 321.234A or in specific areas permitted by the commission, such as "all-terrain vehicle parks" which are designated and intended for use with or without snow.

11. A person shall not operate or ride in an all-terrain vehicle or snowmobile with a firearm in the person's possession unless it is unloaded and enclosed in a carrying case. However, a nonambulatory person may carry an uncased and unloaded firearm while operating or riding an all-terrain vehicle or a snowmobile.

12. A person shall not operate an all-terrain vehicle while carrying a passenger.

91 Acts, ch 236, §3 HF 289
Subsection 11 amended

321G.16 Special events.

The department may authorize the holding of organized special events as defined in this chapter within this state. The department shall adopt rules relating to the conduct of special events held under department permits and designating the equipment and facilities necessary for safe operation of all-terrain vehicles and snowmobiles or for the safety of operators, participants, and observers in the special events. A special event for all-terrain vehicles may include motorcycles upon payment of an entrance

fee set by the organizer of the special event. The department may require that part of the motorcycle entrance fee be credited to pay costs of all-terrain vehicle programs authorized pursuant to section 321G.7. At least thirty days before the scheduled date of a special event in this state, an application shall be filed with the department for authorization to conduct the special event. The application shall set forth the date, time, and location of the proposed special event and any other information the department requires. The special event shall not be conducted without written authorization of the department. Copies of the rules shall be furnished by the department to any person making an application.

91 Acts, ch 236, §4 HF 289
Section amended

321G.24 Safety certificate — fee.

1. A person under eighteen years of age shall not operate a snowmobile on public land or land purchased with snowmobile registration funds in this state without obtaining a valid safety certificate issued by the department and having the certificate in the person's possession, unless the person is accompanied on the same snowmobile by a responsible person of at least eighteen years of age who is experienced in snowmobile operation and possesses a valid motor vehicle license, as defined in section 321.1, or a safety certificate issued under this chapter. A person under eighteen years of age shall not operate an all-terrain vehicle on public land or land purchased with all-terrain vehicle registration funds in this state without obtaining a valid safety certificate issued by the department and having the certificate in the person's possession.

2. Upon application and payment of a fee of three dollars, a qualified applicant shall be issued a safety certificate which is valid until the certificate is suspended or revoked for a violation of a provision of this chapter or a rule of the commission or the director of transportation. The application shall be made on forms issued by the commission and shall contain information as the commission may reasonably require.

3. Any person who is required to have a safety certificate under this chapter and who has completed a course of instruction established under section 321G.2, subsection 5, including the successful passage of an examination which includes a written test relating to such course of instruction, shall be considered qualified to apply for a safety certificate. The commission may waive the requirement of completing such course of instruction if such person successfully passes a written test based on such course of instruction.

4. The permit fees collected under this section shall be credited to the state conservation fund and shall be used for safety and educational programs.

5. A valid all-terrain vehicle or snowmobile safety certificate or license issued to a nonresident by a governmental authority of another state shall be considered a valid certificate or license in this state

if the permit or license requirements of the governmental authority, excluding fees, are substantially the same as the requirements of this chapter as de-

termined by the commission

91 Acts ch 236 §5 HF 280
Subsection 1 amended

CHAPTER 321J

OPERATING WHILE INTOXICATED

321J.4A Surrender of registration and plates.

1 Upon a plea or verdict of guilty of a third or subsequent violation of section 321J 2, the court shall issue an impoundment order requiring the surrender to the court of the registration certificate and registration plates of all of the following

a All vehicles registered to the defendant, or jointly to the defendant and the defendant's spouse

b All vehicles owned by the defendant, or jointly by the defendant and the defendant's spouse

c All vehicles leased to the defendant, or jointly to the defendant and the defendant's spouse This paragraph does not apply to a rental vehicle which is one of a fleet of two or more vehicles rented for periods of four months or less

2 For purposes of this section, a conviction for, deferred judgment for, or plea of guilty to, a violation of section 321J 2, which occurred more than six years prior to the date of the most recent violation charged, shall not be considered in determining that the most recent violation is a third or subsequent violation

3 If the court issues an impoundment order, the registration certificate and registration plates shall be surrendered to the court either three days after the order is issued or on the date specified by the court, whichever is later If the registration plates have been surrendered to the department pursuant to section 321A 17, the defendant shall notify the court The court shall forward the notice and impoundment order to the county treasurer The court shall forward surrendered registration certificates to the county treasurer within seven days after surrender The court may destroy the surrendered registration plates Except as provided in subsection 5, new registration plates shall not be issued to the defendant or owner until the driver's license of the violator has been reissued or reinstated The court shall notify the director within ten days after issuing an impoundment order

4 a A defendant or an owner may apply to the director for new registration plates, which must bear a special series of numbers or letters so as to be readily identified by traffic law enforcement officers Application for and acceptance of special plates consti-

tutes implied consent for law enforcement officers to stop the vehicle bearing special plates at any time The director shall authorize the issuance of special plates if any of the following apply

(1) A member of the defendant's household has a valid driver's license

(2) The defendant or owner has a temporary restricted license issued pursuant to section 321J 4, subsection 8

The director may issue the special plates on payment of a fifty dollar fee for each vehicle for which special plates are requested

b Until the driver's license of the defendant is reinstated or reissued, the defendant shall inform the department that an impoundment order is in effect when requesting any new registration plates

5 A registered owner shall not sell a motor vehicle during the time its registration plates and registration certificate have been ordered surrendered or during the time its registration plates bear a special series number, unless the registered owner applies to the department for consent to transfer title to the motor vehicle If the department is satisfied that the proposed sale is in good faith and for valid consideration, that the registered owner will be deprived of custody and control of the motor vehicle, and that the sale is not for the purpose of circumventing the provisions of this section, the department may certify its consent to the county treasurer The county treasurer shall then transfer the title to the new owner upon proper application and issue new registration plates After the registration plates and registration certificate have been ordered surrendered to the court under this section, if the title to the motor vehicle is transferred by the cancellation of a conditional sales contract, a sale upon execution, or by decree or order of a court of competent jurisdiction, the department shall order the title surrendered to the new registered owner The county treasurer shall then transfer the title and issue new registration plates to the new registered owner

6 This section is not intended to change or modify taxation of motor vehicles or the time within which a motor vehicle tax must be paid

7 a A person who fails to surrender any registration plates or a registration certificate to the court

upon demand under this section or who fails to comply with this section is guilty of a simple misdemeanor and contempt of court.

b A person who operates a motor vehicle on a street or highway at a time when a court has ordered the surrender of its registration plate and registration certificate is guilty of a simple misdemeanor as a separate and distinct offense from any other penalty imposed in connection with driving while under a license suspension or revocation.

8. The director may adopt such rules as may be necessary or convenient for the implementation and administration of this section.

91 Acts ch 258 §47 49 HF 709
 Subsections 3 and 5 amended
 Subsection 4 paragraph a subparagraph (2) amended

321J.17 Civil penalty — victim compensation fund — reinstatement.

When the department revokes a person’s motor vehicle license or nonresident 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 the separate fund established in section 912.14. A temporary restricted license shall not be issued or a motor vehicle license or nonresident operating privilege reinstated until the civil penalty has been paid.

91 Acts ch 258 §50 HF 709
 Section amended

CHAPTER 322A

MOTOR VEHICLE FRANCHISERS

322A.1 Definitions.

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

1. “Community” means the franchisee’s area of responsibility as stipulated in the franchise.

2. “Consumer care” means to perform, for the public, necessary maintenance and repairs to motor vehicles.

3. “Department” means the state department of transportation.

4. “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 motor vehicles manufactured or distributed by the franchiser.

c The franchisee, as an independent business, constitutes a component of franchiser’s distribution system.

d The operation of franchisee’s business is substantially associated with the franchiser’s trade-

mark, service mark, trade name, advertising, or other commercial symbol designating the franchiser.

e The operation of the franchisee’s business is substantially reliant on franchiser for the continued supply of motor vehicles, parts, and accessories.

5. “Franchisee” means a person who receives motor vehicles from the franchiser under a franchise and who offers and sells such motor vehicles to the general public.

6. “Franchiser” means a person who manufactures or distributes motor vehicles and who may enter into a franchise as hereinafter defined.

7. “Motor vehicle” means “motor vehicles” as defined in chapter 321 which are subject to registration pursuant to the provisions thereof.

8. “Person” means a sole proprietor, partnership, corporation, or any other form of business organization.

9. “Termination or noncontinuance” includes a reduction of the geographic area of a community.

91 Acts ch 27 §3 HF 307
 NEW subsection 9
 Subsections alphabetized

CHAPTER 322E

NEW MOTOR VEHICLE REPAIR OR REPLACEMENT

Repealed by 91 Acts,
ch 153, § 16; see ch 322G

CHAPTER 322G

DEFECTIVE MOTOR VEHICLES (LEMON LAW)

322G.1 Legislative intent.

The general assembly recognizes that a motor vehicle is a major consumer acquisition and that a defective motor vehicle undoubtedly creates a hardship for the consumer. The general assembly further recognizes that a duly franchised motor vehicle dealer is an authorized service agent of the manufacturer. It is the intent of the general assembly that a good faith motor vehicle warranty complaint by a consumer be resolved by the manufacturer within a specified period of time. It is further the intent of the general assembly to provide the statutory procedures whereby a consumer may receive a replacement motor vehicle, or a full refund, for a motor vehicle which cannot be brought into conformity with the warranty provided for in this chapter. However, this chapter does not limit the rights or remedies which are otherwise available to a consumer under any other law.

91 Acts, ch 153, §1 HF 566
NEW section

322G.2 Definitions.

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

1. "*Collateral charges*" means those additional charges to a consumer wholly incurred as a result of the acquisition of the motor vehicle. For the purposes of this chapter, collateral charges include, but are not limited to, charges for manufacturer-installed or agent-installed items, earned finance charges, use taxes, and title charges.
2. "*Condition*" means a general problem that may be attributable to a defect in more than one part.
3. "*Consumer*" means the purchaser or lessee, other than for purposes of lease or resale, of a new or previously untitled motor vehicle, or any other person entitled by the terms of the warranty to enforce the obligations of the warranty during the duration of the lemon law rights period.
4. "*Days*" means calendar days.
5. "*Department*" means the attorney general.

6. "*Incidental charges*" means those reasonable costs incurred by the consumer, including, but not limited to, towing charges and the costs of obtaining alternative transportation, which are the direct result of the nonconformity or nonconformities which are the subject of the claim. Incidental charges do not include loss of use, loss of income, or personal injury claims.

7. "*Lease price*" means the aggregate of the following:

- a. Lessor's actual purchase costs.
- b. Collateral charges, if applicable.
- c. Any fee paid to another to obtain the lease.
- d. Any insurance or other costs expended by the lessor for the benefit of the lessee.
- e. An amount equal to state and local use taxes, not otherwise included as collateral charges, paid by the lessor when the vehicle was initially purchased.
- f. An amount equal to five percent of the lessor's actual purchase cost.

8. "*Lemon law rights period*" means the term of the manufacturer's written warranty, the period ending two years after the date of the original delivery of a motor vehicle to a consumer, or the first twenty-four thousand miles of operation attributable to a consumer, whichever expires first.

9. "*Lessee*" means any consumer who leases a motor vehicle for one year or more pursuant to a written lease agreement which provides that the lessee is responsible for repairs to the motor vehicle.

10. "*Lessee cost*" means the aggregate of the deposit and rental payments previously paid to the lessor for the leased vehicle.

11. "*Lessor*" means a person who holds the title to a motor vehicle leased to a lessee under a written lease agreement or who holds the lessor's rights under the agreement.

12. "*Manufacturer*" means a person engaged in the business of constructing or assembling new motor vehicles or installing on previously assembled vehicle chassis special bodies or equipment which, when installed, form an integral part of the new motor vehicle, or a person engaged in the business of

importing new motor vehicles into the United States for the purpose of selling or distributing the new motor vehicles to new motor vehicle dealers.

13. "*Motor vehicle*" means a self-propelled vehicle purchased or leased in this state and primarily designed for the transportation of persons or property over public streets and highways, but does not include mopeds, motorcycles, motor homes, or vehicles over ten thousand pounds gross vehicle weight rating.

14. "*Nonconformity*" means a defect, malfunction, or condition in a motor vehicle such that the vehicle fails to conform to the warranty, but does not include a defect, malfunction, or condition that results from an accident, abuse, neglect, modification, or alteration of the motor vehicle by persons other than the manufacturer or its authorized service agent.

15. "*Person*" means person as defined in section 714.16.

16. "*Program*" means an informal dispute settlement procedure established by a manufacturer which mediates and arbitrates motor vehicle warranty disputes arising in this state.

17. "*Purchase price*" means the cash price paid for the motor vehicle appearing in the sales agreement or contract, including any net allowance given for a trade-in vehicle.

18. "*Reasonable offset for use*" means the number of miles attributable to a consumer up to the date of the third attempt to repair the same nonconformity which is the subject of the claim, or the first attempt to repair a nonconformity that is likely to cause death or serious bodily injury, or the twentieth cumulative day when the vehicle is out of service by reason of repair of one or more nonconformities, whichever occurs first, multiplied by the purchase price of the vehicle, or in the event of a leased vehicle, the lessor's actual lease price plus an amount equal to two percent of the purchase price, and divided by one hundred twenty thousand.

19. "*Replacement motor vehicle*" means a motor vehicle which is identical or reasonably equivalent to the motor vehicle to be replaced, and as the motor vehicle to be replaced would have existed without the nonconformity at the time of original acquisition.

20. "*Substantially impair*" means to render the motor vehicle unfit, unreliable, or unsafe for warranted or ordinary use, or to significantly diminish the value of the motor vehicle.

21. "*Warranty*" means any written warranty issued by the manufacturer; or any affirmation of fact or promise made by the manufacturer, excluding statements made by the dealer, in connection with the sale or lease of a motor vehicle to a consumer, which relates to the nature of the material or workmanship and affirms or promises that the material or workmanship is free of defects or will meet a specified level of performance.

91 Acts, ch 153, §2 HF 566
NEW section

322G.3 Duties of manufacturer.

1. At the time of the consumer's purchase or lease of the vehicle, the manufacturer shall provide to the consumer a written statement that explains the consumer's rights and obligations under this chapter. The written statement shall be prepared by the attorney general and shall contain a telephone number that the consumer can use to obtain information from the attorney general regarding the rights and obligations provided under this chapter.

2. At the time of the consumer's purchase or lease of the vehicle, the manufacturer shall provide to the consumer the address and phone number for the zone, district, or regional office of the manufacturer for this state where a claim may be filed by the consumer. This information shall be provided to the consumer in a clear and conspicuous manner. Within thirty days of the introduction of a new model year for each make and model of motor vehicle sold in this state, the manufacturer shall notify the attorney general of such introduction. The manufacturer shall also inform the attorney general that a copy of the owner's manual and applicable written warranties shall be provided upon request and provide information as to where the request should be made. The manufacturer shall inform the attorney general where such a request should be directed and shall provide the copy of the owner's manual and applicable written warranties within five business days of a request by the attorney general.

3. A manufacturer or the authorized service agent of the manufacturer shall make repairs as necessary to conform the vehicle to the warranty if a motor vehicle does not conform to the warranty and the consumer reports the nonconformity to the manufacturer or authorized service agent during the lemon law rights period. Such repairs shall be made irrespective of whether they can be made prior to the expiration of the lemon law rights period.

4. A manufacturer or the authorized service agent of the manufacturer, shall provide to the consumer, each time the motor vehicle is returned after being examined or repaired under the warranty, a fully itemized, legible statement or repair order indicating any diagnosis made, and all work performed on the motor vehicle including, but not limited to, a general description of the problem reported by the consumer or an identification of the defect or condition, parts and labor, the date and the odometer reading when the motor vehicle was submitted for examination or repair, and the date when the repair or examination was completed.

5. Upon request from the consumer, the manufacturer, or the authorized service agent of the manufacturer, shall provide a copy of either or both of the following:

a. Any report or printout of any diagnostic computer operation compiled by the manufacturer or authorized service agent regarding an inspection or diagnosis of the motor vehicle.

b. A copy of any technical service bulletin issued by the manufacturer regarding the year and model of

the motor vehicle as it pertains to any material, feature, component, or the performance of the motor vehicle.

91 Acts, ch 153, §3 HF 566
NEW section

322G.4 Nonconformity of motor vehicles.

1. After three attempts have been made to repair the same nonconformity that substantially impairs the motor vehicle, or after one attempt to repair a nonconformity that is likely to cause death or serious bodily injury, the consumer may give written notification, which shall be by certified or registered mail or by overnight service, to the manufacturer of the need to repair the nonconformity in order to allow the manufacturer a final attempt to cure the nonconformity. The manufacturer shall, within ten days after receipt of such notification, notify and provide the consumer with the opportunity to have the vehicle repaired at a reasonably accessible repair facility and after delivery of the vehicle to the designated repair facility by the consumer, the manufacturer shall, within ten days, conform the motor vehicle to the warranty. If the manufacturer fails to notify and provide the consumer with the opportunity to have the vehicle repaired at a reasonably accessible repair facility or perform the repairs within the time periods prescribed in this subsection, the requirement that the manufacturer be given a final attempt to cure the nonconformity does not apply.

After twenty or more cumulative days when the motor vehicle has been out of service by reason of repair of one or more nonconformities, the consumer may give written notification to the manufacturer which shall be by certified or registered mail or by overnight service. Commencing upon the date such notification is received, the manufacturer has ten cumulative days when the vehicle has been out of service by reason of repair of one or more nonconformities to conform the motor vehicle to the warranty.

2. If the manufacturer, or its authorized service agent, has not conformed the motor vehicle to the warranty by repairing or correcting one or more nonconformities that substantially impair the motor vehicle after a reasonable number of attempts, the manufacturer shall, within forty days of receipt of payment by the manufacturer of a reasonable offset for use by the consumer, replace the motor vehicle with a replacement motor vehicle acceptable to the consumer, or repurchase the motor vehicle from the consumer or lessor and refund to the consumer or lessor the full purchase or lease price, less a reasonable offset for use. The replacement or refund shall include payment of all collateral and reasonably incurred incidental charges. The consumer has an unconditional right to choose a refund rather than a replacement. If the consumer elects to receive a refund, and the refund exceeds the amount of the payment for a reasonable offset for use, the requirement that the consumer pay the reasonable offset for use in advance does not apply, and the manufacturer shall deduct that amount from the refund due to the con-

sumer. If the consumer elects a replacement motor vehicle, the manufacturer shall provide the consumer a substitute motor vehicle to use until such time as the replacement vehicle is delivered to the consumer. At the time of the refund or replacement, the consumer, lienholder, or lessor shall furnish to the manufacturer clear title to and possession of the original motor vehicle.

Refunds shall be made to the consumer and lienholder of record, if any, as their interests appear. If applicable, refunds shall be made to the lessor and lessee as follows: the lessee shall receive the lessee's cost less a reasonable offset for use, and the lessor shall receive the lease price less the aggregate deposit and rental payments previously paid to the lessor for the leased vehicle. If it is determined that the lessee is entitled to a refund pursuant to this chapter, the consumer's lease agreement with the lessor is terminated upon payment of the refund and no penalty for early termination shall be assessed. The department of revenue and finance shall refund to the manufacturer any use tax which the manufacturer refunded to the consumer, lessee, or lessor under this section, if the manufacturer provides to the department of revenue and finance a written request for a refund and evidence that the use tax was paid when the vehicle was purchased and that the manufacturer refunded the use tax to the consumer, lessee, or lessor.

3. It is presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the warranty if, during the lemon law rights period, any of the following occur:

a. The same nonconformity that substantially impairs the motor vehicle has been subject to examination or repair at least three times by the manufacturer or its authorized service agent, plus a final attempt by the manufacturer to repair the motor vehicle if undertaken as provided for in subsection 1, and such nonconformity continues to exist.

b. A nonconformity that is likely to cause death or serious bodily injury has been subject to examination or repair at least one time by the manufacturer or its authorized service agent, plus a final attempt by the manufacturer to repair the motor vehicle if undertaken as provided for in subsection 1, and such nonconformity continues to exist.

c. The motor vehicle has been out of service by reason of repair by the manufacturer, or its authorized service agent, of one or more nonconformities that substantially impair the motor vehicle for a cumulative total of thirty or more days, exclusive of down time for routine maintenance prescribed by the owner's manual. The thirty-day period may be extended by any period of time during which repair services are not available to the consumer because of war, invasion, strike, fire, flood, or natural disaster.

The terms of this subsection shall be extended for a period of up to two years after the date of the original delivery of a motor vehicle to a consumer, or the first twenty-four thousand miles of operation attributable to a consumer, whichever occurs first, if a

nonconformity has been reported but has not been cured by the manufacturer, or its authorized service agent, before the expiration of the lemon law rights period.

4. A manufacturer, or its authorized service agent, shall not refuse to examine or repair any nonconformity for the purpose of avoiding liability under this chapter.

91 Acts, ch 153, §4 HF 566
NEW section

322G.5 Affirmative defenses.

Any of the following is an affirmative defense to a claim under this chapter:

1. The alleged nonconformity or nonconformities do not substantially impair the motor vehicle.

2. A nonconformity is the result of an accident, abuse, neglect, or unauthorized modification or alteration of the motor vehicle by a person other than the manufacturer or its authorized service agent.

3. The claim by the consumer was not filed in good faith.

4. Any other defense allowed by law which may be raised against the claim.

91 Acts, ch 153, §5 HF 566
NEW section

322G.6 Informal dispute settlement procedures — operations and certification.

1. At the time of the consumer's purchase or lease of the vehicle, a manufacturer who has established a program certified pursuant to this section shall, at a minimum, clearly and conspicuously disclose to the consumer in written materials accompanying the vehicle how and where to file a claim with the program.

2. A certified program shall be funded and competently staffed at a level sufficient to ensure fair and expeditious resolution of all disputes, and shall not charge consumers any fee for use of the program. The manufacturer shall take all steps necessary to ensure that a certified program and its staff and decision makers are sufficiently insulated from the manufacturer so that the performance of the staff and the decisions of the decision makers are not influenced by the manufacturer. Such steps, at a minimum, shall ensure that the manufacturer does not make decisions on whether a consumer's dispute proceeds to the decision maker. Staff and decision makers of a certified program shall be trained in the provisions of this chapter and rules adopted under this chapter.

3. A certified program shall allow an oral presentation by a party, or by a party's employee, agent, or representative.

Within five days following the consumer's notification to the certified program of the dispute, the program shall inform each party of their right to make an oral presentation.

Meetings of a certified program to hear and decide disputes shall be open to observers, including either party to the dispute, on reasonable and nondiscriminatory terms.

4. A certified program shall render a decision no later than sixty days from the day of the consumer's notification of the dispute, provided that a significant number of decisions are rendered within forty days. For the purposes of this section, notification is deemed to have occurred when a certified program has received the consumer's name and address; the current date and the date of the original delivery of the motor vehicle to a consumer; the year, make, model, and identification number of the motor vehicle; and a description of the nonconformity. If the consumer has not previously notified the manufacturer of the nonconformity, the sixty-day period is extended for an additional seven days.

5. A certified program shall, in rendering decisions, take into account the provisions of this chapter and all legal and equitable factors germane to a fair and just decision. The decision shall disclose to the consumer and the manufacturer the reasons for the decision, and the manufacturer's required actions, if applicable. If the decision is in favor of the consumer, the consumer shall have up to twenty-five days from the date of receipt of the certified program's decision to indicate acceptance of the decision. The decision shall prescribe a reasonable period of time, not to exceed thirty days from the date the consumer notifies the manufacturer of acceptance of the decision, within which the manufacturer must fulfill the terms of the decision. If the manufacturer has had a reasonable number of attempts to conform a motor vehicle to the warranty as set forth in section 322G.4, subsection 3, including a final attempt by the manufacturer to repair the motor vehicle, if undertaken as provided for in section 322G.4, subsection 1, and the consumer is entitled to a replacement vehicle or a refund under section 322G.4, subsection 2, the decision shall be limited to relief as allowed under section 322G.4, subsection 2. In an action brought by a consumer under this chapter, the decision of a certified program is admissible in evidence.

6. A certified program shall establish written procedures which explain operation of the certified program. Copies of the written procedures shall be made available to any person upon request and shall be sent to the consumer upon notification of the dispute.

7. A certified program shall retain all records for each dispute for at least four years after the final disposition of the dispute. A certified program shall have an independent audit conducted annually to determine whether the manufacturer and its performance and the program and its implementation are in compliance with this chapter. All records for each dispute shall be available for the audit. Such audit, upon completion, shall be forwarded to the attorney general.

8. Any manufacturer licensed to sell motor vehicles in this state may apply to the attorney general for certification of its program. A manufacturer seeking certification of its program in this state shall submit to the attorney general an application for cer-

tification on a form prescribed by the attorney general

9 A program certified in this state or a program established by a manufacturer applying for certification in this state shall submit to the attorney general a copy of each settlement approved by the program or decision made by the decision maker within thirty days after the settlement is reached or the decision is rendered. The decision or settlement shall contain information prescribed by the attorney general.

10 The attorney general shall review the operations of any certified program at least once annually. The attorney general shall prepare annual and periodic reports evaluating the operation of certified programs serving consumers in this state or programs established by motor vehicle manufacturers applying for certification in this state. The reports shall indicate whether certification should be granted, renewed, denied, or revoked.

11 If a manufacturer has established a program which the attorney general has certified as substantially complying with the provisions of and the rules adopted under this chapter, and has informed the consumer how and where to file a claim with the program pursuant to subsection 1, the provisions of section 322G 4, subsection 2, do not apply to any consumer who has not first resorted to the program.

91 Acts ch 153 §6 HF 566
NEW section

322G.7 Informal dispute settlement procedure — certification uniformity.

To facilitate uniform application, interpretation, and enforcement of this section and section 322G 6, and in implementing rules adopted pursuant to section 322G 14, the attorney general may cooperate with agencies that perform similar functions in any other states that enact these or similar sections. The cooperation authorized by this subsection may include any of the following:

1 Establishing a central depository for copies of all applications and accompanying materials submitted by manufacturers for certification, and all reports prepared, notices issued, and determinations made by the attorney general under section 322G 6.

2 Sharing and exchanging information, documents, and records pertaining to program operations.

3 Sharing personnel to perform joint reviews, surveys, and investigations of program operations.

4 Preparing joint reports evaluating program operations.

5 Granting joint certifications and certification renewals.

6 Issuing joint denials or revocations of certification.

7 Holding a joint administrative hearing.

8 Formulating, in accordance with chapter 17A, the administrative procedure Act, rules or proposed rules on matters such as guidelines, forms, statements of policy, interpretative opinions, and any other information necessary to implement section 322G 6.

91 Acts ch 153 §7 HF 566
NEW section

322G.8 Consumer remedies.

1 If a consumer resorts to a manufacturer's certified program and a decision is not rendered within the time periods allowed in this chapter, or a manufacturer has no certified program and the consumer has notified the manufacturer pursuant to section 322G 4, subsection 1, the consumer may file an action in district court under this chapter within one year from the expiration of the lemon law rights period or an extension of the period pursuant to section 322G 4, subsection 3.

2 If a consumer resorts to a manufacturer's certified program and is not satisfied with the performance of the manufacturer as ordered in the decision, or the manufacturer does not perform as directed by the decision within the time period specified in the decision, the consumer may file an action in district court under this chapter within six months after the date prescribed in the decision by which the manufacturer must fulfill the terms of the decision. If the consumer declines to accept the decision of the manufacturer's certified program, the consumer may appeal the decision pursuant to subsection 4. For purposes of this subsection, "*not satisfied with the performance of the decision*" means, following the consumer's acceptance of the decision, the consumer indicates that the manufacturer failed to comply with the terms of the decision within the time specified in the decision or failed to cure the nonconformity within the time specified in the decision if further repairs were ordered.

3 In an action under either subsection 1 or 2, the court shall award a consumer who prevails the amount of any pecuniary loss, including relief the consumer is entitled to under section 322G 4, subsection 2, reasonable attorney's fees, and costs. In addition, if the court affirms the decision of the certified program, the court may award any additional amounts allowed under subsection 7.

4 A certified program's decision is final unless appealed by either party. A petition to the district court to appeal a decision must be made within fifty days after receipt of the decision or within twenty-five days from the date the consumer indicates acceptance of the decision to the manufacturer, whichever occurs first. Within seven days after the petition has been filed, the appealing party must send, by certified, registered, or express mail, a copy of the petition to the attorney general. If the attorney general receives no notice of the petition within sixty days after the manufacturer's receipt of a decision in favor of the consumer, and the consumer has indicated acceptance of the decision within the twenty-five days of receipt of the decision, but the manufacturer has neither complied with, nor petitioned to appeal the decision, the attorney general may apply to the court to impose a fine up to one thousand dollars per day against the manufacturer until the amount stands at twice the purchase price of the motor vehicle, unless the manufacturer provides clear and convincing evidence that the delay or failure was beyond its control or was acceptable to the

consumer as evidenced by a written statement signed by the consumer. If the manufacturer fails to provide such evidence or fails to pay the fine, the attorney general shall initiate proceedings against the manufacturer for failure to pay the fine. The proceeds from the fine imposed shall be placed in the attorney general's motor vehicle fraud and odometer law enforcement fund for implementation and enforcement of this chapter.

5. If the manufacturer fails to comply with a decision which has been timely accepted by the consumer or fails to file a timely petition for appeal, the court shall affirm the board's decision upon application by the consumer.

6. An appeal of a decision by a certified program to the court by a consumer or a manufacturer shall be tried de novo, and may be based upon stipulated facts. In a written petition to appeal a decision by the board, the appealing party must state the action requested and the grounds relied upon for appeal.

7. If a decision of the certified program in favor of the consumer is affirmed or upheld by the court, recovery by the consumer shall include the pecuniary value of the award, including relief the consumer is entitled to under section 322G.4, subsection 2, attorney's fees incurred in obtaining confirmation of the award, and all costs and continuing damages in an amount of twenty-five dollars per day for all days beyond the twenty-five-day period following the manufacturer's receipt of the consumer's acceptance of the certified program's decision. If a court determines that a manufacturer filed a petition for appeal to be tried de novo in bad faith or brought such an appeal solely for the purpose of harassment, the court shall double, and may triple, the amount of the total award, after consideration of all circumstances.

8. Appellate review of a court decision in favor of the consumer may be conditioned upon payment by the manufacturer of the consumer's attorney's fees and giving security for costs and expenses resulting from the review period.

9. This chapter does not prohibit a consumer from pursuing other rights or remedies under any other law.

91 Acts, ch 153, §8 HF 566
NEW section

322G.9 Compliance and disciplinary action.

The attorney general may enforce and ensure compliance with the provisions of this chapter and rules adopted pursuant to section 322G.14, may issue subpoenas requiring the attendance of witnesses and the production of evidence, and may petition any court having jurisdiction to compel compliance with the subpoenas. The attorney general may levy and collect an administrative fine in an amount not to exceed one thousand dollars for each violation against any manufacturer found to be in violation of this chapter or rules adopted pursuant to section 322G.14. A manufacturer may request a hearing pursuant to chapter 17A, the administrative procedure Act, if the manufacturer contests the fine levied

against it. The proceeds from any fine levied and collected pursuant to this section shall be placed in the attorney general's motor vehicle fraud and odometer law enforcement fund for implementation and enforcement of this chapter.

91 Acts, ch 153, §9 HF 566
NEW section

322G.10 Unfair or deceptive trade practice.

A violation by a manufacturer of this chapter is an unfair or deceptive trade practice in violation of section 714.16, subsection 2, paragraph "a".

91 Acts, ch 153, §10 HF 566
NEW section

322G.11 Dealer liability.

This chapter does not impose any liability on a franchised motor vehicle dealer or create a cause of action by a consumer against a dealer. A dealer shall not be made a party defendant in any action involving or relating to this chapter, except as provided in this section. The manufacturer shall not charge back or require reimbursement by the dealer for any costs, including but not limited to any refunds or vehicle replacements, incurred by the manufacturer pursuant to this chapter, in the absence of a finding by a court that the related repairs had been carried out by the dealer in a manner substantially inconsistent with the manufacturer's published instructions. A manufacturer who is found by a court to have improperly charged back a dealer because of a violation of this section is liable to the injured dealer for full reimbursement plus reasonable costs and any attorney's fees.

91 Acts, ch 153, §11 HF 566
NEW section

322G.12 Resale of returned vehicles.

Subsequent to December 31, 1991, a manufacturer who accepts the return of a motor vehicle pursuant to a settlement, determination, or decision under this chapter shall notify the state department of transportation and report the vehicle identification number of that motor vehicle within ten days after the acceptance. The state department of transportation shall note the fact that the motor vehicle was returned pursuant to this chapter on the title for the motor vehicle. A person shall not knowingly lease; or sell, either at wholesale or retail; or transfer a title to a motor vehicle returned by reason of a settlement, determination, or decision pursuant to this chapter or a similar statute of any other state unless the nature of the nonconformity is clearly and conspicuously disclosed to the prospective transferee, lessee, or buyer. The attorney general shall prescribe by rule the form, content, and procedure pertaining to such a disclosure statement, recognizing the need of manufacturers to implement a uniform disclosure form. The manufacturer shall make a reasonable effort to ensure that such disclosure is made to the first subsequent retail buyer or lessee. For purposes of this subsection, "settlement" includes an agreement entered into between the manufacturer and the con-

sumer that occurs after the dispute has been submitted to a manufacturer-established program, but does not include agreements reached in informal proceedings prior to the first written or oral presentation to the certified program by either party.

91 Acts ch 153 §12 HF 566
NEW section

322G.13 Certain agreements void.

Any agreement entered into by a consumer that waives, limits, or disclaims the rights set forth in this chapter is void as contrary to public policy.

91 Acts, ch 153 §13 HF 566
NEW section

322G.14 Rulemaking authority.

1. The attorney general shall adopt rules as necessary to implement this chapter.
2. In prescribing rules and forms under this

chapter, the attorney general may cooperate with agencies that perform similar functions in other states with a view to effectuating the policy of this chapter to achieve maximum uniformity in the form and content of certification, regulation, and procedural evaluation of manufacturer-established programs, required recordkeeping, required reporting wherever practicable, and required notices to consumers.

91 Acts ch 153 §14 HF 566
NEW section

322G.15 Effective dates.

This chapter applies to motor vehicles originally purchased or leased in this state by consumers on or after July 1, 1991. Section 322G.14, which concerns rulemaking, shall take effect May 9, 1991.

91 Acts ch 153 §15 HF 566
NEW section

CHAPTER 323A

PURCHASING FUEL FROM ALTERNATE SOURCES

323A.2 Purchase from other source.

1. The orderly flow of an adequate supply of motor fuel is declared to be essential to the economy and to the welfare of the people of this state. Therefore, in the public interest and notwithstanding the terms, provisions, or conditions of any franchise, a franchisee unable to obtain motor fuel from the franchisor may purchase the fuel from another available source, subject to subsections 2 to 5 and provided the franchisee has done all of the following:

a At least forty-eight hours prior to entering into an agreement to purchase motor fuel from another source, the franchisee has requested delivery of motor fuel from the franchisor and the requested motor fuel has not been delivered and the franchisor has given the franchisee notice that the franchisor is unable to provide the requested motor fuel, or prior to entering into an agreement the franchisor has stated to the franchisee that the requested motor fuel will not be delivered. The request to the franchisor for delivery shall be for a type of fuel normally provided by the franchisor to the franchisee and for a quantity of fuel not exceeding the average amount sold by the franchisee in one week, based upon average weekly sales in the three months preceding the request, except that this provision shall not restrict a franchisee from purchasing ethanol blended gasoline from a source other than the franchisor or limit the quantity to be purchased when the franchisor does not normally supply the franchisee with ethanol blended gasoline.

b The franchisee has requested and has been denied delivery of motor fuel sold or distributed under the trademark named in the franchise from a person other than franchisor.

c The director of the department of natural resources determines that the franchisee has demonstrated that a special hardship exists in the community served by the franchisee relating to the public health, safety and welfare, as specified under the rules of the department of natural resources.

2. The quantity of motor fuel requested or purchased from another source including the source listed in subsection 1, paragraph "b", shall not exceed the quantity requested from the franchisor.

3. At the time a franchisee enters into an agreement to purchase motor fuel from a source other than the franchisor, the franchisee shall inform the franchisor by the quickest available means.

4. If the franchisee sells motor fuel supplied from a source other than the franchisor, the franchisee shall prominently post a sign disclosing this fact to the public on each motor fuel pump used for dispensing the motor fuel. The size of the sign shall not be less than eight inches by ten inches and the letters on the sign shall be at least three inches in height.

5. A franchisee who sells motor fuel supplied from a source other than the franchisor shall also fully indemnify the franchisor against any claims asserted by a user on which the claimant prevails and in which the court determines that motor fuel not acquired from the franchisor was the proximate cause of the injury.

Purchases of motor fuel in accordance with this section are not good cause for termination of a franchise.

91 Acts ch 87 §2 HF 657
Subsection 1 paragraph a amended

CHAPTER 324

MOTOR FUEL TAX LAW

324.2 Definitions.

As employed in this division:

1. "*Aviation gasoline*" means any gasoline which is capable of being used for propelling aircraft, which is invoiced as aviation gasoline or is received, sold, stored, or withdrawn from storage by any person for the purpose of propelling aircraft. Motor fuel capable of being used for propelling motor vehicles is not aviation gasoline.

2. "*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.

3. "*Department*" means the department of revenue and finance.

4. "*Director*" means the director of revenue and finance.

5. "*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.

6. "*Ethanol blended gasoline*" means motor fuel containing at least ten percent alcohol distilled from cereal grains.

7. "*Licensee*" shall mean and include any person holding an uncanceled distributor's license issued by the department under this division or any prior motor fuel tax law.

8. "*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 liq-

uids 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.

9. "*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

10 “Naphthas and solvents” shall mean and include those liquids which come within the distillation specifications for motor fuel set out under subsection 8, paragraph “b,” but which are designed and sold for exclusive use other than as a fuel for propelling motor vehicles

11 “Regional transit system” means regional transit system as defined in section 324 57, subsection 11

12 “Urban transit system” means Iowa urban transit system as defined in section 324 57, subsection 9

91 Acts ch 87 §3 HF 657
Subsection 6 (formerly 7) amended and subsections renumbered to alpha betize

324.3 Levy of excise tax — exemptions — refunds.

For the privilege of operating motor vehicles in this state an excise tax of twenty cents per gallon is imposed upon the use of all motor fuel used for any purpose except aviation gasoline and except motor fuel containing at least ten percent alcohol distilled from cereal grains grown in the United States for the period ending June 30, 2000, and except as otherwise provided in this division For the privilege of operating aircraft in this state an excise tax of eight cents per gallon is imposed on the use of all aviation gasoline

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

4 Motor fuel used in the operation of an Iowa urban transit system However, fuel sold to an Iowa urban transit system which is used for a purpose other than as specified in section 324 57, subsection 9, is not exempt from the tax

5 Motor fuel sold to a regional transit system, the state, any of its agencies, or to any political subdivision of the state, which is used for a purpose specified in section 324 57, subsection 11 or for public purposes and delivered into any size of storage tank owned or used exclusively by a regional transit system, the state, any of its agencies, or a political subdivision of the state The department shall issue exemption certificate forms to a regional transit system, the state, its agencies, and political subdivisions of the state, or a regional transit system, 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 a purpose specified in section 324 57, subsection 11, or be used for public purposes

Motor fuel shall be sold tax-paid to a regional transit system, 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 this subsection Tax on fuel which is used for a purpose specified in section 324 57, subsection 11 or 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 shall 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 nineteen cents per gallon until June 30, 2000, is imposed upon the use of motor fuel containing at least ten percent alcohol distilled from cereal grains grown in the United States and used for any purpose except as otherwise provided in this division

91 Acts ch 87 §4 HF 657 91 Acts ch 254 §19 20 SF 545
See Code editor's note
Unnumbered paragraph 1 amended
Last unnumbered paragraph amended

324.8 Tax reports — computation and payment of tax — credits.

For the purpose of determining the amount of the distributor's liability for the tax herein imposed, each distributor shall, not later than the last day of the month next following the month in which this division becomes effective and not later than the last day of each calendar month thereafter, file with the department a monthly report, signed under penalty for false certificate, which shall include the following:

1. A statement of the number of invoiced gallons of motor fuel received (within the meaning of the term "received" as defined in this division) by the distributor within this state during the next preceding calendar month in such detail as is prescribed by the department and as may be necessary for the proper administration of this division.

2. A statement showing the deductions authorized in this division in such detail and with such supporting evidence as is prescribed by the department and as may be for proper administration of this division.

3. Such other information as the department may require for the enforcement of this chapter.

At the time of filing each monthly report, each distributor shall pay to the department the full amount of the motor fuel tax due from the distributor for the next preceding calendar month computed as follows:

4. From the total number of invoiced gallons of motor fuel "received" by the distributor within the state during the next preceding calendar month shall be made the following deductions:

First, the gallonage of motor fuel received and thereafter sold within the exemptions provided for in section 324.3; and second, the number of gallons of motor fuel equal to two per centum of the first three hundred thousand gallons and one per centum of all gallonage in excess of three hundred thousand gallons of invoiced gallons of motor fuel received by the distributor within this state during the next preceding calendar month after deduction provided in this subsection, this percentage being a flat allowance to cover evaporation, shrinkage, and losses, and the distributor's expenses and losses in collection, accounting for, and paying over the motor fuel tax.

5. The number of invoiced gallons remaining after the deductions hereinabove set forth shall be multiplied by the per gallon motor fuel tax rate.

6. The sum of the number of invoiced gallons of ethanol blended gasoline which are received tax free by the distributor during the next preceding calendar month less the number of gallons of ethanol blended gasoline equal to two per centum of the first three hundred thousand gallons and one per centum of all gallonage in excess of three hundred thousand gallons of ethanol blended gasoline received or blended by the distributor within this state during the next preceding calendar month after deduction provided in this subsection, this percentage being a flat allowance to cover evaporation, shrinkage and losses in collection, accounting for, and paying over the tax on ethanol blended gasoline, and the number of gallons

of ethanol blended gasoline blended by the distributor during the next preceding calendar month shall be multiplied by the per gallon motor fuel tax rate applicable to ethanol blended gasoline.

7. The sum of the tax due under subsections 5 and 6 shall be the amount of motor fuel tax in dollars and cents due from the distributor for the next preceding calendar month. Any outstanding credit memoranda issued by the department to the distributor may be applied against the amount due.

For the purpose of determining the amount of the tax liability on alcohol blended to produce ethanol blended gasoline, each licensed blender shall, not later than thirty-one days following the last day of each month, file with the department a monthly report, signed under penalty for false certificate, which shall include the following: The number of gallons of gasoline blended into ethanol blended gasoline, the number of gallons of alcohol blended into ethanol blended gasoline. The amount of alcohol blended shall be multiplied by the per gallon motor fuel tax rate applicable to ethanol blended gasoline.

91 Acts, ch 87, §5, 6 HF 657
Subsection 6 amended
Last unnumbered paragraph amended

324.18 Refund permit.

A person shall not claim a refund under section 324.17 or section 324.21 until the person has obtained a refund permit from the department. A special permit shall be obtained by applicants claiming a refund under this chapter on account of motor fuel used to blend ethanol blended gasoline. Application for a refund permit shall be made to the department on a form provided by the department, shall be certified by the applicant under penalty for false certificate and shall contain among other things, the name, address, and occupation of the applicant, the nature of the applicant's business, and a sufficient description for identification of the machines and equipment in which is to be used motor fuel for which refund may be claimed under the permit. Each permit shall bear a separate number and each claim for refund shall bear the number of the permit under which it is made. The department shall keep a permanent record of all permits issued and a cumulative record of the amount of refund claimed and paid under each. A refund permit shall continue in effect until it is revoked or becomes invalid.

91 Acts, ch 87, §7 HF 657
Section amended

324.21 Refund — credit — penalty.

Persons other than distributors licensed under this division who blend motor fuel and alcohol to produce ethanol blended gasoline may file for a refund for the difference between taxes paid on the motor fuel purchased to produce ethanol blended gasoline and the tax due on the ethanol blended gasoline blended. If, during any month, a person licensed as a distributor under this division uses tax paid motor fuel to blend ethanol blended gasoline and the refund otherwise due under this section is

greater than the distributor's total tax liability for that month, the distributor will be entitled to a credit. The claim for credit shall be filed as part of the report required by section 324.8.

In order to obtain the refund established by this section, the person shall do all of the following:

1 Obtain a blender's permit as provided in section 324.18.

2 File a refund claim containing the information as required by the department and certified by the claimant under penalty for false certificate.

3 Retain invoices meeting the requirements of section 324.17, subsection 3, for the motor fuel purchased.

4 Retain invoices for the purchase of alcohol.

A refund or credit memorandum will not be issued unless the claim is filed within ninety days following the end of the month during which the ethanol blended gasoline was actually blended.

If a person files an incorrect refund claim, there shall be added a penalty of five percent to the amount by which the amount claimed and refunded exceeds the amount actually due. If a fraudulent refund claim is filed with intent to evade the tax, the penalty shall be fifty percent in lieu of five percent. The person shall also pay interest on the excess refunded at a rate of three fourths of one percent per month counting each fraction of a month as an entire month, computed from the date the refund was issued to the date the excess refund is repaid to the state.

91 Acts ch 87 §8 9 HF 657
Unnumbered paragraphs 1 and 3 amended

324.65 Failure to promptly pay fuel taxes — refunds — interest and penalties — successor liability.

In addition to the tax or additional tax, the taxpayer shall pay a penalty as provided in section 421.27. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7 counting each fraction of a month as an entire month, computed from the date the return was required to be filed. If the amount of the tax as determined by the appropriate state agency is less than the amount paid, the excess shall be refunded with interest, the interest to begin to accrue on the first day of the third calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the latest, at the rate in effect under section 421.7 counting each fraction of a month as an entire month under the rules prescribed by the appropriate state agency. In lieu of a refund allowed under this section, the licensee may request that the department allow the refund to be held as a credit for the licensee.

A report required of licensees or persons operating under division III, upon which no tax is due, is subject to a penalty of ten dollars if the report is not timely filed with the state department of transportation.

If a licensee or other person sells the licensee's or

other person's business or stock of goods or quits the business, the licensee or other person shall prepare a final return and pay all tax due within the time required by law. The immediate successor to the licensee or other person, if any, shall withhold sufficient of the purchase price, in money or money's worth, to pay the amount of any delinquent tax, interest or penalty due and unpaid. If the immediate successor of the business or stock of goods intentionally fails to withhold any amount due from the purchase price as provided in this paragraph, the immediate successor is personally liable for the payment of the taxes, interest and penalty accrued and unpaid on account of the operation of the business by the immediate former licensee or other person, except when the purchase is made in good faith as provided in section 421.28. However, a person foreclosing on a valid security interest or retaking possession of premises under a valid lease is not an "immediate successor" for purposes of this paragraph. The department may waive the liability of the immediate successor under this paragraph if the immediate successor exercised good faith in establishing the amount of the previous liability.

91 Acts ch 159 §2 SF 356
Unnumbered paragraph 2 amended

324.79 Use of revenue.

The net proceeds of the excise tax on the diesel special fuel and the excise tax on motor fuel and other special fuel, and penalties collected under the provision of this chapter, shall be credited to the road use tax fund.

A separate fund is created and designated as the "marine fuel tax fund." All moneys derived from the excise tax on the sale of motor fuel used in watercraft shall be deposited in the marine fuel tax fund. Moneys in the fund are subject to appropriation by the general assembly to the department of natural resources for use in its recreational boating program, which may include but is not limited to:

1 Dredging and renovation of natural lakes of this state.

2 Acquisition, development and maintenance of access to public boating waters.

3 Development and maintenance of boating facilities and navigation aids.

4 Administration, operation, and maintenance of recreational boating activities of the department of natural resources.

5 Acquisition, development and maintenance of recreation facilities associated with recreation boating.

Notwithstanding the provisions of this section and section 324.84 directing that certain moneys be transferred or deposited into the marine fuel tax fund, for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, such moneys shall be deposited into the general fund of the state.

91 Acts ch 260 §1227 HF 173
Restrictions on use of moneys deposited in state general fund see 91 Acts ch 263 §38 SF 209
NEW unnumbered paragraph 3

324.85 Tax payment for stored motor fuel, ethanol blended gasoline, and special fuel — penalty.

1. Persons having title to motor fuel, ethanol blended gasoline, or special fuel in storage and held for sale on the effective date of an increase in the excise tax rate imposed on motor fuel, ethanol blended gasoline, or special fuel under this chapter shall be subject to an inventory tax based upon the gallonage in storage as of the close of the business day next preceding the effective date of the increased excise tax rate of motor fuel, ethanol blended gasoline, or special fuel which will be subject to the increased excise tax rate.

2. Persons subject to the tax imposed under this

section shall take an inventory to determine the gallonage in storage for purposes of determining the tax and shall report that gallonage on forms provided by the department of revenue and finance and pay the tax due within thirty days of the prescribed inventory date. The department of revenue and finance shall adopt rules pursuant to chapter 17A as are necessary to carry out the provisions of this section.

3. The amount of the inventory tax is equal to the inventory tax rate times the gallonage in storage as determined under subsection 1. The inventory tax rate is equal to the difference of the increased excise tax rate less the previous excise tax rate.

91 Acts, ch 87, §10 HF 657
Subsection 1 amended

CHAPTER 326

MOTOR VEHICLE REGISTRATION RECIPROCITY

326.6 Proportional registration of fleets.

The department may, pursuant to section 326.5, provide for proportional registration between this state and other jurisdictions of fleets of commercial vehicles owned by residents or nonresidents engaged in interstate commerce or simultaneously engaged in interstate and intrastate commerce.

1. The owners of fleets of commercial vehicles subject to proportional registration under apportionment agreements negotiated by the department shall file a sworn statement with the department which shall contain the following information and such other information as the department may require:

a. Total fleet miles for the preceding year.

b. In-state miles for the preceding year.

c. A description and identification of each vehicle which is part of the fleet for which proportional registration is sought.

2. The dollar amount of registration fees due this state for each fleet subject to proportional registration shall be computed as follows:

a. Divide total fleet miles during the preceding year into in-state miles during the preceding year to determine the percentage of total fleet mileage allocable to this state.

b. Determine the sum total amount necessary to register each and every vehicle in the fleet based on the annual registration fees prescribed in chapter 321.

c. Multiply the percentage obtained under paragraph "a" of this subsection by the sum total obtained under paragraph "b" of this subsection.

d. The product so obtained under paragraph "c" of this subsection shall be the amount payable by the owner for proportional registration of the fleet for the registration year. Payment of registration fees shall be made in accordance with section 321.134, subsection 2, or a fleet owner on a renewal registration may pay a fee equal to one-half of the applicable fee and post a surety bond, certificate of deposit, or letter of credit, equal to one-half of the applicable fee at the time of the first installment. Payment of the first installment entitles an owner to the issuance of full-year credentials. The second installment shall be paid by July 15. If the second installment is not paid by July 15, the department shall file claim against the security for payment of fees and penalties due and the owner shall not be entitled to elect the installment payment option for the following year. Excess surety moneys received shall be refunded minus a fifty dollar administration fee.

3. The department may negotiate apportionment agreements on either a vehicle or a dollar basis. In apportionment on a vehicle basis, a sufficient number of vehicles shall be registered to produce total fee payments not less than an amount obtained by applying the proportion of in-state fleet miles to total fleet miles to the fees which would otherwise be required for total fleet registration in this state.

90 Acts, ch 1230, §89 SF 2329

1990 amendment to subsection 2, paragraph d, applies to the 1992 and subsequent registration years, 90 Acts, ch 1230, §100 SF 2329

Subsection 2, paragraph d amended

CHAPTER 327D

REGULATION OF CARRIERS

327D.4 Connections.

If a railroad corporation in this state refuses to connect by proper switches or tracks with the tracks of another railroad corporation or refuses to receive, transport, load, discharge, reload, or return cars furnished by another connecting railroad corporation, a petition requesting resolution of the dispute may be filed with the department. The department shall notify the department of inspections and appeals

which shall hold a hearing on the dispute. Upon conclusion of the hearing, the department of inspections and appeals shall issue an order to resolve the dispute. The order may include the allocation of costs between the parties. The order is subject to review by the department which review shall be the final agency action.

91 Acts ch 27 §4 HF 307
Section amended

CHAPTER 327H

TAX AID FOR RAILROADS

327H.18 Railroad assistance fund established.

There is established a railroad assistance fund in the office of the treasurer of state. Moneys in this fund shall be expended for providing assistance for the restoration, conservation, improvement and construction of railroad main lines, branch lines, switching yards and sidings. Any unencumbered funds appropriated by the general assembly for branch line railroad assistance shall be deposited in the railroad assistance fund. However, not more than twenty percent of the funds appropriated to the railroad assistance fund from the general fund of the state in any fiscal year shall be used for restoration, conservation, improvement and construction of railroad main lines, switching yards and sidings. Any moneys received by the department by agreements, grants, gifts, or other means from individuals, companies, business entities, cities or counties for the

purposes of this section shall be credited to the railroad assistance fund.

Notwithstanding the provisions of this section and sections 307B.7, subsection 14, and 327H.20 directing that moneys received or reimbursements made be deposited into the railroad assistance fund, for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, such moneys shall be deposited into the general fund of the state and for that period all moneys received by the department by agreements, grants, gifts, or other means which were deposited into the state general fund as a result of this paragraph are appropriated for state railroad assistance under this chapter. Such appropriations shall not be deposited into the railroad assistance fund.

91 Acts ch 260, §1228 HF 173
Restrictions on use of moneys deposited in state general fund, see 91 Acts, ch 263, §38 SF 209, 91 Acts ch 268, §508 SF 529
NEW unnumbered paragraph 2

CHAPTER 328

AERONAUTICS

328.36 State aviation fund.

There is created a fund to be known as the state aviation fund, which shall consist of all moneys received by the department, together with all moneys appropriated to the fund by the state.

Unless otherwise provided, the fund is appropriated for airport engineering studies, construction or improvements.

Notwithstanding section 453.7, subsection 2, interest or earnings on investments or time deposits of the moneys in the state aviation fund shall be credited to the state aviation fund.

Notwithstanding the provisions of this section

and sections 324.82 and 328.21, directing that moneys remaining after the cost of administering the aviation fuel tax fund and money received by the department be deposited into the state aviation fund, for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, such moneys shall be deposited into the general fund of the state and refunds under section 328.24 during that period shall be paid from the state general fund.

91 Acts, ch 260, §1229 HF 173

Restrictions on use of moneys deposited in state general fund, see 91 Acts, ch 263, §38 SF 209, 91 Acts, ch 268, §508 SF 529

NEW unnumbered paragraph 4

CHAPTER 330

AIRPORTS

330.17 Airport commission — election.

The council of any city or county which owns or acquires an airport may, and upon the council's receipt of a valid petition as provided in section 362.4, or receipt of a petition by the board of supervisors as provided in section 331.306 shall, at a regular city election or a general election if one is to be held within seventy-four days from the filing of the petition, or otherwise at a special election called for that purpose, submit to the voters the question as to whether the management and control of the airport shall be placed in an airport commission. If a majority of the voters favors placing the management and control of the airport in an airport commission, the commission shall be established as provided in this chapter.

The management and control of an airport by an airport commission may be ended in the same manner. If a majority of the voters does not favor continuing the management and control of the airport in an airport commission, the commission shall stand abolished sixty days from and after the date of the election, and the power to maintain and operate the airport shall revert to the city or county.

91 Acts, ch 129, §24 HF 420

Unnumbered paragraph 1 amended

330.20 Appointment of commission — terms.

When a majority of the voters favors airport control and management by a commission, the governing body shall, within ten days, appoint an airport commission of three or five resident voters. The governing body shall by ordinance set the commencement dates of office and the length of the terms of office which shall be no more than six and no less than three years. The terms of the first appointees of a newly created commission shall be staggered by length of term and all subsequent appointments shall be for full terms. The governing body shall also provide for staggered terms of office for the appointees of commissions existing on July 1, 1991. Vacancies shall be filled as original appointments are made. Members of the airport commission shall serve without compensation. Each commissioner shall execute and furnish a bond in an amount fixed by the governing body and filed with the city clerk or county auditor. The commission shall elect from its own members a chairperson and a secretary who shall serve for a term as the commission shall determine.

91 Acts, ch 76, §1 HF 92

Section amended

CHAPTER 330B
QUAD CITIES INTERSTATE
METROPOLITAN AUTHORITY COMPACT

DIVISION II

QUAD CITIES INTERSTATE
METROPOLITAN AUTHORITY

330B.2 Citation.

This division may be cited as the “*Quad Cities Interstate Metropolitan Authority Act*”.

91 Acts, ch 198, §1 HF 690
NEW section

330B.3 Purposes.

1. This division is enabling legislation for the quad cities interstate metropolitan authority compact, a compact entered into by the states of Illinois and Iowa as provided in section 330B.1.

2. The authority shall engage in operations and services that can best be conducted on an area basis benefiting the entire greater metropolitan area, and at the same time improving the quality of life for the greater metropolitan area. The authority may include the following areas of operation and service:

- a. Intermodal water port operations.
- b. Waste disposal systems.
- c. Mass transit.
- d. Airports.
- e. Bridges.
- f. Parks and recreation.
- g. Related facilities, fixtures, equipment, and property necessary, appurtenant, or incidental to the operations and services specified in paragraphs “a” through “f”. The authority shall be supportive of, and refrain from unnecessary and unreasonable competition with, private sector operations when possible.

3. The establishment, maintenance, and operation of safe, adequate, and necessary metropolitan facilities, and the creation of the authority having powers necessary or desirable for the establishment, maintenance, and operation of the metropolitan facilities beneficial to the territory of the authority, and the powers and the corporate purposes and functions of the authority are public and governmental in nature and essential to the public interest in the territory of the authority.

91 Acts, ch 198, §2 HF 690
NEW section

330B.4 Definitions.

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

1. “*Authority*” means the quad cities interstate

metropolitan authority created as provided in this division.

2. “*Board*” means the board of commissioners of the authority.

3. “*Cost*” of any project for a metropolitan facility includes construction contract costs and the costs of engineering, architectural, technical, and legal services, preliminary reports, property valuations, estimates, plans, specifications, notices, acquisition of real and personal property, consequential damages or costs, easements, rights-of-way, supervision, inspection, testing, publications, printing and sale of bonds, if any, and provisions for contingencies.

4. “*Greater metropolitan area*” means the combined area of Rock Island county, Illinois, and Scott county, Iowa.

5. “*Metropolitan area*” means Rock Island county, Illinois, as a separate and distinct area, or Scott county, Iowa, as a separate and distinct area, or each as a part of the greater metropolitan area.

6. “*Metropolitan facility*” means a structure, fixture, equipment, or property of any kind or nature related to or connected with an intermodal water port, waste disposal system, mass transit system, airport, park, recreation, or bridge, which the authority may construct, acquire, own, lease, or operate, including all related facilities necessary, appurtenant, or incidental to the facilities.

7. “*Person*” means an individual, firm, partnership, corporation, company, association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative of any of the entities.

8. “*Waste disposal system*” means a facility or service for collection, transportation, processing, storage, or disposal of solid waste including a facility or service established pursuant to chapter 28G.

91 Acts, ch 198, §3 HF 690
NEW section

330B.5 Petition and public hearing.

1. Upon petition of eligible electors of a metropolitan area equal in number to at least ten percent of the persons who voted in the last general election held in the metropolitan area for the office of president of the United States or governor, the governing body of the county shall adopt a resolution signifying its intention to initiate the question of participating in the creation of an authority and shall publish the resolution at least once in a newspaper of general cir-

cultation in the metropolitan area giving notice of a hearing to be held on the question of the metropolitan area's entry into the authority. The resolution shall be published at least fourteen days prior to the date of hearing, and shall contain all of the following information:

- a. Intention to join in the creation of the authority pursuant to this division.
- b. That the greater metropolitan area will include Rock Island county, Illinois, and Scott county, Iowa, which have expressed their interest in the creation of the authority.
- c. Name of the authority.
- d. Place, date, and time of hearing.

2. After the hearing, if the governing body of a metropolitan area wishes to proceed in the creation of or to join the authority, the governing body shall direct the proper election authority to submit the proposition to the electorate of the metropolitan area as provided in section 330B.6.

91 Acts, ch 198, §4 HF 690
NEW section

330B.6 Election.

1. Upon receipt of the resolution, the county commissioner of elections shall place the proposition on the ballot of a special election but not at a general election, called by the governing body of the metropolitan area. At the election, the proposition shall be submitted in substantially the following form:

Shall the Quad Cities Interstate Metropolitan Authority be established effective on the day of, 19.....?

YES..... NO.....

2. Notice of the election shall be given by publication as required in section 49.53 in a newspaper of general circulation in the metropolitan area. At the election, the ballot used for submission of the proposition shall be substantially the form for submitting special questions at general elections.

3. The proposition is approved if the vote in favor of the proposition is a simple majority of the total votes cast on the proposition in the metropolitan area.

4. If the proposition is approved, the governing body of the county shall enact an ordinance authorizing the joining of the authority.

91 Acts, ch 198, §5 HF 690
NEW section

330B.7 Board of commissioners — appointment.

1. The authority established under this division shall be governed by a board of commissioners appointed as provided in subsection 2. The appointment of the commissioners shall be made in writing and shall indicate the legal residence of the appointee.

2. The board of commissioners of an authority

shall consist of sixteen members, eight members of which shall be residents of the metropolitan area of each state which is a party to the authority. At least four but not more than five members appointed from each metropolitan area shall be elected city or county officers. The mayor of each city having a population of at least eighty thousand within the metropolitan area shall appoint, with the consent of the city council, four members to the board of commissioners. The mayor of each city having a population of at least forty thousand, but less than eighty thousand, within the metropolitan area shall appoint, with the consent of the city council, two members to the board of commissioners. The mayor of each city having a population of at least nineteen thousand, but less than forty thousand, within the metropolitan area shall appoint, with the consent of the city council, one member to the board of commissioners. The remaining members appointed from each state shall be appointed by the chairperson of the governing body of the county within the metropolitan area, with consent of the governing body, from cities having less than nineteen thousand population and areas outside the corporate limits of cities.

3. If a city increases to a population that would enable an additional appointment to be made, a member appointed by the chairperson of the governing body of the county and having the least tenure shall be removed from the board of commissioners. If a city decreases to a population warranting fewer members, the appointee having the least tenure of that city shall be removed from the board of commissioners and the chairperson of the governing body of the county in which that city is located shall make a new appointment as provided in subsection 2. If more members than are required to be removed have the same tenure, the removal shall be determined by lot.

4. The membership of the board of commissioners shall be gender balanced if possible. The appointing authorities shall comply with the requirements of section 69.16A or to similar laws of the state of Illinois as determined by the appointing authorities. The appointing authorities shall also provide representation for racial groups residing in the metropolitan area based on the ratio of the racial population to the population as a whole.

91 Acts, ch 198, §6 HF 690
NEW section

330B.8 Commissioners — terms of office.

1. All initial appointments of commissioners shall be made within thirty days after the establishment of the authority. The authority is considered established when the proposition is approved by the voters under section 330B.6. Each appointment shall be in writing and a certificate of appointment signed by the appointing officer shall be filed and made a matter of record in the office of the county recorder. A commissioner shall be appointed for a term of two years and shall qualify within ten days after appointment by acceptance and the taking of an oath or af-

firmation to faithfully perform the duties of office. Members initially appointed to the board of commissioners shall serve from date of appointment until June 30 of one or two years after the date of appointment and shall draw lots to determine the terms for which each shall be appointed. Lots shall be drawn so that four commissioners from the metropolitan area shall serve in each of two classes. Thereafter, commissioners shall be appointed for two-year terms beginning on July 1 of the year of appointment. However, a commissioner who is also an elected officer shall have a term of office that runs concurrent and consistent with the elective office.

2. Within forty-five days after any vacancy occurs on the board by death, resignation, change of residence to outside of the metropolitan area, or for any other cause, a successor shall be appointed in the same manner as the commissioner's predecessor was appointed for the unexpired term of office. Commissioners and board officers of the board shall serve until a successor is appointed and qualifies. A vacancy exists when a commissioner who is also an elected officer leaves elective office and a former city or county elective officer is ineligible to serve as a commissioner for two years after leaving elective office.

91 Acts, ch 198, §7 HF 690
NEW section

330B.9 Organization — officers — meetings — compensation.

1. The board of commissioners may exercise all of its legislative and executive powers granted under this division. Within thirty days after the appointment of the initial commissioners, the board shall meet and elect a chairperson from among its members for a term of one year. The chairperson's position shall alternate annually between a commissioner from one state to a commissioner from the other state. The board shall also select a secretary, treasurer, and other officers or employees as necessary for the accomplishment of its corporate objectives, none of whom need be a commissioner. The board, at its first meeting, shall define by ordinance the first and subsequent fiscal years of the authority, and shall adopt a corporate seal and bylaws, which shall determine the times for the annual election of officers and for other regular and special meetings of the board. The bylaws shall contain the rules for the transaction of other business of the authority and for amending the bylaws.

2. Each commissioner of the authority shall devote the amount of time to the duties of office as the faithful discharge of the duties may require. The board shall reimburse a commissioner for actual and necessary expenses incurred in the performance of official duties as approved by the board. A commissioner shall not receive a salary or per diem for the performance of official duties.

3. Each commissioner shall comply with restrictions relating to conflicts of interests or acceptance of gifts as provided in chapter 68B or to similar laws of the state of Illinois as determined by the board.

4. The commissioners shall conduct the meetings as public meetings with appropriate notice pursuant to chapter 21 or to similar laws of the state of Illinois as determined by the board.

5. The board shall keep and maintain its records as public records pursuant to chapter 22 or to similar laws of the state of Illinois as determined by the board.

91 Acts, ch 198, §8 HF 690
NEW section

330B.10 Rights and powers.

The authority constitutes a municipal corporation and body politic separate from any other municipality, state, or other public or governmental agency. The authority has the following express powers, subject to any restrictions or limitations contained in this division, and all other powers incidental, necessary, convenient, or desirable to carry out and effectuate the express powers to:

1. Sue and be sued.
2. Locate, acquire, own, establish, operate, and maintain one or more metropolitan facilities upon any land or body of water within its corporate limits, and to construct, develop, expand, extend, and improve any metropolitan facility. A new metropolitan facility, such as a sanitary landfill or infectious waste disposal facility shall not be established without site approval of the city council or board of supervisors which governs the city or county in which the proposed site is to be located.

3. Acquire, within the corporate limits of the authority, and in fee simple, rights in and over land or water, and easements upon, over, or across land or water, and leasehold interests in land or water, and tangible and intangible personal property, used or useful for the location, establishment, maintenance, development, expansion, extension, or improvement of one or more metropolitan facilities. The acquisition may be by dedication, purchase, gift, agreement, lease, or by condemnation if within corporate limits of the authority. The authority may acquire land in fee simple subject to a mortgage and as part of the purchase price may assume the payment of the indebtedness secured by the mortgage. Land may be acquired, possessed, and used for its purposes by the authority, under a written contract for a deed conveying merchantable title and providing that the deed shall be placed in escrow and be delivered upon payment of the purchase price and containing other terms as are reasonably incident to the contract. Personal property may be purchased on an installment contract basis or lease-purchase contract.

4. Operate, maintain, manage, lease with or without a lease-purchase option, sublease, and make and enter into contracts for the use, operation, or management of, and enact regulations for the operation, management, or use of, a metropolitan facility.

5. Fix, charge, and collect reasonable rentals, tolls, fees, and charges for the use of a metropolitan facility or any part of a metropolitan facility. Rentals, tolls, fees, or charges fixed and collected for the

use of a metropolitan facility shall be used for the construction, reconstruction, repair, maintenance, or operation of that metropolitan facility or the construction, reconstruction, repair, maintenance, or operation of similar metropolitan facilities.

6. Establish and maintain streets and approaches on property of the authority.

7. Remove and relocate hazards or structures on property of the authority.

8. Restrict and reduce the height of objects or buildings on property of the authority.

9. Accept grants, contributions, or loans from, and enter into contracts, leases, or other transactions with, a city, county, state, or federal government.

10. Borrow money and issue bonds, notes, certificates, or other evidences of indebtedness for the purpose of accomplishing any of the corporate purposes, which obligations may be payable from other sources as provided in this division, and refund or advance refund any of the evidences of indebtedness with bonds, notes, certificates, or other evidences of indebtedness, which refunding or advanced refunding obligations may be payable from taxes or from any other source, subject to compliance with any condition or limitation set forth in this division.

11. Employ or enter into contracts for the employment of any person for professional services, necessary or desirable for the accomplishment of the corporate objectives of the authority or the proper administration, management, protection, or control of its property.

12. Regulate traffic, speed, movement, and mooring of vessels on property of the authority.

13. Regulate traffic, speed, movement, and parking of motor vehicles upon property of the authority and employ parking meters, signs, and other devices in the regulation of the motor vehicles.

14. Contract for police and fire protection.

15. Establish, by ordinance of the board, all regulations for the execution of the powers specified in this division, for the government of the authority, and for the protection of any metropolitan facility within the jurisdiction of the authority, or deemed necessary or desirable to effect its corporate objectives. An ordinance may provide for the revocation, cancellation, or suspension of an existing privilege or franchise as a penalty for a second or subsequent violation by the holder or franchisee of a regulation pertaining to the enjoyment, use, or exercise of the privilege or franchise. The use of a metropolitan facility of the authority shall be subject to the reasonable regulation and control of the authority and upon the reasonable terms and conditions as established by the board.

16. Establish a general operating fund and other funds as necessary.

17. Do all acts and things necessary or convenient for the promotion of its business and the general welfare of the authority, in order to carry out the powers granted to it by this chapter or any other laws. The authority has no power to pledge the tax-

ing power of this state or any political subdivision or agency of this state.

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 division, 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 those of the authority.

91 Acts, ch 198, §9 HF 690
NEW section

330B.11 Regulations — ordinances.

Regulations adopted pursuant to section 330B.10 shall be contained in an ordinance which shall be placed on file in the office of the authority in typewritten or printed form for public inspection not less than fifteen days before adoption. The ordinance may impose fines as the board deems appropriate of not more than one hundred dollars upon conviction or guilty plea for each violation, and may provide that, in case of continuing violation, each day during which a violation occurs or continues constitutes a separate offense.

91 Acts, ch 198, §10 HF 690
NEW section

330B.12 Eminent domain procedures.

If land in fee simple, rights in land, air, or water, easements or other interests in land, air, water, property, or property rights are acquired or sought to be acquired by the authority by condemnation, the condemnation procedure shall be in accordance with the eminent domain statutes of the state in which the affected property is located.

91 Acts ch 198, §11 HF 690
NEW section

330B.13 Authority procedures.

Action of the board of a legislative character, including the adoption of regulations, shall be in the form of an ordinance, and after adoption shall be filed with the secretary and shall be made a matter of public record in the office of the authority. Other action of the board shall be by resolution, motion, or in other appropriate form. Executive or ministerial duties may be delegated to one or more commissioners or to an authorized officer, employee, agent, or other representative of the authority. Ten commissioners, five members from each state within the greater metropolitan area, constitute a quorum to conduct business and an affirmative vote of a majority of the commissioners from each metropolitan area is required to adopt or approve an action of the board. The enacting clause of any ordinance shall be

substantially as follows: *“Be it ordained by the Board of Commissioners of the Quad Cities Interstate Metropolitan Authority”*.

91 Acts, ch 198, §12 HF 690
NEW section

330B.14 Official records and officer bonds.

The board shall provide for the safekeeping of its permanent records and for the recording of the corporate action of the authority. The board shall keep a true and accurate account of its receipts and an annual audit shall be made of its books, records, and accounts by state or private auditors. All officers and employees authorized to receive or retain the custody of moneys or to sign vouchers, checks, warrants, or evidences of indebtedness binding upon the authority shall furnish surety bond for the faithful performance of their duties and the faithful accounting for all moneys that may come into their custody in an amount to be fixed and in a form to be approved by the board.

91 Acts, ch 198, §13 HF 690
NEW section

330B.15 Change of name.

The board may change the name of the authority by ordinance. A certified copy of the ordinance shall be filed with the appropriate state office and the county recorder or equivalent county officer of each county in which the authority or part of the authority is located. The name change shall be effective on the date of the filing.

91 Acts, ch 198, §14 HF 690
NEW section

330B.16 Budget and appropriation.

Annually, the board shall prepare and adopt a budget and provide appropriations as follows:

1. The budget shall show the amount required for each class of proposed expenditures, a comparison of the amounts proposed to be expended with the amounts expended for like purposes for the two preceding years, if available, and the sources of revenue.

2. Not less than twenty days before the date that a budget must be certified as determined by the board and not less than ten days before the date set for the hearing under subsection 3, the board shall file the budget with the treasurer of the authority. The treasurer shall post a copy of the budget in the authority offices for public inspection and comment.

3. The board shall set a time and place for a public hearing on the budget before the final certification date and shall publish notice of the hearing not less than ten nor more than twenty days prior to the hearing in one or more newspapers serving the greater metropolitan area. Proof of publication shall be filed with and preserved by the treasurer.

4. At the hearing, any resident or taxpayer of the greater metropolitan area may present to the board objections to or arguments in favor of any part of the budget.

5. After the hearing, the board shall adopt by res-

olution a budget and shall direct the treasurer to properly certify and file the budget.

6. The board shall appropriate, by resolution, the amounts deemed necessary for the ensuing fiscal year. All revenue from taxes, fees, tolls, rental, charges, bonds, or any other source shall be appropriated and used for the specific metropolitan facility project for which it was collected or similar metropolitan facility projects. Increases or decreases in these appropriations do not require a budget amendment, but may be provided by resolution at a regular meeting of the board.

91 Acts, ch 198, §15 HF 690
NEW section

330B.17 Local sales and services tax.

If an authority is established as provided in section 330B.6 and after approval of a referendum by a simple majority of votes cast in each metropolitan area in favor of the sales and services tax, the governing board of a county in this state within a metropolitan area which is part of the authority shall impose, at the request of the authority, a local sales and services tax at the rate of one-fourth of one percent on gross receipts taxed by this state under chapter 422, division IV, within the metropolitan area located in this state. The referendum shall be called by resolution of the board and shall be held as provided in section 330B.6 to the extent applicable. The ballot proposition shall contain a statement as to the specific purpose or purposes for which the revenues shall be expended and the date of expiration of the tax. The local sales and services tax shall be imposed on the same basis, with the same exceptions, and following the same administrative procedures as provided for a county under sections 422B.8 and 422B.9. The amount of the sale, for the purposes of determining the amount of the local sales and services tax under this section, does not include the amount of any local sales and services tax imposed under sections 422B.8 and 422B.9.

The treasurer of state shall credit the local sales and services tax receipts and interest and penalties to the authority's account. Moneys in this account shall be remitted quarterly to the authority. The proceeds of the tax imposed under this section shall be used only for the construction, reconstruction, or repair of metropolitan facilities as specified in the referendum. The local sales and services tax imposed under this section may be suspended for not less than a fiscal quarter or more than one year by action of the board. The suspension may be renewed or continued by the board, but the board shall act on the suspension at least annually. The local sales and services tax may also be repealed by a petition and favorable referendum following the procedures and requirements of sections 330B.5 and 330B.6 as applicable. The board shall give the department of revenue and finance at least forty days' notice of the repeal, suspension, or reinstatement of the tax and the effective dates for imposition, suspension, or repeal of the tax shall be as provided in section 422B.9.

91 Acts, ch 198, §16 HF 690
NEW section

330B.18 Bonds and notes payable from revenue.

1. The bonds issued by the board pursuant to this division shall be authorized by resolution of the board and shall be either term or serial bonds, shall bear the date, mature at the time, not exceeding forty years from their respective dates, bear interest at the rate, not exceeding the rate permitted under chapter 74A or the rate authorized by another state within the greater metropolitan area, whichever rate is lower, payable monthly or semiannually, be in the denominations, be in the form, either coupon or fully registered, shall carry the registration, exchangeability and interchangeability privileges, be payable in the medium of payment and at the place, within or without the state, be subject to the terms of redemption and be entitled to the priorities on the revenues, rates, fees, rentals, or other charges or receipts of the authority as the resolution may provide. The bonds shall be executed either by manual or facsimile signature by the officers as the authority shall determine, provided that the bonds shall bear at least one signature which is manually executed on the bond, and the coupons attached to the bonds shall bear the facsimile signature of the officer as designated by the authority and the bonds shall have the seal of the authority, affixed, imprinted, reproduced, or lithographed on the bond, all as may be prescribed in a resolution.

The bonds shall be sold at public sale or private sale at the price as the authority shall determine to be in the best interests of the authority provided that the bonds shall not be sold at less than ninety-eight percent of the par value of the bond, plus accrued interest and provided that the net interest cost shall not exceed that permitted by applicable state law. Pending the preparation of definitive bonds, interim certificates or temporary bonds may be issued to the purchaser of the bonds, and may contain the terms and conditions as the board may determine.

2. The board, after the issuance of bonds, may borrow moneys for the purposes for which the bonds are to be issued in anticipation of the receipt of the proceeds of the sale of the bonds and within the authorized maximum amount of the bond issue. Any loan shall be paid within three years after the date of the initial loan. Bond anticipation notes shall be issued for all moneys so borrowed under this section, and the notes may be renewed, but all the renewal notes shall mature within the time above limited for the payment of the initial loan. The notes shall be authorized by resolution of the board and shall be in the denominations, shall bear interest at the rate not exceeding the maximum rate permitted by the resolution authorizing the issuance of the bonds, shall be in the form and shall be executed in the manner, all as the authority prescribes.

The notes shall be sold at public or private sale or, if the notes are renewal notes, they may be exchanged for notes outstanding on the terms as the board determines. The board may retire any notes from the revenues derived from its metropolitan fa-

cilities or from other moneys of the authority which are lawfully available or from a combination of revenues and other available moneys, in lieu of retiring them by means of bond proceeds. However, before the retirement of the notes by any means other than the issuance of bonds, the board shall amend or repeal the resolution authorizing the issuance of the bonds, in anticipation of the proceeds of the sale of the notes, so as to reduce the authorized amount of the bond issue by the amount of the notes so retired. The amendatory or repealing resolution shall take effect upon its passage.

3. Any resolution authorizing the issuance of any bonds may contain provisions which shall be part of the contract with the holders of the bonds, as to:

a The pledging of all or any part of the revenues, rates, fees, rentals, or other charges or receipts of the authority derived by the authority from all or any of its metropolitan facilities.

b The construction, improvement, operations, extensions, enlargement, maintenance, repair, or lease of metropolitan facilities and the duties of the authority with reference to the facilities.

c Limitations on the purposes to which the proceeds of the bonds, or of any loan or grant by the federal government or the state government or the county or any city in the county, may be applied.

d The fixing, charging, establishing, and collecting of rates, fees, rentals, or other charges for use of the services and facilities of the metropolitan facilities of an authority, or any part of the facilities.

e The setting aside of reserves or sinking funds or repair and replacement funds or other funds and the regulation and disposition of the funds.

f Limitations on the issuance of additional bonds.

g The terms and provisions of any deed of trust, mortgage, or indenture securing the bonds or under which the bonds may be issued.

h Any other or additional agreements with the holders of the bonds as are customary and proper and which in the judgment of the authority will make the bonds more marketable.

4. The board of the authority may enter into any deeds of trust, mortgages, indentures, or other agreements, with any bank or trust company or any other lender within or without the state as security for the bonds, and may assign and pledge all or any of the revenues, rates, fees, rentals, or other charges or receipts of the authority. The deeds of trust, mortgages, indentures, or other agreements may contain the provisions as may be customary in the instruments, or, as the board may authorize, including, but without limitation, provisions as to:

a The construction, improvement, operation, leasing, maintenance, and repair of the metropolitan facilities and duties of the board with reference to the facilities.

b The application of funds and the safeguarding and investment of funds on hand or on deposit.

c The appointment of consulting engineers or architects and approval by the holders of the bonds.

d. The rights and remedies of the trustee and the holders of the bonds.

e. The terms and provisions of the bonds or the resolution authorizing the issuance of the bonds.

Any of the bonds issued pursuant to this section are negotiable instruments, and have all the qualities and incidents of negotiable instruments and are exempt from state taxation.

91 Acts, ch 198, §17 HF 690
NEW section

330B.19 Existing jurisdictions.

Existing jurisdictions, including those involving airports, mass transit, river bridges, waste disposal systems, and intermodal water ports within their jurisdictional boundaries, are protected from incorporation by the authority and shall not be incorporated in the authority except by their respective governing bodies. However, an existing jurisdiction may negotiate with the authority to take over its entire powers, incomes, and debts. The authority may assume the powers, income, and debts for any type of facility authorized by this division.

91 Acts, ch 198, §18 HF 690
NEW section

330B.20 Cooperation with other governments.

The authority may apply for and receive a grant or loan of moneys or other financial aid from the state or federal government or from any state or federal agency, department, bureau, or board, necessary or useful for the undertaking, performance, or execution of any of its corporate objectives or purposes, and the authority may undertake the acquisition, establishment, construction, development, expansion, extension, or improvement of metropolitan facilities within its corporate limits or within or upon any body of water within the corporate limits aided by, in cooperation with, or as a joint enterprise with the state or federal governments or with the aid of, or in cooperation with, or as a joint project with the state and federal governments. The authority shall assure, in compliance with any state or federal requirements or directives, that the proceeds of a state or federal grant, loan, or other financial assistance for the provision of facilities or services are used for the express purpose of the financial assistance and to the specific benefit of service areas or persons as designated by the local, state, or federal funding provider.

91 Acts, ch 198, §19 HF 690
NEW section

330B.21 Transfer of existing facilities.

1. Any county, city, commission, authority, or person may sell, lease, lend, grant, or convey to the authority, a facility or any part of a facility, or any interest in real or personal property which may be used by an authority in the construction, improvement, maintenance, leasing, or operation of any metropolitan facilities. Any county, city, commission, authority, or person may transfer and assign over to the authority a contract which may have been

awarded by the county, city, commission, authority, or person for the construction of facilities not begun or, if begun, not completed.

2. A proposed action of the board, and a proposed agreement to acquire, shall be approved by the governing body of the owner of the facilities. If the governing body of a county, city, commission, or authority desires to sell, lease, lend, grant, or convey to the authority a facility or any part of a facility, the governing body shall adopt a resolution signifying its intention to do so and shall publish the resolution at least one time in a newspaper of general circulation in the county and in a newspaper or newspapers, if necessary, of general circulation in the area served by the county, city, commission, or authority giving notice of a hearing to be held on the question of the sale, lease, loan, grant, or conveyance. The resolution shall be published at least fourteen days prior to the date of hearing. After the hearing and if in the public interest, the county, city, commission, or authority shall enact an ordinance authorizing the sale, lease, loan, grant, or conveyance.

3. An owner transferring an existing facility to the authority under this section shall notify the board of and make provision in the transfer documents for, where necessary, existing rights, liens, securities, and rights of reentry belonging to the state or federal government.

4. This section, without reference to any other law, shall be deemed complete authority for the acquisition by agreement, of a facility as provided in subsection 1, and no proceedings or other action shall be required except as prescribed in this division.

91 Acts, ch 198, §20 HF 690
NEW section

330B.22 Funds of the authority.

Moneys of an authority shall be paid to the treasurer of the authority who shall not commingle the moneys with any other moneys, but shall deposit them in a separate account or accounts. Moneys in the accounts shall be paid out on check of the treasurer on requisition of the chairperson of the authority, or of another person as the authority may authorize to make the requisition. An authority may deposit any of its rates, fees, rentals, or other charges, receipts, or income with any bank or trust company that is federally insured and may deposit the proceeds of any bonds issued with any bank or trust company that is federally insured, all as may be provided in any agreement with the holders of bonds issued under this division.

91 Acts, ch 198, §21 HF 690
NEW section

330B.23 Award of contracts.

All contracts entered into by an authority for the construction, reconstruction, and improvement of metropolitan facilities shall be entered into pursuant to and shall comply with applicable state laws. However, if an authority determines an emergency exists,

it may enter into contracts obligating the authority for not in excess of one hundred thousand dollars per emergency without regard to the requirements of applicable state laws and the authority may proceed with the necessary action as expeditiously as possible to the extent necessary to resolve the emergency.

91 Acts, ch 198 §22 HF 690
NEW section

330B.24 Exemption from taxation.

Since an authority is performing essential governmental functions, an authority is not required to pay any taxes or assessments of any kind or nature upon any property required or used by it for its purposes, or any rates, fees, rentals, receipts, or incomes at any time received by it, and the bonds issued by an authority, their transfer, and the income, including any profits made on the sale of the bonds, is deductible in determining net income for the purposes of the state individual and corporate income tax under divisions II and III of chapter 422, and shall not be taxed by any political subdivision of this state.

91 Acts, ch 198 §23 HF 690
NEW section

330B.25 Dissolution — referendum.

1. The authority shall be dissolved only by a ma-

ajority vote in a referendum undertaken in a manner similar to the referendum provided for in section 330B.6. The board shall call, upon its own motion, by petition of the eligible electors as provided in section 330B.5, or by action of the governing body of either metropolitan area, for an election to approve or disapprove the dissolution of the authority.

2. The proposition is approved if the vote in favor of the proposition is a simple majority of the total votes cast on the proposition in either one of the metropolitan areas.

3. The authority shall provide by ordinance for the disposal of any remaining property, the proceeds of which shall first be applied against any outstanding obligation of the authority. The remaining balance shall be divided between the counties included in the authority and credited to the general fund of the respective counties.

91 Acts, ch 198 §24 HF 690
NEW section

330B.26 Supremacy of compact.

The provisions of this division II are subject to all of the provisions of the quad cities interstate metropolitan authority compact provided for in section 330B.1.

91 Acts, ch 198 §25 HF 690
NEW section

CHAPTER 331

COUNTY HOME RULE IMPLEMENTATION

331.209 Plan “two” terms of office.

If plan “two” is selected pursuant to section 331.206 or 331.207, the board shall be elected as provided in this section.

1. Before December 15 of the nonelection year following each federal decennial census the board shall divide the county into a number of supervisor districts corresponding to the number of supervisors in the county. However, if the plan is selected pursuant to section 331.207, the board shall divide the county before March 15 of the election year. The supervisor districts shall be drawn, to the extent applicable, in compliance with the redistricting standards provided for senatorial and representative districts in section 42.4, and if a supervisor redistricting plan is challenged in court, the requirement of justifying any variance in excess of one percent contained in section 42.4, subsection 1, paragraph “c” applies to the board. If the board adopts a supervisor redistricting plan with a variance in excess of one percent, the board shall publish the justification for the variance in one or more official newspapers as provided in chapter 349 within ten days after the action is

taken. If more than one incumbent supervisor resides in the same supervisor district after the districts have been redrawn following the federal decennial census, the terms of office of those supervisors shall expire on the first day of January that is not a Sunday or a holiday following the next general election.

2. Each supervisor must reside in a separate supervisor district but shall be elected by the electors of the county at large. Election ballots shall be prepared to specify the district which each candidate seeks to represent and each elector may cast a vote for one candidate from each district for which a supervisor is to be chosen in the general election.

3. The board may redesignate supervisor districts only once in two years. If the board redesignates districts, the redesignation must be completed and available to the public by December 15 of the year before the election to be applicable in that election year. This subsection does not lengthen or diminish the term of office of a member of the board as a result of the redesignation and districts shall not be redesignated except in compliance with this section.

4 At the primary and general elections the number of supervisors, or candidates for the offices, which constitute the board in the county shall be elected as provided in this section. Terms of supervisors shall be the same as provided in section 331.208.

5 Each county board shall notify the state commissioner of elections when the boundaries of supervisor districts are changed, shall provide a map delineating the new boundary lines, and shall certify to the state commissioner of elections the populations of the new supervisor districts as determined under the latest federal decennial census. Upon failure of a county board to make the required changes by the dates specified by this section as determined by the state commissioner of elections, the state commissioner of elections shall make or cause to be made the necessary changes as soon as possible, and shall assess to the county the expenses incurred in so doing. The state commissioner of elections may request the services of personnel and materials available to the legislative service bureau to assist the state commissioner in making required changes in supervisor district boundaries which become the state commissioner's responsibility.

91 Acts ch 190 §1 HF 614
Subsection 1 amended

331.231 Alternative forms of county government.

The alternative forms of county government are as follows:

- 1 Board of supervisor form as provided in division II, part 1
- 2 Board-elected executive form as provided in section 331.239
- 3 Board-manager form as provided in section 331.241
- 4 Charter government form as provided in section 331.246
- 5 City-county consolidated form as provided in section 331.247
- 6 Multicounty consolidated form as provided in section 331.253
- 7 Community commonwealth form as provided in sections 331.260 through 331.263

91 Acts ch 256 §2 3 HF 693
Subsection 6 amended
NEW subsection 7

331.232 Plan for an alternative form of government.

1 A charter to change a form of county government may be submitted to the electors of a county only by a commission established by resolution of the board upon petition of the number of eligible electors of the county equal to at least twenty-five percent of the votes cast in the county for the office of president of the United States or governor at the preceding general election or the signatures of at least ten thousand eligible electors of the county, whichever number is fewer.

2 The council of any city wishing to participate in a city-county consolidation charter commission

must notify the board by resolution within thirty days of the creation of the commission pursuant to subsection 1. A city's participation in a city-county consolidation charter commission may be proposed by the city council adopting a resolution in favor of participation or by eligible electors of the city equal in number to at least twenty-five percent of the persons who voted at the last regular city election petitioning the council to adopt a resolution in favor of participation. The council shall within ten days of the filing of a valid petition adopt such a resolution.

3 An alternative form of county government shall be submitted to the county electorate by the commission in the form of a charter or charter amendment.

91 Acts ch 256 §4 HF 693
NEW subsection 2 and former subsection 2 renumbered as 3

331.233 Appointment of commission members.

1 The members of a commission created to study the alternative forms of county government under division II, part 1, and sections 331.239, 331.241, 331.246, and 331.253, shall be appointed within forty-five days after the adoption of the resolution creating the commission as follows:

a Two members shall be appointed by each of the following officers:

- (1) County auditor
- (2) County recorder
- (3) County treasurer
- (4) County sheriff
- (5) County attorney

b Two members shall be appointed by each member of the board.

c Two members shall be appointed by each state representative whose legislative district is located in the county if a majority of the constituents of that legislative district resides in the county. However, if a county does not have a state representative's legislative district which has a majority of a state representative's constituency residing in the county, the state representative having the largest plurality of constituents residing in the county shall appoint two members.

2 Only eligible electors of the county not holding a city, county, or state office shall be members of the commission. In counties having multiple state legislative districts, the districts shall be represented as equally as possible. The membership shall be bipartisan and gender balanced and each appointing authority under subsection 1 shall provide for representation of various age groups, racial minorities, economic groups, and representatives of identifiable geographically defined populations, all in reasonable relationship to the proportions in which these groups are present in the population of the commission area. A vacancy on the commission shall be filled by appointment in the same manner as the original appointment. The county auditor shall notify the appropriate appointing authority of a vacancy.

The legislative appointing authorities shall be

considered one appointing authority for the purpose of complying with this subsection. The senior legislative appointing authority in terms of length of legislative service shall convene the legislative appointing authorities to consult for the purpose of complying with this subsection.

3. If at any time during the commission process, the commission adopts a resolution by majority vote to prepare a charter proposing city-county consolidation or the community commonwealth form, additional members shall be appointed to the commission in order to comply with section 331.233A. The life of the commission shall be extended up to six months after the appointment of the additional members.

91 Acts, ch 256, §5-7 HF 693
See Code editor's note
Subsection 1 amended
Subsection 2 stricken and rewritten
NEW subsection 3

331.233A Appointment of commission members — city-county consolidation or community commonwealth.

1. The members of a commission created to study city-county consolidation or the community commonwealth form shall be appointed within forty-five days after the adoption of a resolution creating the commission as follows:

a. One member shall be appointed by the city council of each city participating in the charter process.

b. One member shall be appointed by the board of each county participating in the charter process. The member must be a resident of the unincorporated area of the county.

c. One member shall be appointed by each state legislator whose legislative district is located in the commission area if a majority of the constituents of that legislative district resides in the commission area. However, if a commission area does not have a state legislative district which has a majority of its constituents residing in the commission area, the legislative district having the largest plurality of constituents residing in the commission area shall appoint one member.

d. An additional member shall be appointed by each city council and each county board for every twenty-five thousand residents in the participating city or unincorporated area of the county, whichever is applicable.

2. The commission members shall be appointed in compliance with section 331.233, subsection 2. A vacancy on the commission shall be filled by appointment in the same manner as the original appointment. The county auditor shall notify the appropriate appointing authority of a vacancy.

3. If at any time during the commission process, the commission adopts a resolution by majority vote to prepare a charter proposing an alternative form other than city-county consolidation or the community commonwealth form, the resolution shall be submitted to the board of supervisors of the partici-

pating county, and the board shall proceed pursuant to section 331.233. The life of the commission shall be extended up to six months after the appointment of the new members.

91 Acts, ch 256, §8 HF 693
NEW section

331.234 Organization and expenses.

1. Within thirty days after the appointment of the members of the commission, the county auditor shall give written notice of the date, time, and location of the first meeting of the commission. At the first meeting the commission shall organize by electing a chairperson, vice chairperson, and other officers as necessary. The commission shall adopt rules governing the conduct of its meetings, subject to chapter 21.

2. The members of the commission shall serve without compensation, but they are entitled to travel and other necessary expenses relating to their duties of office.

3. The board shall make available to the commission in-kind services such as office space, printing, supplies, and equipment and shall pay the other necessary expenses of the commission including compensation for secretarial, clerical, professional, and consultant services. The total annual expenses, not including the value of in-kind expenses, to be paid from public funds shall not exceed one hundred thousand dollars or an amount equal to thirty cents times the population of the commission area, according to the most recent certified federal census. The commission may employ staff as necessary.

4. The expenses of the commission may be paid from the general fund of the county or from any combination of public or private funds available for that purpose. The commission's annual expenses may exceed the amount in subsection 3 only if the excess is paid from private funds. If a proposed charter is submitted to the electorate, private funds donated to the commission may be used to promote passage of the proposed charter.

91 Acts, ch 256, §9 HF 693
Subsections 3 and 4 amended

331.235 Commission procedures and reports.

1. Within sixty days after its organization, the commission shall hold at least one public hearing for the purpose of receiving information and material which will assist in the drafting of a charter. Notice of the date, time, and place of the hearing shall be given as provided in chapter 21.

2. Within nine months after the organization of the commission, the commission shall submit a preliminary report to the board, which report may include the text of the proposed charter. If a proposed charter is included in the preliminary report, the report shall also include an analysis of the fiscal impact of the proposed charter. Sufficient copies of the report shall be made available for distribution to residents of the county who request a copy. The com-

mission shall hold at least one public hearing after submission of the preliminary report to obtain public comment.

3. Within twenty months after organization, the commission shall submit the final report to the board. If the commission recommends a charter including a form of government other than the existing form of government, the final report shall include the full text and an explanation of the proposed charter, an analysis of the fiscal impact of the proposed charter, any comments deemed desirable by the commission, and any minority reports. The final report may recommend no change to the existing form of government and that no charter be submitted to the electorate. The final report shall be made available to the residents of the county upon request. A summary of the final report shall be published in the official newspapers of the county.

4. The commission is dissolved on the date of the general election at which the proposed charter is submitted to the electorate. If a charter is not recommended, the commission is dissolved upon submission of its final report to the board.

91 Acts, ch 256, §10 HF 693
Section amended

331.236 Ballot requirements.

Unless otherwise provided, the question of adopting the proposed alternative form of government shall be submitted to the electors in substantially the following form:

Should the (charter or amendment) described below be adopted for (insert name of local government)?

The ballot must contain a brief description and summary of the proposed charter or amendment.

91 Acts, ch 256, §11 HF 693
Section stricken and rewritten

331.237 Referendum — effective date.

1. If a proposed charter for county government is received not later than five working days before the filing deadline for candidates for county offices specified in section 44.4 for the next general election, the board shall direct the county commissioner of elections to submit to the qualified electors of the county at the next general election the question of whether the proposed charter shall be adopted. A summary of the proposed charter or amendment must be published in the official county newspapers and in a newspaper of general circulation in each participating city, if applicable, at least ten but not more than twenty days before the date of the election. If a majority of the votes cast on the question is in favor of the proposal, the proposal is adopted.

2. If a proposed charter for county government is adopted:

a. The adopted charter shall take effect July 1 following the general election at which it is approved unless the charter provides a later effective date. If

the adopted charter calls for a change in the form of government, a special election shall be called to elect the new elective officers. If the adopted charter provides for a special election, the board shall direct the county commissioner of elections to conduct the election.

b. The adoption of the alternative form of county government does not alter any right or liability of the county in effect at the time of the election at which the charter was adopted.

c. All departments and agencies shall continue to operate until replaced.

d. All ordinances or resolutions in effect remain effective until amended or repealed, unless they are irreconcilable with the adopted charter.

e. Upon the effective date of the adopted charter, the county shall adopt the alternative form by ordinance, and shall file a copy with the secretary of state, and maintain available copies for public inspection.

f. The former governing bodies shall continue to perform their duties until the new governing body is sworn into office, and shall assist the new governing body in planning the transition to the charter government.

3. If a charter is submitted to the electorate but is not adopted, another charter shall not be submitted to the electorate for two years. If a charter is adopted, it may be amended at any time. If a charter is adopted, a proposed charter for another alternative form of county government shall not be submitted to the electorate for six years.

91 Acts, ch 129, §25 HF 420, 91 Acts, ch 256, §12-14 HF 693
See Code editor's note to §15 287
Subsection 1 amended
Subsection 2, NEW paragraph f
Subsection 3 amended

331.238 Limitations to alternative forms of county government.

1. A county may adopt or amend an alternative form of county government subject to the requirements and limitations provided in this section.

2. An alternative form of county government shall provide for the exercise of home rule power and authority not inconsistent with state law and may include provisions for any of the following:

a. A board of an odd number of members which may exceed the number of members specified in sections 331.201, 331.203, and 331.204.

b. A supervisor representation plan for the county which may differ from the supervisor representation plans as provided in division II, part 1.

c. The initial compensation for members of the board which, thereafter, shall be determined as provided in section 331.215.

d. The method of selecting officers of the board and fixing their terms of office which may differ from the requirements of sections 331.208 through 331.211.

e. Determining meetings of the board and rules of procedure which may differ from the requirements of section 331.213, except the meetings shall

be scheduled and conducted in compliance with chapter 21.

f. The combining of duties of elected officials or the elimination of elected offices and the assumption of the duties of those offices by appointed officials.

g. The organization of county departments, agencies, or boards. The organization plan may provide for the abolition or consolidation of a board or a commission and the assumption of its powers and duties by the board of supervisors or another officer. This paragraph does not apply to the board of trustees of a county hospital.

h. In lieu of the election or appointment of township trustees, a method providing for the exercise of their powers and duties by the board of supervisors or other governing body of the county or another office.

i. Consolidating city-county government or government functions.

j. Consolidating county-county government or government functions.

This subsection does not apply to the board of trustees of a county hospital.

3. An alternative form of county government shall provide for the partisan election of its officers.

91 Acts, ch 256, §15 18 HF 693
Subsection 2, paragraph f amended
Subsection 2, paragraph k stricken
Subsection 2, NEW unnumbered paragraph 2
NEW subsection 3

331.247 City-county consolidation form.

1. A county and one or more cities within the county may unite to form a single unit of local government in accordance with this part. If more than fifty percent of the population of a city resides within the affected county, it is a city within the county for the purposes of this section.

2. An alternative form of government, including a charter form, for a consolidated unit of government may be submitted to the voters only by a commission established under this chapter. A majority vote by the charter commission is required for the submission of an alternative form of government for a consolidated unit of local government. The charter commission submitting a consolidated form shall issue a final report and proposal.

3. An alternative form of government for a consolidated unit of local government does not need to include more than one city. A city shall not be included unless the city participates in the commission process, and a majority of the electors of the affected city voting approves the proposed charter for the consolidated government.

4. If an alternative form of government for a consolidated unit of local government is proposed, approval of the consolidation charter shall be a separate ballot issue from approval of the alternative form of government in those cities proposed to be included in the consolidation. The consolidation charter shall be effective in regard to a city government only if a majority of the voters of the city voting on the question voted for participation in the consolidation charter.

5. A city may join an existing city-county consolidated government by resolution of the city council or upon petition of eligible electors of the city equal in number to at least twenty-five percent of the persons who voted at the last general election for the office of governor or president of the United States, whichever is fewer. Within fifteen days after receiving a valid petition, the city council of the petitioning city shall adopt a resolution in favor of participation and shall immediately forward the resolution to the legislative body of the city-county consolidated government. If a majority of the city-county consolidated legislative body approves the resolution, the question of joining the city-county consolidated government shall be submitted to the electorate of the petitioning city within sixty days after approval of the resolution.

91 Acts, ch 256, §19, 20 HF 693
See Code editor's note
Section amended
NEW subsection 5

331.248 Charter of consolidation.

1. The charter commission proposing consolidation shall prepare, adopt, and submit to the voters a consolidation charter including an alternative form of government.

2. The consolidation charter shall:

a. Provide for adjustment of existing bonded indebtedness and other obligations in a manner which will provide for a fair and equitable burden of taxation for debt service.

b. Provide for establishment of service areas, except that formation of a city-county consolidation government form shall not affect the assignment of electric utility service territories pursuant to chapter 476, and shall not affect the rights of a city to grant a franchise under chapter 364.

c. Provide for the transfer or other disposition of property and other rights, claims, assets, and franchises of local governments consolidated under the alternative form.

d. Provide the official name of the consolidated unit of local government.

e. Provide for the transfer, reorganization, abolition, absorption, and adjustment of boundaries of all existing boards, bureaus, commissions, agencies, special districts, and political subdivisions of the consolidated government.

f. Include other provisions which the county charter commission and the city charter commission elect to include and which are not inconsistent with state law.

3. The charter may grant the legislative body of the consolidated government the authority to transfer, reorganize, and provide a method for adjusting the boundaries of the entities within the consolidated government.

91 Acts, ch 256, §21, 22 HF 693
Subsection 1 amended
Subsection 2, paragraph b amended

331.249 Effect of consolidation.

1. The consolidation of one or more cities and one or more counties shall create a unified government which includes a municipal corporation and a county. The consolidated unit shall have the separate status of a county and a city for all purposes and shall constitute two political subdivisions, a consolidated city and a county, under combined governance. The consolidated unit shall retain one separate constitutional debt limitation with respect to its status as a city and a separate constitutional debt limitation with respect to its status as a county.

2. A consolidated unit of local government may include an area which is located in another county, but which is within the corporate boundaries of one of the consolidated cities. County services shall be provided in the extra-county area and taxes to fund those services shall be collected in the extra-county area by the consolidated government, to the extent permitted by the Constitution of the State of Iowa. In addition to the right to vote in the county of residence, electors residing in the extra-county area shall have the right to vote on any matter related to the consolidated unit of local government, including election of its officials.

If a city-county consolidation charter is proposed, within ninety days following the final report of the commission, a resident or property owner of the commission area proposed to be consolidated may bring an action in district court for declaratory judgment to determine the legality of the proposed charter and to otherwise declare the effect of the charter. The referendum on the proposed charter shall be stayed during pendency of the action and for such additional time during which the proposed charter or its enabling legislation does not conform to the Constitution or laws of the State of Iowa. If in its final judgment the court determines that the proposed charter fails to conform to the Constitution or laws of this state, the commission shall have a period of six months in which to revise and resubmit the proposed charter.

3. All provisions of law authorizing contributions of any kind, in money or otherwise, from the state or federal government to counties and cities shall remain in full force with respect to each city and the county comprising a consolidated local government.

91 Acts, ch 256, §23, 24 HF 693
Subsections 1 and 2 stricken and rewritten
Subsection 3 amended

331.250 General powers of consolidated local governments.

The consolidation charter shall provide for the delivery of services to specified areas of the consolidated local government. The governing body of the consolidated government shall administer the provision of services in each of the designated service areas and shall have the authority to determine the boundaries of the service areas. For each service provided by the consolidated government, the consolidated

government shall assume the same statutory rights, powers, and duties relating to the provision of the service as if the member city were itself providing the service to its citizens.

91 Acts, ch 256, §25 HF 693
Section stricken and rewritten

331.252 Form of ballot — city-county consolidation.

The question of city-county consolidation shall be submitted to the electors in substantially the following form:

Should the corporate existence and governments of the county of and the cities of and be consolidated into one joint city-county corporation government?

If section 331.247, subsection 4, applies, the following question shall be placed on the ballot of each participating city:

Should the (name of city or second county) participate in the consolidation charter?

The ballot must contain a brief description and summary of the proposed charter or amendment.

91 Acts, ch 256, §26 HF 693
Section stricken and rewritten

MULTICOUNTY CONSOLIDATION

331.253 Requirements for multicounty government consolidation.

1. Consolidation may be placed on the ballot only by a joint report by two or more counties.

2. A final report must contain a consolidation charter if multicounty consolidation is recommended. The consolidation charter must conform to the provisions and requirements in accordance with this part.

91 Acts, ch 256, §27 HF 693
Section amended

331.254 Charter of consolidation.

When multicounty consolidation is recommended, a petition must contain a consolidation charter which provides for:

1. Adjustment of existing bonded indebtedness and other obligations in a manner which assures a fair and equitable burden of taxation for debt service.

2. Establishment of subordinate service districts.

3. The transfer or other disposition of property and other rights, claims, assets, and franchises of the counties consolidated under the charter.

4. The official name of the consolidated county.

5. The transfer, reorganization, abolition, absorption, and adjustment of boundaries of existing boards, subordinate service districts, local improvement districts, and agencies of the consolidated counties.

6. The retention of each county's geographic boundaries as the boundaries existed before consolidation.

7. The merger of the elective offices of each consolidating county with the election of new officers within sixty days after the effective date of the charter. The elections shall be conducted by the county commissioner of elections of each county pursuant to section 69.13.

8. The merger of the appointive offices of each consolidating county.

The consolidation charter may include other provisions that are not inconsistent with state law.

91 Acts, ch 256, §28, 29 HF 693
 Unnumbered paragraph 1 and subsection 5 amended
 NEW subsections 6, 7 and 8

331.255 Form of ballot — multicounty consolidation.

The question of multicounty consolidation shall be submitted to the electors in substantially the following form:

Should the consolidation charter described below be adopted for (name of applicable county)?

The ballot must contain a brief description and summary of the proposed charter.

91 Acts, ch 256, §30 HF 693
 Section stricken and rewritten

331.256 Joining existing multicounty consolidated government.

A county may join an existing multicounty consolidated government by resolution of the board of supervisors or upon petition of eligible electors of the county equal in number to at least twenty-five percent of the persons who voted at the last general election for the office of governor or president of the United States, whichever is fewer. Within fifteen days after receiving a valid petition, the board of the petitioning county shall adopt a resolution in favor of participation and shall immediately forward the resolution to the legislative body of the multicounty consolidated government. If a majority of the multicounty consolidated board of supervisors approves the resolution, the question of joining the multicounty consolidated government shall be submitted to the electorate of the petitioning county within sixty days after approval of the resolution.

91 Acts, ch 256, §31 HF 693
 NEW section

331.257 through 331.259 Reserved.

COMMUNITY COMMONWEALTH

331.260 Community commonwealth.

1. A county and one or more cities or townships within the county, a contiguous county, and a city or a township within a contiguous county may unite to establish an alternative form of local government for

the purpose of making more efficient use of their resources by providing for the delivery of regional services.

2. A charter proposing a community commonwealth as an alternative form of government may be submitted to the voters only by a commission established under section 331.232. A majority vote by the commission is required for the submission of a charter proposing a community commonwealth as an alternative form of local government. The commission submitting a community commonwealth form of government shall issue a final report and proposal. If an alternative form of government for a community commonwealth form of local government is proposed, approval of the commonwealth charter shall be a separate ballot issue from approval of the alternative form of government in those cities proposed to be included in the commonwealth. The commonwealth charter shall be effective in regard to a city government only if a majority of the voters of the city voting on the question voted for participation in the commonwealth charter.

The question of forming a community commonwealth shall be submitted to the electorate in substantially the same form as provided in section 331.252.

91 Acts, ch 256, §32 HF 693
 NEW section

331.261 Charter — community commonwealth.

The community commonwealth charter shall provide for the following:

1. The official name of the community commonwealth government.

2. An elective legislative body established in the manner provided for county boards of supervisors under sections 331.201 through 331.216 and section 331.238.

3. Appointment of a manager pursuant to sections 331.241 through 331.243.

4. Adjustment of existing bonded indebtedness and other obligations to the extent it relates to the delivery of services.

5. The transfer or other disposition of property and other rights, claims, assets, and franchises as they relate to the delivery of services.

6. The transfer, reorganization, abolition, adjustment, and absorption of existing boards, existing subordinate service districts, local improvement districts, and agencies of the participating county and cities.

7. A system of delivery of services to the entire community commonwealth pursuant to section 331.263.

8. A formula for the transfer of taxing authority from member cities to the community commonwealth governing body to fund the delivery of regional services.

9. The transfer into the community commonwealth of areawide services which had been provided by other boards, commissions, and local govern-

ments, except that formation of a community commonwealth shall not affect the assignment of electric utility service territories pursuant to chapter 476, and shall not affect the rights of a city to grant a franchise under chapter 364.

10. A process by which the governing body of the community commonwealth and the governing bodies of the member cities provide by mutual agreement for the delivery of specified services to the community commonwealth.

11. The partisan election of community commonwealth government officials.

The community commonwealth charter may include other provisions not inconsistent with state law.

91 Acts, ch 256, §33 HF 693
NEW section

331.262 Adoption of charter — effect.

1. As a political subdivision of the state, the community commonwealth unit of local government shall have the statutory and constitutional status of a county and of a city to the extent the community commonwealth governing body assumes the powers and duties of cities as those powers and duties relate to the delivery of services. For each service provided by the community commonwealth, the community commonwealth shall assume the same statutory rights, powers, and duties relating to the provision of the service as if the member city were itself providing the service to its citizens.

On its effective date, the community commonwealth charter operates to replace the existing county government structure. The governments of participating cities shall remain in existence to render those services not transferred to the community commonwealth government.

2. A city or county wishing to terminate its membership in the community commonwealth government must do so pursuant to the existing charter procedure under this chapter or chapter 372, whichever is applicable.

A city or county may join an existing community commonwealth government by resolution of the board or council, whichever is applicable, or upon petition of eligible electors of the city or county, whichever is applicable, equal in number to at least twenty-five percent of the persons who voted at the last general election for the office of governor or president of the United States, whichever is fewer. Within fifteen days after receiving a valid petition, the applicable governing body shall adopt a resolution in favor of participation and shall immediately forward the resolution to the governing body of the community commonwealth. If a majority of the community commonwealth governing body approves the resolution, the question of joining the community commonwealth shall be submitted to the electorate of the petitioning city or county within sixty days after approval of the resolution.

91 Acts, ch 256, §34 HF 693
NEW section

331.263 Service delivery.

1. The governing body of the community commonwealth government shall administer the provision of services in each of the designated service areas and shall have the authority to determine the boundaries of the service areas.

2. The governing body of the community commonwealth shall have the authority to levy county taxes and shall have the authority to levy city taxes to the extent the city tax levy authority is transferred by the charter to the community commonwealth. A city participating in the community commonwealth shall transfer a portion of the city's tax levy authorized under section 384.1 or 384.12, whichever is applicable, to the governing body of the community commonwealth. The maximum rates of taxes authorized to be levied under sections 384.1 and 384.12 by a city participating in the community commonwealth shall be reduced by an amount equal to the rates of the same or similar taxes levied in the city by the governing body of the community commonwealth.

91 Acts, ch 256, §35 HF 693
NEW section

331.264 through 331.300 Reserved.

331.302 County legislation.

1. The board shall exercise a power or perform a duty only by the passage of a motion, a resolution, an amendment, or an ordinance.

2. A county 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. The criminal penalty surcharge required by section 911.2 shall be added to a county fine and is not a part of the county's penalty.

3. The subject matter of an ordinance or amendment shall be generally described in its title.

4. An amendment to an ordinance or to a code of ordinances shall specifically repeal the ordinance or code, or the section, subsection, paragraph, or subpart to be amended, and shall set forth the ordinance, code, section, subsection, paragraph, or subpart as amended.

4A. a. A county may by ordinance adopt by reference any portion of the Code of Iowa in effect at the time of the adoption in the manner provided in section 380.8 for adoption of a proposed code of ordinances containing a proposed new ordinance or amendment, subject to the following limitations:

(1) The ordinance shall describe the subject matter and identify the portion of the Code of Iowa adopted by chapter, section, and subsection or other subpart, as applicable.

(2) A portion of the Code of Iowa may be adopted by reference only if the criminal penalty provided by the law adopted does not exceed thirty days' imprisonment or a one hundred dollar fine.

(3) Amendments or other changes to those portions of the Code of Iowa which have been adopted by reference shall serve as an automatic modification of the applicable ordinance.

b An ordinance which adopts by reference any portion of the Code of Iowa may provide that violations of the ordinance are county infractions and subject to the limitations of section 331.307.

5. A proposed ordinance or amendment shall be considered and voted on for passage at two meetings of the board prior to the meeting at which it is to be finally passed, unless this requirement is suspended by a recorded vote of not less than a majority of the supervisors.

However, if a summary of the proposed ordinance or amendment is published as provided in section 331.305 prior to its first consideration and copies are available at the time of publication at the office of the auditor, the ordinance or amendment shall be considered and voted on for passage at one meeting prior to the meeting at which it is to be finally passed, unless this requirement is suspended by a recorded vote of not less than a majority of the supervisors.

6. Passage of an ordinance, amendment, or resolution requires an affirmative vote of not less than a majority of the supervisors. Each supervisor's vote on an ordinance, amendment, or resolution shall be recorded.

7. A resolution becomes effective upon passage and an ordinance or amendment becomes a law when published, unless a subsequent effective date is provided within the measure.

8. The auditor shall promptly record each measure, publish all ordinances and amendments as provided in section 331.305, authenticate all measures except motions with signature and certification as to time and manner of publication, if any, and maintain for public use copies of all effective ordinances and codes. The auditor's certification is presumptive evidence of the facts stated therein.

9. At least once every five years, the board shall compile a code of ordinances containing all of the county ordinances in effect.

If a proposed code of ordinances contains only existing ordinances edited and compiled without change in substance, the board may adopt the code by ordinance.

If a proposed code of ordinances contains a proposed new ordinance or amendment, the board shall hold a public hearing on the proposed code before adoption. The auditor shall publish notice of the hearing as provided in section 331.305. Copies of the proposed code of ordinances shall be available at the auditor's office and the notice shall so state. Within thirty days after the hearing, the board may adopt the proposed code of ordinances which becomes law upon publication of the ordinance adopting it. If the board substantially amends the proposed code of ordinances after a hearing, notice and hearing shall be repeated.

Ordinances and amendments which become effective after adoption of a code of ordinances may be compiled as a supplement to the code, and upon adoption of the supplement by resolution, become part of the code of ordinances.

An adopted code of ordinances is presumptive evidence of the passage, publication, and content of the ordinances therein as of the date of the auditor's certification of the ordinance adopting the code or supplement.

10. The compensation paid to a newspaper for a publication required by this section shall not exceed three-fourths of the fee provided in section 618.11.

11. The board may adopt the provisions of a statewide or nationally recognized standard code or portions of any such code by an ordinance which identifies the code by subject matter, source, and date, and incorporates the provisions either by reference or by setting them forth in full. The code or portion shall be adopted only after notice and hearing in the manner provided in subsection 9.

12. Immediately after the effective date of a measure establishing a zoning district, building lines, or fire limits, the auditor shall certify the measure and a plat showing the district, lines, or limits, to the recorder. The recorder shall record the measure and plat in the miscellaneous record or other book provided for special records, and shall index the record.

13. A measure voted upon is not invalid because a supervisor has a conflict of interest, unless the vote of the supervisor was decisive to passage of the measure. If a majority or unanimous vote of the board is required by statute, the majority or vote shall be computed on the basis of the number of supervisors not disqualified by reason of conflict of interest. However, a majority of all supervisors is required for a quorum. For the purposes of this subsection, the statement of a supervisor that the supervisor declines to vote by reason of conflict of interest is conclusive and shall be entered of record.

14. A valid measure adopted by a county prior to July 1, 1981 remains valid unless the measure is irreconcilable with a state law.

15. A county shall not provide a civil penalty in excess of one hundred dollars for the violation of an ordinance which is classified as a county infraction or if the infraction is a repeat offense, a civil penalty not to exceed two hundred dollars for each repeat offense. A county infraction is not punishable by imprisonment.

91 Acts ch 145 §1 2 SF 221
Subsection 4 amended
NEW subsection 4A

331.401 Duties relating to finances.

1. The board shall:

a Audit expenses charged to the county for the annual examination by the auditor of state and approve or object to the expenses as provided in section 11.21.

b Establish budgets for the farm-to-market road fund and the secondary road fund in accordance with sections 309.10 and 309.93 to 309.97.

c Pay expenses of administration of juvenile justice, attributable to the county under section 232.141.

d Provide for the expense of persons committed

to the county jail or a regional detention facility in accordance with section 356.15.

e. Adopt resolutions authorizing the county assessor to provide forms for homestead exemption claimants as provided in section 425.2 and military service tax exemptions as provided in section 427.6.

f. Examine and allow or disallow claims for homestead exemption in accordance with section 425.3 and claims for military service tax exemption in accordance with chapter 426A and sections 427.3 to 427.6. The board, by a single resolution, may allow or disallow the exemptions recommended by the assessor.

g. Hear appeals relating to the agricultural land tax credit in accordance with section 426.6.

h. Order the suspension of property taxes of certain persons in accordance with section 427.9.

i. Approve or deny an application for a property tax exemption for impoundment structures, as provided in section 427.1, subsection 33.

j. Serve on the conference board as provided in section 441.2.

k. Levy taxes as certified to it by tax-certifying bodies in the county, in accordance with the statutes authorizing the levies and in accordance with chapter 24 and sections 444.1 to 444.8, and levy taxes as required in chapters 430A, 433, 434, 436, 437 and 438.

l. Carry out duties in regard to the collection of taxes as provided in sections 445.16, 445.60, and 445.62.

m. Apportion taxes upon receipt of a petition, in accordance with sections 449.1 to 449.3.

n. Comply with chapters 452 and 453 in the management of public funds.

o. Allocate payments from flood control projects as provided in sections 467B.13 and 467B.14.

p. Examine and settle all accounts of the receipts and expenditures of the county and all claims against the county, except as otherwise provided by state law.

q. Require a local historical society to submit to it a proposed budget including the amount of available funds and estimated expenditures, as a prerequisite to receiving funds. A local historical society receiving funds shall present to the board an annual report describing in detail its use of the funds received.

r. Perform other financial duties as required by state law.

2. The board shall not pay membership dues for a county officers association in this state other than the Iowa state association of counties or an organization affiliated with it. This subsection does not prohibit expenditures for organizations with which the Iowa state association or its affiliates are affiliated.

3. The board shall not pay bounties on crows, rattlesnakes, foxes, or wolves other than coyotes.

91 Acts, ch 191, §7 HF 687

1991 amendment to subsection 1, paragraph 1, effective April 1, 1992, 91 Acts, ch 191, §124 HF 687

Subsection 1, paragraph 1 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, 321G.7, 331.554, subsection 6, 341A.20, 364.3, 368.21, 422.65, 422A.2, 428A.8, 430A.3, 433.15, 434.19, 445.57, 533.24, 556B.1, 567.10, 583.6, 906.17, and 911.3, and chapter 405A, 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.

91 Acts, ch 191, §8 HF 687

1991 amendment to subsection 1, unnumbered paragraph 1, effective April 1, 1992, 91 Acts, ch 191, §124 HF 687

Subsection 1, unnumbered paragraph 1 amended

331.434 County budget — notice and hearing — appropriations.

Annually, the board of each county, subject to sections 331.423 through 331.426 and other applicable state law, shall prepare and adopt a budget, certify taxes, and provide appropriations as follows:

1. The budget shall show the amount required for each class of proposed expenditures, a comparison of the amounts proposed to be expended with the amounts expended for like purposes for the two preceding years, the revenues from sources other than property taxation, and the amount to be raised by property taxation, in the detail and form prescribed by the director of the department of management.

2. Not less than twenty days before the date that a budget must be certified under section 24.17 and not less than ten days before the date set for the hearing under subsection 3 of this section, the board shall file the budget with the auditor. The auditor shall make available a sufficient number of copies of the budget to meet the requests of taxpayers and organizations and have them available for distribution at the courthouse or other places designated by the board.

3. The board shall set a time and place for a public hearing on the budget before the final certification date and shall publish notice of the hearing not less than ten nor more than twenty days prior to the hearing in the county newspapers selected under chapter 349. A summary of the proposed budget, in the form prescribed by the director of the department of management, shall be included in the notice. Proof of publication shall be filed with and preserved by the auditor. A levy is not valid unless and until the notice is published and filed.

4. At the hearing, a resident or taxpayer of the county may present to the board objections to or arguments in favor of any part of the budget.

5. After the hearing, the board shall adopt by resolution a budget and certificate of taxes for the next fiscal year and shall direct the auditor to properly certify and file the budget and certificate of taxes as adopted. The board shall not adopt a tax in excess of the estimate published, except a tax which is approved by a vote of the people, and a greater tax than that adopted shall not be levied or collected. A county budget and certificate of taxes adopted for the following fiscal year becomes effective on the first day of that year.

6. The board shall appropriate, by resolution, the amounts deemed necessary for each of the different county officers and departments during the ensuing fiscal year. Increases or decreases in these appropriations do not require a budget amendment, but may be provided by resolution at a regular meeting of the board, as long as each class of proposed expenditures contained in the budget summary published under subsection 3 of this section is not increased. However, decreases in appropriations for a county officer or department of more than ten percent or five thousand dollars, whichever is greater, shall not be effective unless the board sets a time and place for a public hearing on the proposed decrease and publishes notice of the hearing not less than ten nor more than twenty days prior to the hearing in the county newspapers selected under chapter 349.

331.512 Duties relating to taxation.

The auditor shall:

1. Include on the tax list:

a. The levy of county taxes authorized by the board as provided by law.

b. The levy of taxes to pay the principal and interest on bonds as provided in sections 76.2 and 76.3.

c. The levy of a mulct tax against the property of a person maintaining a nuisance as certified by the clerk of the district court as provided in section 99.28.

d. The levy of a tax to pay the expenses incurred and penalties assessed by the state fire marshal relating to the repair or destruction of fire hazards as provided in sections 100.27 to 100.29.

e. The costs of erecting, rebuilding, or repairing a fence under order of the fence viewers as provided in section 113.6.

f. A levy against the property of a bee owner sufficient to pay the costs of disinfecting or destroying diseased bees as provided in section 160.8.

g. The levy for taxes for the county brucellosis and tuberculosis eradication fund as provided in section 165.18.

h. The levy of a tax for the operation of a community college as provided in section 280A.17.

i. The levy of a tax to pay the principal and interest under a loan agreement entered into by community college authorities as provided in section 280A.22.

j. The levy of community school taxes as provided by law.

k. The levy of a tax as certified by the board of trustees of a sanitary district as provided in section 358.18.

l. The levy of taxes certified by the board of trustees of a township as provided in chapters 359 and 360.

m. The levy of city taxes and assessments as certified by the city council as provided by law.

n. Other tax levies as provided by law.

2. Carry out duties relating to tax sales of property within special charter cities as provided in sections 420.220 to 420.229.

3. Carry out duties relating to the homestead tax credit and agricultural land tax credit as provided in chapters 425 and 426.

4. Prepare and certify to the county treasurer the total amount of dollars for military service tax credits claimed and allowed as provided under sections 426A.3 and 427.3 to 427.6.

5. Carry out duties relating to the preparation of the tax list as provided in sections 427A.3, 427A.6, 428.4, 441.17, 441.21, 443.2 to 443.9 and 443.21.

6. Carry out duties relating to the valuation and taxation of telegraph and telephone companies as provided in sections 433.8 to 433.10 including mapping requirements as provided in sections 433.14 and 433.15.

7. Transmit to other local government officials the order stating the length of the main track and the assessed value of each railway located within the county as provided in section 434.22.

8. Carry out duties relating to the valuation and taxation of express companies as provided in sections 436.9 to 436.11.

9. Transmit to other local government officials the order stating the length of the electric transmission lines and the assessed value of the property of the electric transmission line companies located within the county as provided in section 437.10.

10. Carry out duties relating to the valuation and taxation of pipeline companies as provided in sections 438.14 to 438.16.

11. Furnish the assessor a plat book which is platted with the lands and lots within the assessment district as provided in section 441.29. The auditor, with the approval of the board of supervisors, may establish a permanent real estate index number system as provided in section 441.29.

12. Carry out duties relating to levy of school taxes as provided in chapter 257.

13. Carry out duties relating to the computation of tax rates as provided under chapter 444.

14. When an order of apportionment is made, correct the tax books or records in the auditor's possession as provided in section 449.4.

15. Carry out other duties as provided by law.

91 Acts ch 191 §9 HF 687
1991 amendment striking former subsections 14 and 15, effective April 1
1992 91 Acts ch 191 §124 HF 687
Subsections 14 and 15 stricken and former subsections 16 and 17 renum-
bered as 14 and 15

331.552 General duties.

The treasurer shall:

1. Receive all money payable to the county unless otherwise provided by law.

2. Disburse money owed or payable by the county on warrants drawn and signed by the auditor and sealed with the official county seal.

3. Keep a true account of all receipts and disbursements of the county, which account shall be available for inspection by the board at any reasonable time.

4. Keep the official county seal provided by the county. The official seal shall be an impression seal on the face of which shall appear the name of the county, the word "county" which may be abbreviated, the word "treasurer" which may be abbreviated, and the word "Iowa" The impression of the seal shall be placed on each motor vehicle registration certificate signed by the treasurer.

5. Account for, report, and pay into the state treasury any money, property, or securities received on behalf of the state as provided in sections 421.32 to 421.34.

6. Account for and report to the board the amount of swampland indemnity funds received from the treasurer of state under section 12.16.

7. Register and call tax anticipatory warrants issued for a memorial hospital as provided under section 37.30.

8. Serve on a nomination appeals commission to hear nomination objections filed with the county commissioner of elections as provided in section 44.7.

9. Keep on file the bond and oath of the auditor as provided in section 64.23.

10. Reserved.

11. Serve as treasurer of an area hospital located outside the corporate limits of a city as provided in section 145A.15.

12. Register and call anticipatory warrants related to the sale of limestone as provided in section 202.8.

13. Make transfer payments to the state for school expenses for blind and deaf children, support of the mentally ill, and hospital care for the indigent as provided in sections 230.21, 255.26, 269.2 and 270.7.

14. Transfer funds to pay the expenses of creating or changing the boundaries of a school district as provided in section 275.26.

15. Transfer funds to pay tuition expenses owed by a debtor school district to a creditor school district as provided in section 282.21.

16. Pay to the treasurers of the school corporations located in the county the taxes and other moneys due as provided in section 298.11 and send amounts collected for each fund of a school corporation for direct deposit into the depository and account designated as provided in section 298.13.

17. Pay monthly to the treasurer of state proceeds of public lands sold and escheated estates as provided in section 302.2 and pay annually on February 1 interest collected from public lands sold on credit as provided in section 302.5.

18. Maintain a permanent school fund account and records of school funds received as provided in section 302.31.

19. Carry out duties relating to the sale and redemption of anticipatory certificates for secondary road construction as provided in sections 309.50 to 309.55.

20. Carry out duties relating to the establishment of secondary road assessment districts as provided in chapter 311.

21. Carry out duties relating to the sale and redemption of county bonds as provided in division IV, parts 3 and 4.

22. Notify the chairperson of the county hospital board of trustees and pay to the hospital treasurer the tax revenue collected for the county hospital during the preceding month as provided in section 347A.1.

23. Collect a fee of ten dollars for issuing a tax sale certificate or a certificate of redemption from tax sale.

24. Carry out duties relating to the condemnation of property as provided in section 331.656, subsection 4.

25. Carry out duties relating to the funding of drainage districts as provided in chapter 468, subchapter I, parts 1 to 5, subchapter II, parts 1, 5, and 6, subchapter III, and subchapter IV, parts 1 and 2.

26. Collect and disburse funds for soil and water conservation districts as provided in sections 467A.33 and 467A.34.

27. Credit the remainder of funds received from a hotelkeeper's sale to satisfy a lien to the county general fund as provided in section 583.6.

28. Designate the newspapers in which the official notices of the treasurer's office are to be published as provided in section 618.7.

29. Send, before the fifteenth day of each month, the amount of tax revenue, special assessments, and other moneys collected for each tax-certifying or tax-levying public agency in the county for direct deposit into the depository or financial institution and account designated by the governing body of the public agency. The treasurer shall send notice to the chairperson or other designated officer of the public agency stating the amount deposited, the date, the amount to be credited to each fund according to the budget, and the source of revenue.

30. Carry out other duties as required by law and duties assigned pursuant to section 331.323.

91 Acts, ch 191, §10 HF 687
1991 amendment to subsection 23 effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Subsection 23 amended

331.553 General powers.

The treasurer may:

1. Administer oaths and take affirmations as provided in sections 78.2 and 421.21.

2. Subject to the requirements of section 331.903, appoint and remove deputies, clerks and assistants.

3. Require that payment be made by guaranteed funds for tax sale redemptions, issuance of plat clearances, issuance of tax clearances for mobile homes, payments of taxes or assessments made within the ten days prior to the annual tax sale or any adjournment of the tax sale, and any other payment which is to be collected by the county treasurer. For the purposes of this subsection, "guaranteed funds" means cash, cashier's check, money order, travelers' check, or certified check.

91 Acts, ch 191, §11 HF 687
Subsection 3 effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
For definitions applicable to subsection 3, see §445.1
NEW subsection 3

331.559 Duties relating to taxation.

The treasurer shall:

1. Determine and collect taxes on mobile homes as provided in sections 135D.22 to 135D.26.

2. Collect the tax levied for the county brucellosis and tuberculosis eradication fund as provided in section 165.18.

3. Collect the tax levied for the county agricultural extension education fund and pay it to the extension treasurer as provided in section 176A.12.

4. Collect the costs assessed by the secretary of agriculture relating to the treatment or destruction of agricultural or horticultural plants or products as provided in section 177A.17.

5. Collect the tax levied for the erection and equipping of community college facilities as provided in section 280A.22.

6. Collect the costs assessed against a property owner for the destruction or eradication of weeds as provided in sections 317.20 and 317.21.

7. Levy a tax sufficient to pay any deficiency in the assessments collected to pay the principal and interest on bonds issued by a benefited water district as provided in section 357.22.

8. Collect city taxes certified to the auditor as provided in section 384.2.

9. Send the amounts of each city's tax revenue and special assessments collected on its behalf for direct deposit into the depository and account designated as provided in section 384.11.

10. Accept a partial payment of the annual installment of a special assessment before its due date as provided in section 384.65, subsection 6.

11. Serve as an agent of the director of revenue and finance to collect state taxes as provided in section 422.71, subsection 5.

12. Carry out duties relating to the administration of the homestead tax credit as provided in sections 425.4, 425.5, 425.7, 425.9, 425.10 and 425.25.

13. Carry out duties relating to the administration of the agricultural land tax credit as provided in section 426.8.

14. Carry out duties relating to the administration of the military service tax credit as provided in sections 426A.3, 426A.5, 426A.8 and 426A.9.

15. Maintain a suspended tax list book as provided in section 427.12.

16. Collect taxes levied against the property of telephone and telegraph companies as provided in section 433.10.

17. Collect taxes levied against the property of railway companies as provided in section 434.22.

18. Carry out duties relating to the collection and expenditure of assessment expense funds as provided in section 441.16.

19. Apportion and collect the costs assessed by the district court against the board of review or any taxing body resulting from an appeal of property assessments as provided in section 441.40.

20. Carry out duties relating to the preparation and correction of the tax list as provided in chapter 443.

21. Carry out duties relating to the collection of property taxes as provided in chapter 445.

22. Carry out duties relating to the sale of parcels for delinquent taxes as provided in chapter 446.

23. Carry out duties relating to the redemption of parcels sold for delinquent taxes as provided in chapter 447.

24. Carry out duties relating to the issuance of a tax deed or certificate of title for parcels, as defined in section 445.1, sold for delinquent taxes as provided in chapter 448.

25. Correct tax books or records in accordance with an order of apportionment issued as provided in chapter 449.

26. Carry out other duties relating to taxation as provided by state law.

91 Acts, ch 191, §12 HF 687
1991 amendments to subsections 22, 23, and 24 effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Subsections 22, 23 and 24 amended

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 be legible and reproducible, and 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. The instruments shall be no larger than eight and one-half inches by fourteen inches except as otherwise provided in section 409.31, subsection 2, or except as otherwise authorized by the recorder.

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 and finance.

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 division of job service of the department of employment services, 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. Reserved.

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 409A.

20. Submit monthly to the director of revenue and finance a report of the real property transfer tax received.

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 and finance 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. Reserved.

28. Record the articles of incorporation of a cooperative 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 chapter 504A.

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 section 545.206.

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.

35A. Record a statement of claim provided in chapter 557C relating to mineral interests in coal.

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 607A.9.

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 331.604.

43. Report quarterly to the board the fees collected as provided in section 331.902.

44. Carry out other duties as provided by law and duties assigned pursuant to section 331.323.

91 Acts, ch 183, §1 HF 618, 91 Acts, ch 211, §2 HF 556
Subsection 27 stricken
NEW subsection 35A

331.604 General recording and filing fee.

Except as otherwise provided by state law or section 331.605, the recorder shall collect a fee of five dollars for each page or fraction of a page of an instrument which is filed or recorded in the recorder's office. If a page or fraction of a page contains more than one transaction, the recorder shall collect the fee for each transaction.

91 Acts, ch 191, §13 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

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 679B.10.

10. Co-operate with the division of labor services of the department of employment services 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. Reserved.

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 a neglected or estray disabled animal as provided in section 188.49.

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 appraisal 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. Reserved.

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 321J.

34. Upon request, assist the department of revenue and finance 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. Reserved.

37. Reserved.

38. Notify the department of natural resources 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. Carry out duties relating to the service of notice on a jury commissioner or jury manager as provided in section 607A.44.

44. Reserved.

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 re-committed 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 10.

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 and duties assigned pursuant to section 331.323.

91 Acts ch 191, §14 HF 687
1991 amendment striking subsections 36 and 37, effective April 1, 1992 91 Acts, ch 191, §124 HF 687
Subsections 36 and 37 stricken

331.660 Appropriation — Indian settlement officer.

There is appropriated annually from the general fund of the state to the county of Tama the sum of twenty-five thousand dollars to be used by the county only for the payment of the salary and expenses of an additional deputy sheriff for the county. The principal duty of the deputy sheriff is to provide law enforcement on the Sac and Fox Indian settlement in the county of Tama. If possible, the deputy sheriff shall reside on the settlement. Additional funds nec-

essary to pay the salary and expenses of the deputy sheriff shall be paid by the county of Tama. The state shall not be held liable for the performance or nonperformance of law enforcement duties pursuant to this section.

Appropriation limited for 1991 1992 fiscal year, 91 Acts, ch 267, §507 HF 479
Footnote added, section not amended

331.661 Multicounty office.

1. Two or more county boards of supervisors may adopt resolutions proposing to share the services of a county sheriff. The resolutions shall also propose that the question of establishing the office of multicounty sheriff be submitted to the electorate of the counties proposing to share the services of a county sheriff. The proposal is adopted in those counties where a majority of the electors voting approves the proposal.

2. The county sheriff shall be elected by a majority of the votes cast for the office of county sheriff in all of the counties which the county sheriff will serve. The election shall be conducted in accordance with section 47.2, subsection 2.

3. The office of multicounty sheriff is created effective on January 1 of the year following the next general election at which the county sheriff is elected as provided by this section and section 39.17.

91 Acts, ch 189, §1 HF 510
NEW section

331.662 to 331.700 Reserved.

331.908 Motor vehicles required to operate on ethanol-blended gasoline.

A motor vehicle purchased or used by a county to provide county services shall not, on or after January 1, 1993, operate on gasoline other than gasoline blended with at least ten percent ethanol. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on gasoline blended with ethanol.

91 Acts, ch 254, §21 SF 545
NEW section

CHAPTER 341A

CIVIL SERVICE FOR DEPUTY COUNTY SHERIFFS

341A.7 Classifications.

The classified civil service positions covered by this chapter include persons actually serving as deputy sheriffs who are salaried pursuant to section 331.904, subsection 2, but do not include a chief deputy sheriff, two second deputy sheriffs in counties with a population of more than one hundred thou-

sand, and four second deputy sheriffs in counties with a population of more than two hundred thousand. However, a chief deputy sheriff or second deputy sheriff who becomes a candidate for a partisan elective office for remuneration is subject to section 341A.18. A deputy sheriff serving with permanent rank under this chapter may be designated chief dep-

uty sheriff or second deputy sheriff and retain that rank during the period of service as chief deputy sheriff or second deputy sheriff and shall, upon termination of the duties as chief deputy sheriff or second deputy sheriff, revert to the permanent rank.

If the positions of two second deputy sheriffs of a county were exempt from classified civil service cov-

erage under this chapter based on the 1980 decennial census, the two second deputy positions shall remain exempt from classified civil service coverage under this chapter.

91 Acts, ch 110 §1 SF 492
NEW unnumbered paragraph 2

CHAPTER 347

PUBLIC HOSPITALS

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. Certify levies for a tax in excess of any tax levy limit to meet its obligations to pay the premium

costs on tort liability insurance, property insurance, workers' compensation insurance, and any other insurance that may be necessary for the prudent management and operation of the county public hospital, the costs of a self-insurance program, the costs of a local government risk pool, and amounts payable under any insurance agreements to provide or procure such insurance, self-insurance program, or local government risk pool.

11. 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.

12. 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.

13. Operate a health care facility as defined in section 135C.1 in conjunction with the hospital.

14. 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.

15. 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 con-

ditions 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 of county, 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.

91 Acts, ch 160, §11 SF 441
NEW subsection 10 and subsections 10-14 renumbered as 11-15

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. 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.

91 Acts, ch 129, §26 HF 420
Unnumbered paragraph 1 amended

CHAPTER 356

JAILS AND MUNICIPAL HOLDING FACILITIES

356.26 Leaving jail for certain purposes — intermittent sentencing — in-home detention.

The district court may grant by appropriate order to any person sentenced to a county jail the privilege of a sentence to accommodate the work schedule of the person or the privilege of leaving the jail at necessary and reasonable hours for any of the following purposes:

1. Seeking employment.
2. Working at the person’s employment.
3. Conducting the person’s own business or other self-employed occupation, including housekeeping and attending to family needs.

4. Attendance at an educational institution.
5. Medical treatment.

All released prisoners shall remain, while absent from the jail, in the legal custody of the sheriff, and shall be subject, at any time, to being taken into custody and returned to the jail.

The district court may also grant by order to any person sentenced to a county jail the privilege of a sentence of in-home detention where the county sheriff has certified to the court that the jail has an in-home detention program.

91 Acts, ch 267, §413 HF 479
Unnumbered paragraph 3 amended

CHAPTER 357

BENEFITED WATER DISTRICTS

357.13 Trustees — qualification and terms.

At the election provided for in section 357.12, the names of the trustees shall be written by the voter on blank ballots without formal nomination and the board of supervisors shall appoint three from among the five receiving the highest number of votes as trustees for the district, one to serve for one year, one for two years, and one for three years, which trustees and their successors shall give bond in the amount

the board of supervisors may require, the premium of which shall be paid by the district the trustees represent. Vacancies may thereafter be filled by election, or by appointment by the board of supervisors, at the option of the remaining trustees. The trustees must be residents of the district. The term of succeeding trustees shall be for three years.

91 Acts, ch 111, §1 HF 197
Section amended

CHAPTER 357A

RURAL WATER DISTRICTS

357A.1 Definitions.

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

1. "Auditor" means the county auditor of a county in which a district has been incorporated and organized or is proposed to be incorporated and organized.
2. "Board" means the board of directors of a district, and "director" means a member of such board of directors.
3. "Department" means the department of natural resources.
4. "District" means a rural water district incorporated and organized pursuant to the provisions of this chapter.
5. "Member" means an owner of real property which is located within a district, the tenant of the real property, or another person acting for the owner with the owner's written consent.
6. "Participating member" means a member who has subscribed to and paid the established fee for at least one benefit unit in a district, in the manner provided by this chapter.
7. "Supervisors" means the board of supervisors of a county, or the board of supervisors of an adjacent county, in which a district has been incorporated and organized or is proposed to be incorporated and organized.

91 Acts, ch 134, §1 SF 382
Subsections renumbered to alphabetize
Subsections 1, 5 and 7 amended

357A.2 Petition — deposit — limitation.

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 a county or in two or more adjacent counties for the purpose of providing an adequate supply of water for residents of the area who are not served by the water mains of any city water system.

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 real property lying within the outside perimeter of the area designated for inclusion in the proposed district, and shall state:

1. The location of the area, describing such area to be served or specifying the area by an attached map.
2. The reasons a district is needed.
3. A new water service plan describing the cost feasibility and estimated construction schedules.

Water services, other than water services provided as of April 1, 1987, shall not be provided within two miles of the limits of a city by a rural water district incorporated under this chapter or chapter 504A unless the city has approved a new water service plan

submitted by the district. If the new water service plan is not approved by the city, the plan may be subject to arbitration.

91 Acts ch 134 §2 3 SF 382
Unnumbered paragraph 1 amended
Unnumbered paragraph 3 and subsection 1 amended
NFW subsection

357A.3 Hearing after filing with auditor.

When a petition for incorporation and organization of a district is filed with the auditor, the auditor shall so inform the supervisors who shall fix a time for a hearing thereon, not less than fifteen nor more than thirty days after the filing of the petition. The auditor shall prepare a notice as hereinafter required, which shall at least seven days before the date fixed for the hearing on the petition:

1. Be published in a newspaper of general circulation in the area to be incorporated.
2. Be transmitted, together with a copy of the original petition, to the supervisors.

91 Acts ch 134 §4 SF 382
Subsection 2 amended

357A.4 Notice.

The notice prepared by the auditor pursuant to section 357A.3 shall set forth:

1. The location of the area designated by the petitioners for incorporation in the proposed district, as described or shown by the original petition.
2. The time and place fixed by the supervisors for the hearing on the petition.
3. That all owners or tenants of real property within the boundaries described may appear and be heard.
4. That the proposed district, if incorporated, shall have no power or authority to levy any taxes whatsoever.

91 Acts ch 134, §5 SF 382
Subsections 1 and 3 amended

357A.5 Appearances.

At the hearing on the petition, any owner or tenant of real property within the boundaries of the area described in the petition may appear, in person or by a designated representative, and any representative of the department, a city, or an interested person may also appear, in favor of or in opposition to the incorporation and organization of the proposed district. The appearances may also be filed in writing prior to the time set for the hearing.

91 Acts ch 134 §6 SF 382
Section amended

357A.6 Findings — order.

After the hearing, the supervisors may strike off any part of the territory that testimony shows will not be benefited by the creation of the district. If the supervisors do not find that the district is reasonably necessary, they shall dismiss the petition.

If the supervisors find that required notice of the hearing has been given and that the proposed district is reasonably necessary for the public health,

convenience, and comfort of the residents, or may be of benefit in providing fire protection, they shall make an order establishing the district as a political subdivision, designating its boundary, and identifying it by name or number. The order shall be published in the same newspaper which published the notice of hearing. The supervisors shall prepare and preserve a complete record of the hearing on the petition and their findings and action.

91 Acts ch 134 §7 SF 382
Unnumbered paragraph 2 amended

357A.11 Board's powers and duties.

The board shall be the governing body of the district, and shall:

1. Adopt rules, regulations, and rate schedules in conformity with the provisions of this Act and the bylaws of the district as necessary for the conduct of the business of the district.
2. Maintain at its office a record of the district's proceedings, rules and regulations, and any decisions and orders made pursuant to the provisions of this chapter, and furnish copies thereof to the supervisors or the council upon request.

3. Employ, appoint, or retain attorneys, engineers, other professional and technical employees, and other personnel as necessary, and require and approve bonds of district employees. The board may enter into agreements pursuant to chapter 28E to provide professional or technical services under this subsection to other water districts, nonprofit corporations, or related associations.

4. Prior to each annual meeting of participating members:

a Prepare an estimated budget for the coming year, and adjust water rates if necessary in order to produce the revenue required to fund the estimated budget, and make a report thereon at the annual meeting.

b Have an audit made of the district's records and accounts, and make copies of the audit report available to all participating members attending the annual meeting and to any other participating member who so requests.

5. Have authority to acquire by gift, lease, purchase, or grant any property, real or personal, in fee or a lesser interest needed to achieve the purposes for which the district was incorporated, to acquire easements for water lines and reservoirs by condemnation proceedings, and to sell and convey property owned, but no longer needed, by the district. Condemnation proceedings shall not apply to existing wells, ponds or reservoirs.

6. Have authority to construct, operate, maintain, repair, and when necessary to enlarge or extend, such ponds, reservoirs, pipe lines, wells, check dams, pumping installations, or other facilities for the storage, transportation, or utilization of water, and such appurtenant structures and equipment, as may be necessary or convenient to carry out the purposes for which the district was incorporated. A district may purchase its water supply from any source.

7. Have power to borrow from, co-operate with and enter into agreements as deemed necessary with any agency of the federal government, this state, or a county of this state, and to accept financial or other aid from any agency of the federal government. To evidence any indebtedness the obligations may be one or more bonds or notes and the obligations may be sold at private sale.

8. Have power to finance all or part of the cost of the construction or purchase of any project necessary to carry out the purposes for which the district is incorporated, or to refinance all or part of the original cost of any such project, and to evidence that financing by issuance of revenue bonds or notes which shall mature in a period not to exceed forty years from date of issuance, shall bear interest, or combined interest and insurance charges, at a rate not to exceed that permitted by chapter 74A, shall be payable only from revenue derived from sale of water by the district, and shall never become or be construed to be a debt against the state of Iowa or any of its political subdivisions other than the district issuing the bonds.

9. Finance all or part of the cost of the construction or purchase of a project necessary to carry out the purposes for which the district is incorporated or to refinance all or part of the original cost of that project, including, but not limited to, obligations originated by the district as a nonprofit corporation under chapter 504A and assumed by the district reorganized under this chapter. Financing or refinancing carried out under this subsection shall be in accordance with the terms and procedures set forth in the applicable provisions of sections 384.83 through 384.88, 384.92, and 384.93. References in these sections to a city shall be applicable to a rural water district operating under this chapter, and references in that division to a city council shall be applicable to the board of directors of a rural water district. This subsection shall not create a lien against the property of a person who is not a rural water subscriber.

10. Have power to join the Iowa association of rural water districts, and pay out of funds available to the board, reasonable dues to the association. The financial condition and transactions of the Iowa association of rural water districts must be audited in the same manner as rural water districts.

11. This chapter and chapter 384, as it applies to rural water districts, shall not be construed to mean that the real property of any rural water subscriber shall be used as security for any debts of a rural water district. However, the failure to pay water rates or charges by a subscriber may result in a lien being attached against the premises served upon certification to the county treasurer that the rate or charges are due.

91 Acts, ch 134, §8-10 SF 382
Subsections 3 and 8 amended
NEW subsections 10 and 11

357A.12 Plans, specifications, and procedures.

As soon as reasonably possible after incorporation of a district, the board shall file with the supervisors and the department copies of the plans and specifications for, and estimates of the cost of, any improvements authorized by this chapter which the board proposes to construct or acquire. The board shall determine a reasonable fee which each member shall pay for the privilege of utilizing the district's facilities, and which shall be known as a benefit unit. Benefit units may be classified. The board, by publication in a newspaper of general circulation in the district, shall generally describe the planned improvements, the area to be served and the fee members will be required to pay for each service connected to the water system.

The procedures for contract letting specified in sections 384.95 through 384.102 and as specified in section 384.103, subsection 2, shall apply to construction carried out pursuant to this chapter. References in those sections to a city shall be applicable to a rural water district operating under this chapter, and references to a city council shall be applicable to the board of directors of a rural water district.

91 Acts, ch 134, §11 SF 382
Section amended

357A.14 Attaching to district — inclusion of city — merger.

1. Owners of real property outside any district which can economically be served by the facilities of the district may petition to be attached to the district. The petition shall be filed with the auditor, and the auditor and supervisors shall proceed, in substantially the same manner as is provided by this chapter for filing of and proceeding on a petition for incorporation and organization of a district.

2. All or any part of an incorporated city may be included in the boundaries of any existing water district or water district being newly organized, provided the governing body of such city by resolution or ordinance gives, or has given, its consent.

3. Boards of any two or more districts may by concurrent action and by approval of the supervisors merge their districts into one. In case of merger the members of the boards of the merged districts may serve out the terms for which they were elected. The resulting district shall take over all the assets and legal liabilities of the water districts joining in the merger. Obligations of any district secured by the revenue of the systems operated by the district shall continue to be retired, or a sinking fund for such purpose created from revenue from the system operated over the same area by the resulting district in accordance with the laws under which the obligations were issued, until all obligations of the old district have been retired.

4. If there is a conflict between two or more districts concerning which district will serve an area, the supervisors of the county in which the disputed area is located shall, after a public hearing, determine which district can more adequately and economically provide service within the area.

91 Acts, ch 134, §12, 13 SF 382
Subsection 1 amended
NEW subsection 4

357A.16 Detaching real property from district.

If it becomes apparent that any real property included within a district cannot economically or adequately be served by the facilities of the district, the owners of the real property may file with the auditor a petition to the supervisors requesting that the real property be detached from the district. The petition shall

1 Describe by section, or fraction thereof, and by township and range, the real property which it is proposed to detach from the district

2 State that the real property cannot economically or adequately be served by the facilities of the district, and that it is not feasible for the district to enlarge or extend its facilities so as to economically and adequately serve the real property

3 Be signed by the owners of all the real property which it is desired to detach from the district

91 Acts ch 134 §14 SF 382
Section amended

357A.18 Hearing.

Upon the filing with the auditor of a petition under either section 357A 16 or section 357A 17, the auditor shall so inform the supervisors who shall fix a time for consideration of the petition. The supervisors may, but shall not be required to, hold a hearing thereon. After consideration of the petition, and after the hearing if one is held, the supervisors shall ascertain whether

1 The petition meets all of the requirements prescribed by section 357A 16 or section 357A 17 for either such petition

2 It appears from all information available to the supervisors that each allegation included in the petition is factual

If the supervisors' finding on each of the foregoing points is positive, it shall declare the real property described in the petition detached from the district, or declare the district dissolved, as the case may be. The supervisors shall notify the secretary of the district of its action, and the secretary shall amend the records of the district to show that the real property described in the petition has been detached from the district, or shall within thirty days deliver to the auditor all records, maps, plans, and files of the district dissolved

91 Acts ch 134 §15 16 SF 382
Subsection 1 amended
Unnumbered paragraph 2 amended

357A.20 Alternate operation by nonprofit corporation.

A nonprofit corporation incorporated under chapter 504A for the specific purpose of operating a rural water system may petition the supervisors for incorporation of a district, in the manner provided by section 357A 2. The signatures of the corporation's officers on the petition and a resolution adopted by the corporation's board of directors approving the petition shall suffice in lieu of signatures of owners of fifty percent of the real property in the proposed district, if the corporation presents evidence satisfactory to the supervisors that a sufficient number of members of the proposed district will subscribe to benefit units to make its operation feasible. The procedure for hearing and determination of disposition of the petition shall be as provided by this chapter.

In any district incorporated upon the petition of a nonprofit corporation, the following procedures shall apply

1 After final approval of the petition by a board of supervisors, the secretary of the corporation shall file a notice with the secretary of state dissolving the nonprofit corporation in accordance with chapter 504A

2 Upon filing of the notice, the nonprofit corporation shall cease to exist as a chapter 504A entity and all assets and liabilities of the nonprofit corporation become the assets and liabilities of the newly organized district without a need for any further meetings, voting, notice to creditors, or other actions by the members or board

3 The officers and board of directors of the corporation shall be the officers and board of the district

4 The applicable laws of the state and the articles of incorporation and bylaws of the corporation shall control the initial size and initial term of office of such officers and board, in lieu of sections 357A 7, 357A 9, and 357A 10

5 The district shall bring its operation and structure in compliance with sections 357A 7 to 357A 10 at the first annual meeting of the participating members and board of directors

91 Acts ch 134 §17 SF 382
Section amended

CHAPTER 357B

BENEFITED FIRE DISTRICTS

357B.5 Dissolution of district.

1. Upon petition of a number of registered voters residing in a district at least equal to thirty-five percent of the property taxpayers in the district, the board of supervisors may dissolve a benefited fire district and dispose of any remaining property, the proceeds of which shall first be applied against any outstanding obligation of the district. Any remaining balance shall be applied as a tax credit for the property owners of the district. However, except as provided in subsection 2, if all or a part of a district is annexed, the board of supervisors may transfer the remaining property and balance to the city which annexed the territory. The board of supervisors shall continue to levy an annual tax after the dissolution of a district, not to exceed forty and one-half cents per thousand dollars of assessed value of the taxable property of the district, until all outstanding obligations of the district are paid.

2. If a benefited fire district is dissolved that has been providing fire protection by contract, direct levy, or combination of both, to a city within the district for at least twenty years and the city's annual

payments by contract or levy for the fire protection comprise seventy-five percent or more of the district's annual budget, the board of supervisors, in lieu of the disposal of property as provided in subsection 1, shall transfer to the city all of the district's real and personal property. The city shall assume all of the outstanding obligations of the district. If the district provides fire protection outside of the city's boundaries, the city shall continue to provide fire protection to this area until it is assigned to another fire protection district by the board of supervisors. If the city continues the fire protection outside its boundaries, the city shall certify to the board of supervisors the cost of providing this service, which shall be at the same rate as contained in the budget for property within the city, but not exceeding forty and one-half cents per thousand dollars of assessed value of all taxable property in the area. The board of supervisors shall levy the amount of tax certified as provided in section 357B.3. The tax shall be collected and allocated in the same manner as other property taxes and paid to the city.

91 Acts, ch 111, §2 HF 197
Subsection 1 amended

CHAPTER 357C

BENEFITED STREET LIGHTING DISTRICTS

357C.8 Trustees — term and qualification.

At the election, the names of candidates for trustee shall be written in by the voters on blank ballots without formal nomination, and the board of supervisors shall appoint three from among the five receiving the highest number of votes as trustees for the district; one to serve for one year, one for two years, and one for three years. The trustees and their successors must be residents of the district and shall give bond in the amount which the board of supervisors may require, the premium of which shall be paid by the district the trustees represent. Vacancies may thereafter be filled by election, or by appointment by the board of supervisors. The term of succeeding trustees shall be for three years.

91 Acts, ch 111, §3 HF 197
Section amended

357C.11 Dissolution of district.

Upon petition of thirty-five percent of the resident eligible electors, the board of supervisors may dissolve a benefited street lighting district and dispose of any remaining property, proceeds of which shall first be applied against outstanding obligations and any balance shall be applied to tax credit of property owners of the district. However, if the district is annexed, the board of supervisors may transfer the remaining property and balance to the city which annexed the district. The board of supervisors shall continue to levy tax after dissolution of a district, of not to exceed fifty-four cents per thousand dollars of assessed value on all the taxable property of the district, until all outstanding obligations of the district are paid.

91 Acts, ch 111 §4 HF 197
Section amended

CHAPTER 357D

BENEFITED LAW ENFORCEMENT DISTRICTS

357D.9 Trustees — term and qualification.

At the election, the names of up to three candidates for trustee shall be written in by the voters on blank ballots without formal nomination and the board shall appoint three from among the five receiving the highest number of votes as trustees for the district. One trustee shall be appointed to serve for one year, one for two years, and one for three years. The trustees and their successors must be residents of the district and shall give bond in the amount required by the board, the premium of which shall be paid by the district. Vacancies shall be filled by election, but if there are no candidates for a trustee office, the vacancy may be filled by appointment by the board. The term of succeeding trustees shall be three years.

91 Acts ch 111 §5 HF 197
Section amended

357D.12 Dissolution of district.

Upon petition of thirty-five percent of the resident eligible electors, the board may dissolve a district and dispose of any remaining property, the proceeds of which shall first be applied against outstanding obligations and any balance shall be applied to tax credit of property owners of the district. However, if the district is annexed, the board of supervisors may transfer the remaining property and balance to the city which annexed the territory. The board shall continue to levy a tax after dissolution of a district, of not to exceed twenty-seven cents per thousand dollars of assessed value on all the taxable property of the district, until all outstanding obligations of the district are paid.

91 Acts ch 111, §6 HF 197
Section amended

CHAPTER 357E

BENEFITED RECREATIONAL LAKE DISTRICTS

357E.9 Trustees — term and qualification.

At the election, the names of at least three candidates for trustee shall be written in by the voters on blank ballots without formal nomination and the board of supervisors shall appoint three from among the five receiving the highest number of votes as trustees for the district. One trustee shall be appointed to serve for one year, one for two years, and one for three years. The trustees shall give bond in the amount required by the board, the premium of which shall be paid by the district. The trustees must be residents of the district. Vacancies shall be filled by election, but if there are no candidates for a trustee office, the vacancy may be filled by appointment by the board. The terms of the succeeding trustees are for three years.

If the state owns at least four hundred acres of land contiguous to a lake within the district, the natural resources commission shall appoint two members of the board of trustees in addition to the three members provided in this section. The additional two members must be citizens of the state, not less than eighteen years of age, and property owners

within the district. The two additional members have voting and other authority equal to the other members of the board and hold office at the pleasure of the natural resources commission.

91 Acts, ch 111, §7 HF 197
Unnumbered paragraph 1 amended

357E.12 Dissolution of district.

Upon petition of thirty-five percent of the resident eligible electors, the board may dissolve a district and dispose of any remaining property, the proceeds of which shall first be applied against outstanding obligations and any balance shall be applied to tax credits for property owners of the district. However, if the district is annexed, the board of supervisors may transfer the remaining property and balance to the city which annexed the territory. The board shall continue to levy a tax after dissolution of a district, in an amount necessary to pay all outstanding obligations of the district as they become due, until all outstanding obligations of the district are paid.

91 Acts, ch 111, §8 HF 197
Section amended

CHAPTER 358A

COUNTY ZONING COMMISSION

358A.31 Elder family homes.

A county board of supervisors or county zoning commission shall consider an elder family home a family home, as defined in section 358A.25, for purposes of zoning, in accordance with section 249E.2,

and may identify limitations regarding the proximity of one proposed elder family home to another.

91 Acts, ch 88, §3 SF 10
NEW section

CHAPTER 362

DEFINITIONS AND MISCELLANEOUS PROVISIONS

362.5 Interest in public contract prohibited — exceptions.

When used in this section, “contract” means any claim, account, or demand against or agreement with a city, express or implied.

A city officer or employee shall not have an interest, direct or indirect, in any contract or job of work or material or the profits thereof or services to be furnished or performed for the officer’s or employee’s city. A contract entered into in violation of this section is void. The provisions of this section do not apply to:

1. The payment of lawful compensation of a city officer or employee holding more than one city office or position, the holding of which is not incompatible with another public office or is not prohibited by law.

2. The designation of a bank or trust company as a depository, paying agent, or for investment of funds.

3. An employee of a bank or trust company, who serves as treasurer of a city.

4. Contracts made by a city, upon competitive bid in writing, publicly invited and opened.

5. Contracts in which a city officer or employee has an interest solely by reason of employment, or a stock interest of the kind described in subsection 9, or both, if the contract is for professional services not customarily awarded by competitive bid, if the remuneration of employment will not be directly affected as a result of the contract, and if the duties of employment do not directly involve the procurement or preparation of any part of the contract.

6. The designation of an official newspaper.

7. A contract in which a city officer or employee has an interest if the contract was made before the time the officer or employee was elected or appointed, but the contract may not be renewed.

8. Contracts with volunteer fire fighters or civil defense volunteers.

9. A contract with a corporation in which a city officer or employee has an interest by reason of stockholdings when less than five percent of the outstanding stock of the corporation is owned or controlled directly or indirectly by the officer or employee or the spouse or immediate family of such officer or employee.

10. Contracts not otherwise permitted by this section, for the purchase of goods or services by a city having a population of more than two thousand five hundred, which benefit a city officer or employee, if the purchases benefiting that officer or employee do not exceed a cumulative total purchase price of one thousand five hundred dollars in a fiscal year.

11. Contracts not otherwise permitted by this section for the purchase of goods or services by a city having a population of two thousand five hundred or less, which benefit a city officer or employee, if the purchases benefiting that officer or employee do not exceed a cumulative total purchase price of two thousand five hundred dollars in a fiscal year.

91 Acts, ch 60, §1, 2 HF 565
Subsection 10 amended
NEW subsection 11

CHAPTER 364

POWERS AND DUTIES OF CITIES

364.20 Motor vehicles required to operate on ethanol-blended gasoline.

A motor vehicle purchased or used by a city to provide city services shall not, on or after January 1, 1993, operate on gasoline other than gasoline blended with at least ten percent ethanol. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on gasoline blended with ethanol.

91 Acts, ch 254, §22 SF 545
NEW section

364.23 Energy efficient lighting required.

All city-owned exterior flood lighting, including but not limited to street and security lighting but not including era or period lighting which has a minimum efficiency rating of fifty-eight lumens per watt, shall be replaced, when worn-out, exclusively with high pressure sodium lighting or lighting with equiv-

alent or better energy efficiency as approved in rules adopted by the utilities board within the utilities division of the department of commerce.

91 Acts, ch 253, §16 SF 508
Section amended

364.24 Traffic light synchronization.

After July 1, 1992, all cities with more than three traffic lights within the corporate limits shall establish a traffic light synchronization program for energy efficiency in accordance with rules adopted by the state department of transportation. The state department of transportation shall adopt rules required by this section by July 1, 1990. This section does not require that a city replace lighting, which has not completed its useful life, in order to comply with the requirements of this section. However, all lighting shall be replaced, whether or not it has completed its useful life, by July 1, 2001.

91 Acts, ch 253, §15 SF 508
Section amended

CHAPTER 368

CITY DEVELOPMENT

Remand of voluntary applications and involuntary petitions pending before city development board on or after April 1, 1991 for action under this chapter as amended by 91 Acts, ch 250, notice, 91 Acts, ch 250, §11 SF 4

Counties to notify city development board of existing islands on or before January 15, 1992, verification procedures, protests, hearings, declaration of annexation, 91 Acts ch 187, §5 HF 182

368.1 Definitions.

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

1. "Adjoining" means having a common boundary for not less than fifty feet. Land areas may be adjoining although separated by a roadway or waterway.
2. "Annexation" means the addition of territory to a city.
3. "Board" means the city development board established in section 368.9.
4. "Boundary adjustment" means annexation, severance or consolidation.
5. "City development" means an incorporation, discontinuance or boundary adjustment.

6. "Committee" means the board members, and the local representatives appointed as provided in section 368.14, to hear and make a decision on a petition or plan for city development.

7. "Consolidation" means the combining of two or more cities into one city.

8. "Discontinuance" means termination of a city.

9. "Incorporation" means establishment of a new city.

10. "Island" means land which is not part of a city and which is completely surrounded by the corporate boundaries of one or more cities. However, a part of the boundary of an "island" may be contiguous with a boundary of the state.

11 “*Qualified elector*” means a person who is registered to vote pursuant to chapter 48

12 “*Severance*” means the deletion of territory from a city

13 “*Territory*” means the land area or areas proposed to be incorporated, annexed, or severed, whether or not contiguous to all other areas proposed to be incorporated, annexed, or severed. Except as provided for by an agreement pursuant to chapter 28E, “*territory*” having a common boundary with the right-of-way of a secondary road extends to the center line of the road

14 “*Urbanized area*” means a metropolitan statistical area as determined by the United States census bureau in the statistical abstract of the United States

91 Acts ch 187 §1 HF 182 91 Acts ch 250 §1 SF 4
NEW subsection 10 and former subsections 10 13 renumbered as 11 14
Subsection 14 amended

368.3 Discontinuance — cemetery fund transfer.

A city is discontinued if, for a period of six years or more, it has held no city election and has caused no taxes to be levied. If the board receives knowledge of facts which cause an automatic discontinuance under this section, it shall make a determination that the city is discontinued, shall take control of the property of the discontinued city, and shall carry out all necessary procedures as if the city were discontinued under a petition or plan

When a city is discontinued under this section or under sections 368 11 through 368 22, and that city owns a cemetery, the board shall determine if any perpetual care funds exist and provide for their transfer to a trustee named by a district court or to the county or other suitable governmental entity

91 Acts ch 188 §2 HF 237
NFW unnumbered paragraph 2

368.6 Intent.

It is the intent of the general assembly to provide an annexation approval procedure which gives due consideration to the wishes of the residents of territory to be annexed, and to the interests of the residents of all territories affected by an annexation. The general assembly presumes that a voluntary annexation of territory more closely reflects the wishes of the residents of territory to be annexed, and, therefore, intends that the annexation approval procedure include a presumption of validity for voluntary annexation approval

91 Acts ch 250 §2 SF 4
NFW section

368.7 Voluntary annexation of territory.

All of the owners of land in a territory adjoining a city may apply in writing to the council of the adjoining city requesting annexation of the territory. Territory comprising railway right of way may be included in the application without the consent of the railway if a copy of the application is mailed by certified mail to the owner of the right of way, at least ten

days prior to the filing of the application with the city council. The application must contain a map of the territory showing its location in relationship to the city

An application for annexation of territory not within the urbanized area of a city other than the city to which the annexation is directed must be approved by resolution of the council which receives the application. In the discretion of a city council, the resolution may include a provision for a transition for the imposition of taxes as provided in section 368 11, subsection 13. Upon receiving approval of the council, the city clerk shall file a copy of the resolution, map, and legal description of the territory involved with the state department of transportation. The city clerk shall also file a copy of the map and resolution with the county recorder and secretary of state. The secretary of state shall not accept and acknowledge a copy of a map and resolution of annexation which would create an island. The annexation is completed upon acknowledgment by the secretary of state that the secretary of state has received the map and resolution

An application for annexation of territory within the urbanized area of a city other than the city to which the annexation is directed must be approved both by resolution of the council which receives the application and by the board. The board shall not approve an application which creates an island. A copy of the application shall be mailed by certified mail, at least ten days prior to the filing of the application with the city council, to the council of each city whose boundary adjoins the territory or is within two miles of the territory, to the board of supervisors of each county which contains a portion of the territory, and to the regional planning authority of the territory. Notice of the filing of the application shall be published in an official county newspaper in each affected county at least ten days prior to the filing of the application with the city council. In the discretion of a city council, the resolution may include a provision for a transition for the imposition of taxes as provided in section 368 11, subsection 13. The annexation is completed when the board has filed copies of applicable portions of the proceedings as required by section 368 20, subsection 2

If one or more applications for a voluntary annexation and one or more petitions for an involuntary annexation for a common territory are submitted to the board within thirty days of each other, the board shall approve the application for voluntary annexation, provided that the application meets the applicable requirements of this chapter, unless the board determines by a preponderance of the evidence that the application was filed in bad faith, or that the application as filed is contrary to the best interests of the citizens of the urbanized area, or that the applicant cannot within a reasonable period of time meet its obligation to provide services to the territory to be annexed sufficient to meet the needs of the territory. In consideration of the requests, the board may appoint a committee in the manner provided in sec-

tion 368.14 to seek additional information from the applicant for voluntary annexation as necessary, including the information required of petitioners pursuant to section 368.11. The board, or the committee, if applicable, shall hold a public hearing on the application for voluntary annexation in the manner provided for involuntary petitions in section 368.15. The decision of the board under this paragraph shall be made within ninety days of receipt of the application by the board. The failure of the board to approve an application under this paragraph shall be deemed final agency action subject to judicial review. An applicant may appeal a decision of the board no earlier than one hundred eighty days after the decision is issued or not later than thirty days after a final decision is made by the special local committee under section 368.14A, whichever is earlier.

If an application for voluntary annexation is not approved pursuant to this section, the board shall cause the conversion of the application to a petition pursuant to section 368.13 and shall proceed under section 368.14A. The conversion of an application to a petition shall not prejudice the status of the applicant. Judicial review of a board decision under this paragraph and the preceding paragraph shall be limited to review of the testimony and documents presented to the board prior to issuing its decision on the application for voluntary annexation.

91 Acts, ch 187, §2, 3 HF 182, 91 Acts, ch 250, §3, 4 SF 4
See Code editor's note to §15 287
Unnumbered paragraphs 2 and 3 amended
NEW unnumbered paragraphs 4 and 5

DIVISION III

CITY DEVELOPMENT BOARD

City development board duties relating to annexation of existing islands identified by counties on or before January 15, 1992,
91 Acts, ch 187, §5 HF 182

368.9 Board created.

1. A city development board is created. The department of economic development shall provide office space and staff assistance, and shall budget funds to cover expenses of the board and committees. The board consists of five members appointed by the governor subject to confirmation by the senate. The appointments must be for six-year staggered terms beginning and ending as provided by section 69.19, or to fill an unexpired term in case of a vacancy. Members are eligible for reappointment, but no member shall serve more than two complete six-year terms.

2. The board shall be composed of the following members:

a. One member appointed from a city with a population of more than forty-five thousand, according to the most recent certified federal census.

b. One member appointed from a city with a population of forty-five thousand or less, according to the most recent certified federal census.

c. One member appointed from a county with a population of more than fifty thousand, according to the most recent certified federal census.

d. One member appointed from a county with a population of fifty thousand or less, according to the most recent certified federal census.

e. One member appointed to represent the general public.

3. Each member is entitled to receive from the state actual and necessary expenses in performance of board duties and may also be eligible to receive compensation as provided in section 7E.6.

91 Acts, ch 250, §5 SF 4
Details of transition to five member board, 91 Acts, ch 250, §11 SF 4
Section amended

368.11 Petition for involuntary city development action.

A petition for incorporation, discontinuance, or boundary adjustment may be filed with the board by a city council, a county board of supervisors, a regional planning authority, or five percent of the qualified electors of a city or territory involved in the proposal. Notice of the filing, including a copy of the petition, must be served upon the council of each city for which a discontinuance or boundary adjustment is proposed, the board of supervisors for each county which contains a portion of a city to be discontinued or territory to be incorporated, annexed or severed, and any regional planning authority for the area involved.

Within ninety days of receipt of a petition, the board shall initiate appropriate proceedings or dismiss the petition. The board may combine for consideration petitions or plans which concern the same territory or city.

The petition must include substantially the following information as applicable:

1. A general statement of the proposal.
2. A map of the territory, city or cities involved.
3. Assessed valuation of platted and unplatted land.
4. Names of property owners.
5. Population density.
6. Description of topography.
7. Plans for disposal of assets and assumption of liabilities.
8. Description of existing municipal services, including but not limited to water supply, sewage disposal, and fire and police protection.
9. Plans for agreements with any existing special service districts.
10. In a case of annexation or incorporation, the petition must state that none of the territory is within a city.
11. In a case of incorporation or consolidation, the petition must state the name of the proposed city.
12. Plans shall include a formal agreement between affected municipal corporations and counties for the maintenance, improvement and traffic control of any shared roads involved in an incorporation or boundary adjustment.

13 In the discretion of a city council, a provision for a transition for the imposition of city taxes against property within an annexation area. The provision shall not allow a greater exemption from taxation than the tax exemption formula schedule provided under section 427B 3, subsections 1 through 5, and shall be applied in the levy and collection of taxes. The provision may also allow for the partial provision of city services during the time in which the exemption from taxation is in effect.

At least ten days before a petition for involuntary annexation is filed as provided in this section, the petitioner shall make its intention known to all affected parties by sending a letter of intent by certified mail to the council of each city, the board of supervisors of each county within the urbanized area, the regional planning authority of the territory involved, and to each property owner listed in the petition. The written notification shall include notice that the petitioners shall hold a public meeting on the petition for involuntary annexation prior to the filing of the petition.

Before a petition for involuntary annexation may be filed, the petitioner shall hold a public meeting on the petition. Notice of the meeting shall be published in an official county newspaper in each affected county at least five days before the date of the public meeting. The chairperson of the board of supervisors of the county containing the greatest area of the territory proposed to be annexed, or that person's designee, shall serve as chairperson of the public meeting. The auditor of the same county, or the auditor's designee, shall record the proceedings of the public meeting. Any person attending the meeting may submit written comments and may be heard on the petition. The minutes of the public meeting and all documents submitted at the public meeting shall be forwarded to the board by the chairperson of the meeting.

91 Acts ch 250 §6 SF 4
 Unnumbered paragraphs 4 and 5 applicable to petitions filed on or after July 1, 1991. 91 Acts ch 250 §12 SF 4
 NEW unnumbered paragraphs 4 and 5

368.12 Dismissal.

The board may dismiss a petition only if it finds that the petition does not meet the requirements of this chapter, or that substantially the same incorporation, discontinuance, or boundary adjustment has been disapproved by a committee formed to consider the proposal, or by the voters, within the two years prior to the date the petition is filed with the board, or that the territory to be annexed, or a portion of that territory, has been voluntarily annexed under section 368.7. The board shall file for record a statement of each dismissal and the reason for it, and shall promptly notify the parties to the proceeding of its decision.

91 Acts ch 250 §7 SF 4
 Section amended

368.14 Local representatives.

If an involuntary petition is not dismissed, the board shall direct the appointment of local representatives to serve with board members as a committee to consider the proposal. Each local representative is entitled to receive from the state the representative's actual and necessary expenses spent in performance of committee duties. Three board members and one local representative, or if the number of local representatives exceeds one, three board members and at least one-half of the appointed local representatives, are required for a quorum of the committee. A local representative must be a qualified elector of the territory or city which the representative represents, and must be selected as follows:

1 From a territory to be incorporated, one representative appointed by the county board of supervisors. If the territory is in more than one county, the board shall direct the appointment of a local representative from each county involved.

2 From a city to be discontinued, one representative appointed by the city council.

3 From a territory to be annexed to or severed from a city, one representative appointed by the county board of supervisors. If there are no qualified electors residing in an area to be annexed to or severed from a city, the county board of supervisors shall appoint as local representative an individual owning property in the territory whether or not the individual is a qualified elector or appoint a designee of such individual. If the territory is in more than one county, the board shall direct the appointment of a local representative from each county involved by its board of supervisors.

4 From a city to which territory is to be annexed or from which territory is to be severed, one representative appointed by the city council. If the territory is in more than one county, the board shall direct the appointment of an equal number of city and county local representatives.

5 From each city to be consolidated, one representative appointed by each city council.

91 Acts ch 250 §8 SF 4
 Unnumbered paragraph 1 amended

368.14A Special local committees.

When two or more involuntary petitions or voluntary applications for boundary adjustment describing common territory are being considered together, the board shall direct the appointment of representatives for each of the petitions to serve on one special committee to consider the petitions. Expense reimbursement and qualifications of these representatives shall be as provided in section 368.14. Three board members and at least one-half of the appointed local representatives are required for a quorum of the special local committee. The manner of appointment of representatives shall be the same as for single petition committees except

that if one or more of the territories to be annexed is in more than one county, the board of supervisors of the county containing the greatest area of the territory proposed to be annexed shall appoint one representative. The special committee shall consider the petitions in conformity with the provisions of this chapter, and shall resolve common territory issues between petitioners. The special committee shall conduct a public hearing on the petitions pursuant to section 368.15. If the common territory issue is resolved, the special local committee may approve the resulting compatible petitions by a single vote or separately, in its discretion.

91 Acts, ch 250, §9 SF 4
NEW section

368.17 When approval barred.

The committee may not approve:

1. An incorporation unless it finds that the city to be incorporated will be able to provide customary municipal services within a reasonable time.
2. A discontinuance or severance if the city to be discontinued or the territory to be severed will be surrounded by one or more cities unless a petition for annexation of the same area is also filed and approved.
3. A discontinuance or severance unless it finds that the county or another city will be able to provide necessary municipal services to the residents.
4. An annexation unless the territory is adjoining the city to which it will be annexed, and the committee finds that the city will be able to provide to the territory substantial municipal services and benefits not previously enjoyed by such territory, and that the motive for annexation is not solely to increase revenues to the city.
5. A consolidation unless the cities are contiguous.

6. An incorporation of territory, any part of which is within an urbanized area of a city, unless a petition for annexation of substantially the same territory to such city has been dismissed, disapproved, or voted upon unfavorably within the last five years.

7. An annexation which creates an island.

91 Acts, ch 187, §4 HF 182
NEW subsection 7

368.19 Time limit — election.

The committee shall approve or disapprove the petition or plan as amended, within ninety days of the final hearing, and shall file its decision for record and promptly notify the parties to the proceeding of its decision. If a petition or plan is approved, the board shall set a date not less than thirty days nor more than ninety days after approval for a special election on the proposal and the county commissioner of elections shall conduct the election. In a case of incorporation or discontinuance, qualified electors of the territory or city may vote, and the proposal is authorized if a majority of those voting approves it. In a case of annexation or severance, qualified electors of the territory and of the city may vote, and the proposal is authorized if a majority of the total number of persons voting approves it. In a case of consolidation, qualified electors of each city to be consolidated may vote, and the proposal is authorized only if it receives a favorable majority vote in each city. The county commissioner of elections shall publish notice of the election as provided in section 49.53 and shall conduct the election in the same manner as other special city elections.

The costs of an incorporation election shall be borne by the initiating petitioners if the election fails, but if the proposition is approved the cost shall become a charge of the new city.

91 Acts, ch 250, §10 SF 4
Unnumbered paragraph 1 amended

CHAPTER 372

ORGANIZATION OF CITY GOVERNMENT

372.4 Mayor-council form.

A city governed by the mayor-council form has a mayor and five council members elected at large, unless the council representation plan is changed pursuant to section 372.13, subsection 11. The council may, by ordinance, provide for a city manager and prescribe the manager's powers and duties, and as long as the council contains an odd number of council members, may change the number of wards, abolish wards, or increase the number of council members at large without changing the form.

However, a city governed, on the effective date of this section*, by the mayor-council form composed of a mayor and a council consisting of two council members elected at large, and one council member from each of four wards, or a special charter city governed, on the effective date of this section, by the mayor-council form composed of a mayor and a council consisting of two council members elected at large and one council member elected from each of eight wards, may continue until the form of government is changed as provided in section 372.2 or sec-

tion 372.9. While a city is thus operating with an even number of council members, the mayor may vote to break a tie vote on motions not involving ordinances, resolutions or appointments made by the council alone, and in a special charter city operating with ten council members under this section, the mayor may vote to break a tie vote on all measures.

The mayor shall appoint a council member as mayor pro tem, and shall appoint the marshal or chief of police except where an intergovernmental agreement makes other provisions for police protection or as otherwise provided in section 400.13. Other officers must be selected as directed by the council. The mayor is not a member of the council and may not vote as a member of the council.

In a city having a population of five thousand or less, the city council may, or shall upon petition of the electorate meeting the numerical requirements of section 372.2, subsection 1, submit a proposal at the next regular or special city election to reduce the number of council members to three. If a majority of the voters voting on the proposal approves it, the proposal is adopted. If the proposal is adopted, the new council shall be elected at the next regular or special city election. The council shall determine by ordinance whether the three council members are elected at large or by ward.

91 Acts ch 256 §36 HF 693
*See 75 Acts ch 197 §13 35
Unnumbered paragraph 1 amended

372.5 Commission form.

A city governed by the commission form has five departments as follows:

1. Department of public affairs.
2. Department of accounts and finances.
3. Department of public safety.
4. Department of streets and public improvements.
5. Department of parks and public property.

A city governed by the commission form has a council composed of a mayor and four council members elected at large, unless the council representation plan is changed pursuant to section 372.13, subsection 11. The mayor administers the department of public affairs and each other council member is elected to administer one of the other four departments.

However, a city governed, on the effective date of this section*, by the commission form and having a council composed of a mayor and two council members elected at large may continue with a council of three until the form of government is changed as provided in section 372.2 or section 372.9 or without changing the form, may submit to the voters the question of increasing the council to five members assigned to the five departments as set out in this section.

The mayor shall supervise the administration of all departments and report to the council all matters requiring its attention. The mayor is a member of the council and may vote on all matters before the council.

The council member elected to administer the department of accounts and finances is mayor pro tem.

The council may appoint a city treasurer or mayor by ordinance, provide for election of that officer.

91 Acts ch 256 §37 HF 693
*See 75 Acts ch 197 §14 15
Unnumbered paragraph 2 amended

372.10 Contents of charter.

A home rule charter must contain provisions for:

1. A council of an odd number of members, not less than five.
2. A mayor, who may be one of those council members.
3. Two-year or staggered four-year terms of office for the mayor and council members.
4. The powers and duties of the mayor and the council, consistent with the provisions of the city code.
5. A council representation plan pursuant to section 372.13, subsection 11.

91 Acts ch 256 §38 HF 693
NEW subsection 5

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, an appointment to fill the vacancy is temporary and the council shall call a special election to fill the vacancy permanently, under paragraph "b". The number of signatures of eligible electors of a city for a valid petition shall be determined as follows:

- (1) For a city with a population of ten thousand or less, at least two hundred signatures or at least the number of signatures equal to fifteen percent of the voters who voted for candidates for the office at the preceding regular election at which the office was on the ballot, whichever number is fewer.

(2) For a city with a population of more than ten thousand but not more than fifty thousand, at least one thousand signatures or at least the number of signatures equal to fifteen percent of the voters who voted for candidates for the office at the preceding regular election at which the office was on the ballot, whichever number is fewer.

(3) For a city with a population of more than fifty thousand, at least two thousand signatures or at least the number of signatures equal to ten percent of the voters who voted for candidates for the office at the preceding regular election at which the office was on the ballot, whichever number is fewer.

(4) The minimum number of signatures for a valid petition pursuant to subparagraphs (1) through (3) shall not be fewer than ten.

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. The council shall give the county commissioner at least sixty days' written notice of the date chosen for the special election. 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. However, ordinances, resolutions, council proceedings, and records and documents relating to real property transactions or bond issues or accurate reproductions of those 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 does not become effective during the term in which the change is adopted, and the council shall not adopt an ordinance changing the compensation of the mayor, council members, or other elected officers during the months of November and December in the year of a regular city election. A change in the compensation of council members becomes 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 is not entitled to receive any other compensation for any other city office or city employment during that officer's tenure in 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 the compensation 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.

10. A council member, during the term for which that member is elected, is not precluded from hold-

ing the office of chief of the volunteer fire department if the fire department serves an area with a population of not more than two thousand, and if no other candidate who is not a city council member is available to hold the office of chief of the volunteer fire department

11 Council members shall be elected according to the council representation plans under sections 372.4 and 372.5. However, the council representation plan may be changed, by petition and election, to one of those described in this subsection. Upon receipt of a valid petition, as defined in section 362.4, requesting a change to a council representation plan, the council shall submit the question at a special city election to be held within sixty days. If a majority of the persons voting at the special election approves the changed plan, it becomes effective at the beginning of the term following the next regular city elec-

tion. If a majority does not approve the changed plan, the council shall not submit another proposal to change a plan to the voters within the next two years.

Eligible electors of a city may petition for one of the following council representation plans:

a Election at large without ward residence requirements for the members.

b Election at large but with equal-population ward residence requirements for the members.

c Election from single member, equal-population wards, in which the electors of each ward shall elect one member who must reside in that ward.

d Election of a specified number of members at large and a specified number of members from single-member, equal-population wards.

91 Acts ch 256 §39 HF 693
NEW subsection 11

CHAPTER 373

CONSOLIDATED METROPOLITAN CORPORATION

373.1 Creation of commission.

1 Cities within a county may unite to form a single unit of local government in accordance with this chapter. Any city located in two or more counties shall be allowed to participate in a metropolitan consolidation in the county where at least fifty percent of its population resides. An alternative form of metropolitan government shall be submitted to the electorate by a commission in the form of a charter or charter amendment proposed in accordance with this chapter.

2 Participation in a charter commission under this chapter may be proposed by:

a The city council adopting a resolution calling for participation.

b By petition of the number of eligible electors of the city equal to at least twenty-five percent of the votes cast in the city at the last regular city election petitioning the council to adopt a resolution calling for participation. The council shall within thirty days of the filing of a valid petition adopt such a resolution.

91 Acts ch 256 §40 HF 693
NEW section

373.2 Appointment of commission members.

1 Within forty-five days after the establishment of a commission, the members of the commission shall be appointed as follows:

a One member shall be appointed by the city council of each city participating in the charter process.

b An additional member shall be appointed by each city council for every twenty-five thousand residents in the participating city.

c One member shall be appointed by each state legislator whose legislative district is located in the commission area if a majority of the constituents of that legislative district resides in the commission area. However, if a commission area does not have a state legislative district which has a majority of its constituents residing in the commission area, the legislative district having the largest plurality of constituents residing in the commission area shall appoint one member.

2 Only eligible electors of the county not holding a city, county, or state office shall be members of the commission. In counties having multiple state legislative districts, the districts shall be represented as equally as possible. The membership shall be bipartisan and gender balanced and each appointing authority under subsection 1 shall provide for representation of various age groups, racial minorities, economic groups, and representatives of identifiable geographically defined populations, all in reasonable relationship to the proportions in which these groups are present in the population of the commission area. A vacancy on the commission shall be filled by appointment in the same manner as the original appointment. The county auditor shall notify the appropriate appointing authority of a vacancy.

The legislative appointing authorities shall be considered one appointing authority for the purpose

of complying with this subsection. The senior legislative appointing authority in terms of length of legislative service shall convene the legislative appointing authorities to consult for the purpose of complying with this subsection.

91 Acts, ch 256, §41 HF 693
NEW section

373.3 Organization and expenses.

1. Within thirty days after the appointment of the members of the commission, the city clerk of the participating city with the largest population shall give written notice of the date, time, and location of the first meeting of the commission. At the first meeting the commission shall organize by electing a chairperson, vice chairperson, and other officers as necessary. The commission shall adopt rules governing the conduct of its meetings, subject to chapter 21.

2. The members of the commission shall serve without compensation, but they are entitled to travel and other necessary expenses relating to their duties of office.

3. The participating cities shall make available to the commission in-kind services such as office space, printing, supplies, and equipment and shall pay the other necessary expenses of the commission, including compensation for secretarial, clerical, professional, and consultant services. The total annual expenses, not including the value of in-kind expenses, to be paid from public funds shall not exceed one hundred thousand dollars or an amount equal to thirty cents times the population of the commission area, according to the most recent certified federal census. The commission may employ staff as necessary.

4. The expenses of the commission may be paid from the general fund of the participating cities or from any combination of public or private funds available for that purpose. The commission's annual expenses may exceed the amount in subsection 3 only if the excess is paid from private funds. If a proposed charter is submitted to the electorate, private funds donated to the commission may be used to promote passage of the proposed charter.

91 Acts, ch 256, §42 HF 693
NEW section

373.4 Commission procedures and reports.

1. Within sixty days after its organization, the commission shall hold at least one public hearing for the purpose of receiving information and material which will assist in the drafting of a charter. Notice of the date, time, and place of the hearing shall be published in the official county newspapers of each county in which the participating cities are located.

2. Within nine months after the organization of the commission, the commission shall submit a preliminary report to the councils of the participating cities, which report may include the text of the proposed charter. If a proposed charter is included in the preliminary report, the report shall also include an analysis of the fiscal impact of the proposed char-

ter. Sufficient copies of the report shall be made available for distribution to residents of the participating cities who request a copy. The commission shall hold at least one public hearing after submission of the preliminary report to obtain public comment.

3. Within twenty months after organization, the commission shall submit the final report to the councils of the participating cities. If the commission recommends a charter of consolidation, the final report shall include the full text and an explanation of the proposed charter, an analysis of the fiscal impact of the proposed charter, any comments deemed desirable by the commission, and any minority reports. The final report may recommend no change to the existing form of government and that no charter be submitted to the electorate, or it may recommend consolidation of the participating cities with the county. If the board of supervisors by resolution agrees to participate in consolidation, then the participating cities and county shall proceed under sections 331.231 through 331.252.

4. The final report of the commission shall be made available to the residents of the participating cities upon request. A summary of the final report shall be published in the official newspapers of the county. If a charter is not recommended, the commission is dissolved upon submission of its final report to the councils of the participating cities.

91 Acts, ch 256, §43 HF 693
NEW section

373.5 Consolidation charter.

A proposed charter written by a charter commission shall specify the consolidated metropolitan form of government. The proposed consolidation charter shall do all of the following:

1. Provide the official name of the consolidated unit of local government and establish its geographic boundaries.

2. Establish an elective legislative body pursuant to section 373.9, including provisions on terms of office, initial compensation, meetings, and rules of procedure.

3. Provide for the at-large election of an officer to preside over the metropolitan council and perform other duties as specified, and provide for the election of other necessary officers.

4. Provide for the nonpartisan election of officers of the consolidated metropolitan corporation government.

5. Specify the powers and duties of the metropolitan council, its administrative officers, and elected officials.

6. Provide for delivery of certain services to the member cities, pursuant to section 373.11, and may provide for the abolition or consolidation of a department, agency, board, or commission and the assumptions of its powers and duties by the metropolitan council or another officer.

7. Provide for a system of revenue collection pursuant to section 373.10.

8. Provide for the orderly transition to the charter form of metropolitan consolidation.

9. Include other provisions which the consolidation charter commission elects to include and which are not inconsistent with state law.

10. Specify a charter amendment process pursuant to section 372.11.

11. Provide for the appointment of a manager by the metropolitan council pursuant to section 372.8.

91 Acts, ch 256, §44 HF 693
NEW section

373.6 Referendum — effective date.

1. If a proposed charter for consolidation is received not later than sixty days before the next general election, the council of the participating city with the largest population shall direct the county commissioner of elections to submit to the qualified electors of the participating cities at the next general election the question of whether the proposed charter shall be adopted. A summary of the proposed charter shall be published in a newspaper of general circulation in each city participating in the charter commission process at least ten but not more than twenty days before the date of the election. The proposed charter shall be effective in regard to a city only if a majority of the electors of the city voting approves the proposed charter.

2. If a proposed charter for consolidation is adopted:

a. The adopted charter shall take effect July 1 following the election at which it is approved unless the charter provides a later effective date. A special election shall be called to elect the new elective officers.

b. The adoption of the consolidated metropolitan corporation form of government does not alter any right or liability of any participating city in effect at the time of the election at which the charter was adopted.

c. All departments and agencies shall continue to operate until replaced.

d. All ordinances or resolutions in effect remain effective until amended or repealed, unless they are irreconcilable with the adopted charter.

e. Upon the effective date of the adopted charter, the participating cities shall adopt the consolidation form by ordinance, and shall file a copy with the secretary of state, and maintain available copies for public inspection.

3. If a charter is submitted to the electorate but is not adopted, another charter shall not be submitted to the electorate for two years. If a charter is adopted, it may be amended at any time. If a charter is adopted, a proposed charter for another alternative form of city government shall not be submitted to the electorate for six years.

4. Section 372.2 shall not apply to a charter commission established under this chapter.

91 Acts, ch 256, §45 HF 693
NEW section

373.7 Form of ballot.

The question of metropolitan consolidation shall be submitted to the electors in substantially the following form:

Should the cities of and
.... unite to form one joint metropolitan corporation government?

The ballot must contain a brief description and summary of the proposed charter or amendment.

91 Acts, ch 256, §46 HF 693
NEW section

373.8 Effect of consolidation.

Cities consolidating pursuant to this chapter shall retain all the rights, powers, and duties conferred upon them by the Constitution of the State of Iowa and shall retain all the rights, powers, and duties conferred upon them by the laws of the state of Iowa, except to the extent those statutory rights, powers, and duties are limited by the charter government in fulfilling its duty to provide efficient administration and delivery of services to its citizens.

The consolidation charter may provide for the replacement of the city government of the member city with the largest population, according to the most recent certified federal census. That city shall be known as the home city of the consolidated metropolitan corporation. If its government is replaced, the consolidation charter shall provide that the home city be governed either directly by the metropolitan council or by those members of the metropolitan council who reside within the corporate boundaries of the home city. The home city shall retain its geographic boundaries for the purposes of taxation.

Cities participating in consolidation shall be referred to as member cities of the consolidated metropolitan corporation.

A city may join an existing consolidated metropolitan corporation government by resolution of the city council or upon petition of eligible electors of the city equal in number to at least twenty-five percent of the persons who voted at the last general election for the office of governor or president of the United States, whichever is fewer. Within fifteen days after receiving a valid petition, the city council of the petitioning city shall adopt a resolution in favor of participation and shall immediately forward the resolution to the metropolitan council. If a majority of the metropolitan council approves the resolution, the question of joining the consolidated metropolitan corporation shall be submitted to the electorate of the petitioning city within sixty days after approval of the resolution.

91 Acts, ch 256, §47 HF 693
NEW section

373.9 Metropolitan council.

1. A consolidated metropolitan corporation shall be governed by a metropolitan council. The council

shall consist of an odd number of members, not less than eleven and not more than seventeen. If a vacancy on the metropolitan council occurs more than sixty days before the next general election, the council shall direct the county commissioner of elections to conduct a special election to fill the vacancy until the next general election.

2 Unless otherwise specified in the consolidation charter, the council shall act by a majority vote of the members on the council.

91 Acts ch 256 §48 HF 693
NEW section

373.10 Taxing authority.

The metropolitan council shall have the authority to levy city taxes to the extent the city tax levy authority is transferred by the charter to the metropolitan council. A member city shall transfer a portion of the city's tax levy authorized under section 384.1 or 384.12, whichever is applicable, to the metropolitan council. The maximum rates of taxes authorized to be levied under sections 384.1 and 384.12 by a member city shall be reduced by an amount equal to the rates of the same or similar taxes levied in the city by the metropolitan council.

91 Acts ch 256 §49 HF 693
NEW section

373.11 Service delivery.

1 The charter of consolidation shall provide for the transfer into the metropolitan consolidated corporation of areawide services which had been provided by other boards, commissions, and local gov-

ernments. The metropolitan council shall have the authority to determine the boundaries of the service areas, except that formation of a consolidated metropolitan corporation shall not affect the assignment of electric utility service territories pursuant to chapter 476, and shall not affect the rights of a city to grant a franchise under chapter 364.

For each service provided by the consolidated metropolitan corporation, the consolidated metropolitan corporation shall assume the same statutory rights, powers, and duties, except taxing authority, relating to the provision of such service as if the member city were itself providing the service to its citizens. However, the consolidated metropolitan corporation shall not assume any of the governmental functions of its member cities except as the functions relate to the delivery of services and except as provided in section 373.8.

If a service is being provided by the consolidated metropolitan corporation to any member city that member city shall not invoke any statutory right, power, or duty relating to the delivery of the service to its citizens.

2 A member city may apply to the metropolitan council for the purchase of any service which is being provided by the consolidated metropolitan corporation to any other member city, including the home city of the consolidated metropolitan corporation. Such an agreement to provide services shall be executed pursuant to chapter 28E and must contain provisions necessary for the lawful execution of the agreement.

91 Acts ch 256 §50 HF 693
NEW section

CHAPTER 380

CITY LEGISLATION

380.2 Amendment.

An amendment to an ordinance or to a code of ordinances must specifically repeal the ordinance or code, or the section, subsection, paragraph, or subpart to be amended, and must set forth the ordinance, code, section, subsection, paragraph, or subpart as amended.

91 Acts ch 145 §3 SF 221
Section amended

380.10 Adoption by reference.

A city may adopt the provisions of any statewide or nationally recognized standard code or portions of any such code by an ordinance which identifies the code by subject matter, source and date, and incorporates the provisions by reference without setting

them forth in full. Such code or portion must be adopted only after notice and hearing in the manner provided in section 380.8.

A city may by ordinance adopt by reference any portion of the Code of Iowa in effect at the time of the adoption in the manner provided in section 380.8 for adoption of a proposed code of ordinances containing a proposed new ordinance or amendment, subject to the following limitations:

1 The ordinance shall describe the subject matter and identify the portion of the Code of Iowa adopted by chapter, section, and subsection or other subpart, as applicable.

2 A portion of the Code of Iowa may be adopted by reference only if the criminal penalty provided by

the law adopted does not exceed thirty days' imprisonment or a one hundred dollar fine.

3. Amendments or other changes to those portions of the Code of Iowa which have been adopted by reference shall serve as an automatic modification of the applicable ordinance.

An ordinance which adopts by reference any portion of the Code of Iowa may provide that violations of the ordinance are municipal infractions and subject to the limitations of section 364.22.

91 Acts, ch 145, §4 SF 221

NEW unnumbered paragraphs 2 and 3 and subsections 1 3

CHAPTER 384

CITY FINANCE

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 instrumental or vocal musical groups, one or more organizations which have tax-exempt status under section 501(c)(3) of the Internal Revenue Code and are organized and operated exclusively for artistic and cultural purposes, or any of these purposes, 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 ninety-five 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, property insurance, and any other insurance that may be necessary in the operation of the city, the costs of a self-insurance program, the costs of a local government risk pool and amounts payable under any insurance agreements to provide

or procure such insurance, self-insurance program, or local government risk pool.

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.

20. A tax not to exceed twenty-seven cents per thousand dollars of assessed value for support of a public library, subject to petition and referendum requirements of subsection 1, except that if a majority approves the levy, it shall be imposed.

91 Acts, ch 247, §1 HF 700
Subsection 10 amended

384.14 Office, expenses, compensation.

The committee is located for administrative purposes within the department of management. The

director of the department of management shall provide office space and staff assistance, and shall budget funds to cover expenses of the committee

Each member is entitled to receive actual and necessary expenses incurred in the performance of committee duties. Each member other than the state of-

icial members is also entitled to receive a per diem as specified in section 7E 6 for each day spent in performance of committee duties

91 Acts ch 258 §51 HF 709

1991 amendment to unnumbered paragraph 2 retroactively applicable to January 1 1991 91 Acts ch 258 §73 HF 709

Unnumbered paragraph 2 amended

CHAPTER 389

JOINT WATER UTILITIES

389.1 Definitions.

As used in this chapter, unless the context otherwise requires

1 “*Joint water utility*” means a water utility established by two or more cities which owns or operates or proposes to finance the purchase or construction of all or part of a water supply system or the capacity or use of a water supply system pursuant to this chapter. A water supply system includes all land, easements, rights-of-way, fixtures, equipment, accessories, improvements, appurtenances, and other property necessary or useful for the operation of the system

2 “*Joint water utility board*” means the board of trustees established to operate a joint water utility

3 “*Project*” means any works or facilities useful or necessary for the operation of a joint water utility

91 Acts ch 168 §2 HF 689
NEW section

389.2 Submission to voters.

A joint water utility may be established by two or more cities. A proposal to establish a joint water utility or to join an existing joint water utility may be submitted to the voters of a city by the city council upon its own motion, or upon receipt of a valid petition pursuant to section 362.4. If the proposal is to establish a joint water utility, the proposal shall be submitted to the voters of each city proposing to establish the joint water utility. If a majority of the electorate in each of at least two cities approves the proposal, the cities approving the proposal may establish a joint water utility.

If the proposal is to join an existing joint water utility, the proposal must first be submitted to the joint water utility board for its approval. If the proposal is approved by the board, the proposal shall be submitted to the electorate of the city wishing to join. The proposal must receive a majority affirmative vote for passage.

91 Acts ch 168 §3 HF 689
NEW section

389.3 Powers and duties.

Upon adoption of a proposal to establish a joint water utility, the member cities shall establish a joint water utility board, consisting of at least five members. The mayors of the participating cities shall appoint the members, subject to the approval of the city councils, and at least one member shall be appointed from each participating city. The board shall be responsible for the planning and operation of a joint water utility, subject to the provisions of this chapter.

A joint water utility is a political subdivision and an instrumentality of municipal government. The statutory powers, duties, and limitations conferred upon a city utility apply to a joint water utility, except that title to property of a joint water utility may be held in the name of the joint water utility. The joint water utility board shall have all powers and authority of a city with respect to property which is held by the joint water utility. A joint water utility shall have the power of eminent domain, including the powers conferred upon a city in chapters 471 and 472, for the purposes of constructing and operating a joint water utility.

The joint water utility board may purchase or construct all or part of any water supply system, and may finance the purchase or construction. The board may also contract to sell all or part of the joint water utility’s water supply, including any surplus, to a public 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. The board may contract for the purchase, from any source, of all or a portion of the water supply requirements of the joint water facility. A contract 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 the parties to the contract in the event of a default by any of the parties.

Payments made by a joint water utility pursuant

to a contract shall constitute operating expenses of the joint water utility and shall be payable from the revenues derived from the operation of the joint water utility.

91 Acts, ch 168, §4 HF 689
NEW section

389.4 Financing.

A joint water utility may finance projects pursuant to chapter 28F. A city may finance its share of the cost of a project by the use of any method of financing available for city utilities, including but not limited to sections 384.23 through 384.36 and sections 384.80 through 384.94.

If a project is financed by a joint water utility, revenues derived from the project shall be deemed to be revenues of the joint water utility for all purposes including the issuance and payment of bonds secured by or payable from the revenues of the joint water

utility. If a project is financed by member cities of a joint water utility, the revenues derived from the project shall be deemed to be revenues of the city or city utility for all purposes including the issuance and payment of bonds secured by or payable from the revenues of the city or city utility.

91 Acts, ch 168, §5 HF 689
NEW section

389.5 Construction.

This chapter being necessary for the public health, public safety, and general welfare, shall be liberally construed to effectuate its purposes. This chapter shall be construed as providing a separate and independent method for accomplishing its purposes, and shall take precedence over any contrary provision of the law.

91 Acts, ch 168, §6 HF 689
NEW section

CHAPTER 400

CIVIL SERVICE

400.4 Chairperson — clerk — records.

The commission shall elect a chairperson from among its members. In cities having a population of more than seventy-five thousand, the commission shall appoint a clerk of the commission. In all other cities the city clerk shall be clerk of the commission. If an employee is appointed clerk of the commission who is employed in a civil service status at the time of appointment as clerk of the commission, the appointee shall retain the civil service rights held before the appointment. However, this section does not grant civil service status or rights to the employee in the capacity of clerk of the commission nor extend any civil service right upon which the appointee may retain the position of clerk of the commission.

The civil service commission shall keep a record of all its meetings and also a complete individual service record of each civil service employee which record shall be permanent and kept up to date.

When duly certified by the clerk of the commission copies of all records and entries or papers pertaining to said record shall be admissible in evidence with the same force and effect as the originals.

91 Acts, ch 55, §1 SF 488
Unnumbered paragraph 1 amended

400.27 Jurisdiction — attorney — appeal.

The civil service commission has jurisdiction to hear and determine matters involving the rights of civil service employees under this chapter, and may affirm, modify, or reverse any case on its merits.

The city attorney or solicitor shall be the attorney for the commission or when requested by the com-

mission shall present matters concerning civil service employees to the commission, except the commission may hire a counselor or an attorney on a per diem basis to represent it when in the opinion of the commission there is a conflict of interest between the commission and the city council. The counselor or attorney hired by the commission shall not be the city attorney or solicitor. The city shall pay the costs incurred by the commission in employing an attorney under this section.

The city or any civil service employee shall have a right to appeal to the district court from the final ruling or decision of the civil service commission. The appeal shall be taken within thirty days from the filing of the formal decision of the commission. The district court of the county in which the city is located shall have full jurisdiction of the appeal and the said appeal shall be a trial de novo as an equitable action in the district court.

The appeal to the district court shall be perfected by filing a notice of appeal with the clerk of the district court within the time prescribed in this section by serving notice of appeal on the clerk of the civil service commission, from whose ruling or decision the appeal is taken.

In the event the ruling or decision appealed from is reversed by the district court, the appellant, if it be an employee, shall then be reinstated as of the date of the said suspension, demotion, or discharge and shall be entitled to compensation from the date of such suspension, demotion, or discharge.

91 Acts, ch 55, §2 SF 488
Unnumbered paragraph 4 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 and for the provision of housing and residential development for low and moderate income families; 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 or housing and residential development for low and moderate income families; 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.

91 Acts, ch 186, §1 SF 547

1991 amendment to subsection 3 inapplicable to projects where governing body adopted resolution designating economic development area prior to July 1, 1991, 91 Acts, ch 186, §6 SF 547

Subsection 3 amended

403.15 Agency created.

1. There is hereby created in each municipality a public body corporate and politic to be known as the "urban renewal agency" of the municipality: Provided, that such agency shall not transact any business or exercise its powers hereunder until or unless the local governing body has made the finding prescribed in section 403.4, and has elected to have the urban renewal project powers exercised by an urban renewal agency as provided in section 403.14.

2. If the urban renewal agency is authorized to transact business and exercise powers pursuant to the chapter, the mayor or chairperson of the board, as applicable, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency, which board shall consist of five commissioners. The term of office of each such commissioner shall be one year.

3. A commissioner shall receive no compensation for services, but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of the commissioner's duties. Each commissioner shall hold office until a successor has been appointed and has qualified. A certificate of the

appointment or reappointment of any commissioner shall be filed with the clerk of the municipality, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

4. The powers of an urban renewal agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers of the agency, and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws shall require a larger number. Any persons may be appointed as commissioners if they reside within the area of operation of the agency, which area shall be coterminous with the area of operation of the municipality, and if they are otherwise eligible for such appointments under this chapter.

5. The mayor or chairperson of the board, as applicable, shall designate a chairperson and vice chairperson from among the commissioners. An agency may employ an executive director, technical experts and such other agents and employees, permanent and temporary, as it may require, and the agency may determine their qualifications, duties and compensation. For such legal service as it may require, an agency may employ or retain its own counsel and legal staff. An agency authorized to transact business and exercise powers under this chapter shall file, with the local governing body, on or before September 30 of each year, a report of its activities for the preceding fiscal year, which report shall include a complete financial statement setting forth its assets, liabilities, income and operating expense as of the end of such fiscal year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the city or county, as applicable, a notice to the effect that such report has been filed with the municipality, and that the report is available for inspection during business hours in the office of the city clerk or county auditor, as applicable, and in the office of the agency.

6. For inefficiency, or neglect of duty, or misconduct in office, a commissioner may be removed only after a hearing, and after the commissioner shall have been given a copy of the charges at least ten days prior to such hearing, and after the commissioner shall have had an opportunity to be heard in person or by counsel.

91 Acts, ch 214, §1 HF 704
Subsections 2 and 5 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. “Area of operation” of a city means the area within the corporate limits of the municipality and the area within two miles of such limits, except that

it does not include any area which lies within the territorial boundaries of another incorporated city, unless a resolution has been adopted by the governing body of the city declaring a need to be included in the area. The “area of operation” of a county means an area outside the corporate limits of a city. However, in that area outside a city’s boundary but within two miles of the city’s boundary, a joint agreement between the city and the county is required allowing the county to proceed with the activities authorized under this chapter. In addition, a county may proceed with activities authorized under this chapter in an area inside the boundaries of a city, provided a joint agreement is entered into with respect to such activities between a city and a county.

3. “Blighted area” means an area of a municipality within which the local governing body of the municipality determines that 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”.

4. “Board” or “commission” shall mean a board, commission, department, division, office, body or other unit of the municipality.

5. “Bonds” shall mean any bonds, including refunding bonds, notes, interim certificates, certificates of indebtedness, debentures or other obligations.

6. “Chairperson of the board” means the chairperson of the board of supervisors or other legislative body charged with governing a county.

7. “Clerk” shall mean the clerk or other official of the municipality who is the custodian of the official records of such municipality.

8. “Economic development area” means an area of a municipality designated by the local governing body as appropriate for commercial and industrial enterprises or housing and residential development for low and moderate income families, including single or multifamily housing. Such designated area shall not include land which is part of a century farm.

9. “Federal government” shall include the United States or any agency or instrumentality, corporate or otherwise, of the United States.

10. “Housing and residential development” means single or multifamily dwellings to be constructed in an area with respect to which the local

governing body of the municipality determines that there is an inadequate supply of affordable, decent, safe, and sanitary housing and that providing such housing is important to meeting any or all of the following objectives: retaining existing industrial or commercial enterprises; attracting and encouraging the location of new industrial or commercial enterprises; meeting the needs of special elements of the population, such as the elderly or handicapped; and providing housing for various income levels of the population which may not be adequately served.

11. "*Local governing body*" means the council, board of supervisors, or other legislative body charged with governing the municipality.

12. "*Low or moderate income families*" means low or moderate income families as defined in section 220.1.

13. "*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.

14. "*Municipality*" means any city or county in the state.

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. "*Public body*" shall mean the state or any political subdivision thereof.

18. "*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.

19. "*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.

20. "*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.

21. "*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.

22. "*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.

23. "*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.

h. Expenditure of proceeds of bonds issued before October 7, 1986, for the construction of parking facilities on city blocks adjacent to an urban renewal area.

91 Acts, ch 186, §2-4 SF 547, 91 Acts, ch 214, §2, 3 HF 704
1991 amendment to subsection 8 and addition of subsections 10 and 12 in
91 Acts, ch 186, §2-4, inapplicable to projects where governing body adopted
resolution designating economic development area prior to July 1, 1991, 91
Acts, ch 186, §6 SF 547

Subsections renumbered to alphabetize
Subsections 2, 8, 11 and 14 amended
NEW subsections 6, 10 and 12

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.

7. For the purposes of this section, a county shall include taxes levied on industrial property within an urban renewal area only.

91 Acts, ch 214, §4 HF 704
NEW subsection 7

CHAPTER 403A

MUNICIPAL HOUSING LAW

403A.11 Planning, zoning and building laws — insulation requirements.

All housing projects of a municipality shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the project is situated.

All dwellings which are part of housing projects and which are proposed to be rented to low-income families or the elderly through the programs of the United States department of housing and urban development shall have ceiling insulation having an R value of 38 in the attic, floor insulation having an R value of 20, or perimeter wall insulation having an R

value of 10 beneath all habitable heated areas or over unheated spaces. In addition, basement walls shall have insulation with an R value of 6 to their full height, with insulation in the box sill having an R value of 20. As used in this section, "R value" means resistance to heat flow.

The insulation requirements of this section are effective for all dwellings, the construction of which begins on or after July 1, 1991. For dwellings existing or under construction prior to July 1, 1991, the dwelling must comply with the insulation requirements of this section by June 30, 1996.

91 Acts ch 270 §5 SF 542
NEW unnumbered paragraphs 2 and 3

CHAPTER 404

URBAN REVITALIZATION TAX EXEMPTIONS

404.1 Area established by city or county.

The governing body of a city may, by ordinance, designate an area of the city or the governing body of a county may, by ordinance, designate an area of the county outside the boundaries of a city, as a revitalization area, if that area is any of the following:

1. An area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, the existence of conditions which endanger life or property by fire and other causes or a 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, or welfare.

2. An area which by reason of the presence of a substantial number of deteriorated or deteriorating structures, predominance of defective or inadequate street layout, incompatible land use relationships, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the actual 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 a combination of such 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.

3. An area in which there is a predominance of buildings or improvements which by reason of age, history, architecture or significance should be preserved or restored to productive use.

4. An area which is appropriate as an economic development area as defined in section 403.17.

91 Acts ch 214 §6 7 HF 704
Unnumbered paragraph 1 amended
NEW subsection 4

404.2 Conditions mandatory.

A city or county 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, economic 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 city, or county as applicable, and the area substantially meets the criteria of section 404.1.

2. The city or county 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 or county 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. For a county, a revitalization area shall include only property which will be used as industrial property only.

g. The provisions that have been made for the relocation of persons, including families, business concerns and others, whom the city or county 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.

In the case of a county, the tax schedules used shall only be applicable to property of the type for which the revitalization area is zoned at the time the county designates the area a revitalization area.

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 or county has or will have as a source of funding for that area for residential improvements.

3. The city or county has scheduled a public hearing and notified all owners of record of real property located within the proposed area and the tenants living within the proposed area in accordance with section 362.3 or 331.305, as applicable. 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 or county shall also send notice by ordinary mail addressed to the "occupants" of addresses located within the proposed area, unless the city council or board of supervisors, by reason of lack of a reasonably current and complete address list, or for other good cause, shall have waived the notice. Notwithstanding section 362.3 or 331.305, as applicable, the notice shall be given by the thirtieth day prior to the public hearing.

4. The public hearing has been held.

5. A second public hearing has been held if:

a. The city or county 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;

b. The city or county 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 or county may specifically request those in attendance to indicate the precise nature of desired changes in the proposed plan.

6. The city or county has adopted the proposed or amended plan for the revitalization area after the requisite number of hearings. The city or county may subsequently amend this plan after a hearing. Notice of the hearing shall be published as provided in section 362.3 or 331.305, 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 or board of supervisors meeting following the published notice.

91 Acts, ch 214, §5, 8-11 HF 704
References to "city" changed to "city or county"
Subsection 1 amended
Subsection 2, paragraph f amended
Subsection 2, paragraph h, NEW unnumbered paragraph 2
Subsections 3 and 6 amended

404.3 Basis of tax exemption.

1. All qualified real estate assessed as residential property is eligible to receive an exemption from taxation based on the actual value added by the improvements. The exemption is for a period of ten

years. The amount of the exemption is equal to a percent of the actual value added by the improvements, determined as follows. One hundred fifteen percent of the value added by the improvements. However, the amount of the actual value added by the improvements which shall be used to compute the exemption shall not exceed twenty thousand dollars and the granting of the exemption shall not result in the actual value of the qualified real estate being reduced below the actual value on which the homestead credit is computed under section 425.1.

2. All qualified real estate is eligible to receive a partial exemption from taxation on the actual value added by the improvements. The exemption is for a period of ten years. The amount of the partial exemption is equal to a percent of the actual value added by the improvements, determined as follows:

- a. For the first year, eighty percent
- b. For the second year, seventy percent
- c. For the third year, sixty percent
- d. For the fourth year, fifty percent
- e. For the fifth year, forty percent
- f. For the sixth year, forty percent
- g. For the seventh year, thirty percent
- h. For the eighth year, thirty percent
- i. For the ninth year, twenty percent
- j. For the tenth year, twenty percent

3. All qualified real estate is eligible to receive a one hundred percent exemption from taxation on the actual value added by the improvements. The exemption is for a period of three years.

4. All qualified real estate assessed as residential property or assessed as commercial property, if the commercial property consists of three or more separate living quarters with at least seventy-five percent of the space used for residential purposes, is eligible to receive a one hundred percent exemption from taxation on the actual value added by the improvements. The exemption is for a period of ten years.

5. The owners of qualified real estate eligible for the exemption provided in this section shall elect to take the applicable exemption provided in subsection 1, 2, 3 or 4 or provided in the different schedule adopted in the city or county plan if a different schedule has been adopted. Once the election has been made and the exemption granted, the owner is not permitted to change the method of exemption.

6. The tax exemption schedule specified in subsection 1, 2, 3 or 4 shall apply to every revitalization area within a city or county unless a different schedule is adopted in the city or county plan as provided in section 404.2. However, a city or county shall not adopt a different schedule unless every revitalization area within the city or county has the same schedule applied to it, except in areas of the city or county which have been designated as both urban renewal and urban revitalization areas. In an area designated for both urban renewal and urban revitalization, a city or county may adopt a different schedule than has been adopted for revitalization areas which have not been designated as urban renewal areas. The different schedule adopted shall not provide for a larger

tax exemption in a particular year than is provided for that year in the schedule specified in the corresponding subsection of this section.

7. "Qualified real estate" as used in this chapter and section 419.17 means real property, other than land, which is located in a designated revitalization area and to which improvements have been added, during the time the area was so designated, which have increased the actual value by at least the percent specified in the plan adopted by the city or county pursuant to section 404.2 or if no percent is specified then by at least fifteen percent, or at least ten percent in the case of real property assessed as residential property or which have, in the case of land upon which is located more than one building and not assessed as residential property, increased the actual value of the buildings to which the improvements have been made by at least fifteen percent. "Qualified real estate" also means land upon which no structure existed at the start of the new construction, which is located in a designated revitalization area and upon which new construction has been added during the time the area was so designated. "Improvements" as used in this chapter and section 419.17 includes rehabilitation and additions to existing structures as well as new construction on vacant land or on land with existing structures. However, new construction on land assessed as agricultural property shall not qualify as "improvements" for purposes of this chapter and section 419.17 unless the governing body of the city or county has presented justification at a public hearing held pursuant to section 404.2 for the revitalization of land assessed as agricultural property by means of new construction. Such justification shall demonstrate, in addition to the other requirements of this chapter and section 419.17, that the improvements on land assessed as agricultural land will utilize the minimum amount of agricultural land necessary to accomplish the revitalization of the other classes of property within the urban revitalization area. However, if such construction, rehabilitation or additions were begun prior to January 29, 1979, or one year prior to the adoption by the city or county of a plan of urban revitalization pursuant to section 404.2, whichever occurs later, the value added by such construction, rehabilitation or additions shall not constitute an increase in value for purposes of qualifying for the exemptions listed in this section. "Actual value added by the improvements" as used in this chapter and section 419.17 means the actual value added as of the first year for which the exemption was received.

8. The fifteen and ten percent increase in actual value requirements specified in subsection 7 shall apply to every revitalization area within a city or county unless different percent increases in actual value requirements are adopted in the city or county plan as provided in section 404.2. However, a city or county shall not adopt different requirements unless every revitalization area within the city or county has the same requirements and the requirements do

not provide for a greater percent increase than specified in subsection 7.

91 Acts, ch 186, §5 SF 547, 91 Acts, ch 214, §11 HF 704
 1991 amendment to subsection 6 in 91 Acts, ch 186, §5, inapplicable to projects where governing body adopted resolution designating economic development area prior to July 1, 1991, 91 Acts, ch 186, §6 SF 547
 See Code editor's note to §15 287
 Subsection 6 amended
 References to "city" changed to "city or county"

404.4 Prior approval of eligibility.

A person may submit a proposal for an improvement project to the governing body of the city or county to receive prior approval for eligibility for a tax exemption on the project. The governing body shall, by resolution, give its prior approval for an improvement project if the project is in conformance with the plan for revitalization developed by the city or county. Such prior approval shall not entitle the owner to exemption from taxation until the improvements have been completed and found to be qualified real estate; however, if the proposal is not approved, the person may submit an amended proposal for the governing body to approve or reject.

An application shall be filed for each new exemption claimed. The first application for an exemption shall be filed by the owner of the property with the governing body of the city or county in which the property is located by February 1 of the assessment year for which the exemption is first claimed, but not later than the year in which all improvements included in the project are first assessed for taxation, unless, upon the request of the owner at any time, the governing body of the city or county provides by resolution that the owner may file an application by February 1 of any other assessment year selected by the governing body. The application shall contain, but not be limited to, the following information: The nature of the improvement, its cost, the estimated or actual date of completion, the tenants that occupied the owner's building on the date the city or county adopted the resolution referred to in section 404.2, subsection 1, and which exemption in section 404.3 or in the different schedule, if one has been adopted, will be elected.

The governing body of the city or county shall approve the application, subject to review by the local assessor pursuant to section 404.5, if the project is in conformance with the plan for revitalization developed by the city or county, is located within a designated revitalization area and if the improvements were made during the time the area was so designated. The governing body of the city or county shall forward for review all approved applications to the appropriate local assessor by March 1 of each year with a statement indicating whether section 404.3, subsection 1, 2, 3 or 4 applies or if a different schedule has been adopted, which exemption from that schedule applies. Applications for exemption for succeeding years on approved projects shall not be required.

91 Acts, ch 214, §11 HF 704
 References to "city" changed to "city or county"

404.5 Physical review of property by assessor.

The local assessor shall review each first-year application by making a physical review of the property, to determine if the improvements made increased the actual value of the qualified real estate by at least fifteen percent or at least ten percent in the case of real property assessed as residential property or the applicable percent increase requirement adopted by the city or county under section 404.2. If the assessor determines that the actual value of that real estate has increased by at least the requisite percent, the assessor shall proceed to determine the actual value of the property and certify the valuation determined pursuant to section 404.3 to the county auditor at the time of transmitting the assessment rolls. However, if a new structure is erected on land upon which no structure existed at the start of the new construction, the assessor shall proceed to determine the actual value of the property and certify the valuation determined pursuant to section 404.3 to the county auditor at the time of transmitting the assessment rolls. The assessor shall notify the applicant of the determination, and the assessor's decision may be appealed to the local board of review at the times specified in section 441.37. If an application for exemption is denied as a result of failure to sufficiently increase the value of the real estate as provided in section 404.3, the owner may file a first annual application in a subsequent year when additional improvements are made to satisfy requirements of section 404.3, and the provisions of section 404.4 shall apply. After the tax exemption is granted, the local assessor shall continue to grant the tax exemption, with periodic physical review by the assessor, for the time period specified in section 404.3, subsection 1, 2, 3 or 4, or specified in the different schedule if one has been adopted, under which the exemption was granted. The tax exemptions for the succeeding years shall be granted without the taxpayer having to file an application for the succeeding years.

91 Acts, ch 214, §11 HF 704
 References to "city" changed to "city or county"

404.6 Relocation expense of tenant.

Upon application to it and after verification by it, the city or county shall require compensation of at least one month's rent and may require compensation of actual relocation expenses be paid to a qualified tenant whose displacement is due to action on the part of a property owner to qualify for the benefits under this chapter. However, the city or county may require the persons causing the qualified tenant to be displaced to pay all or a part of the relocation payments as a condition for receiving a tax exemption under section 404.3. "Qualified tenant" as used in this chapter shall mean the legal occupant of a residential dwelling unit which is located within a designated revitalization area and who has occupied the same dwelling unit continuously since one year prior to the city's or county's adoption of the plan pursuant to section 404.2.

91 Acts, ch 214, §11 HF 704
 References to "city" changed to "city or county"

404.7 Repeal of ordinance.

When in the opinion of the governing body of a city or county the desired level of revitalization has been attained or economic conditions are such that the continuation of the exemption granted by this chapter would cease to be of benefit to the city or

county, the governing body may repeal the ordinance establishing a revitalization area. In that event, all existing exemptions shall continue until their expiration.

91 Acts, ch 214, §11 HF 704
References to "city" changed to "city or county"

CHAPTER 405A**STATE FUND ALLOCATIONS TO LOCAL GOVERNMENT****405A.8 Appropriations.**

1. There are appropriated from the general fund of the state to the department of revenue and finance the following sums to carry out the provisions of this chapter: For the fiscal year beginning July 1, 1988, and each subsequent fiscal year, sixty-seven million seven hundred thirty-seven thousand dollars.

2. If, for any fiscal year the amount appropriated is insufficient to pay in full the amounts due to all political subdivisions, then the amount of each payment shall be reduced by the same percentage, so

that the aggregate payments to all political subdivisions are equal to the amount appropriated for such payments. If, for any fiscal year the amount appropriated is in excess of the amounts due to all political subdivisions, then the amount of each payment shall be increased by the same percentage, so that the aggregate payments to all political subdivisions are equal to the amount appropriated for such payments.

Appropriation for 1991-1992 fiscal year see 91 Acts, ch 267, §502 HF 479
Footnote added, section not amended

CHAPTER 409A**PLATTING — DIVISION AND SUBDIVISION OF LAND****409A.4 Divisions requiring a plat of survey or acquisition plat.**

1. The grantor of land which has been divided using a metes and bounds description shall have a plat of survey made of the division, except as provided for in subsection 3. The grantor or the surveyor shall contact the county auditor who, for the purpose of assessment and taxation, shall review the division to determine whether the survey shall include only the parcel being conveyed or both the parcel being conveyed and the remaining parcel. The plat of survey shall be prepared in compliance with chapter 114A and shall be recorded. The plat shall be clearly marked by the surveyor as a plat of survey and shall include the following information for each parcel included in the survey:

- a. A parcel letter or number designation approved by the auditor.
- b. The names of the proprietors.
- c. An accurate description of each parcel.

d. The total acreage of each parcel.

e. The acreage of any portion lying within a public right-of-way.

2. The auditor may note a permanent real estate index number upon each parcel shown on a plat of survey according to section 441.29 for real estate tax administration purposes. The surveyor shall not assign parcel letters or prepare a metes and bounds description for any parcel shown on a plat of survey unless the parcel was surveyed by the surveyor in compliance with chapter 114A. Parcels within a plat of survey prepared pursuant to this section are subject to the regulations and ordinances of the governing body.

3. When land or rights in land are divided for right-of-way purposes by an agency of the government or other persons having the power of eminent domain and the description of the land or rights acquired is a metes and bounds description then an acquisition plat shall be made and attached to the de-

scription when the acquisition instrument is recorded. Acquisition plats shall be clearly marked as an acquisition plat and shall conform to the following:

a. Acquisition plats shall not be required to conform to the provisions of chapter 114A.

b. The information shown on the plat shall be developed from instruments of record together with information developed by field measurements. The unadjusted error of field measurements shall not be greater than one in five thousand.

c. The plat shall be signed and dated by a surveyor, bear the surveyor's Iowa registration number and legible seal, and shall show a north arrow and bar scale.

d. The original drawing shall remain the property of the surveyor or the surveyor's agency and shall not be less than eight and one-half by eleven inches in size.

e. If the right-of-way on an acquisition plat is a portion of lots within an official plat, reference shall be made to both the lots and plat name. If the right-of-way acquisition plat is not within an official plat, reference shall be made to the government lot or quarter-quarter section and to the section, township, range, and county.

f. The plat shall indicate whether the monuments shown are existing monuments or monuments to be established. Monuments shall be established as necessary to construct or maintain the right-of-way project.

g. The acquisition plat shall identify the project for which the right-of-way was acquired and a parcel designation shall be assigned to each right-of-way parcel.

4. The acreage shown for each parcel included in a plat of survey or acquisition plat shall be to the nearest one-hundredth acre. If a parcel described as part of the United States public land survey system and not entirely within an official plat, lies within more than one forty-acre aliquot part of a section, the acreage shall be shown only for assessment and taxation purposes for each portion of the parcel that lies within each forty-acre aliquot part. The surveyor shall not be required to establish the location of the forty-acre aliquot line by survey but is required to use reasonable assumptions in determining its approximate location for assessment and taxation purposes.

5. Governmental agencies shall not be required

to survey a remaining parcel when land is divided for right-of-way purposes and shall not be required to contact the auditor for approval of parcel designations shown on an acquisition plat.

91 Acts, ch 191, §15 HF 687
1991 amendment to subsection 1, paragraph a, effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Subsection 1, paragraph a amended

409A.5 Descriptions and conveyance according to plat of survey or acquisition plat.

1. A conveyance of a parcel shown on a recorded plat of survey shall describe the parcel by using the description provided on the plat of survey or by reference to the plat of survey, which reference shall include all of the following:

a. The parcel letter or number designation.
b. The book and page number of the recorded plat of survey.

c. The lot number or letter and name of the official plat, if the parcel lies within an official plat.

d. The section, township, and range number and reference to the aliquot part of the section, if the parcel lies outside of an official plat.

2. A conveyance of a parcel shown on a recorded acquisition plat shall describe the parcel by using the description provided on the acquisition instrument or by reference to the acquisition plat, which reference shall include all of the following:

a. The parcel designation and reference to the project for which the right-of-way was acquired.
b. The book and page number of the recorded acquisition plat.

c. The lot number or letter and name of the official plat, if the parcel lies within an official plat.

d. The section, township, and range number and reference to the aliquot part of the section, if the parcel lies outside of an official plat.

3. A description by reference to the recorded plat of survey, in compliance with subsection 1, is valid.

4. A description by reference to the recorded acquisition plat, in compliance with subsection 2, is valid.

5. A description by reference to a permanent real estate index number is valid for the purpose of assessment and taxation when a county has established a permanent real estate index number system pursuant to section 441.29.

91 Acts, ch 191, §16 HF 687
1991 amendment to subsection 1, paragraph a, effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Subsection 1 paragraph a amended

CHAPTER 410

DISABLED AND RETIRED FIRE FIGHTERS AND POLICE OFFICERS

410.10 Pensions — surviving spouse — children — dependents.

Upon the death of any acting or retired member of such departments, leaving a spouse or minor children, or dependent father or mother surviving, there shall be paid out of said fund as follows:

1. To the surviving spouse, a sum equal to one-half of the deceased member's total adjusted pension as provided for in section 410.6, but in no event less than seventy-five dollars per month.

2. If there be no surviving spouse, or upon the death of such spouse, then to the dependent father and mother, if both survive, or to either dependent parent, if one survives, thirty dollars per month.

3. To the guardian of each surviving child under eighteen years of age, twenty dollars per month.

Effective July 1, 1991, the remarriage of a surviving spouse does not make the spouse ineligible to receive benefits under this section, and for a surviving spouse who remarried prior to July 1, 1991, the remarriage does not make the spouse ineligible to receive benefits under this section.

However, the benefits provided by this section are subject to the following definitions: The term

"spouse" means a surviving spouse of a marriage contracted prior to retirement of a deceased member from active service, or of a marriage of a retired member contracted prior to March 2, 1934. Surviving spouse includes a former spouse only if the division of assets in the dissolution of marriage decree pursuant to section 598.17 grants the former spouse rights of a spouse under this chapter. If there is no surviving spouse of a marriage contracted prior to retirement of a deceased member, or of a marriage of a retired member contracted prior to March 2, 1934, surviving spouse includes a surviving spouse of a marriage of two years or more duration contracted subsequent to retirement of the member. The terms "child" and "children" mean only the surviving issue of a deceased active or retired member, or the child or children legally adopted by a deceased member prior to the member's retirement from active service.

This section and its provisions shall be interpreted for all purposes as including all surviving spouses.

91 Acts, ch 41, §2 HF 5

1991 amendments relating to remarriage of surviving spouse prior to July 1, 1991, apply to benefits payable on or after July 1, 1991, 91 Acts, ch 41, §4 HF 5

Section amended

CHAPTER 411

RETIREMENT SYSTEMS FOR POLICE OFFICERS AND FIRE FIGHTERS

411.1 Definitions.

The following words and phrases as used in this chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

1. "Retirement system" or "system" means the statewide fire and police retirement system established by this chapter for the fire fighters and police officers of the cities described in section 411.2, its board of trustees, and its appointed representatives.

2. "Police officer" or "police officers" shall mean only the members of a police department who have passed a regular mental and physical civil service examination for police officers, and who shall have been duly appointed to such positions. Such members shall include patrol officers, probationary patrol officers, matrons, sergeants, lieutenants, captains,

detectives, and other senior officers who are so employed for police duty.

3. "Fire fighter" or "fire fighters" shall mean only the members of a fire department who have passed a regular mental and physical civil service examination for fire fighters and who shall have been duly appointed to such position. Such members shall include fire fighters, probationary fire fighters, lieutenants, captains, and other senior officers who have been so employed for the duty of fighting fires.

4. "Member" means a member of the retirement system as defined by section 411.3.

5. "Board of trustees" means the board created by section 411.36 to direct the establishment and administration of the retirement system.

6. "Medical board" shall mean the board of physicians provided for in section 411.5.

7. “*Membership service*” shall mean service as police officers or fire fighters rendered since last becoming a member, or, where membership is regained as provided in this chapter, all of such service.

8. “*Beneficiary*” shall mean any person receiving a retirement allowance or other benefit as provided by this chapter.

9. “*Surviving spouse*” shall mean the surviving spouse of a marriage solemnized prior to retirement of a deceased member from active service. Surviving spouse shall include a former spouse only if the division of assets in the dissolution of marriage decree pursuant to section 598.17 grants the former spouse rights of a spouse under this chapter. If there is no surviving spouse of a marriage solemnized prior to retirement of a deceased member, surviving spouse includes a surviving spouse of a marriage of two years or more duration solemnized subsequent to retirement of the member.

10. “*Child*” means only surviving issue of a deceased active or retired member, or a child legally adopted by a deceased member prior to the member’s retirement. “*Child*” includes only an individual who is under the age of eighteen years, an individual who is under the age of twenty-two years and is a full-time student, or an individual who is disabled at the time under the definitions used in section 402 of the Social Security Act as amended if the disability occurred to the individual during the time the individual was under the age of eighteen years and the parent of the individual was an active member of the system.

11. “*Earnable compensation*” or “*compensation earnable*” shall mean the regular compensation which a member would earn during one year on the basis of the stated compensation for the member’s rank or position including compensation for longevity and holidays and excluding any amount received for overtime compensation or other special additional compensation, meal and travel expenses, and uniform allowances and excluding any amount received upon termination or retirement in payment for accumulated sick leave or vacation.

12. “*Amount earned*” shall mean the amount of money actually earned by a beneficiary in some definite period of time.

13. “*Average final compensation*” means the average earnable compensation of the member during the three years of service the member earned the member’s highest salary as a police officer or fire fighter, or if the member has had less than three years of service, then the average earnable compensation of the member’s entire period of service.

14. “*Pensions*” means annual payments for life derived from appropriations provided by the participating cities and the state and from contributions of the members which are deposited in the fire and police retirement fund. All pensions shall be paid in equal monthly installments.

15. “*Retirement allowance*” shall mean the pension, or any benefits in lieu thereof, granted to a member upon retirement.

16. “*Pension reserve*” means the present value of all payments to be made on account of any pension, or benefit in lieu of a pension, granted under the provisions of this chapter, upon the basis of mortality tables adopted by the system, and interest computed at the rate established by the actuary.

17. “*Actuarial equivalent*” means a benefit of equal value, when computed upon the basis of mortality tables adopted by the system, and interest computed at the rate established by the actuary.

18. “*City*” or “*cities*” means any city or cities participating in the statewide fire and police retirement system as required by this chapter.

19. “*Superintendent of public safety*” shall mean any elected city official who has direct jurisdiction over the fire or police department, or the city manager in cities under the city manager form of government.

90 Acts, ch 1240, §48 HF 2543
 1990 amendments to subsections 1, 4, 5, 14, and 16 18 effective January 1, 1992, 90 Acts, ch 1240, §94 HF 2543
 Subsections 1, 4, 5, 14, and 16-18 amended

411.2 Participation in retirement system.

1. Except as provided in subsections 2 through 5, each city in which the fire fighters or police officers are appointed under the civil service law of this state, shall participate in the retirement system established by this chapter for the purpose of providing retirement allowances only for fire fighters or police officers, or both, of the cities who are so appointed after the date the city comes under the retirement system, or benefits to their dependents.

2. A city whose population was under eight thousand prior to the results of the federal census conducted in 1990 is not required to come under the retirement system established by this chapter upon attaining a population of eight thousand or more.

3. A city which did not have a paid fire department on May 3, 1990, is not required to come under the retirement system established by this chapter upon establishing a paid fire department.

4. A city which did not have a paid police department on May 3, 1990, is not required to come under the retirement system established by this chapter upon establishing a paid police department.

5. If a city’s fire fighters or police officers, or both, are appointed under the civil service law of this state but the city is not operating a city fire or police retirement system, or both, under this chapter on May 3, 1990, the city is not required to come under the statewide fire and police retirement system established by this chapter.

90 Acts, ch 1240, §49 HF 2543
 1990 amendment effective January 1, 1992, 90 Acts, ch 1240, §94 HF 2543, substance of subsections 2-5 applicable retroactively to May 3, 1990, 91 Acts, ch 52, §8, 9 SF 326

See Code editor’s note
 Section amended

411.3 Membership.

1. All persons who become police officers or fire fighters after the date the city is required to come under the retirement system, shall become members

of the retirement system as a condition of their employment, except that a police chief or a fire chief who would not complete twenty-two years of service under this chapter by the time the chief attains fifty-five years of age shall, upon written request to the system, be exempt from this chapter. Notwithstanding section 97B.41, a police chief or fire chief who is exempt from this chapter is exempt from chapter 97B. Members of the system established in this chapter shall not be required to make contributions under any other pension or retirement system of a city, county, or the state of Iowa, anything to the contrary notwithstanding.

2. Should any member in any period of five consecutive years after last becoming a member, be absent from service for more than four years, or should the member become a beneficiary or die, the member shall thereupon cease to be a member of the system.

90 Acts, ch 1240, §50 HF 2543
1990 amendment to subsection 1 effective January 1, 1992, 90 Acts, ch 1240, §94 HF 2543
Subsection 1 amended

411.4 Service creditable.

Service for fewer than six months of a year is not creditable as service. Service of six months or more of a year is equivalent to one year of service, but in no case shall more than one year of service be creditable for all service in one calendar year, nor shall the system allow credit as service for any period of more than one month duration during which the member was absent without pay.

The system shall credit as service for a member of the system a previous period of service for which the member had withdrawn the member's accumulated contributions, as defined in section 411.21.

90 Acts, ch 1240, §51 HF 2543
1990 amendment effective January 1, 1992, 90 Acts, ch 1240, §94 HF 2543
Section amended

411.5 Administration.

1. *Board.* The general responsibility for the establishment and proper operation of the retirement system is vested in the board of trustees created by section 411.36. The system shall be administered under the direction of the board.

2. *Compensation.* The trustees, other than the secretary, shall serve without compensation, but they shall be reimbursed from the fire and police retirement fund for all necessary expenses which they may incur through service on the board.

3. *Rules.* Subject to the limitations of this chapter, the board of trustees shall adopt rules for the establishment and administration of the system and the fire and police retirement fund created by this chapter, and for the transaction of its business.

4. *Organization — employees.* The board of trustees shall elect from its membership a chairperson, and shall, by majority vote of its members, appoint a secretary who may, but need not, be one of its members. The system shall engage such actuarial and other services as are required to transact the business of the retirement system. The compensa-

tion of all persons engaged by the system and all other expenses of the board of trustees necessary for the operation of the retirement system shall be paid at such rates and in such amounts as the board of trustees approves.

5. *Data.* The system shall keep in convenient form such data as is necessary for actuarial valuation of the fire and police retirement fund and for checking the experience of the retirement system.

6. *Records — reports.* The board of trustees shall keep a record of all its proceedings, which record shall be open to public inspection. It shall submit an annual report to the governor, the general assembly, and the city council of each participating city concerning the financial condition of the retirement system, its current and future liabilities, and the actuarial valuation of the system.

7. *Legal advisor.* The system may employ or retain an attorney to serve as the system's legal advisor and to represent the system. The costs of an attorney employed or retained by the system shall be paid from the fire and police retirement fund created in section 411.8.

8. *Medical board.* The system shall designate a medical board to be composed of three physicians who shall arrange for and pass upon all medical examinations required under the provisions of this chapter, except that for examinations required because of disability three physicians from the University of Iowa hospitals and clinics who shall pass upon the medical examinations required for disability retirements, and shall report to the system in writing its conclusions and recommendations upon all matters referred to it. Each report of a medical examination under section 411.6, subsections 3 and 5, shall include the medical board's rating as to the extent of the member's physical impairment.

9. *Duties of actuary.* The actuary shall be the technical advisor of the system on matters regarding the operation of the fire and police retirement fund and shall perform such other duties as are required in connection with the operation of the system.

The actuary shall make such investigation of anticipated interest earnings and of the mortality, service, and compensation experience of the members of the system as the actuary recommends, and on the basis of the investigation the system shall adopt such tables and such rates as are required in subsection 11.

10. *Actuarial investigation — tables — rates.* At least once in each five-year period, the actuary shall make an actuarial investigation into the mortality, service, and compensation experience of the members and beneficiaries of the retirement system, and the interest and other earnings on the moneys and other assets of the retirement system, and shall make a valuation of the assets and liabilities of the fire and police retirement fund, and on the basis of the results of the investigation and valuation, the system shall do all of the following:

a. Adopt for the retirement system such interest rate, mortality and other tables as are deemed necessary.

b Certify the rates of contribution payable by the cities in accordance with section 411 8

c Certify the rates of contributions payable by the members in accordance with section 411 8

11 *Valuation* On the basis of the rate of interest and tables adopted, the actuary shall make an annual valuation of the assets and liabilities of the fire and police retirement fund created by this chapter

90 Acts ch 1240 §52 HF 2543
1990 amendment effective January 1 1992 90 Acts ch 1240 §94 HF 2543
Section amended

411.6 Benefits.

1 *Service retirement benefit* Retirement of a member on a service retirement allowance shall be made by the system as follows

a Any member in service may retire upon written application to the system, setting forth at what time, not less than thirty nor more than ninety days subsequent to the execution and filing of the application, the member desires to be retired. However, the member at the time specified for retirement shall have attained the age of fifty-five and shall have served twenty-two years or more, and notwithstanding that, during the period of notification, the member may have separated from the service

b Any member in service who has been a member of the retirement system four or more years and whose employment is terminated prior to the member's retirement, other than by death or disability, shall upon attaining retirement age, receive a service retirement allowance of four twenty-seconds of the retirement allowance the member would receive at retirement if the member's employment had not been terminated, and an additional one twenty-second of such retirement allowance for each additional year of service not exceeding twenty-two years of service. The amount of the retirement allowance shall be calculated in the manner provided in this paragraph using the average final compensation at the time of termination of employment

2 *Allowance on service retirement*

a Upon retirement from service, prior to July 1, 1990, a member shall receive a service retirement allowance which shall consist of a pension given by the city which equals fifty percent of the member's average final compensation

b Upon retirement from service on or after July 1, 1990, but before July 1, 1992, a member shall receive a service retirement allowance which shall consist of a pension which equals fifty-four percent of the member's average final compensation

c Commencing July 1, 1992, the system shall increase the percentage multiplier of the member's average final compensation by an additional two percent each July 1 until reaching sixty percent of the member's average final compensation

d Commencing July 1, 1990, if the member has completed more than twenty two years of creditable service, the service retirement allowance shall consist of a pension which equals the amount provided in paragraphs "b" and "c", plus an additional percentage as set forth below

(1) For a member who terminates service, other than by death or disability, on or after July 1, 1990, but before July 1, 1991, and who does not withdraw the member's contributions pursuant to section 411 23, upon the member's retirement there shall be added three-tenths percent of the member's average final compensation for each year of service over twenty two years, excluding years of service after the member's fifty-fifth birthday. However, this subparagraph does not apply to more than eight additional years of service

(2) For a member who terminates service, other than by death or disability, on or after July 1, 1991, and who does not withdraw the member's contributions pursuant to section 411 23, upon the member's retirement there shall be added six-tenths percent of the member's average final compensation for each year of service over twenty-two years, excluding years of service after the member's fifty fifth birthday. However, this subparagraph does not apply to more than eight additional years of service

3 *Ordinary disability retirement benefit* Upon application to the system, of a member in service or of the chief of the police or fire departments, respectively, any member shall be retired by the system, not less than thirty and not more than ninety days next following the date of filing the application, on an ordinary disability retirement allowance, if the medical board after a medical examination of the member certifies that the member is mentally or physically incapacitated for further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired

4 *Allowance on ordinary disability retirement* Upon retirement for ordinary disability a member shall receive an ordinary disability retirement allowance which shall consist of a pension which shall equal fifty percent of the member's average final compensation except if the member has not had five or more years of membership service the member shall receive a pension equal to one-fourth of the member's average final compensation

5 *Accidental disability benefit* Upon application to the system, of a member in service or of the chief of the police or fire departments, respectively, any member who has become totally and permanently incapacitated for duty as the natural and proximate result of an injury or disease incurred in or aggravated by the actual performance of duty at some definite time and place, or while acting pursuant to order, outside of the city by which the member is regularly employed, shall be retired by the system, if the medical board certifies that the member is mentally or physically incapacitated for further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired

If a member in service or the chief of the police or fire departments becomes incapacitated for duty as a natural or proximate result of an injury or disease incurred in or aggravated by the actual performance of duty at some definite time or place or while acting, pursuant to order, outside the city by which the

member is regularly employed, the member, upon being found to be temporarily incapacitated following a medical examination as directed by the system, is entitled to receive the member's full pay and allowances from the city's general fund until re-examined as directed by the system and found to be fully recovered or permanently disabled

Disease under this section shall mean heart disease or any disease of the lungs or respiratory tract and shall be presumed to have been contracted while on active duty as a result of strain or the inhalation of noxious fumes, poison or gases

6 Retirement after accident

a Upon retirement for accidental disability prior to July 1, 1990, a member shall receive an accidental disability retirement allowance which shall consist of a pension equal to sixty-six and two-thirds percent of the member's average final compensation

b Upon retirement for accidental disability on or after July 1, 1990, a member shall receive an accidental disability retirement allowance which shall consist of a pension equal to sixty percent of the member's average final compensation

7 *Re examination of beneficiaries retired on account of disability* Once each year during the first five years following the retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the system may, and upon the member's application shall, require any disability beneficiary who has not yet attained age fifty-five to undergo a medical examination at a place designated by the medical board. The examination shall be made by the medical board or in special cases, by an additional physician or physicians designated by such board. If any disability beneficiary who has not attained the age of fifty-five refuses to submit to the medical examination, the member's allowance may be discontinued until withdrawal of such refusal, and if the refusal continues for one year all rights in and to the member's pension may be revoked by the system

a Should any beneficiary for either ordinary or accidental disability, except a beneficiary who is fifty-five years of age or over and would have completed twenty-two years of service if the beneficiary had remained in active service, be engaged in a gainful occupation paying more than the difference between the member's retirement allowance and one and one-half times the earnable compensation of an active member at the same position on the salary scale within the member's rank as the member held at retirement, then the amount of the member's retirement allowance shall be reduced to an amount which together with the amount earned by the member shall equal one and one-half times the amount of the current earnable compensation of an active member at the same position on the salary scale within the member's rank as the member held at retirement. Should the member's earning capacity be later changed, the amount of the member's retirement allowance may be further modified, provided, that the new retirement allowance shall not exceed

the amount of the retirement allowance adjusted by annual readjustments of pensions pursuant to subsection 12 of this section nor an amount which, when added to the amount earned by the beneficiary, equals one and one-half times the amount of the earnable compensation of an active member at the same position on the salary scale within the member's rank as the member held at retirement. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which the member was retired at age fifty-five or greater, shall not again become a member of the retirement system and shall have the member's retirement allowance suspended while in active service. If the rank or position held by the retired member is subsequently abolished, adjustments to the allowable limit on the amount of income which can be earned in a gainful occupation shall be computed in the same manner as provided in subsection 12, paragraph "c", of this section for readjustment of pensions when a rank or position has been abolished.

A beneficiary retired under this paragraph, in order to be eligible for continued receipt of retirement benefits, shall no later than May 15 of each year submit to the system a copy of the beneficiary's federal individual income tax return for the preceding year.

Retroactive to July 1, 1976, the limitations on pay of a member engaged in a gainful occupation who is retired under accidental disability prescribed in this paragraph shall not apply to a member who retired before July 1, 1976.

b Should a disability beneficiary under age fifty-five be restored to active service at a compensation not less than the disability beneficiary's average final compensation, the disability beneficiary's retirement allowance shall cease, the disability beneficiary shall again become a member and shall contribute thereafter at the same rate paid prior to disability, and former service on the basis of which the disability beneficiary's service was computed at the time of retirement shall be restored to full force and effect and upon subsequent retirement the disability beneficiary shall be credited with all service as a member and also with the period of disability retirement.

8 Ordinary death benefit

a Upon the receipt of proof of the death of a member in service, or a member not in service who has completed four or more years of service as provided in subsection 1, paragraph "b", there shall be paid to the person designated by the member to the system as the member's beneficiary if the member has had one or more years of membership service and no pension is payable under subsection 9, an amount equal to fifty percent of the compensation earnable by the member during the year immediately preceding the member's death if the member is in service, or an amount equal to fifty percent of the compensation earned by the member during the member's last year of service if the member is not in service.

b In lieu of the payment specified in paragraph

"a", a beneficiary meeting the qualifications of paragraph "c" may elect to receive a monthly pension equal to one-twelfth of forty percent of the average final compensation of the member, but not less than twenty percent of the monthly earnable compensation paid to an active member holding the highest grade in the rank of fire fighter, for a beneficiary of a deceased member of a fire department, or the highest grade in the rank of police patrol officer, for a beneficiary of a deceased member of a police department, if the member was in service at the time of death. For a member not in service at the time of death, the pension shall be reduced as provided in subsection 1, paragraph "b"

For a member not in service at the time of death, the pension shall be paid commencing when the member would have attained the age of fifty-five except that if there is a child of the member, the pension shall be paid commencing with the member's death until the children reach the age of eighteen, or twenty-two if applicable. The pension shall resume commencing when the member would have attained the age of fifty-five.

For a member in service at the time of death, the pension shall be paid commencing with the member's death. In addition to the pension, there shall also be paid for each child of a member, a monthly pension equal to six percent of the monthly earnable compensation paid to an active member holding the highest grade in the rank of fire fighter, for a child of a deceased member of a fire department, or the highest grade in the rank of police patrol officer, for a child of a deceased member of a police department.

Notwithstanding section 411 6, subsection 8, Code 1985, effective July 1, 1990, for a member's surviving spouse who, prior to July 1, 1986, elected to receive pension benefits under this paragraph, the monthly pension benefit shall be equal to the higher of one-twelfth of forty percent of the average final compensation of the member, or the amount the surviving spouse was receiving on July 1, 1990.

c The pension under paragraph "b" may be selected only by the following beneficiaries:

- (1) The spouse
- (2) If there is no spouse, or if the spouse dies and there is a child of a member, then the guardian of the member's child or children, divided as the system determines, to continue as a joint and survivor pension until every child of the member dies or attains the age of eighteen, or twenty-two if applicable.
- (3) If there is no surviving spouse or child, then the member's dependent father or mother, or both, as the system determines, to continue until remarriage or death.

d If there is no nomination of beneficiary, the benefits provided in this subsection shall be paid to the member's estate.

9 *Accidental death benefit* If, upon the receipt of evidence and proof from the chief of the police or fire department that the death of a member in service was the natural and proximate result of an injury or disease incurred in or aggravated by the actual

performance of duty at some definite time and place, or while acting pursuant to order, outside of the city by which the member is regularly employed, the system decides that death was so caused in the performance of duty, there shall be paid, in lieu of the ordinary death benefit provided in subsection 8, to the member's estate or to such person having an insurable interest in the member's life as the member has nominated by written designation duly executed and filed with the system, the benefits set forth in paragraphs "a" and "b" of this subsection.

a A pension equal to one-half of the average final compensation of the member shall be paid to the member's spouse, children or dependent parents as provided in paragraphs "c", "d" and "e" of subsection 8 of this section. There shall also be paid for each child of a member a monthly pension equal to six percent of the monthly earnable compensation paid to an active member holding the highest grade in the rank of fire fighter, for a child of a deceased member of a fire department, or holding the highest grade in the rank of police patrol officer, for a child of a deceased member of a police department.

b If there is no spouse, child, or dependent parent surviving a deceased member, the death shall be treated as an ordinary death case and the benefit payable under subsection 8, paragraph "a", in lieu of the pension provided in paragraph "a" of this subsection, shall be paid to the member's estate.

Disease under this subsection shall mean heart disease or any disease of the lungs or respiratory tract and shall be presumed to have been contracted while on active duty as a result of strain or the inhalation of noxious fumes, poison, or gases.

10 *Pensions offset by compensation benefits* Any amounts which may be paid or payable by the said cities under the provisions of any workers' compensation or similar law to a member or to the dependents of a member on account of any disability or death, shall be offset against and payable in lieu of any benefits payable out of funds provided by the said cities under the provisions of this chapter on account of the same disability or death. In case the present value of the total commuted benefits under said workers' compensation or similar law is less than the pension reserve on the benefits otherwise payable from funds provided by the said cities under this chapter, then the present value of the commuted payments shall be deducted from the pension reserve and such benefits as may be provided by the pension reserve so reduced shall be payable under the provisions of this chapter.

11 *Pension to spouse and children of deceased pensioned member* In the event of the death of any member receiving a retirement allowance under the provisions of subsections 2, 4, or 6 of this section there shall be paid a pension.

a To the spouse, equal to one-half the amount received by the deceased beneficiary, but in no instance less than twenty percent of the monthly earnable compensation paid to an active member holding the highest grade in the rank of fire fighter, for a ben-

eficiary of a deceased member of the fire department, or the highest grade in the rank of police patrol officer, for a beneficiary of a deceased member of a police department, and in addition a monthly pension equal to the monthly pension payable under subsection 9 of this section for each child under eighteen years of age or twenty-two years of age if applicable; or

b If the spouse dies either prior or subsequent to the death of the member, to the guardian of each surviving child, a monthly pension equal to the monthly pension payable under subsection 9 of this section for the support of the child.

12. *Annual readjustment of pensions* Pensions payable under this section shall be adjusted as follows:

a. On each July 1 and January 1, the monthly pensions authorized in this section payable to retired members and to beneficiaries, except children of a deceased member, shall be adjusted as provided in this paragraph. An amount equal to the following percentages of the difference between the monthly earnable compensation payable to an active member of the department, of the same rank and position on the salary scale as was held by the retired or deceased member at the time of the member's retirement or death, for the month in which the last preceding adjustment was made and the monthly earnable compensation payable to an active member of the department of the same rank and position on the salary scale for the month in which the adjustment is made shall be added to the monthly pension of each retired member and each beneficiary as follows:

(1) Twenty-five percent for members receiving a service retirement allowance and for beneficiaries receiving a pension under subsection 9 of this section. However, effective July 1, 1990, for members who retired before that date, thirty percent shall be the applicable percentage for members and beneficiaries under this subparagraph.

(2) Twenty-five percent for members with five or more years of membership service who are receiving an ordinary disability retirement allowance. However, effective July 1, 1990, for members who retired before that date, thirty percent shall be the applicable percentage for members under this subparagraph.

(3) Twelve and one-half percent for members with less than five years of membership service who are receiving an ordinary disability retirement allowance, and for beneficiaries receiving a pension under subsection 8 of this section. However, effective July 1, 1990, for members who retired before that date, fifteen percent shall be the applicable percentage for members and beneficiaries under this subparagraph.

(4) Thirty-three and one-third percent for members receiving an accidental disability allowance.

The adjusted monthly pension shall not be less than the amount which was paid at the time of the member's retirement or death.

The amount added to the monthly pension of a surviving spouse receiving a pension under subsection

11, paragraph "a" of this section shall be equal to one-half the amount that would have been added to the monthly pension of the retired member.

As of July 1 and January 1 of each year, the monthly pension payable to each surviving child under the provisions of subsections 8, 9, and 11 of this section shall be adjusted to equal six percent of the monthly earnable compensation payable on that July 1 or January 1 to an active member holding the highest grade in the rank of fire fighter, for a child of a deceased member of a fire department, or holding the highest grade in the rank of police patrol officer, for a child of a deceased member of a police department.

b. All monthly pensions adjusted as provided in this subsection shall be payable beginning on July 1 and January 1 of the year in which the adjustment is made and shall continue in effect until the next adjustment at which time the monthly pensions shall again be adjusted in accordance with paragraph "a" of this subsection.

c. The adjustment of pensions required by this subsection shall recognize the retired or deceased member's position on the salary scale within the retired or deceased member's rank at the time of retirement or death. In the event that the rank or position held by the retired or deceased member at the time of retirement or death is subsequently abolished, adjustments in the pensions of the member or of the member's spouse or children shall be computed by the board of trustees as though such rank or position had not been abolished and salary increases had been granted to such rank or position on the same basis as increases granted to other ranks and positions in the department.

d. A retired member eligible for benefits under subsection 1 of this section is not eligible for the readjustment of pensions provided in this subsection unless the member served twenty-two years and attained the age of fifty-five years prior to the member's termination of employment.

13. *Remarriage of surviving spouse.* Effective July 1, 1990, for a member who died prior to July 1, 1988, if the member's surviving spouse remarried prior to July 1, 1988, the remarriage does not make the spouse ineligible under subsection 8, paragraph "c", subparagraphs (1) and (2), to receive benefits under subsections 8, 9, 11, and 12.

90 Acts, ch 1240, §53, 56, 57, 59, 60, 63 and 64 HF 2543, 91 Acts, ch 41, §3 HF 5

1990 amendments to subsection 1, paragraph b, and subsection 8, paragraph a, applicable to members of police and fire retirement systems who are in active service on or after July 1, 1990, 90 Acts, ch 1240, §94 HF 2543

1990 amendments to subsection 1, unnumbered paragraph 1 and paragraph a, subsections 3, 5 and 7, subsection 8, paragraph c, and subsection 9 are effective January 1, 1992, 90 Acts, ch 1240, §94 HF 2543

1991 amendment to subsection 8, paragraph b, unnumbered paragraph 4 is retroactive to July 1, 1990, and applicable on and after that date, 91 Acts, ch 41, §4 HF 5

Section amended

411.7 Management of fund.

1. The board of trustees is the trustee of the fire and police retirement fund created in section 411.8 and shall annually establish an investment policy to

govern the investment and reinvestment of the moneys in the fund, subject to the terms, conditions, limitations and restrictions imposed by subsection 2. Subject to like terms, conditions, limitations, and restrictions the system has full power to hold, purchase, sell, assign, transfer, or dispose of any of the securities and investments in which the fund has been invested, as well as of the proceeds of the investments and any moneys belonging to the fund.

2. The secretary of the board of trustees shall invest, in accordance with the investment policy established by the board of trustees, the portion of the fund established in section 411.8 which in the judgment of the board is not needed for current payment of benefits under this chapter in investments authorized in section 97B.7, subsection 2, paragraph "b", for moneys in the Iowa public employees' retirement fund.

3. The secretary of the board of trustees is the custodian of the fire and police retirement fund. All payments from the fund shall be made by the secretary only upon vouchers signed by two persons designated by the board of trustees. The system may select master custodian banks to provide custody of the assets of the retirement system.

4. A member or employee of the board of trustees shall not have any direct interest in the gains or profits of any investment made by the board of trustees, other than as a member of the system. A trustee shall not receive any pay or emolument for the trustee's services except as secretary. A member or employee of the board of trustees shall not directly or indirectly for the trustee or employee or as an agent in any manner use the assets of the retirement system except to make current and necessary payments as authorized by the board of trustees, nor shall any trustee or employee of the system become an endorser or surety or become in any manner an obligor for moneys loaned by or borrowed from the system.

5. Except as otherwise provided in section 411.36, a member, employee, and the secretary of the board of trustees shall not be personally liable for a loss to the fire and police retirement fund, the loss shall be assessed against the fire and police retirement fund, and moneys are hereby appropriated from the fund in an amount sufficient to cover the losses.

90 Acts, ch 1240, §68 HF 2543, 91 Acts, ch 52, §1 SF 326
 1990 and 1991 amendments effective January 1, 1992, 90 Acts, ch 1240, §94
 HF 2543, 91 Acts, ch 52, §9 SF 326
 Section amended
 NEW subsection 5

411.8 Method of financing.

All the assets of the retirement system created and established by this chapter shall be credited to the fire and police retirement fund, which is hereby created. As used in this section, "fund" means the fire and police retirement fund.

1. All moneys for the payment of all pensions and other benefits payable from contributions made by the participating cities, the state, and the members shall be accumulated in the fund. The refunds

and benefits for all members and beneficiaries shall be payable from the fund. Contributions to and payments from the fund shall be as follows:

a. On account of each member there shall be paid annually into the fund by the participating cities an amount equal to a certain percentage of the earnable compensation of the member to be known as the "normal contribution". The rate percent of such contribution shall be fixed on the basis of the liabilities of the retirement system as shown by annual actuarial valuations.

b. On the basis of the rate of interest and of the mortality, interest and other tables adopted by the system, the actuary engaged by the system to make each valuation required by this chapter, shall immediately after making such valuation, determine the "normal contribution rate". Except as otherwise provided in this lettered paragraph, the normal contribution rate shall be the rate percent of the earnable compensation of all members obtained by deducting from the total liabilities of the fund the amount of the funds in hand to the credit of the fund and dividing the remainder by one percent of the present value of the prospective future compensation of all members as computed on the basis of the rate of interest and of mortality and service tables adopted, all reduced by the employee contribution made pursuant to paragraph "f" of this subsection. However, the normal rate of contribution shall not be less than seventeen percent.

Beginning July 1, 1996, and each fiscal year thereafter, the normal contribution rate shall be the rate percent of the earnable compensation of all members obtained by deducting from the total liabilities of the fund the amount of the funds in hand to the credit of the fund and dividing the remainder by one percent of the present value of the prospective future compensation of all members as computed on the basis of the rate of interest and of mortality and service tables adopted, multiplied by six-tenths, or seventeen percent, whichever is greater.

The normal rate of contribution shall be determined by the actuary after each valuation.

c. The total amount payable in each year to the fund shall be not less than the rate percent known as the normal contribution rate of the total compensation earnable by all members during the year, but the aggregate payment by the participating cities must be sufficient when combined with the amount in the fund to provide the pensions and other benefits payable out of the fund during the then current year.

d. All lump-sum death benefits on account of death in active service payable from contributions of the said cities shall be paid from the fund.

e. Reserved.

f. Except as otherwise provided in paragraph "h":

(1) An amount equal to three and one-tenth percent of each member's compensation from the earnable compensation of the member shall be paid to the fund for the fiscal year beginning July 1, 1989.

(2) An amount equal to four and one-tenth percent of each member's compensation from the earnable compensation of the member shall be paid to the fund for the fiscal year beginning July 1, 1990.

(3) An amount equal to five and one-tenth percent of each member's compensation from the earnable compensation of the member shall be paid to the fund for the fiscal year beginning July 1, 1991.

(4) An amount equal to six and one-tenth percent of each member's compensation from the earnable compensation of the member shall be paid to the fund for the fiscal year beginning July 1, 1992.

(5) An amount equal to seven and one-tenth percent of each member's compensation from the earnable compensation of the member shall be paid to the fund for the fiscal year beginning July 1, 1993.

(6) An amount equal to eight and one-tenth percent of each member's compensation from the earnable compensation of the member shall be paid to the fund for the fiscal year beginning July 1, 1994.

(7) An amount equal to nine and one-tenth percent of each member's compensation from the earnable compensation of the member shall be paid to the fund for the fiscal year beginning July 1, 1995.

(8) Beginning July 1, 1996, and each fiscal year thereafter, the member's contribution rate shall be the rate percent of the earnable compensation of all members obtained by deducting from the total liabilities of the fund the amount of the funds in hand to the credit of the fund and dividing the remainder by one percent of the present value of the prospective future compensation of all members as computed on the basis of the rate of interest and of mortality and service tables adopted, multiplied by four-tenths, or nine and one-tenth percent, whichever is greater. However, the system shall increase this percentage for its members as necessary to cover any increase in cost to the system resulting from statutory changes which are enacted by any session of the general assembly meeting after January 1, 1991, if the increase cannot be absorbed within the contribution rates otherwise established pursuant to this paragraph, but subject to a maximum employee contribution rate of eleven and three-tenths percent. After the employee contribution reaches the maximum rate specified in this subparagraph, sixty percent of the additional cost of such statutory changes shall be paid by employers under paragraph "c" and forty percent of the additional cost shall be paid by employees under this paragraph.

Beginning July 1, 1996, and each fiscal year thereafter, an amount equal to the member's contribution rate times each member's compensation shall be paid to the fund from the earnable compensation of the member.

The total amount to be contributed by the member shall be determined by the actuary after each valuation.

g. The system shall certify to the superintendent of public safety as defined in this chapter and the superintendent of public safety as defined in this chapter shall cause to be deducted from the earnable com-

penensation of each member the contribution required under this subsection and shall forward the contributions to the system for recording and for deposit in the fund.

The deductions provided for under this paragraph shall be made notwithstanding that the minimum compensation provided by law for any member is reduced. Every member is deemed to consent to the deductions made under this paragraph.

h. Notwithstanding the provisions of paragraph "f", the following transition percentages apply to members' contributions as specified:

(1) For members who on July 1, 1990, have attained the age of forty-nine years or more, an amount equal to nine and one-tenth percent of each member's compensation from the earnable compensation of the member shall be paid to the fund for the fiscal year beginning July 1, 1990, and each subsequent fiscal year until the fiscal year beginning July 1, 1996, when paragraph "f", subparagraph (8), applies.

(2) For members who on July 1, 1990, have attained the age of forty-eight years but have not attained the age of forty-nine years, an amount equal to eight and one-tenth percent shall be paid for the fiscal year beginning July 1, 1990, and an amount equal to nine and one-tenth percent shall be paid for the fiscal year beginning July 1, 1991, and each subsequent fiscal year thereafter until the fiscal year beginning July 1, 1996, when paragraph "f", subparagraph (8), applies.

(3) For members who on July 1, 1990, have attained the age of forty-seven years but have not attained the age of forty-eight years, an amount equal to seven and one-tenth percent shall be paid for the fiscal year beginning July 1, 1990, an amount equal to eight and one-tenth percent shall be paid for the fiscal year beginning July 1, 1991, and an amount equal to nine and one-tenth percent shall be paid for the fiscal year beginning July 1, 1992, and each subsequent fiscal year until the fiscal year beginning July 1, 1996, when paragraph "f", subparagraph (8), applies.

(4) For members who on July 1, 1990, have attained the age of forty-six years but have not attained the age of forty-seven years, an amount equal to six and one-tenth percent shall be paid for the fiscal year beginning July 1, 1990, an amount equal to seven and one-tenth percent shall be paid for the fiscal year beginning July 1, 1991, an amount equal to eight and one-tenth percent shall be paid for the fiscal year beginning July 1, 1992, and an amount equal to nine and one-tenth percent shall be paid for the fiscal year beginning July 1, 1993, and each subsequent fiscal year until the fiscal year beginning July 1, 1996, when paragraph "f", subparagraph (8), applies.

(5) For members who on July 1, 1990, have attained the age of forty-five years but have not attained the age of forty-six years, an amount equal to five and one-tenth percent shall be paid for the fiscal year beginning July 1, 1990, an amount equal to six

and one-tenth percent shall be paid for the fiscal year beginning July 1, 1991, an amount equal to seven and one-tenth percent shall be paid for the fiscal year beginning July 1, 1992, an amount equal to eight and one-tenth percent shall be paid for the fiscal year beginning July 1, 1993, and an amount equal to nine and one-tenth percent shall be paid for the fiscal years beginning July 1, 1994, and July 1, 1995. Beginning July 1, 1996, paragraph "f", subparagraph (8), applies.

2. Annually the board of trustees shall budget the amount of money necessary during the ensuing year to provide for the expense of operation of the retirement system. The operating expenses shall be financed from the income derived from the system's investments. Investment management expenses shall be charged directly to the investment income of the system.

90 Acts, ch 1240, §69 72, 74, 76, 77 HF 2543
 1990 amendments to unnumbered paragraph 1 and subsection 1, striking of subsection 2, and amendment to subsection 3 renumbered as 2, are effective January 1, 1992, 90 Acts, ch 1240, §94 HF 2543
 Unnumbered paragraph 1 amended
 Subsection 1, unnumbered paragraph 1 and paragraphs a-d amended
 Subsection 1, paragraph e stricken
 Subsection 1, paragraph g amended
 Subsection 2 stricken and former subsection 3 renumbered as 2
 Renumbered subsection 2 amended

411.11 Contributions by the city.

On or before January 1 of each year the system shall certify to the superintendent of public safety of each participating city the amounts which will become due and payable during the year next following to the fire and police retirement fund. The amounts so certified shall be included by the superintendent of public safety in the annual budget estimate. The amounts so certified shall be appropriated by the respective cities and transferred to the retirement system for the ensuing year. The cities shall annually levy a tax sufficient in amount to cover the appropriations.

90 Acts, ch 1240, §78 HF 2543
 1990 amendment effective January 1, 1992, 90 Acts, ch 1240, §94 HF 2543
 Section amended

411.12 City obligations.

The creation and maintenance of moneys in the fire and police retirement fund as provided for the payment of all pensions and other benefits granted under the provisions of this chapter and all expenses in connection with the administration and operation of the retirement system are hereby made direct liability obligations of the cities participating in the retirement system.

90 Acts, ch 1240, §79 HF 2543
 1990 amendment effective January 1, 1992, 90 Acts, ch 1240, §94 HF 2543
 Section amended

411.13 Exemption from execution and other process, or assignment.

The right of any person to a pension, annuity, or retirement allowance, to the return of contributions, the pension, annuity, or retirement allowance itself, any optional benefit or death benefit, any other right accrued or accruing to any person under this chap-

ter, and the moneys in the fire and police retirement fund created under this chapter, are not subject to execution, garnishment, attachment, or any other process whatsoever, and are unassignable except as in this chapter specifically provided.

90 Acts, ch 1240, §80 HF 2543
 1990 amendment effective January 1, 1992, 90 Acts, ch 1240, §94 HF 2543
 Section amended

411.14 Fraudulent practice — correction of errors.

A person who knowingly makes a false statement or falsifies or permits to be falsified any record or records of the retirement system in an attempt to defraud the system as a result of such act, is guilty of a fraudulent practice. If any change or error in records results in a member or beneficiary receiving from the retirement system more or less than the member or beneficiary would have been entitled to receive had the records been correct, the system shall correct the error, and, as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled, shall be paid.

90 Acts, ch 1240, §81 HF 2543
 1990 amendment effective January 1, 1992, 90 Acts, ch 1240, §94 HF 2543
 Section amended

411.18 Transfer of authority to peace officers' system. Repealed by 90 Acts, ch 1240, § 90, 94. HF 2543

Repeal effective January 1, 1992

411.19 Transfer of benefits to another city. Repealed by 90 Acts, ch 1240, § 90, 94. HF 2543

Repeal effective January 1, 1992

411.20 State appropriation.

There is appropriated from the general fund of the state for each fiscal year an amount necessary to be distributed to the statewide fire and police retirement system, or to the cities participating in the system, to finance the cost of benefits provided in this chapter by amendments of the Acts of the Sixty-sixth General Assembly, chapter 1089. The method of distribution shall be determined by the board of trustees based on information provided by the actuary of the statewide retirement system.

Moneys appropriated by the state shall not be used to reduce the normal rate of contribution of any city below seventeen percent.

90 Acts, ch 1240, §82 HF 2543
 1990 amendment effective January 1, 1992 90 Acts, ch 1240, §94 HF 2543
 Appropriation limited for 1991 1992 fiscal year, 91 Acts, ch 267, §507 HF 479
 Section stricken and rewritten

411.35 Statewide system established — city systems terminated.

1. Effective January 1, 1992, a single statewide fire and police retirement system is established to replace the individual city fire retirement systems and police retirement systems operating under this chapter prior to that date. Each city fire retirement system and police retirement system operating under

this chapter prior to May 3, 1990, shall participate in the statewide system.

2. Effective January 1, 1992, each city fire retirement system and police retirement system operating under this chapter prior to that date is terminated, and all membership, benefit rights, and financial obligations under the terminating systems shall be assumed by the statewide fire and police retirement system.

91 Acts, ch 52, §4 SF 326

1991 amendment to subsection 1 retroactive to May 3, 1990, and applicable on and after that date, 91 Acts, ch 52, §9 SF 326
Subsection 1 amended

411.36 Board of trustees for statewide system.

1. A board of trustees for the statewide fire and police retirement system is created. The board shall consist of thirteen members, including nine voting members and four nonvoting members. The voting members shall be as follows:

a. Two fire fighters from different participating cities, one of whom is an active member of the retirement system and one of whom is a retired member. The fire fighters shall be appointed by the governing body of the Iowa association of professional fire fighters.

b. Two police officers from different participating cities, one of whom is an active member of the retirement system and one of whom is a retired member. The police officers shall be appointed by the governing body of the Iowa state police association.

c. The city treasurers of four participating cities, one of whom is from a city having a population of less than forty thousand, and three of whom are from cities having a population of forty thousand or more. The city treasurers shall be appointed by the governing body of the league of Iowa municipalities.

d. One citizen who does not hold another public office. The citizen shall be appointed by the other members of the board.

The nonvoting members of the board shall be two state representatives, one appointed by the speaker of the house of representatives and one by the minority leader of the house, and two state senators, one appointed by the majority leader of the senate and one by the minority leader of the senate.

2. Except as otherwise provided for the initial appointments, the voting members shall be appointed for four-year terms, and the nonvoting members shall be appointed for two-year terms. Terms begin on May 1 in the year of appointment and expire on April 30 in the year of expiration.

3. Vacancies shall be filled in the same manner as original appointments. A vacancy shall be filled for the unexpired term.

4. The board shall elect a chairperson from among its own members.

5. Members of the board shall be paid their actual and necessary expenses incurred in the performance of their duties and shall receive a per diem as specified in section 7E.6 for each day of service. Per diem and expenses shall be paid to voting members from the fire and police retirement fund created in section 411.8. Per diem and expenses of the legislative members shall be paid from the funds appropriated under section 2.12. However, legislative members shall not be paid pursuant to this section when the general assembly is actually in session at the seat of government.

6. A member, employee, and the secretary of the board of trustees are not personally liable for claims based upon an act or omission of the person performed in the discharge of the person's duties, except for acts or omissions which involve intentional misconduct, or for a transaction from which the person derives an improper personal benefit, even if the acts or omissions violate the standards established in section 411.7, subsection 2.

91 Acts, ch 52, §2 SF 326

Initial board for statewide system, 90 Acts, ch 1240, §89, 91 Acts, ch 52, §5, 6, 9 SF 326

Subsections 5 and 6 effective January 1 1992, 91 Acts, ch 52, §9 SF 326
NEW subsections 5 and 6

411.37 Board responsible for transition.

1. The board of trustees for the statewide system is responsible for effecting the transition from the city fire and police retirement systems to the statewide fire and police retirement system. The board shall adopt a transition plan and other appropriate transition documents it deems necessary to accomplish the transition in accordance with the requirements of this chapter. The city fire and police retirement systems shall comply with orders of the board issued pursuant to the transition plan or other transition documents.

2. The board shall include in the transition plan or other transition documents, provisions to facilitate continuity under sections 411.20, 411.21, and 411.30 and a recommendation for an equitable process for determining earnable compensation changes when calculating adjustments to pensions under section 411.6, subsection 12, to be submitted to the general assembly meeting in 1991.

3. For each of the fiscal years beginning July 1, 1990, and July 1, 1991, ten percent of the amount appropriated for distribution to cities as provided in section 411.20 shall be made available to the board of trustees for the statewide system to cover the administrative costs of the transition. The amount distributed to each city shall be reduced accordingly. The moneys remaining unencumbered or unexpended at the end of the fiscal year beginning July 1, 1990, and the moneys remaining unencumbered or unexpended on January 1, 1992, shall be credited to the cities in the same proportion as the reduction.

91 Acts, ch 52, §3 SF 326

Subsection 3 amended

CHAPTER 414

MUNICIPAL ZONING

414.29 Elder family homes.

A city council or city zoning commission shall consider an elder family home a family home, as defined in section 414 22, for purposes of zoning, in accordance with section 249E 2, and may identify limita-

tions regarding the proximity of one proposed elder family home to another

91 Acts ch 88 §4 SF 10
NFW section

CHAPTER 420

CITIES UNDER SPECIAL CHARTER

420.246 Tax and deed statutes applicable.

Sections 446 16, 446 32, and 448 10 to 448 12 are applicable to cities acting under special charters, except that, where the word "treasurer" is used, there shall be substituted the words "city collector or treasurer or deputy treasurer or deputy or officer autho

rized to collect city taxes", and where the word "auditor" is used, there shall be substituted the words "city clerk or recorder"

91 Acts ch 191 §17 HF 687
1991 amendment effective April 1 1992 91 Acts ch 191 §124 HF 687
Section amended

CHAPTER 421

DEPARTMENT OF REVENUE AND FINANCE

421.17 Powers and duties of director.

In addition to the powers and duties transferred to the director of revenue and finance, 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 and finance 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 and finance 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 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 real property transfer tax, the sale price or consideration, and the equalized value at which that property was assessed that year. This report with further information 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 the records of the ratio of assessments to actual sales prices for all counties, and for cities having city assessors, and the 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 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 to recipients or to providers of services to recipients which the investigations division of the department of inspections and appeals 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 and finance 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 investigations division of the department of inspections and appeals shall obtain and forward to the department of revenue and finance the full name and social security number of the debtor. The department of revenue and finance 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 investigations division of the department of inspections and appeals. However, only rele-

vant information required by the child support unit, by the foster care recovery unit, or by the investigations division of the department of inspections and appeals shall be provided by the department of revenue and finance. 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 investigations division of the department of inspections and appeals shall, at least annually, submit to the department of revenue and finance 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 and the department of inspections and appeals by rule.

d. Upon submission of a claim the department of revenue and finance shall notify the child support recovery unit, the foster care recovery unit, or the investigations division of the department of inspections and appeals as to whether the debtor is entitled to a refund or rebate and if so entitled shall notify the unit or division 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 investigations division of the department of inspections and appeals shall send written notification to the debtor, and a copy of the notice to the department of revenue and finance, of the unit's or division's assertion of its rights, or the rights of the department of human services, 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 of human services within fifteen days from the mailing of the notice of entitlement to a refund or rebate, the department of human services shall grant a hearing pursuant to chapters 10A and 17A. An appeal taken from the decision of an administrative law judge 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 investigations division of the department of inspections and appeals, 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 division shall notify the department of revenue and finance of the request to divide a joint income tax refund or rebate. The de-

partment of revenue and finance 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 and finance shall, after notice has been sent to the debtor by the child support recovery unit, the foster care recovery unit, or the investigations division of the department of inspections and appeals, 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 and finance 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 investigations division of the department of inspections and appeals shall notify the department of revenue and finance not to set off the debt against the debtor's income tax refund or rebate. The department of revenue and finance shall refund any balance of the income tax refund or rebate to the debtor. The department of revenue and finance shall periodically transfer the amount set off to the child support recovery unit, the foster care recovery unit, or the investigations division of the department of inspections and appeals. If the debtor gives timely written notice of intent to contest the claim the department of revenue and finance 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 investigations division of the department of inspections and appeals 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 and finance 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 student aid commission shall obtain and forward to the department of revenue and finance the full name and social security number of the defaulter. The department of revenue and finance shall cooperate in the exchange of relevant information with the college student aid commission.

c. The college student aid commission shall, at least annually, submit to the department of revenue and finance for setoff the guaranteed student loan defaults, which are at least fifty dollars, on a date or dates to be specified by the college student aid commission by rule.

d. Upon submission of a claim, the department of revenue and finance shall notify the college student 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 student aid commission shall send written notification to the defaulter, and a copy of the notice to the department of revenue and finance, 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 an administrative law judge 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 student 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 and finance of the request to divide a joint income tax refund or rebate. The department of revenue and finance 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 and finance shall, after notice has been sent to the defaulter by the college student 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 and finance shall periodically transfer the amount set off to the college student 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 student 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 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 payments filed under subsections 21, 23, 25, and 29 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 student aid commission under subsection 23, next priority shall be given to claims filed by the investigations division of the department of inspections and appeals under subsection 21, next priority shall be given to claims filed by a clerk of the district court under subsection 25, and last priority shall be given to claims filed by other state agencies under subsection 29. In the case of multiple claims under subsection 29, priority shall be determined in accordance with rules to be established by the director.

27. Administer chapter 99E.

28. Assume the accounting functions of the state comptroller's office.

29. To establish and maintain a procedure to set off against any claim owed to a person by a state

agency any liability of that person owed to a state agency, except the setoff procedures provided for in subsections 21, 23, and 25. The procedure shall only apply when at the discretion of the director it is feasible. The procedure shall meet the following conditions:

a. For purposes of this subsection unless the context requires otherwise:

(1) "State agency" means a board, commission, department, including the department of revenue and finance, or other administrative office or unit of the state of Iowa. The term "state agency" does not include the general assembly, the governor, or any political subdivision of the state, or its offices and units.

(2) "Department" means the department of revenue and finance.

(3) The term "person" does not include a state agency.

b. Before setoff, a person's liability to a state agency and the person's claim on a state agency shall be in the form of a liquidated sum due, owing, and payable.

c. Before setoff, the state agency shall obtain and forward to the department the full name and social security number of the person liable to it or to whom a claim is owing who is a natural person. If the person is not a natural person, before setoff, the state agency shall forward to the department the information concerning the person as the department shall, by rule, require. The department shall cooperate with other state agencies in the exchange of information relevant to the identification of persons liable to or claimants of state agencies. However, the department shall provide only relevant information required by a state agency. The information shall be held in confidence and used for the purpose of setoff only. Section 422.72, subsection 1, does not apply to this paragraph.

d. Before setoff, a state agency shall, at least annually, submit to the department the information required by paragraph "c" along with the amount of each person's liability to and the amount of each claim on the state agency. The department may, by rule, require more frequent submissions.

e. Before setoff, the amount of a person's claim on a state agency and the amount of a person's liability to a state agency shall be at least fifty dollars.

f. Upon submission of an allegation of liability by a state agency, the department shall notify the state agency whether the person allegedly liable is entitled to payment from a state agency, and, if so entitled, shall notify the state agency of the amount of the person's entitlement and of the person's last address known to the department. Section 422.72, subsection 1, does not apply to this paragraph.

g. Upon notice of entitlement to a payment, the state agency shall send written notification to that person of the state agency's assertion of its rights to all or a portion of the payment and of the state agency's entitlement to recover the liability through the setoff procedure, the basis of the assertion, the op-

portunity to request that a jointly or commonly owned right to payment be divided among owners, and the person's opportunity to give written notice of intent to contest the amount of the allegation. The state agency shall send a copy of the notice to the department. A state agency subject to chapter 17A shall give notice, conduct hearings, and allow appeals in conformity with chapter 17A.

h Upon the timely request of a person liable to a state agency or of the spouse of that person and upon receipt of the full name and social security number of the person's spouse, a state agency shall notify the department of the request to divide a jointly or commonly owned right to payment. Any jointly or commonly owned right to payment is rebuttably presumed to be owned in equal portions by its joint or common owners.

i The department shall, after the state agency has sent notice to the person liable, set off the amount owed to the agency against any amount which a state agency owes that person. The department shall refund any balance of the amount to the person. The department shall periodically transfer amounts set off to the state agencies entitled to them. If a person liable to a state agency gives written notice of intent to contest an allegation, a state agency shall hold a refund or rebate until final disposition of the allegation. Upon completion of the set-off, a state agency shall notify in writing the person who was liable.

j The department's existing right to credit against tax due or to become due under section 422.73 is not to be impaired by a right granted to or a duty imposed upon the department or other state agency by this subsection. This subsection is not intended to impose upon the department any additional requirement of notice, hearing, or appeal concerning the right to credit against tax due under section 422.73.

30. Under substantive rules established by the director, the department shall seek reimbursement from other state agencies to recover its costs for setting off liabilities.

31. At the director's discretion, accept payment of taxes, penalties, interest, and fees, or any portion thereof, by credit card. The director may adjust the payable amount to reflect the costs of processing the payment as determined by the treasurer of state and the payment by credit card shall include, in addition to all other charges, any discount charged by the credit card issuer.

32. To ensure that persons employed under contract, other than officers or employees of the state, who provide assistance in administration of tax laws and who are directly under contract or who are involved in any way with work under the contract and who have access to confidential information are subject to applicable requirements and penalties of tax information confidentiality laws of the state regarding all tax return, return information, or investigative or audit information that may be required to be divulged in order to carry out the duties specified under the contract.

33. *a* To develop and administer an indirect cost allocation system for state agencies. The system shall be based upon standard cost accounting methodologies and shall be used to allocate both direct and indirect costs of state agencies or state agency functions in providing centralized services to other state agencies. A cost that is allocated to a state agency pursuant to this system shall be billed to the state agency and the cost is payable to the general fund of the state. The source of payment for the billed cost shall be any revenue source except for the general fund of the state. If a state agency is authorized by law to bill and recover direct expenses, the state agency shall recover indirect costs in the same manner.

b For the purposes of this subsection, "state agency" means a board, commission, department, including the department of revenue and finance, or other administrative office, institution, bureau, or unit of the state of Iowa. The term "state agency" does not include the general assembly, the governor, the courts, or any political subdivision of the state, or its offices and units.

91 Acts ch 159 §3 SF 356, 91 Acts ch 268 §127 SF 529
NEW subsections 32 and 33

421.27 Penalties.

1. *Failure to timely file a return or deposit form*
If a person fails to file with the department on or before the due date a return or deposit form there shall be added to the tax shown due or required to be shown due a penalty of ten percent of the tax shown due or required to be shown due. The penalty, if assessed, shall be waived by the department upon a showing of any of the following conditions:

a At least ninety percent of the tax required to be shown due has been paid by the due date of the tax.

b Those taxpayers who are required to file quarterly returns, or monthly or semimonthly deposit forms may have one late return or deposit form within a three-year period. The use of any other penalty exception will not count as a late return or deposit form for purposes of this exception.

c The death of a taxpayer, death of a member of the immediate family of the taxpayer, or death of the person directly responsible for filing the return and paying the tax, when the death interferes with timely filing.

d The onset of serious, long-term illness or hospitalization of the taxpayer, of a member of the immediate family of the taxpayer, or of the person directly responsible for filing the return and paying the tax.

e Destruction of records by fire, flood, or other act of God.

f The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal internal

revenue service, whichever is appropriate, that has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.

g. Reliance upon results in a previous audit was a direct cause for the failure to file where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision, or the adoption, amendment, or repeal of a rule or law.

h. Under rules prescribed by the director, the taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form.

i. The return, deposit form, or payment is timely, but erroneously, mailed with adequate postage to the internal revenue service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage.

j. The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.

k. The failure to file was discovered through a sanctioned self-audit program conducted by the department.

2. *Failure to timely pay the tax shown due, or the tax required to be shown due, with the filing of a return or deposit form.* If a person fails to pay the tax shown due or required to be shown due, on a return or deposit form on or before the due date there shall be added to the tax shown due or required to be shown due a penalty of five percent of the tax due. The penalty, if assessed, shall be waived by the department upon a showing of any of the following conditions:

a. At least ninety percent of the tax required to be shown due has been paid by the due date of the tax.

b. The taxpayer voluntarily files an amended return and pays all tax shown to be due on the return prior to any contact by the department, except under a sanctioned self-audit program conducted by the department.

c. The taxpayer provides written notification to the department of a federal audit while it is in progress and voluntarily files an amended return which includes a copy of the federal document showing the final disposition or final federal adjustments within sixty days of the final disposition of the federal government's audit.

d. The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal internal revenue service, whichever is appropriate, that has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.

e. Reliance upon results in a previous audit was a direct cause for the failure to pay the tax required to be shown due where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision, or the adoption, amendment, or repeal of a rule or law.

f. Under rules prescribed by the director, the taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form.

g. The return, deposit form, or payment is timely, but erroneously, mailed with adequate postage to the internal revenue service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage.

h. The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.

3. *Audit deficiencies.* If any person fails to pay the tax required to be shown due with the filing of a return or deposit and the department discovers the underpayment, there shall be added to the tax required to be shown due a penalty of five percent of the tax required to be shown due. The penalty, if assessed, shall be waived by the department upon a showing of any of the following conditions:

a. At least ninety percent of the tax required to be shown due has been paid by the due date.

b. The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal internal revenue service, whichever is appropriate, that has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.

c. Reliance upon results in a previous audit was a direct cause for the failure to pay the tax shown due or required to be shown due where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision, or the adoption, amendment, or repeal of a rule or law.

d. Under rules prescribed by the director, the taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form.

4. *Willful failure to file or deposit.* In case of willful failure to file a return or deposit form with the intent to evade tax, or in case of willfully filing a false return or deposit form with the intent to evade tax, in lieu of the penalties otherwise provided in this section, a penalty of seventy-five percent shall be added to the amount shown due or required to be shown as tax on the return or deposit form. If penalties are applicable for failure to file a return or deposit form

and failure to pay the tax shown due or required to be shown due on the return or deposit form, the penalty provision for failure to file shall be in lieu of the penalty provisions for failure to pay the tax shown due or required to be shown due on the return or deposit form, except in the case of willful failure to file a return or deposit form or willfully filing a false return or deposit form with intent to evade tax.

The penalties imposed under this subsection are not subject to waiver.

5. *Failure to remit on extension.* If a person fails to remit at least ninety percent of the tax required to be shown due by the time an extension for further time to file a return is made, there shall be added to the tax shown due or required to be shown due a penalty of ten percent of the tax due.

6. *Failure to use required form.* If a person fails to remit payment of taxes in the form required by the rules of the director, there shall be added to the amount of the tax a penalty of five percent of the amount of tax shown due or required to be shown due. The penalty imposed by this subsection shall be waived if the taxpayer did not receive notification of the requirement to remit tax payments electronically or if the electronic transmission of the payment was not in a format or by means specified by the director and the payment was made before the taxpayer was notified of the requirement to remit tax payments electronically.

91 Acts, ch 97, §45 HF 198, 91 Acts, ch 159, §4-6 SF 356
 1991 amendment to subsection 4, unnumbered paragraph 2, and addition of subsection 5, by 91 Acts, ch 159, §4 and 5, retroactive to January 1, 1991, for tax years beginning on or after that date, 91 Acts, ch 159, §31 SF 356
 Subsection 6 effective July 1, 1991, for tax payments due on or after that date, 91 Acts, ch 159, §32 SF 356
 See Code editor's note to §15 287
 Subsection 4, unnumbered paragraph 2 amended
 NEW subsections 5 and 6

421.38 Limits on claims.

The director of the department of revenue and finance is limited in authorizing the payment of claims, as follows:

1. *Three months limit.* A claim shall not be allowed by the department of revenue and finance if the claim is presented after the lapse of three months from its accrual. However, this time limit is subject to the following exceptions:

a. Claims by state employees for benefits pursuant to chapters 85, 85A, and 86 are subject to limitations provided in those chapters.

b. Claims for medical assistance payments authorized under chapter 249A are subject to the time limits imposed by rule adopted by the department.

2. *Convention expenses.* Claims for expenses in attending conventions, meetings, conferences, or gatherings of members of an association or society organized and existing as a quasi-public association or society outside the state of Iowa shall not be allowed at public expense, unless authorized by the executive council; and claims for these expenses outside of the state shall not be allowed unless the voucher is accompanied by the portion of the minutes of the executive council, certified to by its secretary, showing that the expense was authorized by the council. This section does not apply to claims in favor of the governor, attorney general, utilities board members, or to trips referred to in sections 97B.4 and 217.20.

3. *Payment from fees.* No claims for per diem and expenses payable from fees shall be approved for payment in excess of those fees if the law provides that such expenditures are limited to the special funds collected and deposited in the state treasury.

91 Acts, ch 158, §10 SF 343
 Subsection 1 amended

CHAPTER 422

INCOME, CORPORATION, SALES AND BANK TAX

Timely filing or performance for certain individuals in the armed forces, see § 422 21

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 and finance.

3. "*Court*" means the district court in the county of the taxpayer's residence.

4. "*Director*" means the director of revenue and finance.

5. "*Internal Revenue Code*" means the Internal Revenue Code of 1954, prior to the date of its redesignation as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, or means the Internal Revenue Code of 1986 as amended to and including January 1, 1991, whichever is applicable.

91 Acts, ch 215, §1 SF 83
 1991 amendment to subsection 5 retroactive to January 1, 1990, for tax years beginning on or after that date, 91 Acts, ch 215, §6 SF 83
 Subsection 5 amended

422.5 Tax imposed — exclusions — alternative minimum tax.

1 A tax is imposed upon every resident and non-resident 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 all taxable income from zero through one thousand dollars, four-tenths of one percent

b On all taxable income exceeding one thousand dollars but not exceeding two thousand dollars, eight-tenths of one percent

c On all taxable income exceeding two thousand dollars but not exceeding four thousand dollars, two and seven-tenths percent

d On all taxable income exceeding four thousand dollars but not exceeding nine thousand dollars, five percent

e On all taxable income exceeding nine thousand dollars but not exceeding fifteen thousand dollars, six and eight-tenths percent

f On all taxable income exceeding fifteen thousand dollars but not exceeding twenty thousand dollars, seven and two-tenths percent

g On all taxable income exceeding twenty thousand dollars but not exceeding thirty thousand dollars, seven and fifty-five hundredths percent

h On all taxable income exceeding thirty thousand dollars but not exceeding forty five thousand dollars, eight and eight-tenths percent

i On all taxable income exceeding forty five thousand dollars, nine and ninety-eight hundredths percent

j The tax imposed upon the taxable income of a nonresident shall be computed by reducing the amount determined pursuant to paragraphs "a" through "i" 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

k 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 "j" or the state alternative minimum tax equal to seventy-five percent of the maximum state individual income tax rate for the tax year, rounded to the nearest one-tenth of one 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, except subsections (a)(1), (a)(2), and (a)(5),

of the Internal Revenue Code, make the adjustments included in federal alternative minimum taxable income under section 56, except subsections (a)(4), (b)(1)(C)(m), and (d), of the Internal Revenue Code, and add losses as required by section 58 of the Internal Revenue Code. In the case of an estate or trust, the items of tax preference, adjustments, and losses shall be apportioned between the estate or trust and the beneficiaries in accordance with rules prescribed by the director

(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

(d) The exemption amount shall be reduced, but not below zero, by an amount equal to twenty-five percent of the amount by which the alternative minimum taxable income of the taxpayer, computed without regard to the exemption amount in this subparagraph, exceeds the following

(i) Seventy-five thousand dollars in the case of a taxpayer described in subparagraph subdivision (a)

(ii) One hundred twelve thousand five hundred dollars in the case of a taxpayer described in subparagraph subdivision (b)

(iii) One hundred fifty thousand dollars in the case of a taxpayer described in subparagraph subdivision (c)

(3) 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 deduction for a net operating loss for a tax year beginning after December 31, 1986, which is carried back or carried forward to the current taxable year shall not exceed ninety percent of the alternative minimum taxable income determined without regard for the net operating loss deduction

The state alternative minimum tax of a taxpayer whose net capital gain deduction includes 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 per-

cent 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 through 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, plus tax preference items, adjustments, and losses under subparagraph (1) attributable to Iowa and with a denominator of the sum of total net income computed under section 422.7 plus all tax preference items, adjustments, and losses under subparagraph (1). 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, adjustments, and losses under subparagraph (1) bear to the combined preference items, adjustments, and losses under subparagraph (1) of both spouses.

2. However, the tax shall not be imposed on a resident or nonresident whose net income, as defined in section 422.7, is seven thousand five hundred dollars or less in the case of married persons filing jointly or filing separately on a combined return, unmarried heads of household, and surviving spouses or five thousand dollars or less in the case of all other persons; but in the event that the payment of tax under this division would reduce the net income to less than seven thousand five hundred dollars or five thousand dollars as applicable, then the tax shall be reduced to that amount which would result in allowing the taxpayer to retain a net income of seven thousand five hundred dollars or five thousand dollars as applicable. The preceding sentence does not apply to estates or trusts. For the purpose of this subsection, the entire net income, including any part of the net income not allocated to Iowa, shall be taken into account. For purposes of this subsection, net income includes all amounts of pensions or other retirement income received from any source which is not taxable under this division as a result of the government pension exclusions in section 422.7, or any other state law. If the combined net income of a husband and wife exceeds seven thousand five hundred dollars, neither of them shall receive the benefit of this subsection, and it is immaterial whether they file a joint return or separate returns. However, if a husband and wife file separate returns and have a combined net income of seven thousand five hundred dollars or less, neither spouse shall receive the benefit of this paragraph, if one spouse has a net operating loss and elects to carry back or carry forward the loss as provided in section 422.9, subsection 3. A person who is claimed as a dependent by another person as defined in section 422.12 shall not receive

the benefit of this subsection if the person claiming the dependent has net income exceeding seven thousand five hundred dollars or five thousand dollars as applicable or the person claiming the dependent and the person's spouse have combined net income exceeding seven thousand five hundred dollars or five thousand dollars as applicable.

In addition, if the married persons', filing jointly or filing separately on a combined return, unmarried head of household's, or surviving spouse's net income exceeds seven thousand five hundred dollars, the regular tax imposed under this division shall be the lesser of the maximum state individual income tax rate times the portion of the net income in excess of seven thousand five hundred dollars or the regular tax liability computed without regard to this sentence. Taxpayers electing to file separately shall compute the alternate tax described in this paragraph using the total net income of the husband and wife. The alternate tax described in this paragraph does not apply if one spouse elects to carry back or carry forward the loss as provided in section 422.9, subsection 3.

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. Upon determination of the latest cumulative inflation factor, the director shall multiply each dollar amount set forth in subsection 1, paragraphs "a" through "i" of this section 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.

7. The state income tax of a taxpayer whose net income includes 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. For purposes of this subsection, in the case of married taxpayers, except in the case of a husband and wife who live apart at all times during the tax year, the assets and liabilities of both spouses shall be considered in determining if the fair market value of the taxpayer's assets exceed the taxpayer's liabilities.

8. 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 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 seven thousand five hundred dollar or less or five thousand dollar or less exclusion, as applicable.

9. In the case of income derived from the sale or exchange of livestock which qualifies under section 451(e) of the Internal Revenue Code because of drought, the taxpayer may elect to include the income in the taxpayer's net income in the tax year following the year of the sale or exchange in accordance with rules prescribed by the director.

10. If an individual's federal income tax was forgiven for a tax year under section 692 of the Internal Revenue Code, because the individual was killed while serving in an area designated by the president of the United States or the United States Congress as a combat zone, the individual was missing in action and presumed dead, or the individual was killed outside the United States in a terroristic or military action while the individual was a military or civilian employee of the United States, the individual's Iowa income tax is also forgiven for the same tax year.

91 Acts, ch 159, §7 SF 356, 91 Acts, ch 196, §1 HF 489

1991 amendment to subsection 2, unnumbered paragraph 1, retroactive to January 1, 1989, for tax years beginning on or after that date, 91 Acts, ch 159, §33 SF 356

Subsection 10 retroactive to August 2, 1990, for tax years ending on or after that date, 91 Acts, ch 196, §4 HF 489

Subsection 2, unnumbered paragraph 1 amended

NEW subsection 10

422.6 Income from estates or trusts.

The tax imposed by section 422.5 less the credits allowed under sections 422.10, 422.11A, 422.11B, and 422.11C, and the personal exemption credit allowed under section 422.12 apply to and are a charge against estates and trusts with respect to their taxable income, and the rates are the same as those applicable to individuals. The fiduciary shall make the return of income for the estate or trust for which the fiduciary acts, whether the income is taxable to the estate or trust or to the beneficiaries.

The beneficiary of a trust who receives an accumulation distribution shall be allowed credit without interest for the Iowa income taxes paid by the trust attributable to the accumulation distribution in a manner corresponding to the provisions for credit under the federal income tax relating to accumulation distributions as contained in the Internal Revenue Code. The trust is not entitled to a refund of taxes paid on the distributions. The trust shall maintain detailed records to verify the computation of the tax.

91 Acts, ch 159, §8 SF 356

1991 amendment to unnumbered paragraph 1 in 91 Acts, ch 159, §8, retroac-

tive to January 1, 1991, for tax years beginning on or after that date, 91 Acts, ch 159, §31 SF 356

Unnumbered paragraph 1 amended

422.7 "Net income" — how computed.

The term "net income" means the adjusted gross income before the net operating loss deduction as properly computed for federal income tax purposes under the Internal Revenue Code, 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.

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. 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. The disability income exclusion provided in section 105(d) of the Internal Revenue Code, 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.

6. 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.

7. 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 and shall compute the amount of expensing of business assets and capital loss subject to the limitations for joint federal in-

come tax return filers provided by sections 179(b) and 1211(b) respectively of the Internal Revenue Code

8 Subtract the amount of the jobs tax credit allowable for the tax year under section 51 of the Internal Revenue Code to the extent that the credit increased federal adjusted gross income

9 Subtract the amount of the alcohol fuel credit allowable for the tax year under section 40 of the Internal Revenue Code to the extent that the credit increased federal adjusted gross income

10 Notwithstanding the method for computing the amount of travel expenses that may be deducted under section 162(h) of the Internal Revenue Code, for tax years beginning on or after January 1, 1987, a member of the general assembly whose place of residence within the legislative district is greater than fifty miles from the capitol building of the state may deduct the total amount per day determined under section 162(h)(1)(B) of the Internal Revenue Code and a member of the general assembly whose place of residence within the legislative district is fifty or fewer miles from the capitol building of the state may deduct fifty dollars per day. This subsection does not apply to a member of the general assembly who elects to itemize for state tax purposes the member's travel expenses

11 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 for property placed in service by the transferee prior to January 1, 1986, 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 as amended to and including December 31, 1985. Entitlement to depreciation on any property included in a sale-leaseback agreement which is placed in service by the transferee prior to January 1, 1986, shall be determined under the Internal Revenue Code as amended to and including December 31, 1985, excluding section 168(f)(8) in making the determination

12 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 who 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 sixty-five percent of the wages paid to individuals, but shall not exceed twenty thousand dollars per individual, 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 division of job service of the department of employment services, 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

12A If the adjusted gross income includes income or loss from a business operated by the taxpayer, and if the business does not qualify for the adjustment under subsection 12, an additional deduction shall be allowed in computing the income or loss from the business if the business hired for employment in the state during its annual accounting period ending with or during the taxpayer's tax year either of the following

a 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.

b 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 sixty-five percent of the wages paid to individuals, but shall not exceed twenty thousand dollars per individual, named in paragraphs "a" and "b" 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 division of job service of the department of employment services, 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.

The department shall develop and distribute information concerning the deduction available for businesses employing persons named in paragraphs "a" and "b"

13. 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 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. The benefits included in net income must be allocated between the spouses in the ratio of the social security benefits received by each spouse to the total of these benefits received by both spouses.

14. Add the amount of intangible drilling and development costs optionally deducted in the year paid or incurred as described in section 57(a)(2) of the Internal Revenue Code. This amount may be recovered

through cost depletion or depreciation, as appropriate under rules prescribed by the director.

15. Add the percentage depletion amount determined with respect to an oil, gas, or geothermal well as described in section 57(a)(1) of the Internal Revenue Code.

16. Subtract the income resulting 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 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 ninety 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 a reasonable belief that the creditor can force a sale of the asset. For purposes of this subsection, in the case of married taxpayers, except in the case of a husband and wife who live apart at all times during the tax year, the assets and liabilities of both spouses shall be considered for purposes of determining the taxpayer's net worth or the taxpayer's debt to asset ratio.

17. Add interest and dividends from regulated investment companies exempt from federal income tax under the Internal Revenue Code and subtract the loss on the sale or exchange of a share of a regulated investment company held for six months or less to the extent the loss was disallowed under section 852(b)(4)(B) of the Internal Revenue Code.

18. Reserved.

19. Subtract interest earned on bonds and notes issued by the agricultural development authority as provided in section 175.17, subsection 10.

20. Subtract, to the extent included, the proceeds received pursuant to a judgment in or settlement of a lawsuit against the manufacturer or distributor of a Vietnam herbicide for damages resulting from exposure to the herbicide. This subsection applies to proceeds received by a taxpayer who is a disabled veteran or who is a beneficiary of a disabled veteran.

For purposes of this subsection:

a. "Vietnam herbicide" means a herbicide, defoliant or other causative agent containing dioxin, including, but not limited to, Agent Orange, used in the Vietnam conflict beginning December 22, 1961, and ending May 7, 1975, inclusive.

b. "Agent Orange" means the herbicide composed of trichlorophenoxyacetic acid and dichlorophenoxyacetic acid and the contaminant dioxin (TCDD).

21. Subtract forty-five percent of the net capital gain from the following:

a. Net capital gain from the sale of real property used in a business, in which the taxpayer materially participated for ten years, as defined in section 469(h) of the Internal Revenue Code, and which has been held for a minimum of ten years, or from the sale of a business, as defined in section 422.42, in which the taxpayer was employed or in which the taxpayer materially participated for ten years, as defined in section 469(h) of the Internal Revenue Code, and which has been held for a minimum of ten years. The sale of a business means the sale of all or substantially all of the tangible personal property or service of the business.

b. Net capital gain from the sale of cattle or horses held by the taxpayer for breeding, draft, dairy, or sporting purposes for a period of twenty-four months or more from the date of acquisition; but only if the taxpayer received more than one-half of the taxpayer's gross income from farming or ranching operations during the tax year.

c. Net capital gain from the sale of breeding livestock, other than cattle or horses, if the livestock is held by the taxpayer for a period of twelve months or more from the date of acquisition; but only if the taxpayer received more than one-half of the taxpayer's gross income from farming or ranching operations during the tax year.

d. Net capital gain from the sale of timber as defined in section 631(a) of the Internal Revenue Code.

The net capital gain of paragraphs "a", "b", "c", and "d" together shall not exceed seventeen thousand five hundred dollars for the tax year. Married taxpayers who elect separate filing on a combined return for state tax purposes are treated as one taxpayer and the amount of net capital gain to be used to determine the total amount to be subtracted by them shall not exceed seventeen thousand five hundred dollars in the aggregate. Married taxpayers who file jointly or separately on a combined return shall prorate the seventeen thousand five hundred dollar limitation between them based on the ratio of each spouse's net capital gain to the total net capital gain of both spouses. In the case of married taxpayers filing separate returns, the amount of net capital gain to be used to determine the amount to be subtracted by each spouse shall not exceed eight thousand seven hundred fifty dollars.

22. Subtract, to the extent included, the amounts paid to an eligible individual under section 105 of the Civil Liberties Act of 1988, Pub. L. No. 100-383,

Title I, as satisfaction for a claim against the United States arising out of the confinement, holding in custody, relocation, or other deprivation of liberty or property of an individual of Japanese ancestry.

23. Reserved.

24. Subtract to the extent included, active duty pay received by a person in the national guard or armed forces military reserve for services performed on or after August 2, 1990, pursuant to military orders related to the Persian Gulf Conflict.

25. If the federal adjusted gross income includes income or loss from a business or farm or from an interest in a corporation whose income is taxed to the shareholders, add the expenses otherwise deductible under section 162(a) of the Internal Revenue Code which were incurred by the business, farm, or corporation, for which the taxpayer was entitled to all or part of the deduction, with respect to expenditures made at, or payments made to, a club which restricts membership or the use of its services or facilities on the basis of age, sex, marital status, race, religion, color, ancestry, or national origin.

A club described in this subsection holding an alcoholic beverage license pursuant to chapter 123 shall provide on each receipt furnished to a taxpayer a printed statement as follows: "The expenditures covered by this receipt are nondeductible for state income tax purposes."

For the purposes of this subsection, a club means any nonprofit corporation or association of individuals, which is the owner, lessee, or occupant of a permanent building or part of a building, membership in which entails the prepayment of regular dues, and which is not operated for a profit other than such profits as would accrue to the entire membership.

90 Acts, ch 1271, §1903 HF 2569, 91 Acts, ch 196, §2 HF 489, 91 Acts, ch 210, §1 HF 417

Subsection 23, Code 1991, was effective only for tax years beginning on or after January 1, 1990, and before January 1, 1991, 90 Acts, ch 1271, §1902, 1903

Subsection 24 retroactive to August 2, 1990, for tax years ending on or after that date, 91 Acts, ch 196, §4 HF 489

1991 amendment adding subsection 25 effective July 1, 1991

Subsection 23 stricken

NEW subsections 24 and 25

422.9 Deductions from net income.

In computing taxable income of individuals, there shall be deducted from net income the larger of the following amounts:

1. An optional standard deduction, after deduction of federal income tax, equal to one thousand two hundred thirty dollars for a married person who files separately or a single person or equal to three thousand thirty dollars for a husband and wife who file a joint return, a surviving spouse, or an unmarried head of household. The optional standard deduction shall not exceed the amount remaining after deduction of the federal income tax.

2. The total of contributions, interest, taxes, medical expense, nonbusiness losses, miscellaneous expenses and moving expenses deductible for federal income tax purposes under the Internal Revenue Code, with the following adjustments:

a. Subtract the deduction for Iowa income taxes.

b. Add the amount of federal income taxes paid or accrued as the case may be, during the tax year, adjusted by any federal income tax refunds. Provided, however, that where married persons, who have filed a joint federal income tax return, file separately, such total shall be divided between them according to the portion thereof paid or accrued, as the case may be, by each.

c. Add the amount by which expenses paid or incurred in connection with the adoption of a child by the taxpayer exceed three percent of the net income of the taxpayer, or of the taxpayer and spouse in the case of a joint return. The expenses may include medical and hospital expenses of the natural mother which are incident to the child's birth and are paid by the taxpayer, welfare agency fees, legal fees, and all other fees and costs relating to the adoption of a child if the child is placed by a child-placing agency licensed under chapter 238 or by a person making an independent placement according to the provisions of chapter 600.

d. Add an additional deduction for mileage incurred by the taxpayer in voluntary work for a charitable organization consisting of the excess of the state employee mileage reimbursement over the amount deductible for federal income tax purposes. The deduction shall be proven by the keeping of a contemporaneous diary by the person throughout the period of the voluntary work in the tax year.

e. Add the amount, not to exceed five thousand dollars, of expenses not otherwise deductible under this section actually incurred in the home of the taxpayer for the care of a person who is the grandchild, child, parent, or grandparent of the taxpayer or the taxpayer's spouse and who is unable, by reason of physical or mental disability, to live independently and is receiving, or would be eligible to receive if living in a health care facility licensed under chapter 135C, medical assistance benefits under chapter 249A. In the event that the person being cared for is receiving assistance benefits under chapter 239, the expenses not otherwise deductible shall be the net difference between the expenses actually incurred in caring for the person and the assistance benefits received under chapter 239.

f. Add the amount the taxpayer has paid to others, not to exceed one thousand dollars for each dependent in grades kindergarten through twelve, for tuition and textbooks of each dependent in attending an elementary or secondary school situated in Iowa, which school is accredited or approved under section 256.11, which is not operated for profit, and which adheres to the provisions of the federal Civil Rights Act of 1964 and chapter 601A. As used in this lettered paragraph, "textbooks" means books and other instructional materials and equipment used in elementary and secondary schools in teaching only those subjects legally and commonly taught in public elementary and secondary schools in this state and does not include instructional books and materials used in the teaching of religious tenets, doctrines, or worship, the purpose of which is to inculcate those

tenets, doctrines, or worship, and does not include books or materials for extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or programs of a similar nature. The deduction in this paragraph does not apply to a taxpayer whose net income, as properly computed for state tax purposes, is forty-five thousand dollars or more. In the case where the taxpayer is married, whether filing jointly or separately, the deduction does not apply if the combined net income of the taxpayer and spouse is forty-five thousand dollars or more.

As used in this lettered paragraph, "tuition" means any charges for the expenses of personnel, buildings, equipment and materials other than textbooks, and other expenses of elementary or secondary schools which relate to the teaching only of those subjects legally and commonly taught in public elementary and secondary schools in this state and which do not relate to the teaching of religious tenets, doctrines, or worship, the purpose of which is to inculcate those tenets, doctrines, or worship, and which do not relate to extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or programs of a similar nature.

g. Subtract the expenses otherwise deductible under section 162(a) of the Internal Revenue Code which were incurred by a taxpayer with respect to expenditures made at, or payments made to, a club which restricts membership or the use of its services or facilities on the basis of age, sex, marital status, race, religion, color, ancestry, or national origin.

A club described in this lettered paragraph holding an alcoholic beverage license pursuant to chapter 123 shall provide on each receipt furnished to a taxpayer a printed statement as follows: "The expenditures covered by this receipt are nondeductible for state income tax purposes."

For the purposes of this lettered paragraph, a club means any nonprofit corporation or association of individuals, which is the owner, lessee, or occupant of a permanent building or part of a building, membership in which entails the prepayment of regular dues, and which is not operated for a profit other than such profits as would accrue to the entire membership.

3. If, after applying all of the adjustments provided for in section 422.7, the allocation provisions of section 422.8, and the deductions allowable in this section subject to the modifications provided in section 172(d) of the Internal Revenue Code, the taxable income results in a net operating loss, the net operating loss shall be deducted as follows:

a. The Iowa net operating loss shall be carried back three taxable years or to the taxable year in which the individual first earned income in Iowa whichever year is the later.

b. The Iowa net operating loss remaining after being carried back as required in paragraph "a" of this subsection or if not required to be carried back shall be carried forward fifteen taxable years.

c. If the election under section 172(b)(3)(C) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward fifteen taxable years.

4. Where married persons file separately, both must use the optional standard deduction if either elects to use it.

5. A taxpayer affected by section 422.8 shall, if the optional standard deduction is not used, be permitted to deduct only such portion of the total referred to in subsection 2 above as is fairly and equitably allocable to Iowa under the rules prescribed by the director.

91 Acts, ch 159, §9 SF 356, 91 Acts, ch 210 §2 HF 417
 1991 amendment to subsection 2, paragraph f, unnumbered paragraph 1, in 91 Acts, ch 159, §9, retroactive to January 1, 1991, for tax years beginning on or after that date, 91 Acts, ch 159, §31 SF 356
 1991 amendment adding paragraph g to subsection 2 effective July 1 1991
 Subsection 2, paragraph f, unnumbered paragraph 1 amended
 Subsection 2, NEW paragraph g

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 equals 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, 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, 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 which would be allowable under section 41 of the Internal Revenue Code in effect on January 1, 1991.

Any credit in excess of the tax liability imposed by section 422.5 less the credits allowed under sections 422.11A, 422.11C, 422.12, and 422.12B 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.

91 Acts, ch 159, §10 SF 356, 91 Acts, ch 215, §2 SF 83
 1991 amendment to unnumbered paragraph 1 retroactive to January 1 1990 for tax years beginning on or after that date 91 Acts, ch 215, §6 SF 83
 1991 amendment to unnumbered paragraph 2 retroactive to January 1, 1991, for tax years beginning on or after that date 91 Acts, ch 159, §31 SF 356
 Unnumbered paragraphs 1 and 2 amended

422.11A New jobs tax credit.

The taxes imposed under this division, less the credits allowed under sections 422.12 and 422.12B, 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 the 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.

91 Acts, ch 159, §11 SF 356
 1991 amendment in 91 Acts, ch 159, §11, retroactive to January 1, 1991, for tax years beginning on or after that date, 91 Acts, ch 159, §31 SF 356
 Section amended

422.11C Seed capital credit.

1. The taxes imposed under this division less the credits allowed under sections 422.11A, 422.11B, 422.12, and 422.12B, shall be reduced by a seed capital credit. An individual may claim the seed capital 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.

2. The amount of the credit is equal to ten percent of a taxpayer's investment, during the tax year, in an initial offering of securities by a qualified business or a qualified seed capital fund.

3. A seed capital fund, to be a qualified seed capital fund under this section, must meet all of the following conditions:

a The investment must be in shares or other equity interests, which are purchased for money consideration and carry voting rights.

b The issue of shares or other equity interests must be registered under an expedited registration by filing system as provided in section 502.207A.

c Its capital base must be used to make investments exclusively in the types of businesses described in subsection 4, paragraph "a"

d Its capital base must be used to make qualified investments according to the following schedule:

(1) Invest at least thirty percent of its capital base, raised through investments for which tax credits were taken, within three years of the fiscal year in which tax credits were claimed.

(2) Invest at least fifty percent of its capital base, raised through investments for which tax credits were taken, within four years of the fiscal year in which tax credits were claimed.

(3) Invest at least seventy percent of its capital base, raised through investments for which tax credits were taken, within five years of the fiscal year in which tax credits were claimed.

e More than twenty percent of the total funds raised for which tax credits were claimed must not be invested in any one qualified business.

4. A business, to be a qualified business under this section, must meet all of the following conditions:

a The business must be engaged in one or more of the following activities:

(1) Interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products.

(2) Agricultural, fishery, or forestry processing.

(3) Research and development of products and processes associated with any of the activities enumerated in subparagraph (1) or (2).

b The shares must be purchased for money consideration and carry full voting rights.

c The shares must be sold in an offering registered under an expedited registration by filing system as provided in section 502.207A.

5. If during the tax year, the investment or a portion of the investment is disposed of prior to having been owned by the taxpayer for two years, the tax under this division is increased by the amount of the credit taken on the investment or portion of the investment.

6. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier.

7. An investment in securities offered by a seed capital fund or qualified business qualifies for a tax credit only if the investment is in an unaffiliated and nonrelated person, partnership, or corporation.

8. The director may conduct an examination of a seed capital fund or business to determine if it has met the requirements of this section. The director may request and if requested shall receive the assistance of the administrator of chapter 502 to conduct an examination of a seed capital fund or business.

9. The issuer must file a copy of its annual report with the director and the administrator of chapter 502 for each of the three years following the offering.

10. A violation of this section is grounds for decertification of a seed capital fund or business as a qualified seed capital fund or a qualified business. A seed capital fund or a business alleged to have violated this section, or to be out of compliance with this section, shall be allowed a one hundred twenty day grace period to remedy the violation or to comply with this section. Decertification shall cause the forfeiture of any right or interest to a tax credit under this section and shall cause the total amount of tax credit for all tax years under this section to be due and payable with income tax liability for the tax year when decertification is effective.

91 Acts ch 159 §12 SF 356

Effective date section repealed effective January 1 1993 90 Acts ch 1196 §6 8

1991 amendment to subsection 1 retroactive to January 1 1991 for tax years beginning on or after that date 91 Acts ch 159 §11 SF 356

Subsection 1 amended

422.12 Deductions from computed tax.

There shall be deducted from but not to exceed the tax, after the same shall have been computed as provided in this division, the following:

1. A personal exemption credit in the following amounts:

a For an estate or trust, a single individual, or a married person filing a separate return, twenty dollars.

b For a head of household, or a husband and wife filing a joint return, forty dollars.

c For each dependent, an additional fifteen dollars. As used in this section, the term "dependent" has the same meaning as provided by the Internal Revenue Code.

d For a single individual, husband, wife or head of household, an additional exemption of twenty dollars for each of said individuals who has attained the age of sixty-five years before the close of the tax year or on the first day following the end of the tax year.

e For a single individual, husband, wife or head of household, an additional exemption of twenty dollars for each of said individuals who is blind at the close of the tax year. For the purposes of this paragraph, an individual is blind only if the individual's central visual acuity does not exceed twenty-two hundredths in the better eye with correcting lenses, or if the individual's visual acuity is greater than twenty-two hundredths but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

2. For those who do not itemize their deductions, a tuition credit equal to five percent of the first one thousand dollars which the taxpayer has paid to others for each dependent in grades kindergarten through twelve, for tuition and textbooks of each dependent in attending an elementary or secondary school situated in Iowa, which school is accredited or approved under section 256.11, which is not operat-

ed for profit, and which adheres to the provisions of the federal Civil Rights Act of 1964 and chapter 601A. As used in this subsection, "textbooks" means books and other instructional materials and equipment used in elementary and secondary schools in teaching only those subjects legally and commonly taught in public elementary and secondary schools in this state and does not include instructional books and materials used in the teaching of religious tenets, doctrines, or worship, the purpose of which is to inculcate those tenets, doctrines, or worship, and does not include books or materials for extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or programs of a similar nature. Notwithstanding any other provision, all other credits allowed under sections 422.12 and 422.12B shall be deducted before the tuition credit under this subsection. The credit in this subsection does not apply to a taxpayer whose net income, as properly computed for state tax purposes, is forty-five thousand dollars or more. In the case where the taxpayer is married, whether filing jointly or separately, the credit does not apply if the combined net income of the taxpayer and spouse is forty-five thousand dollars or more.

As used in this subsection, "tuition" means any charges for the expenses of personnel, buildings, equipment and materials other than textbooks, and other expenses of elementary or secondary schools which relate to the teaching only of those subjects legally and commonly taught in public elementary and secondary schools in this state and which do not relate to the teaching of religious tenets, doctrines, or worship, the purpose of which is to inculcate those tenets, doctrines, or worship, and which do not relate to extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or programs of a similar nature.

3 For the purpose of this section, the determination of whether an individual is married shall be made as of the close of the individual's tax year unless the individual's spouse dies during the individual's tax year, in which case the determination shall be made as of the date of the spouse's death. An individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance shall not be considered married.

91 Acts ch 159 §13 SF 356

1991 amendment to subsection 2 unnumbered paragraph 1 in 91 Acts ch 159 §13 retroactive to January 1, 1991 for tax years beginning on or after that date. 91 Acts ch 159 §31 SF 356

Subsection 2 unnumbered paragraph 1 amended

422.12A Income tax refund checkoff for Olympics.

A person who files an individual or a joint income tax return with the department of revenue and finance under section 422.13 may designate two dollars to be paid to the Olympic fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the amount designated by the taxpayer to the Olympic fund, the amount designated shall be reduced to the remaining amount of

refund or the remaining amount remitted with the return.

The director of revenue and finance shall draft the income tax form to allow the designation of contributions to the Olympic fund on the tax return.

The department of revenue and finance 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 treasurer of state. The treasurer of state shall credit the amount to the Olympic fund.

The moneys in the Olympic fund are appropriated annually for the purposes specified in this section.

On or before March 1 of each year, the department of revenue and finance shall pay one-half of the moneys in the fund to the United States Olympic committee and shall retain one-half of the funds in this state. Fifty percent of the funds retained by the state shall be spent in that year for local amateur sports, for which there is Olympic competition, with advice of the governor's council on physical fitness, and the remaining fifty percent shall be paid to Iowa special Olympics, incorporated, for special Olympic programs.

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 finance and accounts identified as owing under section 421.17 and the political contribution allowed under section 56.18 shall be satisfied.

91 Acts ch 149 §1 SF 403

Unnumbered paragraph 5 amended

422.12B Earned income tax credit.

1 The taxes imposed under this division, less the credits allowed under section 422.12 shall be reduced by an earned income credit equal to six and one-half percent of the federal basic earned income credit and the health insurance credit provided in section 32 of the Internal Revenue Code. Any credit in excess of the tax liability is nonrefundable.

2 Married taxpayers electing to file separate returns or filing separately on a combined return may avail themselves of the earned income credit by allocating the earned income credit to each spouse in the proportion that each spouse's respective earned income bears to the total combined earned income. Taxpayers affected by the allocation provisions of section 422.8 shall be permitted a deduction for the credit only in the amount fairly and equitably allocable to Iowa under rules prescribed by the director.

91 Acts ch 159 §14 SF 356 91 Acts ch 215 §3 SF 83

1991 amendments to subsection 1 retroactive to January 1, 1991 for tax years beginning on or after that date. 91 Acts ch 159 §31 SF 356 91 Acts ch 215 §7 SF 83

See Code editor's note to §15.287
Subsection 1 amended

422.12C Child and dependent care credit — refund.

1 The taxes imposed under this division, less the

credits allowed under sections 422.11A, 422.11B, 422.11C, 422.12, and 422.12B shall be reduced by a child and dependent care credit equal to the following percentages of the federal child and dependent care credit provided in section 21 of the Internal Revenue Code:

a For a taxpayer with net income of less than ten thousand dollars, seventy-five percent.

b For a taxpayer with net income of ten thousand dollars or more but less than twenty thousand dollars, sixty-five percent.

c For a taxpayer with net income of twenty thousand dollars or more but less than twenty-five thousand dollars, fifty-five percent.

d For a taxpayer with net income of twenty-five thousand dollars or more but less than thirty-five thousand dollars, fifty percent.

e For a taxpayer with net income of thirty-five thousand dollars or more but less than forty thousand dollars, forty percent.

f For a taxpayer with net income of forty thousand dollars or more but less than forty-five thousand dollars, thirty percent.

g For a taxpayer with net income of forty-five thousand dollars or more but less than fifty thousand dollars, twenty percent.

h For a taxpayer with net income of fifty thousand dollars or more, ten percent.

2. Any credit in excess of the tax liability shall be refunded. 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.

3. Married taxpayers who have filed joint federal returns electing to file separate returns or to file separately on a combined return form must determine the child and dependent care credit under subsection 1 based upon their combined net income and allocate the total credit amount to each spouse in the proportion that each spouse's respective net income bears to the total combined net income. Nonresidents or part-year residents of Iowa must determine their Iowa child and dependent care credit in the ratio of their Iowa source net income to their all source net income. Nonresidents or part-year residents who are married and elect to file separate returns or to file separately on a combined return form must allocate the Iowa child and dependent care credit between the spouses in the ratio of each spouse's Iowa source net income to the combined Iowa source net income of the taxpayers.

91 Acts ch 159 §15 SF 356
1991 amendments to subsections 1 and 3 in 91 Acts, ch 159 §15 retroactive to January 1, 1991 for tax years beginning on or after that date 91 Acts ch 159 §31 SF 356
Subsections 1 and 3 amended

422.16 Withholding of income tax at source — penalties — interest — declaration of estimated tax — bond.

1. Every withholding agent and every employer as defined in this chapter and further defined in the Internal Revenue Code, with respect to income tax

collected at source, making payment of wages to a nonresident employee working in Iowa, or to a resident employee, shall deduct and withhold from the wages an amount which will approximate the employee's annual tax liability on a calendar year basis, calculated on the basis of tables to be prepared by the department and schedules or percentage rates, based on the wages, to be prescribed by the department. Every employee or other person shall declare to the employer or withholding agent the number of the employee's or other person's personal exemptions and dependency exemptions or credits to be used in applying the tables and schedules or percentage rates. However, no greater number of personal or dependency exemptions or credits may be declared by the employee or other person than the number to which the employee or other person is entitled except as allowed under section 3402(m)(1) of the Internal Revenue Code and as allowed for the child and dependent care credit provided in section 422.12C. The claiming of exemptions or credits in excess of entitlement is a serious misdemeanor.

For the purposes of this subsection, state income tax shall be withheld from pensions, annuities, other similar periodic payments, and other income payments of those persons whose primary residence is in Iowa in those circumstances in which those persons have federal income tax withheld from pensions, annuities, other similar periodic payments, and other income payments under sections 3402(o), 3402(p), 3402(s), 3405(a), and 3405(b) of the Internal Revenue Code at a rate to be specified by the department.

2. A withholding agent required to deduct and withhold tax under subsections 1 and 12, except those required to deposit on a semimonthly basis, shall deposit for each calendar quarterly period, on or before the last day of the month following the close of the quarterly period, on a quarterly deposit form as prescribed by the director and shall pay to the department, in the form of remittances made payable to "Treasurer, State of Iowa", the tax required to be withheld, or the tax actually withheld, whichever is greater, under subsections 1 and 12. However, a withholding agent who withholds more than fifty dollars in any one month, except those required to deposit on a semimonthly basis, shall deposit with the department the amount withheld, with a monthly deposit form as prescribed by the director. The monthly deposit form is due on or before the fifteenth day of the month following the month of withholding, except that a deposit is not required for the amount withheld in the third month of the quarter but the total amount of withholding for the quarter shall be computed and the amount by which the deposits for that quarter fail to equal the total quarterly liability is due with the filing of the quarterly deposit form. The quarterly deposit form is due within the month following the end of the quarter. A withholding agent who withholds more than eight thousand dollars in a semimonthly period shall deposit with the department the amount withheld,

with a semimonthly deposit form as prescribed by the director. The first semimonthly deposit form for the period from the first of the month through the fifteenth of the month is due on the twenty-fifth day of the month in which the withholding occurs. The second semimonthly deposit form for the period from the sixteenth of the month through the end of the month is due on the tenth day of the month following the month in which the withholding occurs.

Every withholding agent on or before the end of the second month following the close of the calendar year in which the withholding occurs shall make an annual reporting of taxes withheld and other information prescribed by the director and send to the department copies of wage and tax statements with the return.

If the director has reason to believe that the collection of the tax provided for in subsections 1 and 12 is in jeopardy, the director may require the employer or withholding agent to make the report and pay the tax at any time, in accordance with section 422.30. The director may authorize incorporated banks, trust companies, or other depositories authorized by law which are depositories or financial agents of the United States or of this state, to receive any tax imposed under this chapter, in the manner, at the times, and under the conditions the director prescribes. The director shall also prescribe the manner, times, and conditions under which the receipt of the tax by those depositories is to be treated as payment of the tax to the department.

3 Every withholding agent employing not more than two persons who expects to employ either or both of such persons for the full calendar year may, with respect to such persons, pay with the withholding tax return due for the first calendar quarter of the year the full amount of income taxes required to be withheld from the wages of such persons for the full calendar year. The amount to be paid shall be computed as if the employee were employed for the full calendar year for the same wages and with the same pay periods as prevailed during the first quarter of the year with respect to such employee. No such lump sum payment of withheld income tax shall be made without the written consent of all employees involved. The withholding agent shall be entitled to recover from the employee any part of such lump sum payment that represents an advance to the employee. If a withholding agent pays a lump sum with the first quarterly return the withholding agent shall be excused from filing further quarterly returns for the calendar year involved unless the withholding agent hires other or additional employees.

4 Every withholding agent who fails to withhold or pay to the department any sums required by this chapter to be withheld and paid, shall be personally, individually, and corporately liable therefor to the state of Iowa, and any sum or sums withheld in accordance with the provisions of subsections 1 and 12 hereof, shall be deemed to be held in trust for the state of Iowa.

5 In the event a withholding agent fails to with-

hold and pay over to the department any amount required to be withheld under subsections 1 and 12 of this section, such amount may be assessed against such employer or withholding agent in the same manner as prescribed for the assessment of income tax under the provisions of divisions II and VI of this chapter.

6 Whenever the director determines that any employer or withholding agent has failed to withhold or pay over to the department sums required to be withheld under subsections 1 and 12 of this section the unpaid amount thereof shall be a lien as defined in section 422.26, shall attach to the property of said employer or withholding agent as therein provided, and in all other respects the procedure with respect to such lien shall apply as set forth in said section 422.26.

7 Every withholding agent required to deduct and withhold a tax under subsections 1 and 12 of this section shall furnish to such employee, nonresident, or other person in respect of the remuneration paid by such employer or withholding agent to such employee, nonresident, or other person during the calendar year, on or before January 31 of the succeeding year, or, in the case of employees, if the employee's employment is terminated before the close of such calendar year, within thirty days from the day on which the last payment of wages is made, if requested by such employee, but not later than January 31 of the following year, a written statement showing the following:

a The name and address of such employer or withholding agent, and the identification number of such employer or withholding agent.

b The name of the employee, nonresident, or other person and that person's federal social security account number, together with the last known address of such employee, nonresident, or other person to whom wages have been paid during such period.

c The gross amount of wages, or other taxable income, paid to the employee, nonresident, or other person.

d The total amount deducted and withheld as tax under the provisions of subsections 1 and 12 of this section.

e The total amount of federal income tax withheld.

The statements required to be furnished by this subsection in respect of any wages or other taxable Iowa income shall be in such form or forms as the director may, by regulation, prescribe.

8 An employer or withholding agent shall be liable for the payment of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, under subsections 1 and 12 of this section, and any amount deducted and withheld as tax under subsections 1 and 12 of this section during any calendar year upon the wages of any employee, nonresident, or other person shall be allowed as a credit to the employee, nonresident, or other person against the tax imposed by section 422.5, irrespective of whether or not such tax has been, or will

be, paid over by the employer or withholding agent to the department as provided by this chapter.

9. The amount of any overpayment of the individual income tax liability of the employee taxpayer, nonresident, or other person which may result from the withholding and payment of withheld tax by the employer or withholding agent to the department under subsections 1 and 12, as compared to the individual income tax liability of the employee taxpayer, nonresident, or other person properly and correctly determined under the provisions of section 422.4, to and including section 422.25, may be credited against any income tax or installment thereof then due the state of Iowa and any balance of one dollar or more shall be refunded to the employee taxpayer, nonresident or other person with interest at the rate in effect under section 421.7 for each month or fraction of a month, the interest to begin to accrue on the first day of the second calendar month following the date the return was due to be filed or was filed, whichever is the later date. Amounts less than one dollar shall be refunded to the taxpayer, nonresident, or other person only upon written application, in accordance with section 422.73, and only if the application is filed within twelve months after the due date of the return. Refunds in the amount of one dollar or more provided for by this subsection shall be paid by the treasurer of state by warrants drawn by the director of revenue and finance, or an authorized employee of the department, and the taxpayer's return of income shall constitute a claim for refund for this purpose, except in respect to amounts of less than one dollar. There is appropriated, out of any funds in the state treasury not otherwise appropriated, a sum sufficient to carry out the provisions of this subsection.

10. *a.* An employer or withholding agent required under this chapter to furnish a statement required by this chapter who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish the statement is, for each failure, subject to a civil penalty of five hundred dollars, the penalty to be in addition to any criminal penalty otherwise provided by the Code.

b. In addition to the tax or additional tax, any person or withholding agent shall pay a penalty as provided in section 421.27. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7, for each month counting each fraction of a month as an entire month, computed from the date the semimonthly, monthly, or quarterly deposit form was required to be filed. The penalty and interest become a part of the tax due from the withholding agent.

c. If any withholding agent, being a domestic or foreign corporation, required under the provisions of this section to withhold on wages or other taxable Iowa income subject to this chapter, fails to withhold the amounts required to be withheld, make the required returns or remit to the department the amounts withheld, the director may, having exhausted all other means of enforcement of the provisions

of this chapter, certify such fact or facts to the secretary of state, who shall thereupon cancel the articles of incorporation or certificate of authority (as the case may be) of such corporation, and the rights of such corporation to carry on business in the state of Iowa shall thereupon cease. The secretary of state shall immediately notify by registered mail such domestic or foreign corporation of the action taken by the secretary of state. The provisions of section 422.40, subsection 3, shall be applicable.

d. The department shall upon request of any fiduciary furnish said fiduciary with a certificate of acquittance showing that no liability as a withholding agent exists with respect to the estate or trust for which said fiduciary acts, provided the department has determined that there is no such liability.

11. *a.* A person or married couple filing a return shall make estimated tax payments if the person's or couple's Iowa income tax attributable to income other than wages subject to withholding can reasonably be expected to amount to two hundred dollars or more for the taxable year, except that, in the cases of farmers and fishermen, the exceptions provided in the Internal Revenue Code with respect to making estimated payments apply. The estimated tax shall be paid in quarterly installments. The first installment shall be paid on or before the last day of the fourth month of the taxpayer's tax year for which the estimated payments apply. The other installments shall be paid on or before the last day of the sixth month of the tax year, the last day of the ninth month of the tax year, and the last day of the first month after the tax year. However, at the election of the person or married couple, an installment of the estimated tax may be paid prior to the date prescribed for its payment. If a person or married couple filing a return has reason to believe that the person's or couple's Iowa income tax may increase or decrease, either for purposes of meeting the requirement to make estimated tax payments or for the purpose of increasing or decreasing estimated tax payments, the person or married couple shall increase or decrease any subsequent estimated tax payments accordingly.

b. In the case of persons or married couples filing jointly, the total balance of the tax payable after credits for taxes paid through withholding, as provided in subsection 1 of this section, or through payment of estimated tax, or a combination of withholding and estimated tax payments is due and payable on or before April 30 following the close of the calendar year, or if the return is to be made on the basis of a fiscal year, then on or before the last day of the fourth month following the close of the fiscal year.

c. If a taxpayer is unable to make the taxpayer's estimated tax payments, the payments may be made by a duly authorized agent, or by the guardian or other person charged with the care of the person or property of the taxpayer.

d. Any amount of estimated tax paid is a credit against the amount of tax found payable on a final, completed return, as provided in subsection 9, relat-

ing to the credit for the tax withheld against the tax found payable on a return properly and correctly prepared under sections 422.5 through 422.25, and any overpayment of one dollar or more shall be refunded to the taxpayer and the return constitutes a claim for refund for this purpose. Amounts less than one dollar shall not be refunded. The method provided by the Internal Revenue Code for determining what is applicable to the addition to tax for underpayment of the tax payable applies to persons required to make payments of estimated tax under this section except the amount to be added to the tax for underpayment of estimated tax is an amount determined at the rate in effect under section 421.7. This addition to tax specified for underpayment of the tax payable is not subject to waiver provisions relating to reasonable cause, except as provided in the Internal Revenue Code. Underpayment of estimated tax shall be determined in the same manner as provided under the Internal Revenue Code and the exceptions in the Internal Revenue Code also apply.

e. In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return for the taxable year credited to the taxpayer's tax liability for the following taxable year.

12. In the case of nonresidents having income subject to taxation by Iowa, but not subject to withholding of such tax under subsection 1 hereof, withholding agents shall withhold from such income at the same rate as provided in subsection 1 hereof, and such withholding agents and such nonresidents shall be subject to the provisions of this section, according to the context, except that such withholding agents may be absolved of such requirement to withhold taxes from such nonresident's income upon receipt of a certificate from the department issued in accordance with the provisions of section 422.17, as hereby amended. In the case of nonresidents having income from a trade or business carried on by them in whole or in part within the state of Iowa, such nonresident shall be considered to be subject to the provisions of this subsection unless such trade or business is of such nature that the business entity itself, as a withholding agent, is required to and does withhold Iowa income tax from the distributions made to such nonresident from such trade or business.

Notwithstanding this subsection, withholding agents are not required to withhold state income tax from payments subject to taxation made to nonresidents for commodity credit certificates, grain, livestock, domestic fowl, or other agricultural commodities or products sold to the withholding agents by the nonresidents or their representatives, if the withholding agents provide on forms prescribed by the department information relating to the sales required by the department to determine the state income tax liabilities of the nonresidents. However, the withholding agents may elect to make estimated tax payments on behalf of the nonresidents on the basis of the net incomes of the nonresidents from the agricultural commodities or products, if the estimat-

ed tax payments are made on or before the last day of the first month after the end of the tax years of the nonresidents.

13. The director shall enter into an agreement with the secretary of the treasury of the United States with respect to withholding of income tax as provided by this chapter, pursuant to an Act of Congress, section 1207 of the Tax Reform Act of 1976, Public Law 94-455, amending title 5, section 5517 of the United States Code.

14. The director may, when necessary and advisable in order to secure the collection of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, require an employer or withholding agent to file with the director a bond, issued by a surety company authorized to conduct business in this state and approved by the insurance commissioner as to solvency and responsibility, in an amount as the director may fix, to secure the payment of the tax and penalty due or which may become due. In lieu of the bond, securities shall be kept in the custody of the department and may be sold by the director at public or private sale, without notice to the depositor, if it becomes necessary to do so in order to recover any tax and penalty due. Upon a sale, any surplus above the amounts due under this section shall be returned to the employer or withholding agent who deposited the securities.

If the withholding agent fails to file the bond as requested by the director to secure collection of the tax, the withholding agent is subject to penalty for failure to file the bond. The penalty is equal to fifteen percent of the tax the withholding agent is required to withhold on an annual basis. However, the penalty shall not exceed five thousand dollars.

91 Acts, ch 215, §4 SF 83

1991 amendment adding unnumbered paragraph 2 to subsection 1 effective January 1, 1992, for tax years beginning on or after that date, 91 Acts, ch 215, §8 SF 83

Subsection 1, NEW unnumbered paragraph 2

422.20 Information confidential — penalty.

1. It shall be unlawful for any present or former officer or employee of the state to divulge or to make known in any manner whatever not provided by law to any person the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any person committing an offense against the foregoing provision shall be guilty of a serious misdemeanor. If the offender is an officer or employee of the state, such person shall also be dismissed from office or discharged from employment. Nothing herein shall prohibit turning over to duly authorized officers of the United States or tax officials of other states state informa-

tion and income returns pursuant to agreement between the director and the secretary of the treasury of the United States or the secretary's delegate or pursuant to a reciprocal agreement with another state.

2. It is unlawful for an officer, employee, or agent, or former officer, employee, or agent of the state to disclose to any person, except as authorized in subsection 1 of this section, any federal tax return or return information as defined in section 6103(b) of the Internal Revenue Code. It is unlawful for a person to whom any federal tax return or return information, as defined in section 6103(b) of the Internal Revenue Code, is disclosed in a manner unauthorized by subsection 1 of this section to thereafter print or publish in any manner not provided by law any such return or return information. A person violating this provision is guilty of a serious misdemeanor.

3. Unless otherwise expressly permitted by section 421.17, subsections 21, 22, 23, 25, 29, and 32, sections 252B.9, 324.63, 421.19, 421.28, and 422.72, and this section, a tax return, return information, or investigative or audit information shall not be divulged to any person or entity, other than the taxpayer, the department, or internal revenue service for use in a matter unrelated to tax administration.

This prohibition precludes persons or entities other than the taxpayer, the department, or the internal revenue service from obtaining such information from the department, and a subpoena, order, or process which requires the department to produce such information to a person or entity, other than the taxpayer, the department, or internal revenue service for use in a nontax proceeding is void.

4. The director may disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the director, after reasonable effort and lapse of time, has been unable to locate the persons.

91 Acts, ch 159, §16 SF 356

Subsection 3, unnumbered paragraph 1 amended

422.21 Form and time of return.

Returns shall be in the form the director prescribes, and shall be filed with the department on or before the last day of the fourth month after the expiration of the tax year. However, co-operative associations as defined in section 6072(d) of the Internal Revenue Code shall file their returns on or before the fifteenth day of the ninth month following the close of the taxable year and nonprofit corporations subject to the unrelated business income tax imposed by section 422.33, subsection 1A, shall file their returns on or before the fifteenth day of the fifth month following the close of the taxable year. If, under the Internal Revenue Code, 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 is 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 disabili-

ty, 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 shall show the county of the residence of the taxpayer.

An individual in the armed forces of the United States serving in an area designated by the president of the United States or the United States Congress as a combat zone, or an individual serving in support of those forces, is allowed the same additional time period after leaving the combat zone, or after a period of continuous hospitalization, to file a state income tax return or perform other acts related to the department, as would constitute timely filing of the return or timely performance of other acts described in section 7508(a) of the Internal Revenue Code. For the purposes of this paragraph, "*other acts related to the department*" includes filing claims for refund for any tax administered by the department, making tax payments other than withholding payments, filing appeals on the tax matters, filing other tax returns, and performing other acts described in the department's rules. The additional time period allowed applies to the spouse of the individual described in this paragraph to the extent the spouse files jointly or separately on the combined return form with the individual or when the spouse is a party with the individual to any matter for which the additional time period is allowed. For the purposes of this paragraph, the Internal Revenue Code shall be interpreted to include the provisions of Pub. L. No. 102-2.

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 the taxpayer's 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 advis-

able 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 incompleting return.

The director shall determine for the 1989 and each subsequent calendar year the annual and cumulative inflation factors for each calendar year 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 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. The director shall determine for the 1990 calendar year and each subsequent calendar year the annual and cumulative standard deduction factors to be applied to tax years beginning on or after January 1 of that calendar year. The director shall compute the new dollar amounts of the standard deductions specified in section 422.9, subsection 1, by the latest cumulative standard deduction factor and round off the result to the nearest ten dollars. The annual and cumulative standard deduction factors determined by the director are not rules as defined in section 17A.2, subsection 7.

The department shall provide on income tax forms or in the instruction booklets in a manner that will be noticeable to the taxpayers a statement that, even though the taxpayer may not have any federal or state income tax liability, the taxpayer may be eligible for the federal earned income tax credit or state child and dependent care credit. The statement shall also contain notice of where the taxpayer may check on the taxpayer's eligibility for these credits.

91 Acts, ch 159, §17 SF 356, 91 Acts, ch 196, §3 HF 489
1991 amendment to unnumbered paragraph 1 retroactive to January 1, 1991, for tax years beginning on or after that date, 91 Acts, ch 159, §31 SF 356
Unnumbered paragraph 2 retroactive to August 2, 1990, for tax years ending on or after that date, 91 Acts, ch 196, §4 HF 489
Unnumbered paragraph 1 amended
NEW unnumbered paragraph 2

422.26 Lien of tax — collection — action authorized.

Whenever any taxpayer liable to pay a tax and penalty imposed refuses or neglects to pay the same, the amount, including any interest, penalty, or addition to such tax, together with the costs that may ac-

crue in addition thereto, shall be a lien in favor of the state upon all property and rights to property, whether real or personal, belonging to said taxpayer.

The lien shall attach at the time the tax becomes due and payable and shall continue for ten years from the date an assessment is issued unless sooner released or otherwise discharged. The lien may, within ten years from the date an assessment is issued, be extended by filing for record a notice with the appropriate county official of any county and from the time of such filing, the lien shall be extended to the property in such county for ten years, unless sooner released or otherwise discharged, with no limit on the number of extensions. Liens having attached prior to January 1, 1969, will expire on January 1, 1979, unless extended by the director. The director shall charge off any account whose lien is allowed to lapse and may charge off any account and release the corresponding lien before the lien has lapsed if the director determines under uniform rules prescribed by the director that the account is uncollectible or collection costs involved would not warrant collection of the amount due.

In order to preserve the aforesaid lien against subsequent mortgagees, purchasers or judgment creditors, for value and without notice of the lien, on any property situated in a county, the director shall file with the recorder of the county, in which said property is located, a notice of said lien.

The county recorder of each county shall prepare and keep in the recorder's office a book to be known as "*index of income tax liens*", so ruled as to show in appropriate columns the following data, under the names of taxpayers, arranged alphabetically:

1. The name of the taxpayer.
2. The name "State of Iowa" as claimant.
3. Time notice of lien was received.
4. Date of notice.
5. Amount of lien then due.
6. Date of assessment.
7. When satisfied.

The recorder shall endorse on each notice of lien the day, hour, and minute when received and preserve the same, and shall forthwith index said notice in said index book and shall forthwith record said lien in the manner provided for recording real estate mortgages, and the said lien shall be effective from the time of the indexing thereof.

The department shall pay, from moneys appropriated to the department for this purpose, a recording fee as provided in section 331.604, for the recording of the lien, or for its satisfaction.

Upon the payment of a tax as to which the director has filed notice with a county recorder, the director shall forthwith file with said recorder a satisfaction of said tax and the recorder shall enter said satisfaction on the notice on file in the recorder's office and indicate said fact on the index aforesaid.

The department shall, substantially as provided in this chapter and chapter 626, proceed to collect all taxes and penalties as soon as practicable after they become delinquent, except that no property of the

taxpayer is exempt from payment of the tax. If service has not been made on a distress warrant by the officer to whom addressed within five days from the date the distress warrant was received by the officer, the authorized revenue agents of the department may serve and make return of the warrant to the clerk of the district court of the county named in the distress warrant, and all subsequent procedure shall be in compliance with chapter 626.

The attorney general shall, upon the request of the director, bring an action at law or in equity, as the facts may justify, without bond, to enforce payment of any taxes and penalties, and in such action the attorney general shall have the assistance of the county attorney of the county in which the action is pending.

It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the director or attorney general shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

For purposes of this section, "*assessment issued*" means the most recent assessment against the taxpayer for the tax type and tax period.

91 Acts, ch 191, §18 HF 687, 91 Acts, ch 267, §522 HF 479
1991 amendment to unnumbered paragraph 8 effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Unnumbered paragraphs 6 and 8 amended

422.33 Corporate tax imposed — credit.

1. A tax is imposed annually upon each corporation organized under the laws of this state, and upon each foreign corporation doing business in this state, or deriving income from sources within this state, 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.

"*Income from sources within this state*" means income from real or tangible property located or having a situs in this state.

1A. There is imposed upon each corporation exempt from the general business tax on corporations by section 422.34, subsections 2 through 6, a tax at the rates in subsection 1 upon the state's apportioned share computed in accordance with subsections 2 and 3 of the unrelated business income computed in accordance with the Internal Revenue Code and with the adjustments set forth in section 422.35.

2. If the trade or business of the corporation is

carried on entirely within the state, the tax shall be imposed on the entire net income, but if the trade or business is carried on partly within and partly without the state or if income is derived from sources 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 or sources within the state, with the 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 roy-

alties 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 the greater of the tax determined in subsection 1, paragraphs "a" through "d" or the state alternative minimum tax equal to sixty percent of the maximum state corporate income tax rate, rounded to the nearest one-tenth of one percent, of the state alternative minimum taxable income of the taxpayer computed under this subsection.

The state alternative minimum taxable income of a taxpayer is equal to the taxpayer's state taxable income as computed with the adjustments in section 422.35 and with the following adjustments:

a. Add items of tax preference included in federal alternative minimum taxable income under section 57, except subsections (a)(1) and (a)(5), of the Internal Revenue Code, make the adjustments included in federal alternative minimum taxable income under section 56, except subsections (a)(4) and (d), of the Internal Revenue Code, and add losses as required by section 58 of the Internal Revenue Code. In making the adjustment under section 56(c)(1) of the Internal Revenue Code, interest and dividends from federal securities and interest and dividends from state and other political subdivisions and from regulated investment companies exempt from federal income tax under the Internal Revenue Code, net of amortization of any discount or premium, shall be subtracted.

b. Apply the allocation and apportionment provisions of subsection 2.

c. Subtract an exemption amount of forty thousand dollars. This exemption amount shall be reduced, but not below zero, by an amount equal to twenty-five percent of the amount by which the alternative minimum taxable income of the taxpayer, computed without regard to the exemption amount in this paragraph, exceeds one hundred fifty thousand dollars.

d. In the case of a net operating loss computed for a tax year beginning after December 31, 1986 which is carried back or carried forward to the current taxable year, the net operating loss shall be reduced by the amount of items of tax preference and adjustments arising in the tax year which is taken into account in computing the net operating loss in section 422.35, subsection 11. The deduction for a net operating loss for a tax year beginning after December 31, 1986 which is carried back or carried forward to the current taxable year shall not exceed ninety percent of the alternative minimum taxable income determined without regard for the net operating loss deduction.

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 which would be allowable under section 41 of the Internal Revenue Code in effect on January 1, 1991.

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 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.

7 a There is allowed as a credit against the tax determined in subsection 1 for a tax year an amount equal to the minimum tax credit for that tax year.

The minimum tax credit for a tax year is the excess, if any, of the adjusted net minimum tax imposed for all prior tax years beginning on or after

January 1, 1987, over the amount allowable as a credit under this subsection for those prior tax years.

b The allowable credit under paragraph "a" for a tax year shall not exceed the excess, if any, of the tax determined in subsection 1 over the state alternative minimum tax as determined in subsection 4.

The net minimum tax for a tax year is the excess, if any, of the tax determined in subsection 4 for the tax year over the tax determined in subsection 1 for the tax year.

The adjusted net minimum tax for a tax year is the net minimum tax for the tax year reduced by the amount which would be the net minimum tax if the only item of tax preference taken into account was that described in paragraph (6) of section 57(a) of the Internal Revenue Code.

8 The taxes imposed under this division shall be reduced by a seed capital credit.

a The amount of the credit is equal to ten percent of a taxpayer's investment, during the tax year, in an initial offering of securities by a qualified business or a qualified seed capital fund.

b A seed capital fund, to be a qualified seed capital fund under this section, must meet all of the following conditions:

(1) The investment must be in shares or other equity interests, which are purchased for money consideration and carry voting rights.

(2) The issue of shares or other equity interests must be registered under an expedited registration by filing system as provided in section 502.207A.

(3) Its capital base must be used to make investments exclusively in the types of businesses described in paragraph "c", subparagraph (1).

(4) Its capital base must be used to make qualified investments according to the following schedule:

(a) Invest at least thirty percent of its capital base, raised through investments for which tax credits were taken, within three years of the fiscal year in which tax credits were claimed.

(b) Invest at least fifty percent of its capital base, raised through investments for which tax credits were taken, within four years of the fiscal year in which tax credits were claimed.

(c) Invest at least seventy percent of its capital base, raised through investments for which tax credits were taken, within five years of the fiscal year in which tax credits were claimed.

(5) More than twenty percent of the total funds raised for which tax credits were claimed must not be invested in any one qualifying business.

c A business, to be a qualified business under this subsection, must meet all of the following conditions:

(1) The business must be engaged in one or more of the following activities:

(a) Interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products.

(b) Agricultural, fishery, or forestry processing.

(c) Research and development of products and processes associated with any of the activities enumerated in subparagraph subdivision (a) or (b).

(2) The shares must be purchased for money consideration and carry full voting rights.

(3) The shares must be sold in an offering registered under an expedited registration by filing system as provided in section 502.207A.

d. If during the tax year, the investment or a portion of the investment is disposed of prior to having been owned by the taxpayer for two years, the tax under this division is increased by the amount of the credit taken on the investment or portion of the investment.

e. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier.

f. An investment in securities offered by a seed capital fund or qualified business qualifies for a tax credit only if the investment is in an unaffiliated and nonrelated person, partnership, or corporation.

g. The director may conduct an examination of a seed capital fund or business to determine if it has met the requirements of this subsection. The director may request and if requested shall receive the assistance of the administrator of chapter 502 to conduct an examination of a seed capital fund or business.

h. The issuer must file a copy of its annual report with the director and the administrator of chapter 502 for each of the three years following the offering.

i. A violation of this subsection is grounds for decertification of a seed capital fund or business as a qualified seed capital fund or a qualified business. A seed capital fund or a business alleged to have violated this subsection, or to be out of compliance with this subsection, shall be allowed a one hundred twenty day grace period to remedy the violation or to comply with this subsection. Decertification shall cause the forfeiture of any right or interest to a tax credit under this subsection and shall cause the total amount of tax credit for all tax years under this subsection to be due and payable with income tax liability for the tax year when decertification is effective.

91 Acts, ch 215, §5 SF 83
 1991 amendment to subsection 5, unnumbered paragraph 1, retroactive to January 1, 1990, for tax years beginning on or after that date, 91 Acts, ch 215, §6 SF 83
 Subsection 5, unnumbered paragraph 1 amended

422.35 Net income of corporation — how computed.

The term “*net income*” means the taxable income before the net operating loss deduction, as properly computed for federal income tax purposes under the Internal Revenue Code, with the following adjustments:

1. Subtract interest and dividends from federal securities.
2. Add interest and dividends from foreign securities, from securities of state and other political subdivisions, and from regulated investment companies exempt from federal income tax under the Internal Revenue Code.
3. Where the net 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 and regulations 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 fifty percent of the federal income taxes paid or accrued, as the case may be, during the tax year, adjusted by any federal income tax refunds; and add the Iowa income tax deducted in computing said taxable income.

5. Subtract the amount of the jobs tax credit allowable for the tax year under section 51 of the Internal Revenue Code to the extent that the credit increased federal taxable income.

6. If the taxpayer is a small business corporation, subtract an amount equal to sixty-five percent of the wages paid to individuals, but not to exceed twenty thousand dollars per individual, named in paragraphs “a”, “b”, and “c” who were hired for the first time by the taxpayer during the tax year for work done in this state:

a. A handicapped individual domiciled in this state at the time of the hiring who 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.

This deduction is allowed for the wages paid to the individuals successfully completing a probationary period named in paragraphs “a”, “b”, and “c” during the twelve months following the date of first employment by the taxpayer and shall be deducted in the tax years when paid.

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

6A If the taxpayer is a business corporation and does not qualify for the adjustment under section 422 35, subsection 6, subtract an amount equal to sixty-five percent of the wages paid to individuals, but shall not exceed twenty thousand dollars per individual, named in paragraphs "a" and "b" who were hired for the first time by the taxpayer during the tax year for work done in this state

a 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

b 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

This deduction is allowed for the wages paid to the individuals successfully completing a probationary period named in paragraphs "a" and "b" during the twelve months following the date of first employment by the taxpayer and shall be deducted in the tax years when paid

The department shall develop and distribute information concerning the deduction available for businesses employing persons named in paragraphs "a" and "b"

7 Subtract the amount of the alcohol fuel credit allowable for the tax year under section 40 of the Internal Revenue Code to the extent that the credit increased federal taxable income

8 Add the amounts deducted and subtract the amounts included in income as a result of the treatment provided sale-leaseback agreements under section 168(f)(8) of the Internal Revenue Code for property placed in service by the transferee prior to January 1, 1986 to the extent that the amounts deducted and the amounts included in income are not otherwise deductible or included in income under the other provisions of the Internal Revenue Code as amended to and including December 31, 1985 Entitlement to depreciation on any property involved in a sale-leaseback agreement which is placed in service by the transferee prior to January 1, 1986 shall be determined under the Internal Revenue Code as amended to and including December 31, 1985, excluding section 168(f)(8) in making the determination

9 Add the amount of windfall profits tax deducted under section 164(a) of the Internal Revenue Code

10 Add the percentage depletion amount determined with respect to an oil, gas, or geothermal well

using methods in section 613 of the Internal Revenue Code that is in excess of the cost depletion amount determined under section 611 of the Internal Revenue Code

11 If after applying all of the adjustments provided for in this section and the allocation and apportionment provisions of section 422 33, the Iowa taxable income results in a net operating loss, such net operating loss shall be deducted as follows

a The Iowa net operating loss shall be carried back three taxable years or to the taxable year in which the corporation first commenced doing business in this state, whichever is later

b The Iowa net operating loss remaining after being carried back as required in paragraph "a" of this subsection or if not required to be carried back shall be carried forward fifteen taxable years

c If the election under section 172(b)(3)(C) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward fifteen taxable years

d No portion of a net operating loss which was sustained from that portion of the trade or business carried on outside the state of Iowa shall be deducted

e The limitations on net operating loss carry-back and carryforward under sections 172(b)(1)(M) and 172(m) of the Internal Revenue Code shall apply

Provided, however, that a corporation affected by the allocation provisions of section 422 33 shall be permitted to deduct only such portion of the deductions for net operating loss and federal income taxes as is fairly and equitably allocable to Iowa, under rules prescribed by the director

12 Subtract the loss on the sale or exchange of a share of a regulated investment company held for six months or less to the extent the loss was disallowed under section 852(b)(4)(B) of the Internal Revenue Code

13 Subtract the interest earned from bonds and notes issued by the agricultural development authority as provided in section 175 17, subsection 10

14 Add the expenses otherwise deductible under section 162(a) of the Internal Revenue Code which were incurred by a corporation with respect to expenditures made at, or payments made to, a club which restricts membership or the use of its services or facilities on the basis of age, sex, marital status, race, religion, color, ancestry, or national origin

A club described in this subsection holding an alcoholic beverage license pursuant to chapter 123 shall provide on each receipt furnished to a taxpayer a printed statement as follows "The expenditures covered by this receipt are nondeductible for state income tax purposes"

For the purposes of this subsection, a club means any nonprofit corporation or association of individuals, which is the owner, lessee, or occupant of a permanent building or part of a building, membership in which entails the prepayment of regular dues, and which is not operated for a profit other than such profits as would accrue to the entire membership

91 Acts ch 210 §3 HF 417

1991 amendment adding subsection 14 effective July 1 1991

NEW subsection 14

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, pay television service, and communication service, including the gross receipts from such sales by any municipal corporation or joint water utility furnishing gas, electricity, water, heat, pay television service, 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 A like rate of tax is imposed upon the gross receipts from the renting of rooms, apartments, or sleeping quarters in a hotel, motel, inn, public lodging house, rooming house, mobile home which is tangible personal property, 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, or sleeping quarters, or their use. For the purposes of this division, such renting is regarded as a sale of tangible personal property at retail. However, this tax does 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; service charges of all financial institutions, 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, except mobile homes which are 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 re-

pair; 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 or animals; 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; pay television; campgrounds; carpet and upholstery cleaning; gun and camera repair; janitorial and building maintenance or cleaning; lawn care, landscaping and tree trimming and removal; 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, “*financial institutions*” means all national banks, federally chartered savings and loan associations, federally chartered savings banks, federally chartered credit unions, banks organized under chapter 524, savings and loan associations and savings banks organized under chapter 534, and credit unions organized under chapter 533.

12. A tax of four percent is imposed 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 within the state by retailers that meet any of the following criteria:

a. Solicit retail sales of tangible personal property from residents of this state on a continuous, regular, seasonal, or systematic basis by means of advertising which is broadcast from or relayed from a transmitter within this state.

b. Solicit orders from residents of this state for tangible personal property by mail or otherwise, if the solicitations are continuous, regular, or systematic and if the retailer benefits from any banking, financing, debt collection, telecommunications, or marketing activities occurring in this state or benefits from the location in this state of authorized installation, servicing, or repair facilities.

c. Are owned or controlled by the same interests which own or control a retailer engaged in business in the same or a similar line of business in this state.

d. Maintain or have a franchisee or licensee operating under the retailer’s trade name in this state if the franchisee or licensee is required to collect the tax imposed by this division or chapter 423.

91 Acts, ch 81, § 1 HF 487, 91 Acts, ch 159, §18 SF 356, 91 Acts, ch 168, §7 HF 689

See Code editor’s note to §15 287

Subsection 1 amended

Subsection 11, unnumbered paragraph 1 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 and 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 or recreational boats, and except the rental of motor vehicles subject to registration which are registered for a gross weight of thirteen tons or less for a period of sixty days 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 from services rendered, furnished, or performed and of all sales of goods, wares, or merchandise used for public purposes to a tax-certifying or tax-levying body of the state or a governmental subdivision of the state, including regional transit systems, as defined in section 601J.1, the state board of regents, 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, heat, or pay television service 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*”. However, this exemption does not apply to aircraft.

7. A private nonprofit educational institution in this state, nonprofit private museum, 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, a private nonprofit educational institution in this state, or a nonprofit private museum if the property becomes an integral part of the project under contract and at the completion of the project becomes public property, is devoted to educational uses, or becomes a nonprofit private museum, 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 or in connection with the operation of a municipal pay television system, 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 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, private nonprofit educational institution, or nonprofit private museum which has made any written contract for performance by the contractor. The forms shall be filed by the contractor with the governmental unit, educational institution, or nonprofit private museum before final settlement is made

b Such governmental unit, educational institution, or nonprofit private museum 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, issue a warrant to such governmental unit, educational institution, or nonprofit private museum 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 sub-

section shall be guilty of a simple misdemeanor and in addition thereto shall be liable for the payment of the tax and any applicable penalty and interest

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 or aircraft 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 ethanol blended gasoline, 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

12A The gross receipts from the sale of foods purchased with coupons issued under the federal Food Stamp Act of 1977, 7 U S C § 2011, et seq

13 The gross receipts from the sale of prescription drugs, as defined in chapter 155A, if dispensed for human use or consumption by a registered pharmacist licensed under chapter 155A, 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, or in the consumer rental purchase business if the property is to be utilized in a transaction involving a consumer rental purchase agreement as defined in section 537 3604, subsection 8, and the leasing or consumer rental of the property is subject to taxation under this division. If tangible personal property exempt under this subsection is made use of for any purpose other than leasing, renting, or consumer rental purchase, the person claiming the exemption under this subsection is 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, renting, or rental purchase of such tangible personal property, not to exceed the amount of the sales tax owed, shall be credited against the tax. This sales tax is 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 manufacturers for the purpose of packaging or facilitating the transportation of tangible personal property or transferred in association with the maintenance or repair of fabric or clothing.*

19A The gross receipts from the sale of degradable, as defined in section 455B 301, subsection 7, property which is a container, carton, packaging case, wrapping paper, bag, bottle, shipping carton, or other similar article or receptacle sold to retailers for the purpose of point-of-sale packaging or for facilitating the transportation of tangible personal property sold at retail or transferred in association with the maintenance or repair of fabric or clothing. For the purpose of this subsection and subsection 19B, "point of sale" means the point at which payment is exchanged for tangible personal property.*

19B The gross receipts from the sale of property which is a container, carton, packaging case, wrap-

ping paper, bag, bottle, shipping carton, or other similar article or receptacle sold to retailers for the purpose of nonpoint-of-sale packaging.*

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, pay television service, 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, photo-engraved 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 non-profit 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 inspections and appeals under chapter 135C.

b Residential facilities licensed by the department of human services pursuant to chapter 237, other than those maintained by individuals as defined in section 237 1, subsection 7.

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.

e Community health centers as defined in 42 U.S.C.A. § 254c and migrant health centers as defined in 42 U.S.C.A. § 254b.

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 of farm machinery and equipment, including replacement parts, 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

c The replacement part is essential to any repair or reconstruction necessary to the farm machinery's or equipment's exempt use in the production of agricultural products

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, or in the recycling or reprocessing of waste products As used in this paragraph

(1) "Insurance company" means an insurer organized or operating under chapters 508, 514, 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 9

(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 This paragraph does not apply to machinery and equipment used in the recycling or reprocessing of waste products qualifying for an exemption under paragraph "a"

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 Reserved

32 Gross receipts from the sale of raffle tickets for a raffle licensed pursuant to section 99B 5

33 a The gross receipts from the sale of automotive fluids to a retailer to be used either in providing a service which includes the installation or application of the fluids in or on a motor vehicle, which service is subject to section 422 43, subsection 11, or to be installed in or applied to a motor vehicle which the retailer intends to sell, which sale is subject to section 423 7 For purposes of this subsection, automotive fluids are all those which are refined, manufactured or otherwise processed and packaged for sale prior to their installation in or application to a motor vehicle They include but are not limited to motor oil and other lubricants, hydraulic fluids, brake fluid, transmission fluid, sealants, undercoatings, antifreeze and gasoline additives

b Claims for refund of tax, interest, or penalty

which arise under this subsection for the sale or use of automotive fluids occurring between January 1, 1979, and June 30, 1986, shall not be allowed unless filed prior to December 31, 1987, notwithstanding any other provision of law.

34. The gross receipts from the sale, furnishing, or service of gas, electricity, water, or heat to be used in implements of husbandry engaged in agricultural production.

35. The gross receipts from the sale of tangible personal property which will be given as prizes to players in games of skill, games of chance, raffles, and bingo games as defined in chapter 99B.

36. Gross receipts from the sale of tangible personal property to a nonprofit organization which was organized for the purpose of lending the tangible personal property to the general public for use by them for nonprofit purposes.

37. The gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to nonprofit legal aid organizations.

38. The gross receipts from the sale of aircraft for use in a scheduled interstate federal aviation administration certificated air carrier operation.

39. The gross receipts from the sale or rental of farm machinery and equipment, including replacement parts, if all of the following conditions are met:

a. The implement, machinery, or equipment is directly and primarily used in livestock or dairy production.

b. The implement is not a self-propelled implement or implement customarily drawn or attached to self-propelled implements.

c. The replacement part is essential to any repair or reconstruction necessary to the farm machinery's or equipment's exempt use in livestock or dairy production.

40. The gross receipts from the sale of a modular home, as defined in section 135D.1, to the extent of the portion of the purchase price of the modular home which is not attributable to the cost of the tangible personal property used in the processing of the modular 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 modular home is forty percent.

41. The gross receipts from the sale of motion picture films, video and audio tapes, video and audio discs and records, or other media which can be seen, heard, or read, to a person regularly engaged in the business of leasing, renting, or selling this property if the ultimate leasing, renting, or selling of the property is subject to tax under this division.

The exemption provided in this subsection is retroactive to July 1, 1984.

42. The gross receipts from the sale or rental of irrigation equipment used in farming operations.

43. The gross receipts of all sales of goods, wares, merchandise, or services, used for educational, scientific, historic preservation, or aesthetic purpose to a nonprofit private museum.

44. The gross receipts from the sale of tangible personal property or the sale, furnishing, or servicing of electrical energy, natural or artificial gas, or communication service to another state or political subdivision of another state if the other state provides a similar reciprocal exemption for this state and political subdivisions of this state.

45. The gross receipts from the sale of tangible personal property consisting of advertising material including paper to a person in Iowa if that person or that person's agent will, subsequent to the sale, send that advertising material outside this state and the material is subsequently used solely outside of Iowa. For the purpose of this subsection, "advertising material" means any brochure, catalog, leaflet, flyer, order form, return envelope, or similar item used to promote sales of property or services.

46. The gross receipts from the sale of property which the seller transfers to a carrier for shipment to a point outside of Iowa, places in the United States mail or parcel post directed to a point outside of Iowa, or transports to a point outside of Iowa by means of the seller's own vehicles, and which is not thereafter returned to a point within Iowa, except solely in the course of interstate commerce or transportation. This exemption shall not apply if the purchaser, consumer, or their agent, other than a carrier, takes physical possession of the property in Iowa.

91 Acts, ch 81, §2 4 HF 487, 91 Acts, ch 87, §11 HF 657, 91 Acts, ch 97, §46 HF 198, 91 Acts, ch 159, §19 SF 356

*Effective date of 1988 amendments to subsection 19 striking references to sales to retailers and new subsections 19A and 19B is to be established by rule of laboratory division of the department of agriculture and land stewardship upon determination that degradable products are available to a degree which makes compliance reasonably possible, 88 Acts, ch 1182 §6, 89 Acts, ch 83 §86

For subsection 19 prior to 1988 amendment see 1987 Code Supplement

See Code editor's note to §15 287

Subsection 5, unnumbered paragraph 1 amended

Subsection 7, unnumbered paragraph 1 amended

Subsection 11 amended

Subsection 20 amended

NEW subsection 46

422.52 Payment of tax — bond.

1. The tax levied under this division is due and payable in quarterly installments on or before the last day of the month following each quarterly period except as otherwise provided in this subsection. Every retailer who collects more than four thousand dollars in retail sales tax in a semimonthly period shall deposit with the department or in a depository authorized by law and designated by the director, the amount collected or an amount equal to not less than one-sixth of the tax collected and paid to the department during the preceding quarter, with a deposit form for the semimonthly period as prescribed by the director. The first semimonthly deposit form is for the period from the first of the month through the fifteenth of the month and is due on or before the twenty-fifth day of the month. The second semimonthly deposit form is for the period from the sixteenth through the end of the month and is due on or before the tenth day of the month following the month of collection. A deposit is not required for the last semimonthly period of the calendar quarter. The

total quarterly amount, less the amount deposited for the five previous semimonthly periods, is due with the quarterly report on the last day of the month following the month of collection. A retailer who collects more than five hundred dollars in retail sales taxes in one month and not more than four thousand dollars in retail sales taxes in a semimonthly period shall deposit with the department or in a depository authorized by law and designated by the director, the amount collected or an amount equal to not less than one-third of the tax collected and paid to the department during the preceding quarter, with a deposit form for the month as prescribed by the director. The deposit form is due on or before the twentieth day of the month following the month of collection, except a deposit is not required for the third month of the calendar quarter and the total quarterly amount, less the amounts deposited for the first two months of the quarter, is due with the quarterly report on the last day of the month following the month of collection. Every retailer who collects more than fifty dollars and not more than five hundred dollars in retail sales tax in one month shall deposit with the department or in a depository authorized by law and designated by the director, the amount collected, or an amount equal to not less than one-third of the tax collected and paid to the department during the last preceding quarter, with a deposit form for the month as prescribed by the director. The deposit form is due on or before the twentieth day of the month following the month of collection, except a deposit is not required for the third month of the calendar quarter and the total quarterly amount, less the amounts deposited for the first two months of the quarter, is due with the quarterly report on the last day of the month following the month of collection. The monthly remittance procedure is optional for any sales tax permit holder whose average monthly collection of tax amounts to more than twenty-five dollars and less than fifty dollars. If the exact amounts of the taxes due or an amount equal to not less than one-third or one-sixth, as applicable, of the tax collected and paid to the department during the last preceding quarter on the deposit form are not ascertainable by the retailer, or would work undue hardship in the computation of the taxes due by the retailer, the director may provide by rules alternative procedures for estimating the amounts (but not the dates) due by the retailers. The forms prescribed by the director shall be referred to as "*retailers semimonthly tax deposit*" or "*retailers monthly tax deposit*". Deposit forms shall be signed by the retailer or the retailer's duly authorized agent, and shall be duly certified by the retailer or agent to be correct. The director may authorize incorporated banks and trust companies or other depositories authorized by law which are depositories or financial agents of the United States, or of this state, to receive any tax imposed under this chapter, in the manner, at the times and under the conditions the director prescribes. The director shall prescribe the manner, times, and

conditions under which the receipt of the tax by those depositories is to be treated as payment of the tax to the department.

2. Every permit holder at the time of making the return required hereunder, shall compute and pay to the department the tax due for the preceding period.

3. The director may, when necessary and advisable in order to secure the collection of the tax levied under this division, require any person subject to such tax to file with the director a bond, issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility, in such amount as the director may fix, to secure the payment of any tax or penalties due or which may become due from such person. In lieu of such bond, securities approved by the director, in such amount as the director may prescribe, may be deposited with the department, which securities shall be kept in the custody of the department and may be sold by the director at public or private sale, without notice to the depositor thereof, if it becomes necessary so to do in order to recover any tax or penalties due. Upon any such sale, the surplus, if any, above the amounts due under this division shall be returned to the person who deposited the securities.

Notwithstanding the provisions of this subsection directing that securities be kept in the custody of the department for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, all such securities shall be deposited into the general fund of the state.

4. The tax by this division imposed upon those sales of motor vehicle fuel which are subject to tax and refund under chapter 324 shall be collected by the state treasurer by way of deduction from refunds otherwise allowable under said chapter. The amount of such deductions the treasurer shall transfer from the motor vehicle fuel fund to the special tax fund.

5. The provisions of subsection 1, according to the context, shall apply to persons having receipts from rendering, furnishing, or performing services enumerated in section 422.43.

6. *a.* If a purchaser fails to pay tax imposed by this division to the retailer required to collect the tax, then in addition to all of the rights, obligations, and remedies provided, the tax is payable by the purchaser directly to the department, and sections 422.50, 422.51, 422.52, 422.54, 422.55, 422.56, 422.57, 422.58 and 422.59 apply to the purchaser. For failure, the retailer and purchaser are liable, unless the circumstances described in section 422.47, subsection 3, paragraph "b" or "e" or subsection 4, paragraph "b" or "d" are applicable.

b. If any retailer subject to this division sells the retailer's business or stock of goods or quits the business, the retailer shall prepare a final return and pay all tax due within the time required by law. The immediate successor to the retailer, if any, shall withhold sufficient of the purchase price, in money or money's worth, to pay the amount of delinquent tax, interest or penalty due and unpaid. If the immediate successor of the business or stock of goods intention-

ally fails to withhold the amount due from the purchase price as provided in this paragraph, the immediate successor is personally liable for the payment of the delinquent taxes, interest and penalty accrued and unpaid on account of the operation of the business by the immediate former retailer, except when the purchase is made in good faith as provided in section 421.28. However, a person foreclosing on a valid security interest or retaking possession of premises under a valid lease is not an "immediate successor" for purposes of this paragraph. The department may waive the liability of the immediate successor under this paragraph if the immediate successor exercised good faith in establishing the amount of the previous liability.

c. A person sponsoring a flea market, or a craft, antique, coin, or stamp show or similar event shall obtain from every retailer selling tangible personal property or taxable services at the event proof that the retailer possesses a valid sales tax permit or secure from the retailer a statement, taken in good faith, that property or services offered for sale are not subject to sales tax. Failure to do so renders a sponsor of the event liable for payment of any sales tax, interest and penalty due and owing from any retailer selling property or services at the event. Sections 422.50, 422.51, 422.52, 422.54, 422.55, 422.56, 422.57, 422.58 and 422.59 apply to the sponsors. For purposes of this paragraph a person sponsoring a flea market, or a craft, antique, coin or stamp show or similar event does not include an organization which sponsors an event less than three times a year or a state, county or district agricultural fair.

7. The tax on gross receipts from the sale or rental of tangible personal property under a consumer rental purchase agreement as defined in section 537.3604, subsection 8, is payable in the tax period of receipt.

8. If an amount of tax represented by a retailer to a consumer or user as constituting tax due is computed upon gross receipts that are not taxable or the amount represented is in excess of the actual taxable amount and the amount represented is actually paid by the consumer or user to the retailer, the excess amount of tax paid shall be returned to the consumer or user upon notification to the retailer by the department or by the consumer or user that an excess payment exists. If the retailer fails to make a return, the amount which the consumer or user has paid to the retailer shall be remitted by the retailer to the department.

91 Acts, ch 260, §1230 HF 173
 Restrictions on use of securities deposited in state general fund, see 91 Acts, ch 263, §38 SF 209
 Subsection 3, NEW unnumbered paragraph 2

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 state bank chartered under the laws of any other state, a

national banking association, a trust company, a federally chartered savings and loan association, an out-of-state state chartered savings bank, a financial institution chartered by the federal home loan bank board, a non-Iowa chartered savings and loan association, an association incorporated 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, 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 following adjustments:

a. Federal income taxes paid or accrued shall not be subtracted.

b. Notwithstanding sections 262.41 and 262.51, or any other provisions of law, income from obligations of the state and its political subdivisions and franchise taxes paid or accrued under this division during the taxable year shall be added.

c. Interest and dividends from federal securities shall not be subtracted.

d. Interest and dividends derived from obligations of United States possessions, agencies, and instrumentalities, including bonds which were purchased after January 1, 1991, and issued by the governments of Puerto Rico, Guam, and the Virgin Islands shall be added, to the extent they were not included in computing federal taxable income.

e. A deduction disallowed under section 265(b) or section 291(e)(1)(B) of the Internal Revenue Code shall be subtracted.

91 Acts, ch 217, §1 SF 350
 1991 amendment to subsection 4 applicable to interest received on or after July 1, 1991, 91 Acts, ch 217, §2 SF 350
 Subsection 4 stricken and rewritten

422.65 Allocation of revenue.

All moneys received from the franchise tax shall be deposited in the state general fund. Forty-five percent of all franchise tax money received and deposited in the state general fund shall be paid quarterly on warrants by the director, after certification by the director, as follows:

1. Sixty percent to the general fund of the city from which the tax is collected.

2. Forty percent to the county from which the tax is collected.

If the financial institution maintains one or more offices for the transaction of business, other than its principal office, a portion of its franchise tax shall be allocated to each office, based upon a reasonable measure of the business activity of each office. The director shall prescribe, for each type of financial institution, a method of measuring the business activi-

ty of each office. Financial institutions shall furnish all necessary information for this purpose at the request of the director.

Quarterly, the director shall certify to the treasurer of state the amounts to be paid to each city and county from the state general fund. All moneys received from the franchise tax are appropriated according to the provisions of this section.

Appropriation limited for 1991 1992 fiscal year, 91 Acts, ch 267, §507 HF 479

Footnote added, section not amended

422.69 Moneys paid and deposited.

1. All fees, taxes, interest and penalties imposed under this chapter shall be paid to the department in the form of remittances payable to the state treasurer and the department 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. The director shall estimate the amount of tax revenues collected as a result of the sales tax imposed under section 422.43, subsection 12, and shall deposit a like amount in a "GAAP escrow account" to be created within the general fund. Amounts deposited in the GAAP escrow account shall be used to implement generally accepted accounting principles as required in 1986 Iowa Acts, chapter 1245, section 2046, as amended by 1986 Iowa Acts, chapter 1238, section 59.

Notwithstanding the provisions of this subsection directing that certain revenues collected be deposited into the GAAP escrow account, for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, all such revenues shall be deposited into the general fund of the state.

4. The director shall estimate the amount of state corporate income tax revenues collected as a result of the United States supreme court decision holding that the federal windfall profits tax is not a federal income tax and shall deposit a like amount in the Iowa resources enhancement and protection fund created under section 455A.18.

91 Acts, ch 260, §1231 HF 173

Restriction on use of moneys deposited in state general fund, see 91 Acts, ch 263, §38 SF 209

Subsection 3, NEW unnumbered paragraph 2

422.72 Information deemed confidential — informational exchange agreement.

1. It is unlawful for the director, or any person having an administrative duty under this chapter, or any present or former officer or other employee of the state authorized by the director to examine returns, to divulge in any manner whatever, the business affairs, operations, or information obtained by an investigation under this chapter of records and equipment of any person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy of a return or any book

containing any abstract or particulars thereof to be seen or examined by any person except as provided by law. However, the director may authorize examination of such state returns and other state information which is confidential under this section, if a reciprocal arrangement exists, by tax officers of another state or the federal government. The director may, by rules adopted pursuant to chapter 17A, authorize examination of state information and returns by other officers or employees of this state to the extent required by their official duties and responsibilities. Disclosure of state information to tax officers of another state is limited to disclosures which have a tax administrative purpose and only to officers of those states which by agreement with this state limit the disclosure of the information as strictly as the laws of this state protecting the confidentiality of returns and information. The director shall place upon the state tax form a notice to the taxpayer that state tax information may be disclosed to tax officials of another state or of the United States for tax administrative purposes.

The department shall not authorize the examination of tax information by officers and employees of this state, another state, or of the United States if the officers or employees would otherwise be required to obtain a judicial order to examine the information if it were to be obtained from another source, and if the purpose of the examination is other than for tax administration. However, the director may provide sample individual income tax information to be used for statistical purposes to the legislative fiscal bureau. The information shall not include the name or mailing address of the taxpayer or the taxpayer's social security number. Any information contained in an individual income tax return which is provided by the director shall only be used as a part of a data base which contains similar information from a number of returns. The legislative fiscal bureau shall not have access to the income tax returns of individuals. Each request for individual income tax information shall contain a statement by the director of the legislative fiscal bureau that the individual income tax information received by the bureau shall be used solely for statistical purposes. This subsection does not prevent the department from authorizing the examination of state returns and state information under the provisions of section 252B.9. This subsection prevails over any general law of this state relating to public records.

The director shall provide state tax returns and return information to the auditor of state, to the extent that the information is necessary to complete the annual audit of the department required by section 11.2. The state tax returns and return information provided by the director shall remain confidential and shall not be included in any public documents issued by the auditor of state.

2. Federal tax returns, copies of returns, and return information as defined in section 6103(b) of the Internal Revenue Code, which are required to be filed with the department for the enforcement of the

income tax laws of this state, shall be held as confidential by the department and subject to the disclosure limitations in subsection 1.

3. Unless otherwise expressly permitted by section 421.17, subsections 21, 22, 23, 25, 29, and 32, sections 252B.9, 324.63, 421.19, 421.28, and 422.20, and this section, a tax return, return information, or investigative or audit information shall not be divulged to any person or entity, other than the taxpayer, the department, or internal revenue service for use in a matter unrelated to tax administration.

This prohibition precludes persons or entities other than the taxpayer, the department, or the internal revenue service from obtaining such information from the department, and a subpoena, order, or process which requires the department to produce such information to a person or entity, other than the taxpayer, the department, or internal revenue service for use in a nontax proceeding is void.

4. A person violating subsection 1, 2, 3, or 6 is guilty of a serious misdemeanor.

5. The director may disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the director, after reasonable effort and lapse of time, has been unable to locate the persons.

6. The department may enter into a written informational exchange agreement for tax administration purposes with a city or county which is entitled to receive funds due to a local hotel and motel tax or a local sales and services tax. The written informational exchange agreement shall designate no more than two paid city or county employees that have access to actual return information relating to that city's or county's receipts from a local hotel and motel tax or a local sales and services tax.

City or county employees designated to have access to information under this subsection are deemed to be officers and employees of the state for purposes of the restrictions and penalties pursuant to subsection 1 pertaining to confidential information. The department may refuse to enter into a written informational exchange agreement if the city or county does not agree to pay the actual cost of providing the information and the department may refuse to abide by a written informational exchange agreement if the city or county does not promptly pay the actual cost of providing the information or take reasonable precautions to protect the information's confidentiality.

91 Acts, ch 159, §20 SF 356

Subsection 3, unnumbered paragraph 1 amended

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.

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.

The department shall enter into an agreement with the internal revenue service for the transmission of federal income tax reports on individuals required to file an Iowa income tax return who have been involved in an income tax matter with the internal revenue service. After final disposition of the income tax matter between the taxpayer and the internal revenue service, the department shall determine whether the individual is due a state income tax refund as a result of final disposition of such income tax matter. If the individual is due a state income tax refund, the department shall notify the individual within thirty days and request the individual to file a claim for refund or credit with the department.

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 in-

jury 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.

5. Notwithstanding subsection 2, a claim for credit or refund of the income tax paid for a tax year beginning in the 1983 calendar year is considered timely if the claim is filed with the department on or before April 30, 1988, if the taxpayer's federal income tax was forgiven under section 692 of the Internal Revenue Code of 1986 because the taxpayer died, or was missing in action and determined dead, while serving in a combat zone. To the extent the federal income tax was forgiven under section 692 of the Internal Revenue Code of 1986 for the tax year, the Iowa income tax is also forgiven.

6. Notwithstanding subsection 2, a claim for credit or refund of the state alternative minimum tax paid for any tax year beginning on or after January 1, 1982, and before January 1, 1984, is considered timely if the claim is filed with the department on or before April 30, 1988, if the taxpayer's capital gains preference items for purposes of the federal individual alternative minimum tax were reduced as a result of section 13208 of the Consolidated Omnibus Budget Reconciliation Act of 1985 as amended by section 1896 of the Tax Reform Act of 1986.

7. 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 November 10, 1989, if the taxpayer's federal income tax was forgiven under section 170(m) of the Internal Revenue Code because eighty percent of the taxpayer's payment to a college or university was allowed as a charitable contribution since the payment entitled the taxpayer to purchase tickets to an athletic event of the college or university. To the extent the federal income tax was forgiven for the tax year under section 170(m) of the Internal Revenue Code, the Iowa income tax is also forgiven.

91 Acts, ch 221, §1, 2 SF 536
Subsection 2 amended
Subsection 2, NEW unnumbered paragraph 2

422.74 Certification of refund.

If a refund is authorized in any division of this chapter, the director shall certify the amount of the refund and the name of the payee and draw a warrant on the general fund of the state in the amount specified payable to the named payee, and the treasurer of state shall pay the warrant.

91 Acts, ch 97, §47 HF 198
Section amended

CHAPTER 423

USE TAX

423.24 Deposit of revenue — appropriation.

1. *a.* Twenty-five percent of all revenue derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment as collected pursuant to section 423.7, up to a maximum of three million eight hundred twenty-five thousand dollars per quarter, shall be deposited into the Iowa comprehensive petroleum underground storage tank fund created in section 455G.3, and the moneys so deposited are a continuing appropriation for expenditure under chapter 455G, and moneys so appropriated shall not be used for other purposes.

b. Any remaining revenue derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment as collected pursuant to section 423.7 shall be credited to the primary road fund to the extent necessary to reimburse that fund for the expenditures, not otherwise eligible to be made from the primary road fund, made for repairing, improving and maintaining bridges over the rivers bordering the state. Expenditures for those portions of bridges within adjacent states may be

included when they are made pursuant to an agreement entered into under sections 313.63, 313A.34 and 314.10.

c. Any remaining revenues derived from the operation of section 423.7 shall be credited to the road use tax fund.

2. All other revenue arising under the operation of this chapter shall be credited to the general fund of the state.

91 Acts, ch 252, §1 SF 362
Exception for sesquicentennial registration plate fees, §321 34(14)
Subsection 1, paragraph a amended

423.27 Penalty for willful failure to pay tax.

A person who willfully makes a false statement in regard to the purchase price of a vehicle subject to taxation under section 423.7 with the intent to evade the payment of tax shall be assessed a penalty of seventy-five percent of the amount of tax unpaid and required to be paid on the actual purchase price less trade-in allowance.

91 Acts, ch 159, §21 SF 356
NEW section

CHAPTER 424

ENVIRONMENTAL PROTECTION CHARGE
ON PETROLEUM DIMINUTION**424.2 Definitions.**

As used in this chapter, unless the context otherwise requires

1 “*Board*” means the Iowa comprehensive petroleum underground storage tank board

2 “*Charge*” means the environmental protection charge imposed upon petroleum diminution pursuant to section 424.3

3 “*Charge payer*” means a depositor, receiver, or tank owner or operator obligated to pay the environmental protection charge under this chapter

4 “*Department*” means the department of revenue and finance

5 “*Depositor*” means the person who deposits petroleum into an underground storage tank subject to regulation under chapter 455G or an aboveground petroleum storage tank as defined in section 101.21, located at a retail motor vehicle fuel outlet

6 “*Diminution*” means the petroleum released into the environment prior to its intended beneficial use

7 “*Director*” means the director of revenue and finance

8 “*Fund*” means the Iowa comprehensive petroleum underground storage tank fund

9 “*Owner or operator*” means “*owner or operator*” of an underground storage tank as used in chapter 455G or the “*owner*” or “*operator*” of an aboveground petroleum storage tank as defined in section 101.21, located at a retail motor vehicle fuel outlet

10 “*Petroleum*” means petroleum as defined in section 455G.2

11 “*Receiver*” means, if the owner and operator are not the same person, the person who, under a contract between the owner and operator, is responsible for payment for petroleum deposited into a tank, and if the owner and operator of a tank are the same person, means the owner

12 “*Tank*” means an underground storage tank subject to regulation under chapter 455G or an aboveground petroleum storage tank as defined in section 101.21, located at a retail motor vehicle fuel outlet

91 Acts ch 252 §2 SF 362
Subsections 5, 9 and 17 amended

424.3 Environmental protection charge imposed upon petroleum diminution.

1 An environmental protection charge is imposed upon diminution. A depositor shall collect from the receiver of petroleum deposited into a tank, the environmental protection charge imposed under this section on diminution each time petroleum is deposited into the tank, and pay the charge to the department as directed by this chapter.

2 The environmental protection charge shall be equal to the total volume of petroleum deposited in a tank multiplied by the diminution rate multiplied by the cost factor.

3 The diminution rate is one-tenth of one percent.

4 Diminution equals total volume of petroleum deposited multiplied by the diminution rate established in subsection 3.

5 The cost factor is an amount per gallon of diminution determined by the board pursuant to this subsection. The board, after public hearing, shall determine, or shall adjust, the cost factor to the greater of either an amount reasonably calculated to generate an annual average revenue, year to year, of fifteen million three hundred thousand dollars from the charge, excluding penalties and interest, or ten dollars. The board may determine or adjust the cost factor at any time but shall at minimum determine the cost factor at least once each fiscal year.

91 Acts ch 252 §3 SF 362
Subsection 17 amended

CHAPTER 425

HOMESTEAD TAX CREDITS AND REIMBURSEMENT

Certification as to smoke detector, § 100 18(2b) SF 383

425.1 Homestead credit fund — apportionment — payment.

1. A homestead credit fund is created. There is appropriated annually from the general fund of the state to the department of revenue and finance to be credited to the homestead credit fund, an amount sufficient to implement this chapter.

The director of revenue and finance shall issue warrants on the homestead credit fund payable to the county treasurers of the several counties of the state under this chapter.

2. The homestead credit fund shall be apportioned each year so as to give a credit against the tax on each eligible homestead in the state in an amount equal to the actual levy on the first four thousand eight hundred fifty dollars of actual value for each homestead.

3. The amount due each county shall be paid in two payments on November 15 and March 15 of each fiscal year, drawn upon warrants payable to the respective county treasurers. The two payments shall be as nearly equal as possible.

4. Annually the department of revenue and finance shall estimate the credit not to exceed the actual levy on the first four thousand eight hundred fifty dollars of actual value of each eligible homestead, and shall certify to the county auditor of each county the credit and its amount in dollars. Each county auditor shall then enter the credit against the tax levied on each eligible homestead in each county payable during the ensuing year, designating on the tax lists the credit as being from the homestead credit fund, and credit shall then be given to the several taxing districts in which eligible homesteads are located in an amount equal to the credits allowed on the taxes of the homesteads. The amount of credits shall be apportioned by each county treasurer to the several taxing districts as provided by law, in the same manner as though the amount of the credit had been paid by the owners of the homesteads. However, the several taxing districts shall not draw the funds so credited until after the semiannual allocations have been received by the county treasurer, as provided in this chapter. Each county treasurer shall show on each tax receipt the amount of credit received from the homestead credit fund.

5. If the homestead tax credit computed under this section is less than sixty-two dollars and fifty cents, the amount of homestead tax credit on that eligible homestead shall be sixty-two dollars and fifty cents subject to the limitation imposed in this section.

6. The homestead tax credit allowed in this chapter shall not exceed the actual amount of taxes payable on the eligible homestead, exclusive of any special assessments levied against the homestead.

91 Acts, ch 97, §48 HF 198
Appropriation limited for fiscal year beginning July 1, 1991, proration, 91 Acts, ch 267, §507 HF 479
Subsection 3 amended

425.2 Qualifying for credit.

A person who wishes to qualify for the credit allowed under this chapter shall obtain the appropriate forms for filing for the credit from the assessor. The person claiming the credit shall file a verified statement and designation of homestead with the assessor for the year for which the person is first claiming the credit. The claim shall be filed not later than July 1 of the year for which the person is claiming the credit. A claim filed after July 1 of the year for which the person is claiming the credit shall be considered as a claim filed for the following year.

Upon the filing and allowance of the claim, the claim shall be allowed on that homestead for successive years without further filing as long as the property is legally or equitably owned and used as a homestead by that person or that person's spouse on July 1 of each of those successive years, and the owner of the property being claimed as a homestead declares residency in Iowa for purposes of income taxation, and the property is occupied by that person or that person's spouse for at least six months in each of those calendar years in which the fiscal year begins. When the property is sold or transferred, the buyer or transferee who wishes to qualify shall refile for the credit. However, when the property is transferred as part of a distribution made pursuant to chapter 598, the transferee who is the spouse retaining ownership of the property is not required to refile for the credit. Property divided pursuant to chapter 598 shall not be modified following the division of the property. An owner who ceases to use a property for a homestead or intends not to use it as a homestead for at least six months in a calendar year shall provide written notice to the assessor by July 1 following the date on which the use is changed. A person who sells or transfers a homestead or the personal representative of a deceased person who had a homestead at the time of death, shall provide written notice to the assessor that the property is no longer the homestead of the former claimant.

In case the owner of the homestead is in active service in the armed forces of this state or of the United States, or is sixty-five years of age or older, or is dis-

abled, the statement and designation may be signed and delivered by any member of the owner's family, by the owner's guardian or conservator, or by any other person who may represent the owner under power of attorney. If the owner of the homestead is married, the spouse may sign and deliver the statement and designation. The director of human services or the director's designee may make application for the benefits of this chapter as the agent for and on behalf of persons receiving assistance under chapter 249.

Any person sixty-five years of age or older or any person who is disabled may request, in writing, from the appropriate assessor forms for filing for homestead tax credit. Any person sixty-five years of age or older or who is disabled may complete the form, which shall include a statement of homestead, and mail or return it to the appropriate assessor. The signature of the claimant on the statement shall be considered the claimant's acknowledgment that all statements and facts entered on the form are correct to the best of the claimant's knowledge.

Upon adoption of a resolution by the county board of supervisors, any person may request, in writing, from the appropriate assessor forms for the filing for homestead tax credit. The person may complete the form, which shall include a statement of homestead, and mail or return it to the appropriate assessor. The signature of the claimant on the statement of homestead shall be considered the claimant's acknowledgment that all statements and facts entered on the form are correct to the best of the claimant's knowledge.

The failure of a person to file a claim under this section on or before July 1 of the year for which the person is first claiming the credit or to have the evidence of ownership recorded in the office of the county recorder does not disqualify the claim if the person claiming the credit or through whom the credit is claimed is otherwise qualified. The belated claim shall be filed with the appropriate assessor on or before December 31 of the following calendar year and, if approved by the board of supervisors, the county treasurer shall file an amended certificate of homestead tax credits with the director of revenue and finance pursuant to section 425.4.

91 Acts, ch 97, §49 HF 198
Unnumbered paragraph 2 amended

425.11 Definitions.

For the purpose of this chapter and wherever used in this chapter:

1. The word "*homestead*" shall have the following meaning:

a. The homestead includes the dwelling house which the owner, in good faith, is occupying as a home on July 1 of the year for which the credit is claimed and occupies as a home for at least six months during the calendar year in which the fiscal year begins, except as otherwise provided.

When any person is inducted into active service under the Selective Training and Service Act of the

United States or whose voluntary entry into active service results in a credit on the quota of persons required for service under the Selective Training and Service Act, or who, being a member of any component part of the military, naval, or air forces or nurse corps of this state or nation, is called or ordered into active service, such person shall be considered as occupying or living on the homestead during such service and, where equitable or legal title of the homestead is in the spouse of the person who is a member of or is inducted into the armed services of the United States, the spouse shall be considered as occupying or living on the homestead during such service.

When any person is confined in a nursing home, extended-care facility, or hospital, such person shall be considered as occupying or living on a homestead where such person is the owner of such homestead and such person maintains such homestead and does not lease, rent, or otherwise receive profits from other persons for the use thereof.

b. It may contain one or more contiguous lots or tracts of land with the buildings or other appurtenances thereon habitually, and in good faith, used as a part of the homestead.

c. It must not embrace more than one dwelling house, but where a homestead has more than one dwelling house situated thereon, the credit provided for in this chapter shall apply to the home and buildings used by the owner, but shall not apply to any other dwelling house and buildings appurtenant.

d. The words "*dwelling house*" shall embrace any building occupied wholly or in part by the claimant as a home.

2. The word "*owner*" shall mean the person who holds the fee simple title to the homestead, and in addition shall mean the person occupying as a surviving spouse or the person occupying under a contract of purchase which contract has been recorded in the office of the county recorder of the county in which the property is located, or the person occupying the homestead under devise or by operation of the inheritance laws where the whole interest passes or where the divided interest is shared only by persons related or formerly related to each other by blood, marriage or adoption, or the person occupying the homestead is a shareholder of a family farm corporation that owns the property, or the person occupying the homestead under a deed which conveys a divided interest where the divided interest is shared only by persons related or formerly related to each other by blood, marriage or adoption or where the person occupying the homestead holds a life estate with the reversion interest held by a nonprofit corporation organized under chapter 504A, provided that the holder of the life estate is liable for and pays property tax on the homestead or where the person occupying the homestead holds an interest in a horizontal property regime under chapter 499B, regardless of whether the underlying land committed to the horizontal property regime is in fee or as a leasehold interest, provided that the holder of the interest in the horizontal property regime is liable for and pays

property tax on the homestead. For the purpose of this chapter the word “owner” shall be construed to mean a bona fide owner and not one for the purpose only of availing the person of the benefits of this chapter. In order to qualify for the homestead tax credit, evidence of ownership shall be on file in the office of the clerk of the district court or recorded in the office of the county recorder at the time the owner files with the assessor a verified statement of the homestead claimed by the owner as provided in section 425.2.

3. The words “assessed valuation” shall mean the taxable valuation of the homestead as fixed by the assessor, or by the board of review, under the provisions of section 441.21, without deducting therefrom the exemptions authorized in section 427.3.

Where not in conflict with the terms of the definitions above set out, the provisions of chapter 561 shall control.

91 Acts, ch 97, §50 HF 198

Subsection 1, paragraph a, unnumbered paragraph 1 amended

425.17 Definitions.

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

1. “Base year” means the calendar year last ending before the claim is filed.

2. “Claimant” means either one of the following:

a. A person filing a claim for credit or reimbursement under this division who has attained the age of sixty-five years on or before December 31 of the base year or who is a surviving spouse having attained the age of fifty-five years on or before December 31, 1988, or who is totally disabled and was totally disabled on or before December 31 of the base year, and was domiciled in this state during the entire base year and is domiciled in this state at the time the claim is filed or at the time of the person’s death in the case of a claim filed by the executor or administrator of the claimant’s estate.

b. A person filing a claim for credit or reimbursement under this division who has attained the age of eighteen years on or before December 31 of the base year but has not attained the age or disability status described in paragraph “a”, and was domiciled in this state during the entire base year and is domiciled in this state at the time the claim is filed or at the time of the person’s death in the case of a claim filed by the executor or administrator of the claimant’s estate and was not claimed as a dependent on any other person’s tax return for the base year.

“Claimant” under paragraph “a” or “b” includes a vendee in possession under a contract for deed and may include one or more joint tenants or tenants in common. In the case of a claim for rent constituting property taxes paid, the claimant shall have rented the property during any part of the base year. If a homestead is occupied by two or more persons, and more than one person is able to qualify as a claimant, the persons may determine among them who will be the claimant. If they are unable to agree, the matter shall be referred to the director of revenue and fi-

nance not later than October 31 of each year and the director’s decision is final.

3. “Gross rent” means rental paid at arm’s length solely for the right of occupancy of a homestead or mobile home, including rent for space occupied by a mobile home not to exceed one acre, exclusive of charges for any utilities, services, furniture, furnishings, or personal property appliances furnished by the landlord as a part of the rental agreement whether or not expressly set out in the rental agreement. If the director of revenue and finance determines that the landlord and tenant have not dealt with each other at arm’s length, and the director of revenue and finance is satisfied that the gross rent charged was excessive, the director shall adjust the gross rent to a reasonable amount as determined by the director. If the landlord does not supply the charges for any utilities, services, furniture, furnishings, or personal property appliances furnished by the landlord, or if the charges appear to be incorrect, the director of revenue and finance may apply a percentage determined from samples of similar gross rents paid solely for the right of occupancy.

4. “Homestead” means the dwelling owned or rented and actually used as a home by the claimant during all or part of the base year, and so much of the land surrounding it including one or more contiguous lots or tracts of land, as is reasonably necessary for use of the dwelling as a home, and may consist of a part of a multidwelling or multipurpose building and a part of the land upon which it is built. It does not include personal property except that a mobile home may be a homestead. Any dwelling or a part of a multidwelling or multipurpose building which is exempt from taxation does not qualify as a homestead under this division. However, solely for purposes of claimants living in a property and receiving reimbursement for rent constituting property taxes paid immediately before the property becomes tax exempt, and continuing to live in it after it becomes tax exempt, the property shall continue to be classified as a homestead. A homestead must be located in this state. When a person is confined in a nursing home, extended-care facility, or hospital, the person shall be considered as occupying or living in the person’s homestead if the person is the owner of the homestead and the person maintains the homestead and does not lease, rent, or otherwise receive profits from other persons for the use of the homestead.

5. “Household” means a claimant, spouse, and any person related to the claimant or spouse by blood, marriage, or adoption and living with the claimant at any time during the base year. “Living with” refers to domicile and does not include a temporary visit.

6. “Household income” means all income of the claimant and the claimant’s spouse in a household and actual monetary contributions received from any other household member during their respective twelve-month income tax accounting periods ending with or during the base year.

7. “Income” means the sum of Iowa net income

as defined in section 422.7, plus all of the following to the extent not already included in Iowa net income: Capital gains, alimony, child support money, cash public assistance and relief, except property tax relief granted under this division, the gross amount of any pension or annuity, including but not limited to railroad retirement benefits, all payments received under the federal social security Act, and all military retirement and veterans' disability pensions, interest received from the state or federal government or any of its instrumentalities, workers' compensation and the gross amount of disability income or "loss of time" insurance. "Income" does not include gifts from nongovernmental sources, or surplus foods or other relief in kind supplied by a governmental agency.

8. "Property taxes due" means property taxes including any special assessments, but exclusive of delinquent interest and charges for services, due on a claimant's homestead in this state, but includes only property taxes for which the claimant is liable and which will actually be paid by the claimant. However, if the claimant is a person whose property taxes have been suspended under sections 427.8 and 427.9, "property taxes due" means property taxes including any special assessments, but exclusive of delinquent interest and charges for services, due on a claimant's homestead in this state, but includes only property taxes for which the claimant is liable and which would have to be paid by the claimant if the payment of the taxes has not been suspended pursuant to sections 427.8 and 427.9. "Property taxes due" shall be computed with no deduction for any credit under this division or for any homestead credit allowed under section 425.1. Each claim shall be based upon the taxes due during the fiscal year next following the base year. If a homestead is owned by two or more persons as joint tenants or tenants in common, and one or more persons are not members of claimant's household, "property taxes due" is that part of property taxes due on the homestead which equals the ownership percentage of the claimant and the claimant's household. The county treasurer shall include with the tax receipt a statement that if the owner of the property is eighteen years of age or over, the person may be eligible for the credit allowed under this division. If a homestead is an integral part of a farm, the claimant may use the total property taxes due for the larger unit. If a homestead is an integral part of a multidwelling or multipurpose building the property taxes due for the purpose of this subsection shall be prorated to reflect the portion which the value of the property that the household occupies as its homestead is to the value of the entire structure. For purposes of this subsection, "unit" refers to that parcel of property covered by a single tax statement of which the homestead is a part.

9. "Rent constituting property taxes paid" means twenty-seven and one-half percent of the gross rent actually paid in cash or its equivalent during the base year by the claimant or the claimant's household solely for the right of occupancy of their homestead

in the base year, and which rent constitutes the basis, in the succeeding year, of a claim for reimbursement under this division by the claimant.

10. "Special assessment" means an unpaid special assessment certified pursuant to chapter 384, division IV. The claimant may include as a portion of the taxes due during the fiscal year next following the base year an amount equal to the unpaid special assessment installment due, plus interest, during the fiscal year next following the base year.

11. "Totally disabled" means the inability to engage in any substantial gainful employment by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or is reasonably expected to last for a continuous period of not less than twelve months.

91 Acts, ch 191, §19 HF 687
 1991 amendment to subsection 10 effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
 Subsections renumbered to alphabetize
 Subsection 10 stricken and rewritten

425.23 Schedule for claims for credit or reimbursement.

The amount of any claim for credit or reimbursement filed under this division shall be determined as provided in this section.

1. a. The tentative credit or reimbursement for a claimant described in section 425.17, subsection 2, paragraph "a" shall be determined in accordance with the following schedule:

If the household income is:	Percent of property taxes due or rent constituting property taxes paid allowed as a credit or reimbursement:
\$ 0 — 5,999.99	100%
6,000 — 6,999.99	85
7,000 — 7,999.99	70
8,000 — 9,999.99	50
10,000 — 11,999.99	35
12,000 — 13,999.99	25

b. The tentative credit or reimbursement for a claimant described in section 425.17, subsection 2, paragraph "b", shall be determined in accordance with the following schedule:

If the household income is:	Percent of property taxes due or rent constituting property taxes paid allowed as a credit or reimbursement:
\$ 0 — 5,999.99	50%
6,000 — 6,999.99	42
7,000 — 7,999.99	35
8,000 — 9,999.99	25
10,000 — 11,999.99	17
12,000 — 13,999.99	12

Notwithstanding the effective date provisions in

1990 Iowa Acts, chapter 1250, section 21, this lettered paragraph is effective for property tax claims filed on or after January 1, 1993, and for rent reimbursement claims filed on or after January 1, 1994, and all such claims filed under this lettered paragraph before such dates shall not be allowed.

2. The actual credit for property taxes due shall be determined by subtracting from the tentative credit the amount of the homestead credit under section 425.1 which is allowed as a credit against property taxes due in the fiscal year next following the base year by the claimant or any person of the claimant's household. If the subtraction produces a negative amount, there shall be no credit but no refund shall be required. The actual reimbursement for rent constituting property taxes paid shall be equal to the tentative reimbursement.

3. a. A person who is eligible to file a claim for credit for property taxes due and who has a household income of six thousand dollars or less and who has a special assessment levied against the homestead may file a claim with the county treasurer that the claimant had a household income of six thousand dollars or less and that a special assessment is presently levied against the homestead. The department shall provide to the respective county treasurers the forms necessary for the administration of this subsection. The claim shall be filed not later than September 30 of each year. Upon the filing of the claim, a penalty or interest for late payment shall not accrue against the amount of the special assessment due and payable. The claim filed by the claimant constitutes a claim for credit of an amount equal to the actual amount due and payable upon the special assessment payable during the fiscal year against the homestead of the claimant or an amount equal to the annual payment of the special assessment levied against the homestead of the claimant and payable in annual installments through the period of years provided by the governing body of the city, whichever is less. However, where the claimant is an individual described in section 425.17, subsection 2, paragraph "b", the claim filed constitutes a claim for credit of an amount equal to one-half of the actual amount due and payable during the fiscal year or equal to one-half of the annual payment, whichever

is less. The department of revenue and finance shall, upon the filing of the claim with the department by the county treasurer, pay that amount of the special assessment during the current fiscal year to the county treasurer. The county treasurer shall submit the claims to the director of revenue and finance not later than October 15 of each year. The director of revenue and finance shall certify the amount of reimbursement due each county for special assessment credits allowed under this subsection. The amount of reimbursement due each county shall be paid by the director of revenue and finance on October 20 of each year, drawn upon warrants payable to the respective county treasurer. There is appropriated annually from the general fund of the state to the department of revenue and finance an amount sufficient to carry out the provisions of this subsection. The county treasurer shall credit any moneys received from the department against the amount of the special assessment due and payable on the homestead of the claimant.

b. For purposes of this subsection, a totally disabled person in computing household income shall deduct all medical and necessary care expenses paid during the twelve-month income tax accounting periods used in computing household income which are attributable to the person's total disability. "Medical and necessary care expenses" are those used in computing the federal income tax deduction under section 213 of the Internal Revenue Code as defined in section 422.3.

91 Acts, ch 267, §524 HF 479

1991 amendment to paragraph b of subsection 1 retroactive to January 1, 1991, 91 Acts, ch 267, §529 HF 479

Subsection 1, paragraph b, NEW unnumbered paragraph 2

425.39 Fund created — appropriation.

The extraordinary property tax credit and reimbursement fund is created. There is appropriated annually from the general fund of the state to the department of revenue and finance to be credited to the extraordinary property tax credit and reimbursement fund, from funds not otherwise appropriated, an amount sufficient to implement this division.

Limit on appropriation for 1991 1992 fiscal year, priority, proration, eligibility of claims, 91 Acts, ch 267, §502 HF 479

Footnote added, section not amended

CHAPTER 425A

FAMILY FARM TAX CREDIT

425A.1 Family farm tax credit fund.

The family farm tax credit fund is created in the office of the treasurer of state. There is appropriated to the fund from funds in the general fund not otherwise appropriated the sum of ten million dollars. Any balance in the fund on June 30 shall revert to the general fund.

Exception to standing appropriation for 1991-1992 fiscal year, 91 Acts, ch 267, §501 HF 479

Footnote added, section not amended

425A.2 Definitions.

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

1. “*Actively engaged in farming*” means the designated person is personally involved in the production of crops and livestock on the eligible tract on a regular, continuous, and substantial basis. However, a lessor, whether under a cash or a crop share lease, is not actively engaged in farming on the area of the tract covered by the lease. This provision applies to both written and oral leases.

2. “*Agricultural land*” means land in tracts of ten acres or more excluding any buildings or other structures located on the land, and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, lying within a school corporation and in good faith used for agricultural or horticultural purposes. Any land in tracts laid off or platted into lots of less than ten acres belonging to and a part of other lands of more than ten acres and in good faith used for agricultural or horticultural purposes is entitled to the benefits of this chapter.

3. “*Crop*” or “*crop production*” includes pastureland.

4. “*Designated person*” means one of the following:

a. If the owner is an individual, the designated person includes the owner of the tract or a person related to the owner as spouse, parent, grandparent, child, grandchild, stepchild, and their spouses.

b. If the owner is a partnership, a partner, or the partner’s spouse.

c. If the owner is a family farm corporation, a family member who is a shareholder of the family farm corporation or the shareholder’s spouse.

d. If the owner is an authorized farm corporation, a shareholder who owns at least fifty-one percent of the stock of the authorized farm corporation or the shareholder’s spouse.

5. “*Eligible tract*” or “*eligible tract of agricultural land*” means an area of agricultural land which meets all of the following:

a. Is comprised of all of the contiguous tracts under identical legal ownership that are located within the same county.

b. In the aggregate more than half the acres of the contiguous tract is devoted to the production of crops or livestock by a designated person who is actively engaged in farming.

c. For purposes of paragraph “b”, if some or all of the contiguous tract is being farmed under a lease arrangement, the activities of the lessor do not constitute being actively engaged in farming on the areas of the tract covered by the lease. If the lessee is a designated person who is actively engaged in farming, the acres under lease may be considered in determining whether more than half the acres of the contiguous tract are devoted to the production of crops or livestock.

6. “*Owner*” means any of the following:

a. An individual who holds the fee simple title to the agricultural land.

b. An individual who owns the agricultural land under a contract of purchase which has been recorded in the office of the county recorder of the county in which the agricultural land is located.

c. An individual who owns the agricultural land under devise or by operation of the inheritance laws, where the whole interest passes or where the divided interest is shared only by individuals related or formerly related to each other by blood, marriage, or adoption.

d. An individual who owns the agricultural land under a deed which conveys a divided interest, where the divided interest is shared only by individuals related or formerly related to each other by blood, marriage, or adoption.

e. A partnership where all partners are related or formerly related to each other by blood, marriage, or adoption.

f. A family farm corporation or authorized farm corporation, as both are defined in section 172C.1, which owns the agricultural land.

91 Acts, ch 267, §609 611 HF 479

Subsections 1 and 5 stricken and rewritten

NEW subsection 4 and former subsections 4 and 5 renumbered as 5 and 6

425A.3 Where credit given.

1. The family farm tax credit fund shall be apportioned each year in the manner provided in this chapter so as to give a credit against the tax on each eligible tract of agricultural land within the several school districts of the state in which the levy for the general school fund exceeds five dollars and forty cents per thousand dollars of assessed value. The amount of the credit on each eligible tract of agricul-

tural land shall be the amount the tax levied for the general school fund exceeds the amount of tax which would be levied on each eligible tract of agricultural land were the levy for the general school fund five dollars and forty cents per thousand dollars of assessed value for the previous year. However, in the case of a deficiency in the family farm tax credit fund to pay the credits in full, the credit on each eligible tract of agricultural land in the state shall be proportionate and applied as provided in this chapter.

2. An eligible tract of agricultural land qualifies for the credit computed under subsection 1 if the tract is owned by an owner as defined in section 425A.2 and a designated person is actively engaged in farming during the fiscal year preceding the fiscal year in which the auditor computes the amount of the credit under section 425A.5 for which the tract would be eligible. Notwithstanding the foregoing sentence, the “actively engaged in farming” requirement is satisfied if the designated person is in general control of the tract under a federal program pertaining to agricultural land.

3. The county board of supervisors shall determine the eligibility of each tract for which an application is received.

91 Acts, ch 267, §612, 613 HF 479
Subsections 2 and 3 stricken and rewritten

425A.4 Claim for credit.

1. To apply for the credit, the person shall each year between July 1 and October 15 deliver to the county assessor a verified statement and designation of the tracts of agricultural land for which the credit is claimed. The assessor shall return the statement and designation on or before November 15 of each year to the county board of supervisors with a recommendation for allowance or disallowance.

2. The county board of supervisors in each county shall examine all claims delivered to county assessors, and shall either allow or disallow the claims, and if disallowed shall send notice of disallowance by regular mail to the claimant at the claimant’s last known address. The claimant may appeal the decision of the board to the district court in which the tract for which the credit is claimed is situated by giving written notice of the appeal to the county board of supervisors within twenty days from the

date of the mailing of the notice of the decision of the board of supervisors.

91 Acts, ch 97, §51 HF 198, 91 Acts, ch 267, §614, 615 HF 479
See Code editor’s note
Subsection 1 stricken and rewritten
Subsection 2 amended

425A.5 Computation by county auditor.

The family farm tax credit allowed each year shall be computed as follows: On or before March 1, the county auditor shall list by school districts all tracts of agricultural land which are entitled to credit, the taxable value for the previous year, the budget from each school district for the previous year, and the tax rate determined for the general fund of the school district in the manner prescribed in section 444.3 for the previous year, and if the tax rate is in excess of five dollars and forty cents per thousand dollars of assessed value, the auditor shall multiply the tax levy which is in excess of five dollars and forty cents per thousand dollars of assessed value by the total taxable value of the agricultural land entitled to credit in the school district, and on or before March 1, certify the total amount of credit and the total number of acres entitled to the credit to the department of revenue and finance.

91 Acts, ch 267, §616 HF 479
Section amended

425A.6 Warrants drawn by director — proration.

After receiving from the county auditors the certifications provided for in section 425A.5, and during the following fiscal year, the director of revenue and finance shall draw warrants on the family farm tax credit fund created in section 425A.1, payable to the county treasurers in the amount certified by the county auditors of the respective counties and mail the warrants to the county auditors on June 1 of each year taking into consideration the relative budget and cash position of the state resources. However, if the family farm tax credit fund is insufficient to pay in full the total of the amounts certified to the director of revenue and finance, the director shall prorate the fund to the county treasurers and shall notify the county auditors of the pro rata percentage on or before June 1.

91 Acts, ch 267, §617 HF 479
Section amended

CHAPTER 426

AGRICULTURAL LAND TAX CREDIT

426.1 Agricultural land credit fund.

There is hereby created as a permanent fund in the office of the treasurer of state a fund to be known as the agricultural land credit fund, and for the purpose of establishing and maintaining said fund for each fiscal year there is appropriated thereto from

funds in the general fund not otherwise appropriated the sum of forty-three million five hundred thousand dollars. Any balance in said fund on June 30 shall revert to the general fund.

Appropriation for 1991-1992 fiscal year see 91 Acts ch 267 §501 HF 479
Footnote added section not amended

CHAPTER 426A

MILITARY SERVICE TAX CREDIT

426A.1 Appropriation.

There is appropriated from the general fund of the state the amounts necessary to fund the credits pro-

vided under this chapter.

Appropriation limited for 1991-1992 fiscal year 91 Acts ch 267 §507 HF 479
Footnote added section not amended

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. Reserved.

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 and finance, 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 and grounds 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 except commercial orchards and vineyards.

14. *Rent* Obligations for rent not yet due and owned by the original payee.

15. Reserved.

16. Reserved.

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 512B.16, or for the payment of the expenses of the 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, domestic corporations engaged in manufacturing as defined in section 428.20, and manufac-

turing 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 Reserved

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 the director of revenue and finance, 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 However, the board of trustees or the board of directors of a hospital, as defined in section 135B 1, subsection 1, may permit use of a portion of the hospital for commercial purposes, and the hospital is entitled to full exemption for that portion used for nonprofit health related purposes, upon compliance with the filing requirements of this subsection

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 and finance for revocation for any exemption, based upon alleged violations of this chapter The director of revenue and finance 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 and finance shall give notice by mail to the societies or organizations claiming an exemption upon property, exemption of which is questioned before or by the director of revenue and finance, and any order made by the director of revenue and finance revoking or modifying an exemption is subject to judicial review in accordance with the Iowa administrative procedure Act Notwithstanding the terms of that Act, petitions for judicial review may be filed in the district court having jurisdiction in the county in which the property is located, and must be filed within thirty days after any order revoking an exemption is made by the director of revenue and finance

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 Reserved

29 Reserved

30 *Rural water sales* The real 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 finance and the local board of review on or before April 16 of each year on forms prescribed by the director of revenue and finance.

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 and finance. 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 administrator of the environmental protection division of the department of natural resources 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 administrator of the environmental protection division or, on appeal, of the environmental protection commission in accordance with the provisions of chapter 17A.

The environmental protection commission of the department of natural resources 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 department of revenue and finance 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 environmental protection commission of the department of natural resources.

33 *Impoundment structures* The impoundment structure and any land underlying an impoundment located outside an 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 and water conservation district commissioners of the county in which the impoundment structure and the impoundment are located. A 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 and finance. The first application shall be accompanied by a copy of the water storage permit approved by the administrator of the environmental protection division of the department of natural resources 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 and water conservation district commissioners, to the board of supervisors for approval or denial. An 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 a 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 the area, and "*impoundment structure*" means a 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. Reserved.

36. *Natural conservation or wildlife areas.*

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. 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 and water conservation district in which the property is located, not later than April 15 of the assessment year, on forms provided by the department of revenue and finance. 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 shall certify whether the property is eligible to receive the exemption. The commissioners 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. However, no public hearing is required if the proposed priorities are the same as those for the previous year. 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 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 and water conservation district in which it is located. 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 is eligible for an exemption. For purposes of this subsection:

a. "Open prairies" includes hillsides and gully

areas which have a permanent grass cover but does not include native prairies meeting the criteria of the natural resource commission

b "Forest cover" means land which is predominantly wooded

c "Recreational lake" means a body of water, which is not a river or stream, owned solely by a non profit organization and primarily used for boating, fishing, swimming and other recreational purposes

d "Used for economic gain" includes, but is not limited to, using property for the storage of equipment, machinery, or crops

Notwithstanding other requirements under this subsection, the owner of any property lying between a river or stream and a dike which is required to be set back three hundred feet or less from the river or stream shall automatically be granted an exemption for that property upon submission of an application 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 period of exemption. The exemption shall continue from year to year for as long as the property qualifies and is not used for economic gain, without need for filing additional applications or affidavits. Property exempted pursuant to this paragraph is in addition to the maximum acreage applicable to other exemptions under this subsection

37 *Native prairie and wetland* Land designated as native prairie or land designated as a protected wetland by the department of natural resources pursuant to section 108 12. Application for the exemption shall be made on forms provided by the department of revenue and finance. Land designated as a protected wetland shall be assessed at a value equal to the average value of the land where the wetland is located and which is owned by the person granted the exemption. 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 department of natural resources stating that the land is native prairie or protected wetland. The department of natural resources shall issue a certificate for the native prairie exemption if the department 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 natural resource commission for native prairie. The department of natural resources shall issue a certificate for the wetland exemption if the department finds the land is a protected wetland,

as defined under section 108 1, or if the wetland was previously drained and cropped but has been restored under a nonpermanent restoration agreement with the department or other county, state, or federal agency or private conservation group. A taxpayer may seek judicial review of a decision of the department according to chapter 17A. The natural resource commission shall adopt rules to implement this subsection.

The assessing authority each year may submit to the department a claim for reimbursement of tax revenue lost from the exemption. Upon receipt of the claim, the department shall reimburse the assessing authority an amount equal to the lost tax revenue based on the value of the protected wetland as assessed by the authority, unless the department reimburses the authority based upon a departmental assessment of the protected wetland. The authority may contest the department's assessment as provided in chapter 17A. The department is not required to honor a claim submitted more than sixty days after the authority has assessed land where the protected wetland is located and which is owned by the person granted the exemption.

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 natural resource commission for a wildlife habitat under section 110 3, the department of natural resources shall certify the designated land as a wildlife habitat and shall send a copy of the certification to the appropriate assessor. The department of natural resources 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 *Right of way* 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.

40 *Public television station* All grounds and buildings used or under construction for a public television station and not leased or otherwise used or under construction for pecuniary profit.

41 *Speculative shell buildings of community development organizations* New construction of shell buildings by community development organizations for speculative purposes or the portion of the value added to buildings being reconstructed or renovated by community development organizations in order to become speculative shell buildings. The exemption or partial exemption shall be allowed only pursuant to ordinance of a city council or board of supervisors and shall be effective for the assessment year in which the building is first assessed for property taxation or the assessment year in which the reconstruction or renovation first adds value and all subsequent years until the property is leased or sold or for a specific time period stated in the ordinance.

or until the exemption is terminated by ordinance of the city council or board of supervisors which approved the exemption. If the shell building or any portion of the shell building is leased or sold, the portion of the shell building which is leased or sold shall not be entitled to an exemption under this subsection for subsequent years. An application shall be filed pursuant to section 427B.4 for each project for which an exemption is claimed. Upon the sale of the shell building, the shell building shall be considered new construction for purposes of section 427B.1 if used for purposes set forth in section 427B.1.

For purposes of this subsection the following definitions apply:

a. (1) “*Community development organization*” means an organization, which meets the membership requirements of subparagraph (2), formed within a city or county or multicommunity group for one or more of the following purposes:

(a) To promote, stimulate, develop, and advance the business prosperity and economic welfare of the community, area, or region and its citizens.

(b) To encourage and assist the location of new business and industry.

(c) To rehabilitate and assist existing business and industry.

(d) To stimulate and assist in the expansion of business activity.

(2) For purposes of this definition, a community development organization must have at least fifteen members with representation from the following:

(a) A representative from government at the level or levels corresponding to the community development organization’s area of operation.

(b) A representative from a private sector lending institution.

(c) A representative of a community organization in the area.

(d) A representative of business in the area.

(e) A representative of private citizens in the community, area, or region.

b. “*New construction*” means new buildings or structures and includes new buildings or structures which are constructed as additions to existing buildings or structures. “*New construction*” also includes reconstruction or renovation of an existing building or structure which constitutes complete replacement of an existing building or structure or refitting of an existing building or structure, if the reconstruction or renovation of the existing building or structure is required due to economic obsolescence, if the reconstruction or renovation is necessary to implement recognized industry standards for the manufacturing or processing of products, and the reconstruction or renovation is required in order to competitively manufacture or process products or for community development organizations to market a building or structure as a speculative shell building, which determination must receive prior approval from the city council of the city or county board of supervisors of the county.

c. “*Speculative shell building*” means a building

or structure owned and constructed or reconstructed by a community development organization without a tenant or buyer for the purpose of attracting an employer or user which will complete the building to the employer’s or user’s specification for manufacturing, processing, or warehousing the employer’s or user’s product line.

42. *Joint water utilities.* The property of a joint water utility established under chapter 389, when devoted to public use and not held for pecuniary profit.

91 Acts, ch 97, §52, 53 HF 198, 91 Acts, ch 168, §8 HF 689

Subsection 18 amended

Subsection 37, unnumbered paragraph 1 amended

NEW subsection 42

427.3 Military service — exemptions.

The following exemptions from taxation shall be allowed:

1. The property, not to exceed eleven thousand one hundred eleven dollars in taxable value of an honorably discharged union soldier, sailor, or marine of the Mexican war or the war of the rebellion.

2. The property, not to exceed six thousand six hundred sixty-seven dollars in taxable value of an honorably discharged soldier, sailor, marine or nurse of the war with Spain, Tyler Rangers, Colorado volunteers in the war of the rebellion, 1861 to 1865, Indian wars, Chinese relief expedition or Philippine insurrection.

3. The property, not to exceed two thousand seven hundred seventy-eight dollars in taxable value of any honorably discharged soldier, sailor, marine, or nurse of the first World War.

4. The property, not to exceed one thousand eight hundred fifty-two dollars in taxable value of an honorably separated, retired, furloughed to a reserve, placed on inactive status, or discharged soldier, sailor, marine, or nurse of the second World War from December 7, 1941, to December 31, 1946, army of occupation in Germany from November 12, 1918, to July 11, 1923, American expeditionary forces in Siberia from November 12, 1918, to April 30, 1920, second Nicaraguan campaign with the navy or marines in Nicaragua or on combatant ships 1926-1933, second Haitian suppression of insurrections 1919-1920, navy and marine operations in China 1937-1939 and Yangtze service with navy and marines in Shanghai or in the Yangtze Valley 1926-1927 and 1930-1932 or of the Korean Conflict at any time between June 25, 1950, and January 31, 1955, both dates inclusive, or those who served on active duty during the Vietnam Conflict beginning December 22, 1961, and ending May 7, 1975, both dates inclusive, or those who served on active duty during the Persian Gulf Conflict at any time between August 2, 1990, and the date the president or the congress of the United States declares a permanent cessation of hostilities, both dates inclusive. However, if congress enacts a date different from August 2, 1990, as the beginning of the Persian Gulf Conflict for purposes of determining whether a veteran is en-

titled to receive military benefits as a veteran of the Persian Gulf Conflict, that date shall be substituted for August 2, 1990. For the purposes of this section, "active duty" means full-time duty in the armed forces of the United States, excluding active duty for training purposes only and excluding any period a person was assigned by the armed forces to a civilian institution for a course of education or training which was substantially the same as established courses offered to civilians, or as a cadet or midshipman, however enrolled, at one of the service academies.

5. Where the word "soldier" appears in this chapter, it includes, without limitation, the members of the United States air force and the United States merchant marine.

6. For the purpose of determining a military tax exemption under this section, property includes a mobile home as defined in section 135D.1.

91 Acts, ch 199, §5 HF 694
 Subsection 4 amended

427.8 Petition for suspension or abatement of taxes, assessments, and rates or charges.

If a person is unable to contribute to the public revenue, the person may file a petition, duly sworn to, with the board of supervisors, stating that fact and giving a statement of parcels, as defined in section 445.1, owned or possessed by the petitioner, and other information as the board may require. The board of supervisors may order the county treasurer to suspend the collection of the taxes, special assessments, and rates or charges which are assessed against the petitioner or the petitioner's estate for the current year and those unpaid for prior years, or the board may abate the taxes, special assessments, and rates or charges. The petition, when approved, shall be filed by March 1 of the current tax year with the treasurer.

91 Acts, ch 191, §20 HF 687
 1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
 For definitions applicable to §427.8 through 427.12 effective April 1, 1992, see §445.1
 Section amended

427.9 Suspension of taxes, assessments, and rates or charges.

If a person is a recipient of federal supplementary security income or state supplementary assistance, as defined in section 249.1, or is a resident of a health care facility, as defined by section 135C.1, which is receiving payment from the department of human services for the person's care, the person shall be deemed to be unable to contribute to the public revenue. The director of human services shall notify the board of supervisors, of the county in which the assisted person owns parcels, as defined in section 445.1, of the fact, giving a statement of parcels owned, possessed, or upon which the person is paying taxes as a purchaser under contract. The board of supervisors so notified, without the filing of a petition and statement as specified in section 427.8, shall order the county treasurer to suspend the collection

of all the taxes, special assessments, and rates or charges assessed against the parcels and remaining unpaid by the person or contractually payable by the person, for such time as the person remains the owner or contractually prospective owner of the parcels, and during the period the person receives assistance as described in this section. The director of human services shall advise the person that the person may apply for an additional property tax credit pursuant to sections 425.16 to 425.39 which shall be credited against the amount of the taxes suspended.

91 Acts, ch 191, §21 HF 687
 1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
 Section amended

427.10 Abatement.

The board of supervisors may, if in their judgment it is for the best interests of the public and the petitioner referred to in section 427.8, or the public and the person referred to in section 427.9, abate the taxes, special assessments, and rates or charges which have previously been suspended as provided in section 427.8 or 427.9.

91 Acts, ch 191, §22 HF 687
 1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
 Section amended

427.11 Grantee or devisee to pay tax.

If the petitioner or person described in section 427.9 sells any parcel upon which the taxes, special assessments, and rates or charges have been suspended, or if any parcel, or any part of the parcel, upon which the taxes, special assessments, and rates or charges have been suspended, passes by devise, bequest, or inheritance to any person other than the surviving spouse or minor child of the petitioner or other person, the taxes, special assessments, and rates or charges without any accrued interest, that have been thus suspended shall all become due and payable. The petitioner, or any other person, may pay the suspended amounts at any time.

91 Acts, ch 191, §23 HF 687
 1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
 Section amended

427.12 Suspended tax record.

The county treasurer shall maintain within the county system, as defined in section 445.1, the official record of suspended taxes, special assessments, and rates or charges, the collection of which has been suspended by order of the board of supervisors. The record shall include, but is not limited to, the following information:

1. A governmental or platted description of the parcel on which the tax, special assessment, rate, or charge has been levied or on which it is a lien.
2. The name of the owner of the parcel.
3. The amount and year of the tax, special assessment, rate or charge.
4. The date the suspension was ordered.

The county system, as defined in section 445.1, shall be such that all entries of taxes, special assessments, rates, or charges against the parcel shall be

separate from the entry of taxes, special assessments, rates, or charges against all other parcels.

If a suspended tax, special assessment, or rate or charge in the county system is paid, or subsequently abated, the treasurer shall enter in the county system a notification of payment or abatement.

When a suspension ordered by the board of super-

visors for any reason provided by law, has been entered in the county system, the entry, on and after its date, is a lien and shall serve as notice of a lien in accordance with section 445.10.

91 Acts ch 191 §24 HF 687
1991 amendment effective April 1 1992, 91 Acts, ch 191, §124 HF 687
Section amended

CHAPTER 427A

PERSONAL PROPERTY TAX CREDIT

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-seven million five hundred thousand dollars. For the fiscal year beginning July 1, 1988, the total appropriation shall be thirty-two million five hundred thousand dollars. For the fiscal year beginning July 1, 1989, and for each succeeding fiscal year, the total appropriation shall be zero.

Appropriations to community colleges in lieu of personal property tax replacement, 90 Acts, ch 1272, §8(13), 91 Acts, ch 267, §201 204 HF 479
Footnote updated, section not amended

CHAPTER 427B

SPECIAL TAX PROVISIONS

427B.13 Appropriation.

There is appropriated annually from the general fund of the state to the department of revenue and finance an amount sufficient to carry out sections

427B.10 to 427B.14.

No appropriation provided for 1991 1992 fiscal year, 91 Acts, ch 267, §507 HF 479
Footnote added, section not amended

CHAPTER 428A

TAXATION OF REAL ESTATE TRANSFERS

428A.1 Amount of tax on transfers — declaration of value.

There is imposed on each deed, instrument, or writing by which any lands, tenements, or other realty in this state are 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 is 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 is eighty 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 encumbrance or lien on the property, whether assumed or not by the grantee. It is presumed that the sale price so stated includes the value of all personal property transferred as part of the sale unless the dollar value of 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.

When 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 5, 7 to 13, and 16 to 20, or described in section 428A.2, subsection 6, except in the case of a federal agency or instrumentality, 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 declara-

tion of value information the director of revenue and finance 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 and finance requires for the production of the sales/assessment ratio study and transmit one copy of each declaration of value to the director of revenue and finance, at times as directed by the director of revenue and finance. 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 and finance 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.

91 Acts, ch 267, §317 HF 479
Unnumbered paragraph 1 amended

428A.2 Exceptions.

The tax imposed by this chapter shall not apply to:

1. Any executory contract for the sale of land under which the vendee is entitled to or does take possession thereof, or any assignment or cancellation thereof.
2. Any instrument of mortgage, assignment, extension, partial release, or satisfaction thereof.
3. Any will.
4. Any plat.
5. Any lease.
6. Any deed, instrument, or writing in which the United States or any agency or instrumentality thereof or the state of Iowa or any agency, instrumentality, or governmental or political subdivision thereof is the grantor, assignor, transferor, or conveyor; and any deed, instrument or writing in which any of such unit of government is the grantee or assignee where there is no consideration.
7. Deeds for cemetery lots.
8. Deeds which secure a debt or other obligation, except those included in the sale of real property.
9. Deeds for the release of a security interest in property excepting those pertaining to the sale of real estate.
10. Deeds which, without additional consideration, confirm, correct, modify, or supplement a deed previously recorded.

11. Deeds between husband and wife, or parent and child, without actual consideration. A cancellation of indebtedness alone which is secured by the property being transferred and which is not greater than the fair market value of the property being transferred is not actual consideration within the meaning of this subsection.

12. Tax deeds.

13. Deeds of partition where the interest conveyed is without consideration. However, if any of the parties take shares greater in value than their undivided interest a tax is due on the greater values, computed at the rate set out in section 428A.1.

14. The making or delivering of instruments of transfer resulting from a corporate merger, consolidation, or reorganization under the laws of the United States or any state thereof, where such instrument states such fact on the face thereof.

15. Deeds between a family corporation, partnership, or limited partnership and its stockholders or partners for the purpose of transferring real property in an incorporation or corporate dissolution or the organization or dissolution of a partnership or limited partnership under the laws of this state, where the deeds are given for no actual consideration other than for shares or for debt securities of the corporation, partnership, or limited partnership. For purposes of this subsection a family corporation, partnership, or limited partnership is a corporation, partnership, or limited partnership where the majority of the voting stock of the corporation, or of the ownership shares of the partnership or limited partnership is held by and the majority of the stockholders or partners are persons related to each other as spouse, parent, grandparent, lineal ascendants of grandparents or their spouses and other lineal descendants of the grandparents or their spouses, or

persons acting in a fiduciary capacity for persons so related and where all of its stockholders or partners are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons.

16. Deeds for the transfer of property or the transfer of an interest in property when the deed is executed between former spouses pursuant to a decree of dissolution of marriage.

17. Deeds transferring easements.

18. Deeds giving back real property to lienholders in lieu of forfeitures or foreclosures.

19. Deeds executed by public officials in the performance of their official duties.

20. Deeds transferring distributions of assets to heirs at law or devisees under a will.

21. Deeds in which the consideration is five hundred dollars or less.

91 Acts, ch 191, §25 HF 687

Subsection 21 effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
NEW subsection 21

428A.8 Remittance to state treasurer — portion retained in county.

On or before the tenth day of each month the county recorder shall determine and pay to the treasurer of state eighty-two and three-fourths percent of the receipts from the real estate transfer tax collected during the preceding month and the treasurer of state shall deposit the receipts in the general fund of the state.

The county recorder shall deposit the remaining seventeen and one-fourth percent of the receipts in the county general fund.

The county recorder shall keep records and make reports with respect to the real estate transfer tax as the director of revenue and finance prescribes.

91 Acts, ch 267, §318 HF 479

Section amended

CHAPTER 432

INSURANCE COMPANIES TAXATION

432.11 Premium tax exemption for basic benefit health plans.

Premiums collected on sales of basic benefit health policies, approved by the commissioner pursuant to chapter 514H, are exempt from premium tax.

91 Acts, ch 244, §23 HF 688
NEW section

432.12 Premium tax credit for employer-sponsored health plan premium credit.

An insurance carrier approved by the commissioner pursuant to section 514H.10 to offer a policy eligible for the premium credit provided by section 514H.12, shall receive a premium tax credit equal to the premium credit earned by participating employers pursuant to section 514H.12, subsection 2, and any additional amount allowed by the commissioner pursuant to a contract for administrative expenses.

91 Acts, ch 244, §24 HF 688
NEW section

CHAPTER 442

SCHOOL FOUNDATION PROGRAM

Chapter repealed June 30, 1991, 87 Acts, ch 224, § 81, see ch 257
 For amendments to § 442.2, 442.9A, and 442.39A
 effective from May 14, 1991, through June 30, 1991,
 see 91 Acts, ch 178, § 6, 10 HF 583
 For amendment to § 442.3, effective May 31, 1991 through June 30, 1991,
 see 91 Acts, ch 267, § 523 HF 479
 For amendment to § 442.15, retroactive to January 1, 1990,
 see 91 Acts, ch 159, § 22 SF 356

CHAPTER 444

TAX LEVIES

444.22 Annual levy.

In each year the director of revenue and finance shall fix the rate in percentage to be levied upon the assessed valuation of the taxable property of the state necessary to raise the amount for general state

purposes as shall be designated by the department of management.

91 Acts, ch 258, §52 HF 709
 Section amended

CHAPTER 445

COLLECTION OF TAXES

Repeal of § 445.6, 445.9, 445.17, 445.19, 445.20, 445.29, 445.31, 445.40,
 445.42, 445.52, 445.58, and 445.59 effective April 1, 1992,
 91 Acts, ch 191, § 124 HF 687, see Code 1991 for provisions
 effective until that date

445.1 Definition of terms.

For the purpose of this chapter and chapters 446, 447, and 448, section 331.553, subsection 3, and sections 427.8 through 427.12 and 569.8:

1. "Abate" means to cancel in their entirety all applicable amounts.
2. "Compromise" means to enter into a contractual agreement for the payment of taxes, interests, fees, and costs in amounts different from those specified by law.
3. "County system" means a method of data storage and retrieval as approved by the auditor of state including, but not limited to, tax lists, books, records, indexes, registers, or schedules.
4. "Parcel" means each separate item shown on the tax list, mobile home tax list, schedule of assessment, or schedule of rate or charge.

5. "Rate or charge" means an item legally certified to the county treasurer for collection as provided in sections 331.489, 364.11, and 364.12 and section 384.84, subsection 1.

6. "Taxes" means an annual ad valorem tax, a special assessment, a rate or charge, and taxes on mobile homes pursuant to chapter 135D which are collectible by the county treasurer.

7. "Total amount due" means the aggregate total of all taxes, penalties, interests, costs, and fees due on a parcel.

91 Acts, ch 191, §26 HF 687
 1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
 Section stricken and rewritten

445.2 Duty of county treasurer.

The county treasurer, after making the entry pro-

vided in section 445.10, shall proceed to collect the ad valorem taxes, and the list referred to in chapter 443 is the treasurer's authority and justification against any illegality in the proceedings prior to receiving the list. The treasurer shall also collect, as far as practicable, the taxes remaining unpaid on the county system. If the taxes are not paid, the treasurer shall send a statement of delinquent taxes as part of the notice of tax sale as provided in section 446.9.

91 Acts ch 191 §27 HF 687
Effective April 1 1992 91 Acts ch 191 §124 HF 687
NFW section

445.3 Actions authorized.

In addition to all other remedies and proceedings now provided by law for the collection of taxes, the county treasurer may bring or cause an ordinary suit at law to be commenced and prosecuted in the treasurer's name for the use and benefit of the county for the collection of taxes from any person, as shown by the county system in the treasurer's office, and the suit shall be in all respects commenced, tried, and prosecuted to final judgment the same as provided for ordinary actions.

The commencement of actions for ad valorem taxes authorized under this section shall not begin until the issuance of a tax sale certificate under the requirements of section 446.19. The commencement of actions for all other taxes authorized under this section shall not begin until ten days after the publication of tax sale under the requirements of section 446.9, subsection 2.

91 Acts ch 191 §28 HF 687
1991 amendment effective April 1 1992 91 Acts ch 191 §124 HF 687
Section amended

445.4 Statutes applicable — attachment — damages.

Chapter 639 is applicable to proceedings instituted by a county treasurer under section 445.3, and a writ of attachment shall be issued upon the treasurer complying with the provisions of chapter 639, for taxes, whether due or not due, except that a bond shall not be required from the treasurer or county in such cases, but the county shall be liable for damages only, as provided by section 639.14. The county attorney, upon request of the treasurer, shall assist in prosecution of actions authorized in this section.

91 Acts ch 191 §29 HF 687
1991 amendment effective April 1 1992 91 Acts ch 191 §124 HF 687
Section amended

445.5 Receipt.

The county treasurer shall deliver to the taxpayer a receipt stating the year of tax, date of payment, a description of the parcel, and the amount of taxes, interest, fees, and costs paid except when payment of taxes is made by check, then a receipt shall be issued only upon request. The receipt shall be in full of the first half, second half, or full year amounts unless a payment is made under section 445.36A or 135D.24, subsection 7.

91 Acts ch 191 §30 HF 687
1991 amendment effective April 1 1992 91 Acts ch 191 §124 HF 687
Section stricken and rewritten

445.6 Distress and sale — immediate collection of tax. Repealed by 91 Acts, ch 191, § 123, 124. HF 687 See § 445.3, 445.4, and ch 446.

445.7 Distress warrant — form. Repealed by 91 Acts, ch 191, § 123, 124. HF 687

445.8 Delinquent personal tax list — distress warrant. Repealed by 91 Acts, ch 191, § 123, 124. HF 687

445.9 Record — contents. Repealed by 91 Acts, ch 191, § 123, 124. HF 687

445.10 Former delinquent taxes.

The county treasurer shall each year, after receiving the tax list referred to in chapter 443, enter into the county system a notation of delinquency for each parcel on which the tax remains unpaid for any previous year. Unless the delinquent tax is so entered it shall cease to be a lien upon that parcel. To preserve the tax lien it is only necessary to enter the notation for any parcel upon which it is a lien. If the county system is such that all delinquent taxes of any preceding year are automatically brought forward against each parcel on which the tax remains unpaid for any year, the treasurer is not required to make any further entry. Any sale for a delinquent tax not noted on the county system is invalid. However, this section does not require that in order to preserve the lien of tax and make the tax sale valid, delinquent taxes must be brought forward upon the county system if the tax list is received by the treasurer less than six months preceding the date of conducting the tax sale as provided in section 446.25 or 446.28.

91 Acts ch 191 §31 HF 687
1991 amendment effective April 1 1992 91 Acts ch 191 §124 HF 687
Section amended

445.11 Special assessment levy submitted.

When the levy of a special assessment is submitted to the county treasurer, in a format acceptable by the treasurer, the treasurer shall enter in the county system a description of each parcel affected, the date of the assessment, the total amount assessed, the installments to be paid, and the amounts of the respective installments if the assessment is payable in installments.

91 Acts ch 191 §32 HF 687
1991 amendment effective April 1 1992 91 Acts ch 191 §124 HF 687
Section amended

445.12 Additional data for special assessments.

The county system may contain space for showing interest, if any, that may be incurred, a column showing payments and their amounts, a column showing the number of the receipt to be issued by the county treasurer, and a column that may be used to show the date of payment of the assessment, or any installment of it.

91 Acts ch 191 §33 HF 687
1991 amendment effective April 1 1992 91 Acts ch 191 §124 HF 687
Section amended

445.14 Entries on the county system.

The county treasurer shall each year, after receiving the tax list referred to in section 445.10, indicate on the county system that a special assessment is unpaid. This indication is not required if the county system automatically brings forward a notation of the unpaid special assessment.

91 Acts, ch 191, §34 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

445.16 Abatement or compromise of tax.

When a parcel is offered and not sold at regular tax sale, or if the county holds the tax sale certificate of purchase and the county is unable to assign the certificate as provided in section 446.31, the county, through the board of supervisors, may compromise by written agreement, or abate by resolution, the tax, interest, fees, or costs. In the event of a compromise, the board of supervisors may enter into a written agreement with the owner of the legal title or with any lienholder for the payment of a stipulated sum in full satisfaction of all amounts included in that agreement.

A copy of the agreement or resolution shall be filed with the county treasurer.

91 Acts, ch 191, §35 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section stricken and rewritten

445.17 Filing of compromise agreement.

Repealed by 91 Acts, ch 191, § 123, 124. HF 687 See § 445.16.

445.18 Effect of compromise payment or abatement.

When payment is made, as provided by the compromise agreement or when there is an abatement, all taxes included in the compromise agreement or abatement shall be deemed to be fully satisfied and canceled and the county treasurer shall show the satisfaction on the county system.

91 Acts, ch 191, §36 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

445.19 Compromising tax on personal property. Repealed by 91 Acts, ch 191, § 123, 124. HF 687

445.20 Penalty on unpaid taxes. Repealed by 91 Acts, ch 191, § 123, 124. HF 687 See § 445.39.

445.22 Subsequent collection.

Any tax subsequently collected shall be apportioned according to the tax apportionment at the time of collection. However, this section does not apply to the payment of special assessments, or rates or charges.

91 Acts, ch 191, §37 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

445.23 Statement of taxes due.

Upon request, the county treasurer shall state in writing the full amount of taxes against a parcel, all sales for unpaid taxes, and the amount needed to redeem the parcel, if redeemable. If the person requesting the statement is not the titleholder of record or contract holder of record of the parcel, that person shall pay a fee at the rate of two dollars per parcel for each year that there are unpaid taxes to be deposited in the county general fund.

91 Acts, ch 191, §38 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section stricken and rewritten

445.24 Effect of statement and receipt.

The statement received under section 445.23, with the county treasurer's receipt showing the payment of all the taxes specified in the statement, and the treasurer's certificate of redemption from the tax sales mentioned in the statement, is conclusive evidence for all purposes, and against all persons, that the parcel was, at the date of the receipt, free and clear of all taxes, and sales for taxes, except sales where the time of redemption had already expired and the tax purchaser had received the deed.

91 Acts, ch 191, §39 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

445.28 Tax lien.

Taxes upon a parcel are a lien on the parcel against all persons except the state. However, taxes upon the parcel are a lien on the parcel against the state and a political subdivision of the state which is liable for payment of taxes as a purchaser under section 427.18.

91 Acts, ch 191, §40 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

445.29 Lien of personal taxes. Repealed by 91 Acts, ch 191, § 123, 124. HF 687

445.30 Lien between vendor and purchaser.

As against a purchaser, tax liens attach to a parcel on and after June 30 in each year.

91 Acts, ch 191, §41 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

445.31 Lien follows certain personal property. Repealed by 91 Acts, ch 191, § 123, 124. HF 687

445.32 Liens on buildings.

If a building is erected by a person other than the owner of the land on which the building is located, as provided for in section 428.4, the taxes on the building are and remain a lien on the building from the date of levy until paid. If the taxes on the building become delinquent, as provided in section 445.37, the county treasurer shall collect the tax as provided

in sections 445.3 and 445.4. This section does not apply to special assessments, or rates or charges.

91 Acts, ch 191, §42 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

445.36 Payment — installments.

1. The taxes which become delinquent during the fiscal year are for the previous fiscal year.

2. A demand of taxes is not necessary, but every person subject to taxation shall attend at the office of the county treasurer and pay the taxes either in full, or one-half of the taxes before September 1 succeeding the levy, and the remaining half before March 1 following. However, if the first installment of taxes is delinquent and not paid as of February 15, the treasurer shall mail a notice to the taxpayer of the delinquency and the due date for the second installment. Failure to receive a mailed notice is not a defense to the payment of the tax and any interest due. This section does not apply to special assessments, or rates or charges.

91 Acts, ch 191, §43 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191 §124 HF 687
Section amended

445.36A Partial payments.

1. As an alternative to the semiannual or annual payment of taxes, the county treasurer may accept partial payments of taxes. A minimum payment amount shall be established by the treasurer. The treasurer shall transfer amounts from each taxpayer's account to be applied to each semiannual tax installment prior to the delinquency dates specified in section 445.37 and the amounts collected shall be apportioned by the tenth of the month following transfer. If, prior to the due date of each semiannual installment, the account balance is insufficient to fully satisfy the installment, the treasurer shall transfer and apply the entire account balance, leaving an unpaid balance of the installment. Interest shall attach on the unpaid balance in accordance with section 445.39. Unless funds sufficient to fully satisfy the delinquency are received, the treasurer shall collect the unpaid balance as provided in chapter 446. Any remaining balance in a taxpayer's account in excess of the amount needed to fully satisfy an installment shall remain in the account to be applied toward the next semiannual installment. Any interest income derived from the account shall be deposited in the county's general fund to cover administrative costs. The treasurer shall send a notice with the tax statement or by separate mail to each taxpayer stating that, upon request to the treasurer, the taxpayer may make partial payments of taxes.

2. Partial payment of taxes which are delinquent may be made to the county treasurer. A minimum payment amount shall be established by the treasurer. The minimum payment must be equal to or exceed the interest, fees, and costs attributed to the oldest delinquent installment of the tax and shall be apportioned in accordance with section 445.57. If the payment does not include the whole of any install-

ment of the delinquent tax, the unpaid tax shall continue to accrue interest pursuant to section 445.39. Partial payment shall not be permitted if the property has been sold for taxes under chapter 446 and under any circumstances shall not constitute an extension of the time period for a sale under chapter 446.

Current year taxes may be paid at any time regardless of any outstanding prior year delinquent tax.

This section does not apply to the payment of mobile home taxes, special assessments, or rates or charges.

91 Acts, ch 191, §44 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

445.37 When delinquent.

If the semiannual installment of any tax has not been paid before October 1 succeeding the levy, that amount becomes delinquent from October 1 after due unless the last day of September is a Saturday or Sunday in which case the amount of those taxes becomes delinquent from the following Tuesday. If the second installment is not paid before April 1 succeeding its maturity, it becomes delinquent from April 1 after due unless the last day of March is a Saturday or Sunday in which case the amount of that installment becomes delinquent from the following Tuesday. This paragraph does not apply to special assessments or rates or charges.

However, if there is a delay of the delivery of the tax list referred to in chapter 443 to the county treasurer, the amount of ad valorem taxes and mobile home taxes due shall become delinquent thirty days after the date of delivery or on the delinquent date of the first installment, whichever date occurs later. The delay shall not affect the due dates for special assessments and rates or charges. The delinquent date for special assessments, and rates or charges is the same as the first installment delinquent date for ad valorem taxes.

91 Acts, ch 191, §45 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

445.38 Apportionment.

If ad valorem or mobile home taxes are paid by installment, each of those payments shall be apportioned among the several funds for which taxes have been assessed in their proper proportions.

91 Acts, ch 191, §46 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

445.39 Interest on delinquent taxes.

If the first installment of taxes is not paid by the delinquent date specified in section 445.37, the installment becomes due and draws interest of one and one-half percent per month until paid, from the delinquent date following the levy. If the last half is not paid by the delinquent date specified for it in section 445.37, the same interest shall be charged from the date the last half became delinquent. However, after

April 1 in a fiscal year when late delivery of the tax list referred to in chapter 443 results in a delinquency date later than October 1 for the first installment, interest on delinquent first installments shall accrue as if delivery were made on the previous June 30. The interest imposed under this section shall be computed to the nearest whole dollar and the amount of interest shall not be less than one dollar. In calculating interest each fraction of a month shall be counted as an entire month. The interest percentage on delinquent special assessments and rates or charges is the same as that for the first installment of delinquent ad valorem taxes.

91 Acts, ch 191, §47 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

445.40 Penalty on personal taxes. Repealed by 91 Acts, ch 191, § 123, 124. HF 687

445.41 When interest omitted.

Interest shall not be added to taxes levied by a court to pay a judgment on county, city, or school district indebtedness, other than the interest which that judgment may draw, nor upon taxes levied in aid of the construction of a railroad.

91 Acts, ch 191, §48 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

445.42 through 445.46 Repealed by 91 Acts, ch 191, § 123, 124. HF 687

445.47 through 445.52 Repealed by 91 Acts, ch 191, § 123, 124. HF 687 See § 445.2.

445.53 Taxes certified to another county.

In all cases of delinquent taxes, if the person upon whose property the taxes were levied has disposed of or removed the property and the treasurer of the county where the taxes were levied can find no property within that county against which those taxes can be collected, the treasurer of the county where those taxes are delinquent shall make out a certified abstract of the taxes and forward it to the treasurer of the county in which the person resides or has property, if the treasurer transmitting the abstract has reason to believe that the delinquent taxes can be collected by that county.

91 Acts, ch 191, §49 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

445.54 Collection in such case.

The county treasurer forwarding and the one receiving said abstract shall each keep a record of it, and, upon receipt and filing in the office of the treasurer to whom sent, it shall have the effect of a levy of taxes in that county, and the collection shall proceed in the same manner as in the collection of other taxes.

91 Acts, ch 191, §50 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

445.55 Fees collectible.

The county treasurer collecting taxes so certified into another county shall, in addition to the interest, fees, and costs on delinquent taxes, assess a collection fee of twenty percent on the whole amount of the taxes, inclusive of the interest, fees, and costs on the taxes.

91 Acts, ch 191, §51 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

445.56 Return.

The county treasurer receiving the abstract shall, upon collection, forward the amount to the treasurer of the county where the taxes were levied, less the collection fee provided in section 445.55.

The treasurer receiving the abstract shall, when in the treasurer's opinion the taxes are uncollectible, return the abstract with the endorsement "*uncollectible*" on it. In such case, when it is administratively impractical to collect the tax, the board of supervisors shall compromise or abate the tax, interest, and costs.

91 Acts, ch 191, §52 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

445.57 Monthly apportionment.

On or before the tenth day of each month, the county treasurer shall apportion all taxes collected during the preceding month, except partial payment amounts collected pursuant to section 445.36A, subsection 1 and section 135D.24, subsection 7, paragraph "a", among the several funds to which they belong according to the amount levied for each fund, and shall apportion the interest, fees, and costs on the taxes to the general fund, and shall enter those amounts upon the treasurer's cash account, and report the amounts to the county auditor.

91 Acts, ch 191, §53 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

445.58 Misapplied interest or penalty. Repealed by 91 Acts, ch 191, § 123, 124. HF 687

445.59 Record of separate funds. Repealed by 91 Acts, ch 191, § 123, 124. HF 687

445.60 Refunding erroneous tax.

The board of supervisors shall direct the county treasurer to refund to the taxpayer any tax or portion of a tax found to have been erroneously or illegally paid, with all interest, fees, and costs actually paid. A refund shall not be ordered or made unless a claim for refund is presented to the board within one year of the date the tax was due, or if appealed to the board of review, the state board of tax review, or district court, within one year of the final decision.

91 Acts, ch 191 §54 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

445.61 Sale for erroneous tax.

If a parcel subject to taxation is sold for the payment of such erroneous tax, interest, fees, or costs, the error or irregularity in the tax may be corrected at any time provided in this chapter, but this correction does not affect the validity of the sale or the right or title conveyed by a county treasurer's deed, if the parcel was subject to taxation for any of the purposes for which any portion of the taxes for which the parcel was sold was levied, and the taxes were not paid before the sale, or the parcel redeemed from sale.

91 Acts ch 191 §55 HF 687
1991 amendment effective April 1 1992 91 Acts ch 191 §124 HF 687
Section amended

445.62 Abatement or refund in case of loss.

The board of supervisors has the authority to abate or refund in whole or in part the taxes of any person whose buildings, crops, stock, or other property has been destroyed by fire, tornado, or other unavoidable casualty, if that property has not been sold for taxes, or if the taxes have not been delinquent for thirty days at the time of the destruction. The loss

for which abatement or refund is allowed shall be only that amount which is not covered by insurance. The loss of capital stock in a bank operated within the state and the making and paying of a stock assessment for the year that stock was assessed for taxation is a destruction within the meaning of this section.

91 Acts ch 191 §56 HF 687
1991 amendment effective April 1 1992 91 Acts ch 191 §124 HF 687
Section amended

445.63 Abatement of taxes.

When taxes are owing against a parcel owned or claimed by the state or a political subdivision of this state and the taxes were owing before the parcel was acquired by the state or a political subdivision of this state, the county treasurer shall give notice to the appropriate governing body which shall pay the amount of the taxes due. If the governing body fails to immediately pay the taxes due, the board of supervisors shall abate all of the taxes.

91 Acts ch 191 §57 HF 687
1991 amendment effective April 1 1992 91 Acts ch 191 §124 HF 687
Section amended

CHAPTER 446

TAX SALE

For definitions applicable to chapter
effective April 1 1992 see § 445.1
Repeal of §446.3 through 446.6 effective April 1 1992
91 Acts ch 191 §124 HF 687
see Code 1991 for provisions effective until that date

446.1 Sale shown.

The county treasurer shall designate on the county system each parcel sold for taxes and not redeemed, by noting on the county system the year in which it was sold.

91 Acts ch 191 §58 HF 687
1991 amendment effective April 1 1992 91 Acts ch 191 §124 HF 687
Section amended

446.2 Notice of previous sale.

For each parcel sold, the county treasurer shall notify the titleholder of record that the parcel was sold at tax sale. The notice of sale may be included on or with the tax statement or by separate mail.

91 Acts ch 191 §59 HF 687
1991 amendment effective April 1 1992 91 Acts ch 191 §124 HF 687
Section stricken and rewritten

446.3 Sale of personal property. Repealed by 91 Acts, ch 191, § 123, 124. HF 687

446.4 Notice of time and place of sale. Repealed by 91 Acts, ch 191, § 123, 124. HF 687

446.5 Time of sale — adjournment. Repealed by 91 Acts, ch 191, § 123, 124. HF 687

446.6 Surplus. Repealed by 91 Acts, ch 191, § 123, 124. HF 687

446.7 Annual tax sale.

Annually, on the third Monday in June the county treasurer shall offer at public sale all parcels on which taxes are delinquent. The sale shall be made for the total amount of taxes, interest, fees, and costs due.

Parcels against which the county holds a tax sale certificate, parcels of municipal and political subdivisions of the state of Iowa, parcels held by a city or

county agency or the Iowa finance authority for use in an Iowa homesteading project, or parcels of the state or its agencies, shall not be offered or sold at tax sale and a tax sale of those parcels is void from its inception. When taxes are owing against parcels owned or claimed by a municipal or political subdivision of the state of Iowa, parcels held by a city or county agency or the Iowa finance authority for use in an Iowa homesteading project, or parcels of the state or its agencies, the treasurer shall give notice to the appropriate governing body which shall then pay the total amount due. If the governing body fails to pay the total amount due, the board of supervisors shall abate the total amount due.

91 Acts ch 191, §60 HF 687
 1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
 Section amended

446.9 Notice of sale — service — publication — costs.

1. A notice of the time and place of the annual tax sale shall be served upon the person in whose name the parcel subject to sale is taxed. The county treasurer shall serve the notice by sending it by regular first class mail to the person's last known address not later than May 1 of each fiscal year. The notice shall contain a description of the parcel to be sold which is clear, concise, and sufficient to distinguish the parcel to be sold from all other parcels. It shall also contain the amount of delinquent taxes for which the parcel is liable each year, the amount of the interest, fees, and the actual cost of publication of the notice as provided in subsection 2, all to be incorporated as a single sum. The notice shall contain a statement that, after the sale, if the parcel is not redeemed within the period provided in chapter 447, the right to redeem expires and a deed may be issued.

2. Publication of the time and place of the annual tax sale shall be made once by the treasurer in an official newspaper in the county designated by the treasurer at least one week, but not more than three weeks, before the day of sale. The publication shall contain a description of the parcel to be sold that is clear, concise, and sufficient to distinguish the parcel to be sold from all other parcels. All items offered for sale pursuant to section 446.18 may be indicated by an "s" or by an asterisk. The publication shall also contain the name of the person in whose name the parcel to be sold is taxed, the amount delinquent for which the parcel is liable each year, the amount of the interest, fees, costs, and the cost of publication in the newspaper, all to be incorporated as a single sum. The publication shall contain a statement that, after the sale, if the parcel is not redeemed within the period provided in chapter 447, the right to redeem expires and a deed may be issued.

3. In addition to the notice required by subsection 1 and the publication required by subsection 2, the treasurer shall send, at least one week but not more than three weeks before the day of sale, a notice of sale in the form prescribed by subsection 1, by regular first class mail to any mortgagee having a lien

upon the parcel, a vendor of the parcel under a recorded contract of sale, a lessor of the parcel who has a recorded lease or memorandum of a recorded lease, and to any other person who has an interest of record in the parcel, if the mortgagee, vendor, lessor, or other person having an interest of record has done both of the following:

- a. Requested on a form prescribed by the treasurer that notice of sale be sent to the person.
- b. Filed the request form with the treasurer at least one month prior to the date of sale, together with a fee of twenty-five dollars per parcel.

The request for notice is valid for a period of five years from the date of filing with the treasurer. The request for notice may be renewed for additional periods of five years by the procedure specified in this subsection.

4. Notice required by subsections 1 and 3 shall be deemed completed when the notice is enclosed in a sealed envelope with the proper postage on the envelope, is addressed to the person entitled to receive it at the person's last known mailing address, and is deposited in a mail receptacle provided by the United States postal service.

91 Acts, ch 191, §61 HF 687
 1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
 Section amended

446.10 Publication costs.

The compensation for publication shall not exceed four dollars for each separately described parcel and shall be paid by the county. The amount paid shall be collected as a part of the costs of sale and deposited into the county general fund. If the taxes are paid before the date of sale, the amount paid for publication shall be included as a part of the costs of collecting the taxes.

91 Acts, ch 191, §62 HF 687
 1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
 Section amended

446.11 Substituted service.

If the county treasurer cannot procure the publication of the notice for the sum specified in section 446.10, the notice may be given by posting it in the treasurer's office for two weeks.

91 Acts, ch 191, §63 HF 687
 1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
 Section amended

446.12 Certificate of publication.

The county treasurer shall obtain a copy of the notice of sale with a certificate of its publication from the printer or publisher, and file it in the office of the treasurer. The certificate shall be substantially in the following form:

I,, publisher (or printer) of the, a newspaper printed and published in the county of and state of Iowa, certify that the foregoing notice and list were published in that newspaper on the day of, and that copies of each

issue of the paper in which the notice and list were published were delivered by carrier or transmitted by mail to each of the subscribers to the paper.

.....
Signature of publisher (or printer)

State of Iowa,)
..... County.) ss.

The above certificate of publication was subscribed and sworn to before me by the above named, who is personally known to me to be the identical person described in the certificate, on the day of,

.....
Notary
.....County, Iowa.

91 Acts, ch 191, §64 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

446.13 Method of describing parcels, etc.

In entries required to be made by the county auditor, county treasurer, or other officer, letters and figures may be used to denote townships, ranges, sections, parts of sections, lots, blocks, dates, and the amount of taxes, interest, fees, and costs.

91 Acts, ch 191, §65 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

446.14 Irregularities in advertisement.

An irregularity or informality in the advertisement does not affect the legality of the sale or the title to a parcel conveyed by the county treasurer's deed under this chapter and chapters 447 and 448, and in all cases its provisions shall be sufficient notice to the owners of the sale of the parcel.

91 Acts, ch 191, §66 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

446.15 Offer for sale.

The county treasurer shall, on the day of the sale offer for sale, separately, for the total amount due each parcel advertised for sale.

91 Acts, ch 191, §67 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

446.16 Bid — purchaser.

The person who offers to pay the total amount due which is a lien on any parcel for the smallest portion of the parcel is the purchaser, and when the purchaser designates the portion of any parcel for which the purchaser will pay the total amount due, the portion thus designated shall become an undivided portion. The delinquent tax lien transfers with the tax sale certificate, whether held by the county or purchased by an individual, through assignment or direct purchase at the tax sale. The delinquent tax lien expires when the tax sale certificate expires.

91 Acts, ch 191, §68 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

446.17 Sale continued.

The county treasurer shall continue the sale from day to day as long as there are bidders or until all delinquent parcels have been offered for sale.

91 Acts, ch 191, §69 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

446.18 “Public bidder sale” — notice.

Each county treasurer shall, on the day of the regular tax sale each year or any continuance or adjournment of the tax sale, offer and sell at public sale all parcels which remain liable to sale for delinquent taxes, which have previously been advertised, offered for one year or more, and remain unsold for want of bidders. Notice of the sale shall be given at the same time and in the same manner as that given of the regular sale.

91 Acts, ch 191, §70 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191 §124 HF 687
Section amended

446.19 County or city as purchaser.

When a parcel is offered at a tax sale under section 446.18, and no bid is received, or if the bid received is less than the total amount due, the county in which the parcel is located, through its board of supervisors, shall bid for the parcel a sum equal to the total amount due. Money shall not be paid by the county or other tax-levying and tax-certifying body for the purchase, but each of the tax-levying and tax-certifying bodies having any interest in the taxes shall be charged with the total amount due the levying and tax-certifying body as its just share of the purchase price.

This section does not prohibit a governmental agency or political subdivision from bidding at the sale for a parcel to protect its interests. When a bid is received by a city in which the parcel is located, money shall not be paid by the city, but each of the tax-levying and tax-certifying bodies having any interest in the taxes shall be charged with the total amount due the levying and tax-certifying bodies as its just share of the purchase price.

91 Acts, ch 191, §71 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

446.20 Remedies.

1. Without limiting the county's rights under section 445.3, once a certificate is issued to a county, a county may collect the total amount due by the alternative remedy provided in section 445.3 by converting the total amount due to a personal judgment. The prosecution in equity of such action may be commenced anytime after the date of issuance of the certificate under section 446.19. Entrance of the judgment shall be shown on the county system. Collection of the judgment may then be initiated as provided in section 445.4. The county attorney shall, upon request of the treasurer, assist in prosecution of action authorized under this section and sections 445.3 and 445.4.

2. If the board or council determines that any property located on a parcel purchased by the county or city pursuant to section 446.19 requires removal, dismantling, or demolition, the board or council shall, at the same time and in the same manner that the notice of expiration of right of redemption is served, cause to be served on the person in possession of the parcel and also upon the person in whose name the parcel is taxed a separate notice stating that if the parcel is not redeemed within the time period specified in the notice of expiration of right of redemption, the property described in the notice shall be removed, dismantled, or demolished. The notice shall further state that the costs of removal, dismantling, or demolition shall be assessed against the person in whose name the parcel is taxed and a lien for the costs shall be placed against any other parcel taxed in that person's name within the county.

Service of the notice shall also be made by mail on any mortgagee having a lien upon the parcel, a vendor of the parcel under a recorded contract of sale, a lessor who has a recorded lease or memorandum of a recorded lease, and any other person who has an interest of record, at the person's last known address, if the mortgagee, vendor, lessor, or other person has filed a request for notice, as prescribed in section 446.9, subsection 3, and on the state of Iowa in case of an old-age assistance lien by service upon the department of human services. The notice shall also be served on any city where the parcel is situated.

91 Acts, ch 191, §72 HF 687
Effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
NEW section

446.21 Assignment of certificate to bondholder.

In tax sales made under section 446.19, a holder of a special assessment certificate against a parcel, a holder of a bond payable in whole or in part out of a special assessment against a parcel, or a city within which a parcel is situated, which parcel has been sold, is entitled to an assignment of any certificate of tax sale of the parcel, upon tender to the holder or to the county treasurer of the amount to which the holder of the tax sale certificate would be entitled in case of redemption.

91 Acts, ch 191, §73 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

446.23 Resale.

The person purchasing a tax sale certificate against any parcel shall immediately pay to the county treasurer the total amount bid. Upon failure to do so the parcel is again offered as if no such sale had been made. These payments may be made in the funds receivable in payment of taxes.

91 Acts, ch 191, §74 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

446.24 Record of sales.

The county treasurer or a designee shall attend all tax sales and keep a record in the county system of the sales, describing each parcel on which the total amount due was paid by the purchaser, as they are described in the copy of the notice on file in the treasurer's office. The county system shall include a statement of the amount, kind of tax, interest, fees, and costs for each parcel, to whom sold, and the date of sale.

91 Acts, ch 191, §75 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

446.25 Sale adjourned.

When all the parcels advertised for sale have been offered and parcels remain unsold for want of bidders, the county treasurer shall adjourn the sale to some day not exceeding two months from adjournment, due notice of which day shall be given at the time of adjournment, and by keeping the notice posted in a conspicuous place in the treasurer's office. Further notice is not necessary. On the day fixed by the adjournment, the same proceedings shall occur as in the first instance. Further adjournments shall be made, not exceeding intervals of two months, and the sales continue until the next regular annual sale or until all the parcels are sold.

91 Acts, ch 191, §76 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

446.26 Responsibility of treasurer to attend tax sale.

A county treasurer failing to attend a tax sale in person, by a deputy treasurer, or by another designated employee is guilty of a simple misdemeanor.

91 Acts, ch 191, §77 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section stricken and rewritten

446.27 Liability of treasurer.

1. If the county treasurer, deputy treasurer, or other designated employee sells or assists in selling any parcel, knowing it is not subject to taxation or that the amount for which it is sold has been paid, or knowingly and willfully sells or assists in selling a parcel to defraud the owner, or knowingly and willfully executes a deed for such a parcel sold, the treasurer, deputy treasurer, or designated employee is guilty of a serious misdemeanor and liable to pay the injured party all damages sustained as a result of the illegal sale.

2. If the treasurer is directly or indirectly concerned in the purchase of a parcel sold at tax sale, the treasurer and the treasurer's sureties are liable on the treasurer's official bond for all damages sustained by the owner of the parcel. In addition, the treasurer, deputy treasurer, or designated person, as the case may be, is guilty of a fraudulent practice.

3. Sales made in violation of this section are void.

91 Acts, ch 191, §78 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

446.28 Subsequent sale.

If for good cause, a parcel cannot be advertised and offered for sale on the third Monday of June, the county treasurer shall make the sale on the third Monday of the next succeeding month in which the required notice can be given.

91 Acts, ch 191, §79 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

446.29 Certificate of purchase.

The county treasurer shall prepare, sign, and deliver to the purchaser of any parcel or part of a parcel sold a certificate of purchase, describing the parcel or part of the parcel as shown in the county system identifying the parcel or part of the parcel sold, the total amount due for each parcel as described, and that payment has been made. Not more than one parcel shall be entered upon each certificate of purchase. The certificate fee is the amount specified in section 331.552, subsection 23. The delinquent tax lien transfers with the tax sale certificate, whether held by the county or purchased by an individual through assignment or direct purchase at the tax sale. The delinquent tax lien expires when the tax sale certificate expires.

91 Acts, ch 191, §80 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

446.30 Loss of certificate.

If a certificate of purchase is lost or destroyed, the owner of record, may, by filing an affidavit of the loss or destruction with the county treasurer, receive a duplicate of the certificate, which shall take the place of the original certificate and have the same force and effect in law and be subject to the same laws. The cost of a duplicate certificate of purchase is the same as the cost of the original certificate as provided in section 331.552, subsection 23.

91 Acts, ch 191, §81 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

446.31 Assignment — presumption from deed recitals.

The certificate of purchase is assignable by endorsement and entry in the county system in the office of county treasurer of the county from which the certificate was issued, and when the assignment is so entered, it shall vest in the assignee or legal representatives of the assignee all the right and title of the assignor. The statement in the treasurer's deed of the fact of the assignment is presumptive evidence of that fact. When the county acquires a certificate of purchase, the board of supervisors may compromise and assign the certificate. All money received from assignment of certificates of purchase shall be apportioned to the tax-levying and certifying bodies in proportion to their interests in the taxes for which the parcel was sold. After assignment of a certificate of purchase which is held by the county, section 446.37 applies. In that instance, the three-year-

quirement shall be calculated from the date of assignment.

91 Acts, ch 191, §82 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

446.32 Payment of subsequent taxes by purchaser.

The county treasurer shall also prepare, sign, and deliver to the purchaser of a parcel sold at tax sale a receipt for the total amount paid by the purchaser after the date of purchase for a subsequent year. Taxes for a subsequent year may be paid by the purchaser any time after June 30 or upon delivery of the new tax list referred to in chapter 443.

91 Acts, ch 191, §83 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

446.35 Assessment to wrong person.

A sale of a parcel through tax sale is not invalid if taxed in any other name than that of the rightful owner, if it is in other respects sufficiently described.

91 Acts, ch 191, §84 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

446.36 Certified copies of records as evidence.

The information in the county system of the office of the county treasurer, or a copy properly certified, is sufficient evidence to prove the sale of a parcel at tax sale, the redemption of the parcel, or the payment of taxes on it.

91 Acts, ch 191, §85 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

446.37 Failure to obtain deed — cancellation of sale.

After three years have elapsed from the time of any tax sale, and action has not been completed during the time which qualifies the holder of a certificate to obtain a deed, the county treasurer shall cancel the sale from the county system. However, this section does not apply to certificates of purchase at tax sale which are held by a county.

91 Acts, ch 191, §86 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

446.38 Suspended taxes of old-age assistance recipients.

In cases where taxes were suspended one year or more upon the parcel of a deceased old-age assistance recipient and no estate was opened within ninety days after the death of the recipient and the surviving spouse of the recipient is not occupying the parcel, the county may apply to the probate court to have the parcel conveyed to it for satisfaction of the suspended taxes. The probate court shall prescribe the manner and notices to be given. The probate court shall order the parcel conveyed to the county for satisfaction of the suspended taxes if an estate is not opened within a time specified by the court. The

probate court shall make and enter all appropriate orders to effect this conveyance to the county if an estate is not opened within the time specified. The parcel, at the election of the county treasurer, may be offered at tax sale after its conveyance to the county.

91 Acts, ch 191, §87 HF 687
 1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
 Section stricken and rewritten

446.39 Iowa finance authority statement.

A city or county, a city or county agency as authorized by the Iowa finance authority, or the Iowa finance authority may file with the county treasurer a verified statement that a parcel to be sold at tax sale is abandoned and deteriorating in condition, is inhabited but is not safe for human habitation, or is, or is likely to become, a public nuisance, and that the

parcel is suitable for use and is to be used in an Iowa homesteading project under section 220.14. Other information may be included. Upon proper filing of the statement, and if the parcel is offered at a tax sale and no bid is received, or if the bid received is less than the total amount due, or if the parcel is to be transferred to the county under section 446.38, the city, county, city or county agency, or Iowa finance authority may bid for the parcel for use in an Iowa homesteading project, bidding a sum equal to the total amount due. Each of the tax-levying and tax-certifying bodies having an interest in the taxes for which the parcel is sold shall be charged with its proportionate share of the purchase price.

91 Acts, ch 191, §88 HF 687
 1991 amendment effective April 1, 1992, 91 Acts, ch 191 §124 HF 687
 Section amended

CHAPTER 447

TAX REDEMPTION

For definitions applicable to chapter effective April 1, 1992, see § 445 1

447.1 Redemption — terms.

A parcel sold under this chapter and chapter 446 may be redeemed at any time before the right of redemption expires, by payment to the county treasurer, to be held by the treasurer subject to the order of the purchaser, of the amount for which the parcel was sold and interest of two percent per month, counting each fraction of a month as an entire month, from the month of sale, and the total amount paid by the purchaser or the purchaser's assignee for any subsequent year, with interest at the same rate added on the amount of the payment for each subsequent year from the month of payment, counting each fraction of a month as an entire month. The amount of interest must be at least one dollar and shall be rounded to the nearest whole dollar. Interest shall accrue on subsequent amounts from the month of payment by the certificate holder.

When the county is the certificate holder of the parcel redeemed, the redemption amount shall be apportioned among the several funds for which the taxes were levied. All interest, costs, and fees shall be apportioned to the general fund of the county.

91 Acts, ch 191, §89 HF 687
 1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
 Section amended

447.2 Nonallowable penalties. Repealed by 91 Acts, ch 191, § 123, 124. HF 687

Repeal effective April 1, 1992, 91 Acts, ch 191, §124 HF 687, see Code 1991 for provisions effective until that date

447.3 Agricultural college lands.

In redeeming from a sale of a leasehold interest in agricultural college land, the amount to be paid shall include any amount paid by the holder of the certificate as interest or principal due by the terms of the lease or otherwise to prevent a forfeiture, and for which proper voucher has been filed with the county treasurer, with interest at eight percent per annum from date of payment, which amount shall be paid by the treasurer to the holder of the certificate, and the certificate of redemption shall show the amount paid by the party redeeming.

91 Acts, ch 191, §90 HF 687
 1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
 Section amended

447.4 Redemption from sale for part of tax.

In case a redemption is made of a parcel comprised and assigned for a sum less than the total amount due, the purchaser is entitled to receive only the amount paid and a ratable part of the interest and costs. In determining the interest to be paid upon redemption from sale, the sum due on a parcel sold shall be taken to be the total amount due on the parcel at the time of sale, and the amount paid for a parcel at sale shall be apportioned ratably in accordance with section 447.1. Parcels so sold are redeemable in the same manner and with the same interest as those sold for the taxes of the preceding year.

91 Acts, ch 191, §91 HF 687
 1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
 Section amended

447.5 Certificate of redemption — issued by treasurer.

The county treasurer, upon application of a party to redeem a parcel sold at a tax sale, and being satisfied that the party has a right to redeem the parcel upon the payment of the proper amount, shall issue to the party a certificate of redemption, setting forth the facts of the sale substantially as contained in the certificate, the date of the redemption, the amount paid, and by whom redeemed, and shall make the proper entries in the county system in the treasurer's office. The amount of the fee shall be as provided in section 331.552, subsection 23, for either the original certificate or duplicate certificate.

91 Acts, ch 191, §92 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

447.6 Documentation of corrections.

The entries by the county treasurer on the county system shall be of a permanent nature and if errors are subsequently discovered the correcting entries shall be adequately documented to support the correction.

91 Acts, ch 191, §93 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section stricken and rewritten

447.7 Minors and persons of unsound mind.

If a parcel of a minor or person of unsound mind is sold at tax sale, it may be redeemed at any time within one year after the disability is removed, in the manner specified in section 447.8, or redemption may be made by the guardian or legal representative under sections 447.1 and 447.3 at any time before the delivery of the treasurer's deed.

91 Acts, ch 191, §94 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

447.8 Redemption after delivery of deed.

After the delivery of the treasurer's deed, a person entitled to redeem a parcel sold at tax sale shall do so by an equitable action in a court of record, in which all persons claiming an interest in the parcel derived from the tax sale, as shown by the record, shall be made defendants, and the court shall determine the rights, claims, and interests of the several parties, including liens for taxes and claims for improvements made on or to the parcel by the person claiming under the tax title. A person is not allowed to redeem a parcel sold for taxes in any other manner after the service of the notice provided for by section 447.9 and the execution and delivery of the treasurer's deed.

91 Acts, ch 191, §95 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

447.9 Notice of expiration of right of redemption.

After one year and nine months from the date of sale, or after nine months from the date of a sale made under section 446.18, 446.38 or 446.39, the

holder of the certificate of purchase may cause to be served upon the person in possession of the parcel, and also upon the person in whose name the parcel is taxed, in the manner provided for the service of original notices in R.C.P. 56.1, if the person resides in Iowa, or otherwise as provided in section 446.9, subsection 1, a notice signed by the certificate holder or the certificate holder's agent or attorney, stating the date of sale, the description of the parcel sold, the name of the purchaser, and that the right of redemption will expire and a deed for the parcel be made unless redemption is made within ninety days from the completed service of the notice. The ninety-day redemption period begins as provided in section 447.12. When the notice is given by a county as a holder of a certificate of purchase the notice shall be signed by the county treasurer or the county attorney, and when given by a city, it shall be signed by the city officer designated by resolution of the council. When the notice is given by the Iowa finance authority or a city or county agency holding the parcel as part of an Iowa homesteading project, it shall be signed on behalf of the agency or authority by one of its officers, as authorized in rules of the agency or authority.

Service of the notice shall also be made by mail on any mortgagee having a lien upon the parcel, a vendor of the parcel under a recorded contract of sale, a lessor who has a recorded lease or memorandum of a recorded lease, and any other person who has an interest of record, at the person's last known address, and on the state of Iowa in case of an old-age assistance lien by service upon the state department of human services. The notice shall also be served on any city where the parcel is situated. Only those persons who are required to be sent the notice of expiration as provided in this section are eligible to redeem a parcel from tax sale.

91 Acts, ch 191 §96 HF 687
1991 amendment effective April 1 1992 91 Acts ch 191, §124 HF 687
Section amended

447.11 Agent of nonresident.

A nonresident may in writing appoint a resident of the county in which the parcel is situated as agent, and file the appointment with the county treasurer of the county, who shall make note of the appointment in the county system, after which personal service of notice shall be made upon the agent.

91 Acts, ch 191, §97 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191 §124 HF 687
Section amended

447.12 When service deemed complete — presumption.

Service is complete only after an affidavit has been filed with the county treasurer, showing the making of the service, the manner of service, the time when and place where made, under whose direction the service was made, and costs incurred as provided in section 447.13. Costs not filed with the treasurer before a redemption is complete shall not be collected by the treasurer. The affidavit shall be made by the

holder of the certificate or by the holder's agent or attorney, and in either of the latter cases stating that the affiant is the agent or attorney of the holder of the certificate. The affidavit shall be filed by the treasurer and entered in the county system and is presumptive evidence of the completed service of the notice. The right of redemption shall not expire until ninety days after service is complete. When the parcel is held by a city or county, a city or county agency, or the Iowa finance authority, for use in an Iowa homesteading project, whether or not the parcel is the subject of a conditional conveyance granted under the project, the affidavit shall be made by the treasurer of the county or the county attorney, a city officer designated by resolution of the council, or on behalf of the agency or authority, by one of its officers as authorized in rules of the agency or authority.

91 Acts, ch 191, §98 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

447.13 Cost — fee — report.

The cost of a record search and the cost of serving the notice, including the cost of mailing certified mail notices and the cost of publication under sec-

tion 447.10 if publication is required, shall be added to the amount necessary to redeem. The fee for personal service of the notice shall be the same as for service of an original notice, including copy fee and mileage. The county treasurer shall file the proof of service and statement of costs and record these costs against the parcel. The certificate holder or the holder's agent shall report in writing to the treasurer the amount of authorized costs incurred, and the treasurer shall file the statement. Costs not filed with the treasurer before redemption shall not be collected by the treasurer and may be recovered through a court action against the parcel owner by the certificate holder. If the parcel is held by a city or county, a city or county agency, or the Iowa finance authority, for use in an Iowa homesteading project, whether or not the parcel is the subject of a conditional conveyance granted under the project, the costs incurred for repairs and rehabilitation work required and undertaken in order to make the parcel meet applicable building or housing code standards shall be added to the amount necessary to redeem.

91 Acts, ch 191, §99 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

CHAPTER 448

TAX DEED

For definitions applicable to chapter effective April 1, 1992, see § 445 1

448.1 Deed executed.

Immediately after the expiration of ninety days from the date of completed service of the notice provided in section 447.12 the county treasurer shall make out a deed for each parcel sold and unredeemed, and deliver it to the purchaser upon the return of the certificate of purchase. The treasurer shall receive twenty-five dollars for each deed made by the treasurer, and the treasurer may include any number of parcels purchased by one person in one deed, if authorized by the treasurer.

91 Acts, ch 191, §100 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

448.2 Form.

Deeds executed by the county treasurer shall be substantially in the following form:

KNOW ALL PERSONS BY THESE PRESENTS, that the following described parcel: (Here follows the description), situated in the county of and state of Iowa, was subject to taxes for the year

(or years) A.D., and the taxes on the parcel for the year (or years) stated remained due and unpaid at the date of the sale; and the treasurer of the county, on the day of, A.D., by virtue of the authority vested by law in the treasurer, at (an adjournment of) the sale begun and publicly held on the third Monday of June, A.D., exposed to public sale at the office of the county treasurer in the county named, in substantial conformity with all the requirements of the statute, the parcel described, for the payment of the total amount then due and remaining unpaid on the parcel, and at that time and place A B of the county of and state of, offered to pay the sum of dollars and cents, being the total amount then due and remaining unpaid on the parcel, for (here follows the description of the parcel sold) which was the least quantity bid for, and payment of that sum was made by that person to the treasurer, the parcel was stricken off to that person at that price; and A B did, on the day of, A.D., assign the certificate

of the sale of the parcel and all right, title, and interest to the parcel to E F of the county of and state of; and by the affidavit of, filed in the treasurer's office on the day of A.D., it appears that notice has been given more than ninety days before the execution of this deed to and of the expiration of the time of redemption allowed by law; and two years have elapsed since the date of the sale, and the parcel has not been redeemed:

Now, I, C D, treasurer of the county, for the consideration of the stated sum paid to the treasurer and by virtue of law, have granted, bargained, and sold, and by these presents do grant, bargain, and sell to A B (or E F), and that person's heirs and assigns, the parcel described, to have and to hold unto that person (or E F), and that person's heirs and assigns, forever; subject, however, to all the rights of redemption provided by law. In witness whereof, I, C D, treasurer of county, by virtue of the authority vested in me, have subscribed my name on this day of A.D.

.....
Treasurer

State of Iowa,)
.....County.) ss.

I certify that before me,, in and for said county, personally appeared the above named C D, treasurer of the county, personally known to me to be the treasurer of the county at the date of the execution of the above conveyance, and to be the identical person whose name is affixed to and who executed the above conveyance as treasurer of the county, and acknowledged the execution of the conveyance to be the treasurer's voluntary act and deed as treasurer of the county, for the purposes expressed in the conveyance.

Given under my hand (and seal) this day of, A.D.

91 Acts, ch 191, §101 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

448.3 Execution and effect of deed.

The deed shall be signed by the county treasurer as such, and acknowledged by the treasurer before some officer authorized to take acknowledgments, and when substantially thus executed and recorded in the proper record in the office of the recorder of the county in which the parcel is situated, shall vest in the purchaser all the right, title, interest, and estate of the former owner in and to the parcel conveyed, subject to all restrictive covenants, resulting from prior conveyances in the chain of title to the

former owner, and all the right, title, interest, and claim of the state and county to the parcel. The issuance of the deed shall operate to cancel all suspended taxes.

91 Acts, ch 191, §102 HF 687
1991 amendment effective April 1, 1992, 91 Acts ch 191 §124 HF 687
Section amended

448.4 Presumptive evidence.

The deed shall be presumptive evidence in all the courts of this state in all controversies and actions in relation to the rights of the purchaser, and the purchaser's heirs or assigns, to the parcel conveyed, of the following facts:

1. That the parcel conveyed was subject to taxes for the year or years stated in the deed.
2. That the taxes were not paid at any time before the sale.
3. That the parcel conveyed had not been redeemed from the sale at the date of the deed.
4. That the parcel had been listed and assessed.
5. That the taxes were levied or set according to law.
6. That the parcel was duly advertised for sale.
7. That the parcel was sold as stated in the deed.

91 Acts ch 191, §103 HF 687
1991 amendment effective April 1 1992, 91 Acts, ch 191, §124 HF 687
Section amended

448.5 Conclusive evidence.

The deed shall be conclusive evidence of the following facts:

1. That the manner in which the listing, assessment, levy, notice and sale were conducted was in all respects as the law directed.
2. That the grantee named in the deed was the purchaser.
3. That all the prerequisites of the law were complied with by all the officers who had, or whose duty it was to have had, any part or action in any transaction relating to or affecting the title conveyed or purporting to be conveyed by the deed, from the listing and valuation of the parcel up to the execution of the deed, both inclusive, and that all things required by law to make a good and valid sale and to vest the title in the purchaser were done, except in regard to the points named in section 448.4 for which the deed shall be presumptive evidence only.

91 Acts, ch 191, §104 HF 687
1991 amendment to subsection 3 effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Subsection 3 amended

448.6 Facts necessary to defeat deed.

In all actions involving the title to a parcel claimed and held under a deed executed substantially as required in this chapter by the county treasurer, the person claiming title adverse to the title conveyed shall be required to prove, in order to defeat the title, any of the following:

1. That the parcel was not subject to taxes for the year or years named in the deed.
2. That the taxes had been paid before the sale.
3. That the parcel had been redeemed from the

sale and that the redemption was made for the use and benefit of persons having the right of redemption.

4. That there had been an entire omission to list or assess the parcel, or to levy the taxes, or to give notice of the sale, or to sell the parcel.

91 Acts, ch 191, §105 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

448.7 Additional facts necessary.

A person shall not be permitted to question the title acquired by a county treasurer's deed without first showing that the person, or the person under whom that person claims title, had title to the parcel at the time of the sale, or that the title was obtained from the United States or this state after the sale, and that all amounts due upon the parcel have been paid by that person, or the person under whom that person claims title.

91 Acts, ch 191, §106 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

448.8 Sale made by mistake.

If an amount due was paid, and through mistake in the entry made in the county system, the parcel was afterward sold, the treasurer's deed does not convey the title.

91 Acts, ch 191, §107 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

448.9 Fraudulent sale.

If the owner of a parcel sold for taxes resists the validity of the tax title, the owner may prove fraud committed by the officer selling the parcel, or in the purchaser, to defeat the title, and, if fraud is established, the sale and title shall be void.

91 Acts, ch 191, §108 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

448.10 Wrongful sales — purchaser indemnified.

If, by mistake or wrongful act of the county treasurer, a parcel has been sold on which no tax was due at the time, or when a parcel is sold in consequence of error in describing it within the county system, the county shall hold the purchaser harmless by paying the purchaser the amount due to which the purchaser would have been entitled had the parcel been rightfully sold, and the treasurer and the treasurer's surety shall be liable to the county to the amount of the treasurer's official bond; or the purchaser, or the purchaser's assignee, may recover the amount directly from the treasurer and the treasurer's surety.

91 Acts, ch 191, §109 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

448.11 Correcting wrongful sale.

When it is made known to the county treasurer, before the execution of a deed for a parcel sold, or if the deed is returned by the purchaser, that a parcel

was sold which was not subject to taxation, or upon which the taxes had been paid, the treasurer shall make an entry in the county system that the parcel was erroneously sold, and the entry shall be evidence of the fact, and the purchase money shall be refunded to the purchaser.

91 Act, ch 191, §110 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

448.12 Limitation of actions.

An action for the recovery of a parcel sold for the nonpayment of taxes shall not be brought after three years from the execution and recording of the county treasurer's deed, unless the owner is, at the time of the sale, a minor, a mentally ill person, or an inmate in an adult correctional institution, in which case the action must be brought within three years after the disability is removed.

91 Acts, ch 191, §111 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

448.13 Limitation of action on tax sales and deeds. Repealed by 91 Acts, ch 191, § 123, 124. HF 687

Repeal effective April 1, 1992, 91 Acts, ch 191, §124 HF 687, see Code 1991 for provisions effective until that date

448.14 Officers de facto.

In all actions and controversies involving the question of title to a parcel held under a county treasurer's deed, all acts of assessors, treasurers, auditors, supervisors, and other officers de facto shall be of the same validity as acts of officers de jure.

91 Acts, ch 191, §112 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

448.15 Affidavit by tax-title holder.

Immediately after the issuance and recording of a tax deed or an instrument purporting to be a tax deed issued by a county treasurer of this state, the then owner or holder of the title or purported title may file with the county recorder of the county in which the parcel is located an affidavit substantially in the following form:

State of Iowa,)
..... County.) ss.

I,, being first duly sworn, on oath depose and say that on (date) the county treasurer issued a tax deed to (grantee) for the following described parcel:..... ; that the tax deed was filed for record in the office of the county recorder of county, Iowa, on (date), and appears in the records of the office in county as recorded in Book Page of the Records; and that is now in possession of the parcel and claims title to the parcel by virtue of the tax deed, or purported tax title.

Any person claiming any right, title, or interest in or to the parcel adverse to the title or purported title by virtue of the tax deed referred to shall file a claim with the recorder of the county where the parcel is located, within one hundred twenty days after the filing of this affidavit, the claim to set forth the nature of the interest, also the time and manner in which the interest claimed was acquired.

.....

Subscribed and sworn to before me this day of, 19

.....
Notary Public in and for
.....County, Iowa.

91 Acts, ch 191, §113 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

448.16 Claims adverse to tax title barred.

When the affidavit described in section 448.15 is filed it shall be notice to all persons, and any person claiming any right, title, or interest in or to the parcel described adverse to the title or purported title by virtue of the tax deed referred to, shall file a claim

with the county recorder of the county in which the parcel is located within one hundred twenty days after the filing of the affidavit, which claim shall set forth the nature of the interest, the time when and the manner in which the interest was acquired.

At the expiration of the period of one hundred twenty days, if no such claim has been filed, all persons shall thereafter be forever barred and estopped from having or claiming any right, title, or interest in the parcel adverse to the tax title or purported tax title, and no action shall thereafter be brought to recover the parcel, and the then tax-title owner or owner of the purported tax title shall also have acquired title to the parcel by adverse possession.

91 Acts, ch 191, §114 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

448.17 Indexing and recording of affidavits and claims.

All affidavits and claims as provided for in sections 448.15 and 448.16, filed with the county recorder, shall be indexed in the claimant's book under the description of the parcel involved, and shall be recorded as other instruments affecting parcels.

91 Acts, ch 191, §115 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

CHAPTER 449

APPORTIONMENT OF TAXES

449.1 Application.

When a parcel has been assessed and taxed as one unit, and thereafter and before the tax is paid, the title to different portions of the parcel becomes vested in different parties in severalty, and the owners are unable to agree as to what portion of the total tax each portion of the parcel should bear, any of the parties may file with the board of supervisors a written application for the apportionment of the tax.

91 Acts, ch 191, §116 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

449.3 Order — record.

At the hearing, the board shall apportion the tax to the different portions of the parcel owned in severalty, in accordance with the values of the portions. All orders and determinations of the board shall be

entered in its minutes. An order of apportionment shall clearly identify each portion of the parcel owned in severalty.

91 Acts, ch 191, §117 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

449.4 Correction of books or records.

The county auditor shall, upon the making of an order of apportionment, correct the tax books or records in the auditor's possession, in accordance with the order, and if the books or other records have been delivered to the county treasurer, the auditor shall at once certify the order of apportionment to the treasurer who shall correct the county system.

91 Acts, ch 191, §118 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Section amended

CHAPTER 450

INHERITANCE TAX

450.9 Individual exemptions.

In computing the tax on the net estate passing to the surviving spouse, heirs or beneficiaries of the deceased the following exemptions shall be allowed:

1. Surviving spouse, the entire amount of property, interest in property, and income.
2. Each son and daughter, including legally adopted sons and daughters, or illegitimate sons and daughters entitled to inherit under the law of this state, fifty thousand dollars.
3. Father or mother, fifteen thousand dollars.
4. Any other lineal descendant of the deceased, fifteen thousand dollars.

91 Acts, ch 159, §23, 24 SF 356
1991 amendment to subsection 1 and striking of unnumbered paragraph 2 retroactive to January 1, 1988, for estates of decedents dying on or after that date, 91 Acts, ch 159, §35 SF 356
Subsection 1 amended
Unnumbered paragraph 2 (at end of section) stricken

450.10 Rate of tax.

The property or any interest therein or income therefrom, subject to the provisions of this chapter, shall be taxed as herein provided:

1. When the property, interest, or income passes to the father or mother, or to a child or lineal descendant of the decedent, grantor, donor, or vendor, including a legally adopted child or illegitimate child entitled to inherit under the laws of this state, the tax imposed shall be on the individual share so passing in excess of the exemptions allowed as follows:

One percent of the first five thousand dollars.

Two percent of any amount in excess of five thousand dollars and up to twelve thousand five hundred dollars.

Three percent on any amount in excess of twelve thousand five hundred dollars and up to twenty-five thousand dollars.

Four percent on any amount in excess of twenty-five thousand dollars and up to fifty thousand dollars.

Five percent on any amount in excess of fifty thousand dollars and up to seventy-five thousand dollars.

Six percent on any amount in excess of seventy-five thousand dollars and up to one hundred thousand dollars.

Seven percent on any amount in excess of one hundred thousand dollars and up to one hundred fifty thousand dollars.

Eight percent on all sums in excess of one hundred fifty thousand dollars.

2. When the property or any interest therein or income therefrom taxable under the provisions of this chapter passes to the brother or sister, son-in-law, or daughter-in-law, or step-children, the rate of

tax imposed on the individual share so passing shall be as follows:

Five percent on any amount up to twelve thousand five hundred dollars.

Six percent on any amount in excess of twelve thousand five hundred dollars and up to twenty-five thousand dollars.

Seven percent on any amount in excess of twenty-five thousand dollars and up to seventy-five thousand dollars.

Eight percent on any amount in excess of seventy-five thousand dollars and up to one hundred thousand dollars.

Nine percent on any amount in excess of one hundred thousand dollars and up to one hundred fifty thousand dollars.

Ten percent on all sums in excess of one hundred fifty thousand dollars.

3. When the property or interest in property or income from property, taxable under this chapter, passes to a person not included in subsections 1, 2, and 7, the rate of tax imposed on the individual share so passing shall be as follows:

Ten percent on any amount up to fifty thousand dollars.

Twelve percent on any amount in excess of fifty thousand dollars and up to one hundred thousand dollars.

Fifteen percent on all sums in excess of one hundred thousand dollars.

4. When the property or any interest therein or income therefrom, taxable under the provisions of this chapter, passes in any manner to societies, institutions or associations incorporated or organized under the laws of any other state, territory, province or country than this state, for charitable, educational or religious purposes, or to cemetery associations, including humane societies not organized under the laws of this state, or to resident trustees for uses without this state, the rate of tax imposed shall be as follows:

Ten percent on the entire amount so passing.

5. When the property or any interest therein or income therefrom, taxable under the provisions of this chapter, passes to any firm, corporation, or society organized for profit either under the laws of this state or of any other state, territory, province or country, the rate of tax imposed shall be as follows:

Fifteen percent on the entire amount so passing.

6. When the property or any interest therein, or income therefrom, taxable under the provisions of this chapter passes to any person included under subsection 1 or 2 hereof, there shall be credited to the

tax imposed on the individual share so passing an amount equal to the tax imposed in this state on the decedent on any property, real, personal or mixed, or the proportionate share thereof on property passing to the person taxed hereunder, which can be identified as having been received by the decedent as a share in the estate of any person who died within two years prior to the death of the decedent, or which can be identified as having been acquired by the decedent in exchange for property so received. The credit shall not be applicable to taxes on property of the decedent which was not acquired from the prior estate.

7. Property, interest in property, or income passing to the surviving spouse is not taxable under this section.

91 Acts, ch 159, §25 27 SF 356

1991 amendments to subsections 1, 3, and 7 in 91 Acts, ch 159, §25 27, retro active to January 1, 1988, for estates of decedents dying on or after that date, 91 Acts, ch 159, §35 SF 356

Subsection 1, unnumbered paragraph 1 amended

Subsection 3, unnumbered paragraph 1 amended

Subsection 7 stricken and rewritten

450.81 Duty of recorder.

Each county recorder shall, upon the filing in the recorder's office of a deed, bill of sale, or other transfer of any description which shows upon its face that it was made or intended to take effect in possession or enjoyment at or after the death of the maker of the instrument, forward to the department of revenue and finance a copy of the instrument.

91 Acts, ch 191, §119 HF 687

1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687

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 and finance. 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. Interest shall be computed at the rate in effect under section 421.7, under the rules prescribed by the director counting each fraction of a month as an entire month and the interest shall begin to accrue on the first day of the second calendar month following the date of payment or on the date the return was due to be filed or was filed, whichever is the latest. 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 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 thirty 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 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.

6. Notwithstanding the periods of limitation for filing a claim for refund in subsection 3, with respect to estates of decedents dying on or after July 1, 1982, a qualified heir who has paid an additional inheritance tax under section 450B.3 by reason of the cessation of the qualified use due to cash rent of the special use property by the surviving spouse, shall have until November 10, 1989, to file a claim for refund of the additional inheritance tax paid.

7. Notwithstanding the periods of limitations for filing a claim for refund in subsection 3, estates of decedents dying on or after July 1, 1985, which have elected to treat qualified terminable interest proper-

ty as passing to the surviving spouse in fee, shall have until November 10, 1990, to make the election allowed under section 6152(c)(3) of the Technical and Miscellaneous Revenue Act of 1988 for joint and survivor annuities.

91 Acts ch 159 §28 SF 356
 1991 amendment to subsection 3 in 91 Acts, ch 159 §28 effective July 1

1991 for estates of decedents dying on or after that date 91 Acts ch 159 §34 SF 356
 Subsection 3 amended

CHAPTER 452

SECURITY OF THE REVENUE

452.10 Custody of public funds — investment or deposit.

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 for the funds; or in savings accounts in depositories; or in warrants or improvement certificates of a drainage district. 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.

For the purpose of avoiding the complexity and administrative burdens associated with the required rebate of arbitrage profits to the United States treasury pursuant to section 148 of the Internal Revenue Code, as defined in section 422.3, the treasurer of state and the treasurer or other designated financial officer of each political subdivision may invest the proceeds of public bonds or obligations and funds

being accumulated for the payment of principal and interest or reserves in tax-exempt bonds, as defined and permitted by section 148 of the Internal Revenue Code and applicable federal regulations under that section, and in tax-exempt money market funds, including but not limited to funds issued by an unincorporated investment company or investment trust registered under the federal Investment Company Act of 1940, having assets in excess of five hundred million dollars and having an average maturity in compliance with the federal securities exchange commission regulations for registered money market funds.

Evidences of indebtedness which are obligations of or guaranteed by the United States of America or any of its agencies include investments in an unincorporated investment company or investment trust registered under the federal Investment Company Act of 1940, 15 U.S.C. § 80a, the portfolio of which is limited to such United States government obligations and to repurchase agreements fully collateralized by the United States government obligations if the investment company or investment trust takes delivery of the collateral either directly or through an authorized custodian.

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.

91 Acts ch 249 §1 HF 707
 NEW unnumbered paragraph 2

CHAPTER 453

DEPOSIT OF PUBLIC FUNDS

453.9 Investment of sinking funds.

The governing council or board which by law is authorized to direct the depositing of funds may direct the treasurer or other designated financial officer to invest any fund not an active fund needed for current use and which is being accumulated as a sinking fund for a definite purpose, the interest on which is used for the same purpose, in local certificates or warrants issued by any municipality or school district within the county, in municipal or school district bonds which constitute a general liability, and in investments authorized in section 452.10.

For the purpose of avoiding the complexity and administrative burdens associated with the required rebate of arbitrage profits to the United States treasury pursuant to section 148 of the Internal Revenue Code, as defined in section 422.3, the treasurer of state and the treasurer or other designated financial officer of each political subdivision may invest the proceeds of public bonds or obligations and funds

being accumulated for the payment of principal and interest or reserves in tax-exempt bonds, as defined and permitted by section 148 of the Internal Revenue Code and applicable federal regulations under that section, and in tax-exempt money market funds, including but not limited to funds issued by an unincorporated investment company or investment trust registered under the federal Investment Company Act of 1940, having assets in excess of five hundred million dollars and having an average maturity in compliance with the federal securities exchange commission regulations for registered money market funds.

The treasurer of state may invest 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 shall not be permitted.

91 Acts ch 249 §2 HF 707
NFW unnumbered paragraph 2

CHAPTER 455A

DEPARTMENT OF NATURAL RESOURCES

455A.4 General powers and duties of the director.

1. Except as otherwise provided by law and subject to rules adopted by the natural resource commission and the environmental protection commission, the director shall:

a Plan, direct, coordinate, and execute the functions vested in the department.

b Provide overall supervision, direction, and coordination of functions to be administered by the administrators under chapters 84, 93, 106, 107, 108, 108A, 109, 109A, 110, 110A, 110B, 111, 111B, 111D, 112, 305, 321G, 455B, and 455C.

c Annually compile a comprehensive program budget which reflects all fiscal matters related to the operation of the department and each program, sub-program, and activity in the department in accordance with section 8.23.

d Submit a biennial or an annual report to the governor and the general assembly, in accordance with chapter 17.

e Employ personnel as necessary to carry out the functions vested in the department consistent with chapter 19A unless the positions are exempt from that chapter.

f Devote full time to the duties of the director's office.

g Not be a candidate for nor hold any other public office or trust, nor be a member of a political committee.

h Maintain an office at the state capitol complex, which is open at all reasonable times for the conduct of public business.

i Adopt rules in accordance with chapter 17A as necessary or desirable for the organization or reorganization of the department.

j Submit a report to the natural resource commission before January 15, 1992, and every five years thereafter, which shall include but not be limited to information on the following topics:

(1) The classification of the state's parks, recreation areas, and preserves and recommendations for

their reclassification based upon present and future use

(2) Methods for maintaining the diversity of animal and plant life in state parks, recreation areas, and preserves

(3) Options to achieve controlled deer hunting in order to prevent overpopulation of deer

(4) Prevention of economic damage to private property which is located adjacent to state parks, recreation areas, and preserves

The portion of the report dealing with preserves shall be prepared in conjunction with the state advisory board for preserves. A copy of the report shall be made available to members of the general assembly by sending a copy of the report to the chief clerk of the house of representatives, the secretary of the senate, and the director of each of the caucus or research staffs of the general assembly

2 All powers and duties vested in the director may be delegated by the director to an employee of the department, but the director retains the responsibility for an employee's acts within the scope of the delegation

3 The director and other officers and employees of the department are entitled to receive, in addition to salary, their actual and necessary travel and related expenses incurred in the performance of official business

4 The director shall obtain an adequate public employees fidelity bond to cover those officers and employees of the department accountable for property or funds of this state

5 The department may accept payment of any fees, interest, penalties, subscriptions, or other payments due or collected by the department, or any portion of such payments, by credit card. The department may adjust the amount of the payment to reflect the costs of processing the payment as determined by the treasurer of state and the payment by credit card shall include, in addition to all other charges, any discount charged by the credit card issuer

91 Acts ch 154 §1 HF 577
Subsection 1 NEW paragraph j

455A.5 Natural resource commission — appointment and duties.

1 A natural resource commission is created, which consists of seven members appointed by the governor for staggered terms of six years beginning and ending as provided in section 69 19. The appointees are subject to senate confirmation. The members shall be citizens of the state who have a substantial knowledge of the subjects embraced by chapter 107. The appointments shall be based upon the training, experience, and capacity of the appointees, and not based upon political considerations, other than as provided in section 69 16. A member of the commission shall not hold any other state or federal office

2 A vacancy on the commission shall be filled for the unexpired term in the same manner as the original appointment was made

3 The members of the commission shall be reimbursed for actual and necessary travel and related expenses incurred in the discharge of official duties. Each member of the commission may also be eligible to receive compensation as provided in section 7E 6

4 The commission shall hold an organizational meeting within thirty days of the beginning of a new regular term for one or more of its members. The commission shall organize by electing a chairperson, vice chairperson, secretary, and any other officers deemed necessary or desirable. The commission shall meet at least quarterly throughout the year

5 A majority of the members of the commission is a quorum, and a majority of a quorum may act in any matter within the jurisdiction of the commission, unless a more restrictive rule is adopted by the commission

6 Except as otherwise provided by law, the commission shall

a Establish policy and adopt rules, pursuant to chapter 17A, necessary to provide for the effective administration of chapter 106, 107, 108, 108A, 109, 109A, 110, 110A, 110B, 111, 111B, 111D, 112, or 321G

b Hear appeals in contested cases pursuant to chapter 17A on matters relating to actions taken by the director under chapter 106, 107, 108, 108A, 109, 109A, 110, 110A, 110B, 111, 111B, 111D, 112, or 321G

c Approve or disapprove proposals for the acquisition or disposal of state lands and waters relating to state parks, recreational facilities, and wildlife programs, submitted by the director

d Approve the budget request prepared by the director for the programs authorized by chapters 106, 107, 108, 108A, 109, 109A, 110, 110A, 110B, 111, 111D, 112, and 321G. The commission may increase, decrease, or strike any item within the department budget request for the specified programs before granting approval

e Adopt, by rule, a schedule of fees for permits, including conditional permits, and a schedule of fees for administration of the permits. The fees shall be collected by the department and used to offset costs incurred in administering a program for which the issuance of the permit is made or under which enforcement is carried out. In determining the fee schedule, the commission shall consider all of the following

(1) The reasonable costs associated with reviewing applications, issuing permits, and monitoring compliance with the terms of issued permits

(2) The relative benefits to the applicant and to the public of a permit review, permit issuance, and monitoring compliance with the terms of the permit

(3) The typical costs associated with a type of project or activity for which a permit is required. However, a fee shall not exceed the actual costs incurred by the department

91 Acts ch 268 §230 SF 529
Subsection 6 NEW paragraph e

455A.6 Environmental protection commission — appointment and duties.

1 An environmental protection commission is created, which consists of nine members appointed by the governor for staggered terms of four years beginning and ending as provided in section 69 19. Commission appointees are subject to senate confirmation. The members shall be electors of the state and have knowledge of the subjects embraced in chapter 455B. The appointments shall be based upon the training, experience, and capacity of the appointees, and not based upon political considerations, other than as provided in section 69 16. The membership of the commission shall be as follows:

a Three members actively engaged in livestock and grain farming

b A member actively engaged in the business of finance or commerce

c A member actively engaged in the management of a manufacturing company

d Four members who are electors of the state

2 A vacancy on the commission shall be filled for the unexpired term in the same manner as the original appointment was made.

3 The members of the commission shall be reimbursed for actual and necessary travel and related expenses incurred in the discharge of official duties. Each member of the commission may also be eligible to receive compensation as provided in section 7E 6.

4 The commission shall hold an organizational meeting within thirty days of the beginning of a new regular term for one or more of its members. The commission shall organize by electing a chairperson, vice chairperson, secretary, and any other officers deemed necessary or desirable. The commission shall meet at least quarterly throughout the year.

5 A majority of the members of the commission is a quorum, and a majority of a quorum may act in any matter within the jurisdiction of the commission, unless a more restrictive rule is adopted by the commission.

6 Except as otherwise provided by law, the commission shall

a Establish policy for the department and adopt rules, pursuant to chapter 17A, necessary to provide for the effective administration of chapter 455B or 455C

b Hear appeals in contested cases pursuant to chapter 17A on matters relating to actions taken by the director under chapter 84, 93, 455C, or 469

c Approve or disapprove the issuance of hazardous waste disposal site licenses under chapter 455B

d Approve the budget request prepared by the director for the programs authorized by chapters 455B, 455C, 455E, and 455F. The commission shall approve the budget request prepared by the director for programs administered by the energy and geological resources division, the coordination and information division, the administrative services division, and the office of the director, as provided in section 455A 7. The commission may increase, decrease, or strike any item within the department

budget request for the specified programs before granting approval.

91 Acts ch 268 §231 SF 529

Subsection 6 paragraph d amended

455A.7 Divisions created — deputy director and administrators appointed by director.

1 The following divisions are created within the department:

a Parks and preserves division which is responsible for programs relating to water access development, state parks and recreation areas, and preserves

b Forests and forestry division which is responsible for administering programs relating to state forests and forestry and for the operation of the state nursery under section 107 20

c Fish and wildlife division which is responsible for programs relating to wildlife, law enforcement, fisheries, and land acquisition and management

d Energy and geological resources division which is responsible for programs relating to energy, geological survey, and oil and gas production

e Environmental protection division which is responsible for programs relating to wastewater treatment, water supply, hazardous wastes, air and land, and field services

f Coordination and information division which has the responsibility for legal services, governmental liaison, information and education, and planning

g Administrative services division which is responsible for finance, budget and grants, administrative support, data processing, licensing, and construction services

h Additional divisions deemed necessary for the effective and efficient administration of the department

i Waste management authority which has responsibilities provided in chapter 455B, part 9

j Office of the director which has responsibilities for administering the department

2 The director shall appoint a deputy director who shall be in charge of the department in the absence of the director. The appointment shall be based on the appointee's training, experience, and capabilities.

3 The director shall appoint an administrator for each division created under subsection 1. The director shall make the appointment based on the appointee's training, experience, and capabilities. Each administrator has the responsibility of administering the programs assigned the division under subsection 1 and other programs assigned by the director. Each administrator shall carry out the duties and responsibilities of office under the general direction and supervision of the director.

91 Acts ch 268 §233 SF 529

Subsection 1 NEW paragraphs i and j

455A.9 Fees — publications.

The department may establish a schedule of fees for subscriptions to publications produced by the de-

partment, including periodicals. However, this subsection does not apply to application forms and materials intended for general distribution which explain departmental programs or duties.

Fees shall be based on the amount required to recover the reasonable costs of producing a publication, including costs relating to preparing, printing, publishing, and distributing the publication.

91 Acts, ch 268 §235 SF 529
NEW section

455A.10 State fish and game protection fund — capital projects and contingencies.

Funds remaining in the state fish and game protection fund during a fiscal year which are not specifically appropriated by the general assembly are appropriated and may be used for capital projects and contingencies under the jurisdiction of the fish and wildlife division arising during the fiscal year. A contingency shall not include any purpose or project which was presented to the general assembly by way of a bill or a proposed bill and which failed to be enacted into law. For the purpose of this section, a necessity of additional operating funds may be construed as a contingency. Before any of the funds authorized to be expended by this section are allocated for contingencies, it shall be determined by the executive council that a contingency exists and that the contingency was not existent while the general assembly was in session and that the proposed allocation shall be for the best interests of the state. If a contingency arises or could reasonably be foreseen during the time the general assembly is in session, expenditures for the contingency must be authorized by the general assembly.

91 Acts, ch 268, §610 SF 529
NEW section

455A.11 through 455A.14 Reserved.

455A.17 Iowa congress on resources enhancement and protection.

1. Biennially, during even-numbered years, the director shall schedule and make the necessary arrangements for an Iowa congress on resources enhancement and protection. The congress shall be held within the state capitol complex during the summer months.

2. Prior to each congress, the director shall make arrangements to hold an assembly in each council of governments area of persons having an interest in resources enhancement and protection. The department shall promote attendance of interested persons at each assembly. The director shall call each assembly and serve as temporary chairperson. The department shall provide those attending with information regarding resource enhancement and protection expenditures. The assemblies shall identify opportunities for regional resource enhancement and protection and review and recommend changes in resource enhancement and protection policies, programs, and funding. The persons meeting at each assembly shall

elect five persons as delegates to the congress on resources enhancement and protection.

3. The delegates to the congress on resources enhancement and protection shall organize, discuss, and make recommendations to the governor, the general assembly, and the natural resource commission regarding issues concerning resources enhancement and protection. The director shall call the congress and serve as temporary chairperson. The delegates are entitled to a per diem as specified in section 7E.6 for expenses of office while attending the congress.

4. The expenses of the department in making the arrangements for and the conducting of the council of governments area assemblies and the congress on resources enhancement and protection and the per diem for expenses of the delegates at the congress shall be paid from the funds appropriated for this purpose.

91 Acts, ch 258, §53 HF 709
1991 amendment to subsection 3 retroactively applicable to January 1, 1991,
91 Acts, ch 258, §73 HF 709
Subsection 3 amended

455A.18 Iowa resources enhancement and protection fund — audits.

1. An Iowa resources enhancement and protection fund is created in the office of the treasurer of state. The fund consists of all revenues and all other moneys lawfully credited or transferred to the fund. The director shall certify monthly the portions of the fund that are allocated to the various accounts as provided under section 455A.19. The director shall certify before the twentieth of each month the portions of the fund resulting from the previous month's receipts to be allocated to the various accounts.

2. The auditor of state or a certified public accountant firm appointed by the auditor of state shall conduct annual audits of all accounts and transactions of the fund.

3. For each fiscal year of the fiscal period beginning July 1, 1990, and ending June 30, 2001, there is appropriated from the general fund, to the Iowa resources enhancement and protection fund, the amount of thirty million dollars, except that for the fiscal year beginning July 1, 1990, the amount is twenty million dollars, to be used as provided in this chapter. However, in any fiscal year of the fiscal period, if moneys from the lottery are appropriated by the state to the fund, the amount appropriated under this subsection shall be reduced by the amount appropriated from the lottery.

Section 8.33 does not apply to moneys appropriated under this subsection.

91 Acts, ch 260, §1232, 1233 HF 173
Standing appropriation limited for 1991-1992 fiscal year, see 91 Acts, ch 267,
§503 HF 479, 91 Acts, ch 271, §1(14) SF 549
Subsection 3 stricken and former subsection 4 renumbered as 3
Subsection 3, unnumbered paragraph 2 amended

455A.19 Allocation of fund proceeds.

1. Upon receipt of any revenue, the director shall deposit the moneys in the Iowa resources enhancement and protection fund created pursuant to sec-

tion 455A.18. The first three hundred fifty thousand dollars of the funds received for deposit in the fund annually shall be allocated to the conservation education board for the purposes specified in section 256.34. One percent of the revenue receipts shall be deducted and transferred to the administration fund provided for in section 107.17. All of the remaining receipts shall be allocated to the following accounts:

a. Twenty-eight percent shall be allocated to the open spaces account. At least ten percent of the allocations to the account shall be made available to match private funds for open space projects on the cost-share basis of not less than twenty-five percent private funds pursuant to the rules adopted by the natural resources commission. Five percent of the funds allocated to the open spaces account shall be used to fund the protected waters program. This account shall be used by the department to implement the statewide open space acquisition, protection, and development programs. The department shall give priority to acquisition and control of open spaces of statewide significance. The department shall also use these funds for developments on state property. The total cost of an open spaces project funded under this paragraph shall not exceed two million dollars unless a public hearing is held on the project in the area of the state affected by the project. Political subdivisions of the state shall be reimbursed for property tax dollars lost to open space acquisitions based on the reimbursement formula provided for in section 111E.4. There is appropriated from the open spaces account to the department the amount in that account, or so much thereof as is necessary, to carry out the open spaces program as specified in this paragraph. An appropriation made under this paragraph shall continue in force for two fiscal years after the fiscal year in which the appropriation was made or until completion of the project. All unencumbered or unobligated funds remaining at the close of the fiscal year in which the project is completed or at the close of the final fiscal year, whichever date is earlier, shall revert to the open spaces account.

b. Twenty percent shall be allocated to the county conservation account.

(1) Thirty percent of the allocation to the county conservation account annually shall be allocated to each county equally.

(2) Thirty percent of the allocation to the county conservation account annually shall be allocated to each county on a per capita basis.

(3) Forty percent of the allocation to the county conservation account annually shall be held in an account in the state treasury for the natural resource commission to award to counties on a competitive grant basis by a project selection committee established in this subparagraph. Local matching funds are not required for grants awarded under this subparagraph. The project planning and review committee shall be composed of two staff members of the department and two county conservation board directors appointed by the director and a fifth member selected by a majority vote of the director's appoint-

tees. The natural resource commission, by rule, shall establish procedures for application, review, and selection of county projects submitted for funding. Upon recommendation of the project planning and review committee, the director shall award the grants.

(4) Funds allocated to the counties under subparagraphs (1), (2), and (3) may be used for land easements or acquisitions, capital improvements, stabilization and protection of resources, repair and upgrading of facilities, environmental education, and equipment. However, expenditures are not allowed for single or multipurpose athletic fields, baseball or softball diamonds, tennis courts, golf courses, swimming pools, and other group or organized sport facilities. Funds may be used for county projects located within the boundaries of a city.

(5) Funds allocated pursuant to subparagraphs (2) and (3) shall only be allocated to counties dedicating property tax revenue at least equal to twenty-two cents per thousand dollars of the assessed value of taxable property in the county to county conservation purposes. State funds received under this paragraph shall not reduce or replace county tax revenues appropriated for county conservation purposes. The county auditor shall submit documentation annually of the dedication of property tax revenue for county conservation purposes. The annual audit of the financial transactions and condition of a county shall certify compliance with requirements of this subparagraph. Funds not allocated to counties not qualifying for the allocations under subparagraph (2) as a result of this subparagraph shall be held in reserve for each county for two years. Counties qualifying within two years may receive the funds held in reserve. Funds not spent by a county within two years shall revert to the general pool of county funds for reallocation to other counties where needed.

(6) Each board of supervisors shall create a special resource enhancement account in the office of county treasurer and the county treasurer shall credit all resource enhancement funds received from the state in that account. Notwithstanding section 453.7, all interest earned on funds in the county resource enhancement account shall be credited to that account and used for the purposes authorized for that account.

(7) There is appropriated from the county conservation account to the department the amount in that account, or so much thereof as is necessary, to fund the provisions of this paragraph. An appropriation made under this paragraph shall continue in force for two fiscal years after the fiscal year in which the appropriation was made or until completion of the project for which the appropriation was made, whichever date is earlier. All unencumbered or unobligated funds remaining at the close of the fiscal year in which a project funded pursuant to subparagraph (3) is completed or at the close of the third fiscal year, whichever date is earlier, shall revert to the county conservation account.

(8) Any funds received by a county under this

paragraph may be used to match other state or federal funds, and multicounty or multiagency projects may be funded under this paragraph.

c. Twenty percent shall be allocated to the soil and water enhancement account. The moneys shall be used to carry out soil and water enhancement programs including, but not limited to, reforestation, woodland protection and enhancement, wildlife habitat preservation and enhancement, protection of highly erodible soils, and clean water programs. The division of soil conservation, by rule, shall establish procedures for eligibility, application, review, and selection of projects and practices to implement the requirements of this paragraph. There is appropriated from the soil and water enhancement account to the soil conservation division the amount in that account, or so much thereof as is necessary, to carry out the programs as specified in this paragraph. Remaining funds of the soil and water conservation account shall be allocated to the accounts of the water protection fund authorized in section 467F.4. Annually, fifty percent of the soil and water enhancement account funds, not to exceed one million dollars, shall be allocated to the water quality protection projects account. The balance of the funds shall be allocated to the water protection practices account. An appropriation made under this paragraph shall continue in force for two fiscal years after the fiscal year in which the appropriation was made or until completion of the project for which the appropriation was made, whichever date is earlier. All unencumbered or unobligated funds remaining at the close of the fiscal year in which the project is completed or at the close of the third fiscal year, whichever date is earlier, shall revert to the soil and water enhancement account.

d. Fifteen percent shall be allocated to a cities' parks and open space account. The moneys allocated in this paragraph may be used to fund competitive grants to cities to acquire, establish, and maintain natural parks, preserves, and open spaces. The grants may include expenditures for multipurpose trails, restroom facilities, shelter houses, and picnic facilities, but expenditures for single or multipurpose athletic fields, baseball or softball diamonds, tennis courts, golf courses, swimming pools, and other group or organized sport facilities requiring specialized equipment are excluded. The grants may be used for city projects located outside of a city's boundaries. The natural resource commission, by rule, shall establish procedures for application, review, and selection of city projects on a competitive basis. The rules shall provide for three categories of cities based on population within which the cities shall compete for grants. There is appropriated from the cities' parks and open space account to the department the amount in that account, or so much thereof as is necessary, to carry out the competitive grant program as provided in this paragraph.

e. Nine percent shall be allocated to the state land management account. The department shall use the moneys allocated to this account for maintenance

and expansion of state lands and related facilities under its jurisdiction. The authority to expand state lands and facilities under this paragraph is limited to expansion of the state lands and facilities already owned by the state. There is appropriated from the state land management account to the department the moneys in that account, or so much thereof as is necessary, to implement a maintenance and expansion program for state lands and related facilities under the jurisdiction of the department.

f. Five percent shall be allocated to the historical resource grant and loan fund established pursuant to section 303.16. The department of cultural affairs shall use the moneys allocated to this fund to implement historical resource development programs as provided under section 303.16.

g. Three percent shall be allocated to the living roadway trust fund established under section 314.21 for the development and implementation of integrated roadside vegetation plans.

2. The moneys appropriated under this section shall remain in the appropriate account of the Iowa resources enhancement and protection fund until such time as the agency, board, commission, or overseer of the fund to which moneys are appropriated has made a request to the treasurer for use of moneys appropriated to it and the amount needed for that use. Notwithstanding section 8.33, moneys remaining of the appropriations made for a fiscal year from any of the accounts within the Iowa resources enhancement and protection fund on June 30 of that fiscal year, shall not revert to any fund but shall remain in that account to be used for the purposes for which they were appropriated and the moneys remaining in that account shall not be considered in making the allotments for the next fiscal year.

91 Acts, ch 146, § 4 6 SF 323, 91 Acts, ch 191, §120 HF 687

See Code editor's note

Subsection 1, paragraph b, subparagraphs (4) and (5) amended

Subsection 1, paragraph d amended

455A.20 County resource enhancement committee.

1. A county resource enhancement committee is created in each county. The membership of the committee shall be as follows:

a. The chairpersons of the board of supervisors, county conservation board, commissioners of the soil and water district, and board of directors of each school district in the county. A chairperson may appoint a member of the chairperson's board or commission as the chairperson's designee on the committee. The chairperson or designee of a school district shall be a member of the county committee of the county in which a majority or the largest plurality of the district's students reside.

b. The mayor or the mayor's designee of each city in a county. The mayor's designee shall be a member of the city council. If a city is located in more than one county, the membership shall be on the county committee of the county in which the largest population of the city resides.

c The titular head or the head's designee of each recognized farm organization having a county organization in the county. The designee shall be a member of the organization represented. The recognized farm organizations are the following:

- (1) The Iowa farm bureau federation.
- (2) The Iowa farmers union.
- (3) The Iowa grange.
- (4) The national farmers organization.
- (5) The Iowa farm unity coalition.
- (6) Any other recognized farm or farm commodity group.

d The chairperson or the chairperson's designee of each of the following wildlife or conservation organizations having a recognized county organization:

- (1) Iowa Audubon council.
- (2) Iowa sportsmens federation.
- (3) Ducks unlimited.
- (4) Sierra club.
- (5) Pheasants forever.
- (6) The nature conservancy.
- (7) Iowa association of naturalists.
- (8) Izaak Walton league of America.
- (9) Other recognized wildlife, conservation, environmental, recreation, conservation education, or historical-cultural preservation groups, or a nonpartisan governmental research or study group limited to the league of women voters.

The designee shall be a member of the county chapter or organization in the county.

e If a question arises as to whether a recognized county organization exists under paragraph "*c*" or "*d*", the question shall be decided by a majority vote of the members selected under paragraphs "*a*" and "*b*", excluding the representative of the county con-

servation board. Sections 69.16 and 69.16A do not apply to appointments made pursuant to this subsection.

2. The duties of the county resource enhancement committee are to coordinate the resource enhancement program, plans, and proposed projects developed by cities, county conservation board, and soil and water conservation district commissioners for funding under this division. The county committee shall review and comment upon all projects before they are submitted for funding under section 455A.19. Each county committee shall propose a five-year program plan which includes a one-year proposed expenditure plan and submit it to the department.

3. The initial meeting of the committee shall be called by the chairperson of the board of supervisors. The chairperson shall give written notice of the date, time, and location of the first meeting. The county committee shall meet at least annually to organize by selecting a chairperson, vice chairperson, and other officers as necessary. The committee shall adopt rules governing the conduct of its meetings, subject to chapter 21.

4. The board of supervisors shall provide a meeting room and the necessary secretarial and clerical assistance for the committee. The expenses shall be paid from the county general fund.

5. The members of the committee are not entitled to compensation or expenses related to their duties of office, except as may otherwise be provided by the boards, commissions, or organizations which the members represent.

91 Acts ch 146 §7 9 SF 323
Subsection 1 paragraphs c and e amended
Subsection 1 paragraph d subparagraph (9) amended

CHAPTER 455B

JURISDICTION OF DEPARTMENT OF NATURAL RESOURCES

455B.103A General permits — stormwater discharge — issued by director.

1. If a permit is required pursuant to this chapter for stormwater discharge and a facility to be permitted is representative of a class of facilities which could be described and conditioned by a single permit, the director may issue, modify, deny, or revoke a general permit for all of the following conditions:

a If adoption of a general permit is proposed, the terms, conditions, and limitations of the permit shall be drafted into a notice of intended action and adopted in accordance with the provisions of chapter 17A as a rule of the department. The same process of adoption shall be used for modification of a general permit.

b Following the effective date of a general permit, a person proposing to conduct activities covered by the general permit shall provide a notice of intent to conduct a covered activity on a form provided by the department. A person shall also provide public notice of intent to conduct activities covered under the general permit by publishing notice in two newspapers with the largest circulation in the area in which the facility is located. Notice of the discontinuation of a permitted activity shall be provided in the same manner.

c If the department finds that a proposed activity is not covered by a general permit, the department shall notify the affected person and shall provide the

person with a permit application if the practice is one which could be authorized by individual permit.

d. A person holding an existing permit is subject to the terms of the existing permit until it expires. If the person holding an existing permit continues the activity beyond the expiration date of the existing permit, an applicable, approved general permit shall become effective.

e. A variance or alteration of the terms and conditions of a general permit shall not be granted. If a variance or modification of an operation authorized by a general permit is desired, the applicant shall apply for an individual permit.

f. The department shall perform on-site inspections and review monitoring data to assess the effectiveness of general permits. If a significant adverse environmental problem exists for an individual facility or class of facilities due to regulation under a general permit, the facility or class of facilities shall be required to obtain individual permits.

g. The department shall establish a procedure for the filing of complaints by persons believing themselves to be adversely affected by the environmental impact of the discharge of a facility operating under a general permit under this section.

2. General permits are not subject to the requirements applicable to individual permits.

3. Three years after the adoption of a general permit by rule, the department shall assess the activities which have been conducted under the general permit and determine whether any significant adverse environmental consequences have resulted.

4. An applicant to be covered under a general permit shall pay a permit fee, as established by rule of the commission, which is sufficient in the aggregate to defray the costs of the permit program. Monies collected shall be remitted to the department.

91 Acts, ch 121, §1 HF 661
NEW section

455B.105 Powers and duties of the commission.

The commission shall:

1. Establish policy for the implementation of programs under its jurisdiction. The commission shall appoint advisory committees to advise the commission and the director in carrying out their respective powers and duties.

2. Advise, consult, and co-operate with other agencies of the state, political subdivisions, and any other public or private agency to promote the orderly, efficient, and effective accomplishment of its responsibilities.

3. Adopt, modify, or repeal rules necessary to implement this chapter and the rules deemed necessary for the effective administration of the department. When the commission proposes or adopts rules to implement a specific federal environmental program and the rules impose requirements more restrictive than the federal program being implemented requires, the commission shall identify in its notice of intended action or adopted rule preamble each rule

that is more restrictive than the federal program requires and shall state the reasons for proposing or adopting the more restrictive requirement. In addition, the commission shall include with its reasoning a financial impact statement detailing the general impact upon the affected parties. It is the intent of the general assembly that the commission exercise strict oversight of the operations of the department. The rules shall include departmental policy relating to the disclosure of information on a violation or alleged violation of the rules, standards, permits or orders issued by the department and keeping of confidential information obtained by the department in the administration and enforcement of this chapter. Rules adopted by the executive committee before January 1, 1981 shall remain effective until modified or rescinded by action of the commission.

4. Issue orders and directives necessary to insure integration and co-ordination of the programs administered by the department.

5. Make a concise annual report to the governor and the general assembly, which report shall contain information relating to the accomplishments and status of the programs administered by the department and include recommendations for legislative action which may be required to protect or enhance the environment or to modernize the operation of the department or any of the programs or services assigned to the department and recommendations for the transfer of powers and duties of the department as deemed advisable by the commission. The annual report shall conform to the provisions of section 17.3.

6. Approve all contracts and agreements under this chapter between the department and other public or private persons or agencies.

7. Obtain an adequate public employees fidelity bond to cover those officers and employees of the department accountable for property or funds of this state.

8. Hold public hearings, except when the evidence to be received is confidential pursuant to this chapter or chapter 22, necessary to carry out its powers and duties. The commission may issue subpoenas requiring the attendance of witnesses and the production of evidence pertinent to the hearings. A subpoena shall be issued and enforced in the same manner as provided in civil actions.

9. Upon request of at least four members of the commission before adopting or modifying a rule, the director shall prepare and publish with the notice required under section 17A.4, subsection 1, paragraph "a", a comprehensive estimate of the economic impact of the proposed rule or modification.

10. Appoint a water coordinator who shall coordinate requests from the public for information or assistance relating to the administration of water resources laws and programs and the resolution of water-related problems.

11. *a.* Adopt, by rule, procedures and forms necessary to implement the provisions of this chapter relating to permits, conditional permits, and general

permits. The commission may also adopt, by rule, a schedule of fees for permit and conditional permit applications and a schedule of fees which may be periodically assessed for administration of permits and conditional permits. In determining the fee schedules, the commission shall consider:

(1) The state's reasonable cost of reviewing applications, issuing permits and conditional permits, and checking compliance with the terms of the permits.

(2) The relative benefits to the applicant and to the public of permit and conditional permit review, issuance, and monitoring compliance.

It is the intention of the legislature that permit fees shall not cover any costs connected with correcting violation of the terms of any permit and shall not impose unreasonable costs on any municipality.

(3) The typical costs of the particular types of projects or activities for which permits or conditional permits are required, provided that in no circumstances shall fees be in excess of the actual costs to the department.

b. The fees collected by the department under this subsection shall be remitted to the treasurer of state and credited to the general fund of the state.

91 Acts, ch 121, §2 HF 661

Subsection 11, paragraph a, unnumbered paragraph 1 amended

455B.133 Duties.

The commission shall:

1. Develop comprehensive plans and programs for the abatement, control, and prevention of air pollution in this state, recognizing varying requirements for different areas in the state. The plans may include emission limitations, schedules and timetables for compliance with the limitations, measures to prevent the significant deterioration of air quality and other measures as necessary to assure attainment and maintenance of ambient air quality standards.

2. Adopt, amend, or repeal rules pertaining to the evaluation, abatement, control, and prevention of air pollution. The rules may include those that are necessary to obtain approval of the state implementation plan under section 110 of the federal Clean Air Act as amended through January 1, 1979.

3. Adopt, amend, or repeal ambient air quality standards for the atmosphere of this state on the basis of providing air quality necessary to protect the public health and welfare.

4. Adopt, amend, or repeal emission limitations or standards relating to the maximum quantities of air contaminants that may be emitted from any air contaminant source. The standards or limitations adopted under this section shall not exceed the standards or limitations promulgated by the administrator of the United States environmental protection agency or the requirements of the federal Clean Air Act as amended to January 1, 1990. This does not prohibit the commission from adopting a standard for a source or class of sources for which the United States environmental protection agency has not pro-

mulgated a standard. This also does not prohibit the commission from adopting an emission standard or limitation for infectious medical waste treatment or disposal facilities which exceeds the standards or limitations promulgated by the administrator of the United States environmental protection agency or the requirements of the federal Clean Air Act as amended to January 1, 1991. The commission shall not adopt an emission standard or limitation for infectious medical waste treatment or disposal facilities prior to January 1, 1995, which exceeds the standards or limitations promulgated by the administrator of the United States environmental protection agency or the requirements of the federal Clean Air Act, as amended to January 1, 1991, for a hospital, or a group of hospitals, licensed under chapter 135B which has been operating an infectious medical waste treatment or disposal facility prior to January 1, 1991.

a. (1) The commission shall establish standards of performance unless in the judgment of the commission it is not feasible to adopt or enforce a standard of performance. If it is not feasible to adopt or enforce a standard of performance, the commission may adopt a design, equipment, material, work practice or operational standard, or combination of those standards in order to establish reasonably available control technology or the lowest achievable emission rate in nonattainment areas, or in order to establish best available control technology in areas subject to prevention of significant deterioration review, or in order to adopt the emission limitations promulgated by the administrator of the United States environmental protection agency under section 111 or 112 of the federal Clean Air Act as amended to January 1, 1979.

(2) If a person establishes to the satisfaction of the commission that an alternative means of emission limitation will achieve a reduction in emissions of an air pollutant at least equivalent to the reduction in emissions of the air pollutant achieved under the design, equipment, material, work practice or operational standard, the commission shall amend its rules to permit the use of the alternative by the source for purposes of compliance with this paragraph with respect to the pollutant.

(3) A design, equipment, material, work practice or operational standard promulgated under this paragraph shall be promulgated in terms of a standard of performance when it becomes feasible to promulgate and enforce the standard in those terms.

(4) For the purpose of this paragraph, the phrase "not feasible to adopt or enforce a standard of performance" refers to a situation in which the commission determines that the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.

b. If the maximum standards for the emission of sulphur dioxide from solid fuels have to be reduced in an area to meet ambient air quality standards, a contract for coal produced in Iowa and burned by a

facility in that area that met the sulphur dioxide emission standards in effect at the time the contract went into effect shall be exempted from the decreased requirement until the expiration of the contract period or December 31, 1983, whichever first occurs, if there is any other reasonable means available to satisfy the ambient air quality standards. To qualify under this subsection, the contract must be recorded with the county recorder of the county where the burning facility is located within thirty days after the signing of the contract.

c. The degree of emission limitation required for control of an air contaminant under an emission standard shall not be affected by that part of the stack height of a source that exceeds good engineering practice, as defined in rules, or any other dispersion technique. This paragraph shall not apply to stack heights in existence before December 30, 1970, or dispersion techniques implemented before that date.

5. Classify air contaminant sources according to levels and types of emissions, and other characteristics which relate to air pollution. The commission may require, by rule, the owner or operator of any air contaminant source to establish and maintain such records, make such reports, install, use and maintain such monitoring equipment or methods, sample such emissions in accordance with such methods at such locations and intervals, and using such procedures as the commission shall prescribe, and provide such other information as the commission may reasonably require. Such classifications may be for application to the state as a whole, or to any designated area of the state, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

6. a. Require, by rules, notice of the construction of any air contaminant source which may cause or contribute to air pollution, and the submission of plans and specifications to the department, or other information deemed necessary, for the installation of air contaminant sources and related control equipment. The rules shall allow the owner or operator of a major stationary source to elect to obtain a conditional permit in lieu of a construction permit. The rules relating to a conditional permit for an electric power generating facility subject to chapter 476A and other major stationary sources shall allow the submission of engineering descriptions, flow diagrams and schematics that quantitatively and qualitatively identify emission streams and alternative control equipment that will provide compliance with emission standards. Such rules shall not specify any particular method to be used to reduce undesirable levels of emissions, nor type, design, or method of installation of any equipment to be used to reduce such levels of emissions, nor the type, design, or method of installation or type of construction of any manufacturing processes or kinds of equipment, nor specify the kind or composition of fuels permitted to be sold, stored, or used unless authorized by subsection 4 of this section.

b. The commission may give technical advice pertaining to the construction or installation of the equipment or any other recommendation.

7. Commission rules establishing maximum permissible sulfate content shall not apply to an expansion of an industrial anaerobic lagoon facility which was constructed prior to February 22, 1979.

8. Adopt rules consistent with the federal Clean Air Act of 1990, Pub. L. No. 101-549, which require the owner or operator of an air contaminant source to obtain an operating permit prior to operation of the source. The rules shall specify the information required to be submitted with the application for a permit and the conditions under which a permit may be granted, modified, suspended, terminated, revoked, reissued, or denied. The commission may impose fees, including fees upon regulated pollutants emitted from an air contaminant source, in an amount sufficient to cover all reasonable costs, direct and indirect, required to develop and administer the permit program in conformance with the federal Clean Air Act of 1990, Pub. L. No. 101-549. In the case of affected sources and affected units regulated under Title IV of the federal Clean Air Act of 1990, Pub. L. No. 101-549, such fees shall be collected only as provided in and upon submission of an application pursuant to section 408 of the federal Act. The fees collected pursuant to this subsection shall be deposited in the air contaminant source fund created pursuant to section 455B.133B, and shall be utilized solely to cover all reasonable costs required to develop and administer the programs required by Title V of the federal Clean Air Act of 1990, Pub. L. No. 101-549, including the permit program pursuant to section 502 of the federal Act and the small business stationary source technical and environmental assistance program pursuant to section 507 of the federal Act.

91 Acts, ch 242 §1 HF 302 91 Acts, ch 255 §8 HF 683
 Subsection 4 unnumbered paragraph 1 amended
 NEW subsection 8

455B.133A Temporary air toxics fee imposed.

1. Beginning July 1, 1991, and thereafter until such time as the operating permit fee is established by rule of the commission, and approved by the United States environmental protection agency under section 502(b) of the federal Clean Air Act of 1990, an annual fee of twenty-five dollars per ton of the hazardous air pollutants included in Title III of the federal Clean Air Act of 1990 shall be paid by the affected sources. The fee paid shall be based upon the air emissions of such pollutants as reported or estimated by the source in the previous calendar year.

A source required to report hazardous air pollutant emissions under section 313 of EPCRA shall pay a fee based upon the most recently reported emissions. A person shall pay the established fee for hazardous air pollutants which are not included in section 313 of EPCRA, but which are included in

Title III of the federal Clean Air Act of 1990, based upon the facility's estimates of emissions as required by section 313 of EPCRA including threshold determinations and de minimus exclusions.

2. Moneys collected shall be deposited in the air contaminant source fund created pursuant to section 455B.133B. Notwithstanding section 8.33, any unexpended balance remaining in the fund, which was generated pursuant to this section, shall remain in the fund for the purposes designated under section 455B.133, subsection 8. Notwithstanding section 453.7, any interest and earnings on investments from moneys in the fund shall be used for the purposes of the fund.

91 Acts ch 255 §9 HF 683
 Fee for fiscal year 1991 1992 to be paid by November 1 1991 penalty if paid
 after November 30 1991 91 Acts ch 255 §17 HF 683
 NEW section

455B.133B Air contaminant source fund created.

1. An air contaminant source fund is created in the office of the treasurer of state under the control of the department. Moneys received from the fees assessed pursuant to sections 455B.133A and 455B.133, subsection 8, shall be deposited in the fund. Moneys collected pursuant to section 455B.133, subsection 8, shall be used solely to defray the costs related to the permit, monitoring, and inspection program, including the small business stationary source technical and environmental compliance assistance program required pursuant to the federal Clean Air Act of 1990, sections 502 and 507, Pub. L. No. 101-549. Notwithstanding section 8.33, any unexpended balance in the fund at the end of each fiscal year shall be retained in the fund. Notwithstanding section 453.7, any interest and earnings on investments from money in the fund shall be credited to the fund.

2. Moneys collected pursuant to section 455B.133A shall be used by the department for the following:

a To prepare, submit, and obtain approval of the permit program plan required by section 502(d) of the federal Clean Air Act of 1990.

b To provide technical and other assistance to toxics users, relating to toxics pollution prevention and to provide funding for the costs of compiling data pursuant to section 30.7, subsection 5, and section 30.8, subsection 4.

91 Acts ch 255 §10 HF 683
 Uses of fund for fiscal year 1991 1992 report to general assembly concerning
 receipts 91 Acts ch 255 §17 HF 683
 NEW section

455B.134 Director — duties — limitations.

The director shall:

1. Publish and administer the rules and standards established by the commission. The department shall furnish a copy of such rules or standards to any person upon request.

2. Provide technical, scientific, and other services required by the commission or for the effective administration of this division II.

3. Grant, modify, suspend, terminate, revoke, re-issue or deny permits for the construction or operation of new, modified, or existing air contaminant sources and for related control equipment, and conditional permits for electric power generating facilities subject to chapter 476A and other major stationary sources, subject to the rules adopted by the commission. The department shall furnish necessary application forms for such permits.

a No air contaminant source shall be installed, altered so that it significantly affects emissions, or placed in use unless a construction or conditional permit has been issued for the source.

b The condition of expected performance shall be reasonably detailed in the construction or conditional permit.

c All applications for permits other than conditional permits for electric generating facilities shall be subject to such notice and public participation as may be provided by rule by the commission. Upon denial or limitation of a permit other than a conditional permit for an electric generating facility, the applicant shall be notified of such denial and informed of the reason or reasons therefor, and such applicant shall be entitled to a hearing before the commission.

d All applications for conditional permits for electric power generating facilities shall be subject to such notice and opportunity for public participation as may be consistent with chapter 476A or any agreement pursuant thereto under chapter 28E. The applicant or intervenor may appeal to the commission from the denial of a conditional permit or any of its conditions. For the purposes of chapter 476A, the issuance or denial of a conditional permit by the director or by the commission upon appeal shall be a determination that the electric power generating facility does or does not meet the permit and licensing requirements of the commission. The issuance of a conditional permit shall not relieve the applicant of the responsibility to submit final and detailed construction plans and drawings and an application for a construction permit for control equipment that will meet the emission limitations established in the conditional permit.

e A regulated air contaminant source for which a construction permit or conditional permit has been issued shall not be operated unless an operating permit also has been issued for the source. However, if the facility was in compliance with permit conditions prior to the requirement for an operating permit and has made timely application for an operating permit, the facility may continue operation until the operating permit is issued or denied. Operating permits shall contain the requisite conditions and compliance schedules to ensure conformance with state and federal requirements. If construction of a new air contaminant source is proposed, the department may issue an operating permit concurrently with the construction permit, if possible and appropriate.

f (1) Notwithstanding any other provision of

division II of this chapter, the following siting requirements shall apply to anaerobic lagoons and earthen waste slurry storage basins:

Anaerobic lagoons or earthen waste slurry storage basins, which are used in connection with animal feeding operations containing less than six hundred twenty-five thousand pounds live animal weight capacity of animal species other than beef cattle or containing less than one million six hundred thousand pounds live animal weight capacity of beef cattle, shall be located at least one thousand two hundred fifty feet from a residence not owned by the owner of the feeding operation or from a public use area other than a public road. Anaerobic lagoons or earthen waste slurry storage basins, which are used in connection with animal feeding operations containing six hundred twenty-five thousand pounds or more live animal weight capacity of animal species other than beef cattle or containing one million six hundred thousand pounds or more live animal weight capacity of beef cattle, shall be located at least one thousand eight hundred seventy-five feet from a residence not owned by the owner of the feeding operation or from a public use area other than a public road. For the purpose of this paragraph the determination of live animal weight capacity shall be based on the average animal weight capacity during a production cycle and the maximum animal capacity of the animal feeding operation. These separation distances apply to the construction of new facilities and the expansion of existing facilities.

Anaerobic lagoons which are used in connection with industrial treatment of wastewater where the average wastewater discharge flow is one hundred thousand gallons per day or less shall be located at least one thousand two hundred fifty feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road. Anaerobic lagoons which are used in connection with industrial treatment of wastewater where the average wastewater discharge flow is greater than one hundred thousand gallons per day shall be located at least one thousand eight hundred seventy-five feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road. These separation distances apply to the construction of new facilities and the expansion of existing facilities.

(2) A person may build or expand an anaerobic lagoon or an earthen waste slurry storage basin closer to a residence not owned by the owner of the anaerobic lagoon or to a public use area than is otherwise permitted by subparagraph (1) of this paragraph, if the affected landowners enter into a written agreement with the anaerobic lagoon owner to waive the separation distances under such terms the parties negotiate. The written agreement becomes effective only upon recording in the office of the recorder of deeds of the county in which the residence is located.

4. Determine by field studies and sampling the quality of atmosphere and the degree of air pollution in this state or any part thereof.

5. Conduct and encourage studies, investigations, and research relating to air pollution and its causes, effects, abatement, control, and prevention.

6. Provide technical assistance to political subdivisions of this state requesting such aid for the furtherance of air pollution control.

7. Collect and disseminate information, and conduct educational and training programs, relating to air pollution and its abatement, prevention, and control.

8. Consider complaints of conditions reported to, or considered likely to, constitute air pollution, and investigate such complaints upon receipt of the written petition of any state agency, the governing body of a political subdivision, a local board of health, or twenty-five affected residents of the state.

9. Issue orders consistent with rules to cause the abatement or control of air pollution, or to secure compliance with permit conditions. In making the orders, the director shall consider the facts and circumstances bearing upon the reasonableness of the emissions involved, including but not limited to, the character and degree of injury to, or interference with, the protection of health and the physical property of the public, the practicability of reducing or limiting the emissions from the air pollution source, and the suitability or unsuitability of the air pollution source to the area where it is located. An order may include advisory recommendations for the control of emissions from an air contaminant source and the reduction of the emission of air contaminants.

10. Encourage voluntary co-operation by persons or affected groups in restoring and preserving a reasonable quality of air within the state.

11. Encourage political subdivisions to handle air pollution problems within their respective jurisdictions.

12. Review and evaluate air pollution control programs conducted by political subdivisions of the state with respect to whether the programs are consistent with the provisions of division II of this chapter and rules adopted by the commission.

13. Hold public hearings, except when the evidence to be received is confidential pursuant to section 455B.137, necessary to accomplish the purposes of division II of this chapter. The director may issue subpoenas requiring the attendance of witnesses and the production of evidence pertinent to the hearings. A subpoena shall be issued and enforced in the same manner as in civil actions.

91 Acts ch 255, §11 13 HF 683
 Subsection 3, unnumbered paragraph 1 amended
 Subsection 9 NEW paragraph e and former paragraph e relettered as paragraph f
 Subsection 9 amended

455B.141 Legal action.

If action to prevent, control, or abate air pollution is not taken in accordance with the rules established, or orders or permits issued by the department, or if the director has evidence that an emergency exists by reason of air pollution which requires immediate action to protect the public health or property, the

attorney general, at the request of the director, shall commence legal action, in the name of the state, for an injunction to prevent any further or continued violation of such rule or order.

91 Acts, ch 255, §14 HF 683
Section amended

455B.146 Civil action for compliance — local program actions.

If any order, permit, or rule of the department is being violated, the attorney general shall, at the request of the department or the director, institute a civil action in any district court for injunctive relief to prevent any further violation of the order, permit, or rule, or for the assessment of a civil penalty as determined by the court, not to exceed ten thousand dollars per day for each day such violation continues, or both such injunctive relief and civil penalty. Notwithstanding sections 331.302 and 331.307, a city or county which maintains air pollution control programs authorized by certificate of acceptance under this division may provide civil penalties consistent with the amount established for such penalties under this division.

91 Acts, ch 251, §1 SF 324
Section amended

455B.171 Definitions.

When used in this part 1 of division III, unless the context otherwise requires:

1. *“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 groundwater is unsafe or impracticable.
2. *“Construction”* of a water well means the physical act or process of making the water well including, but not limited to, siting, excavation, construction, and the installation of equipment and materials necessary to maintain and operate the well.
3. *“Contractor”* means a person engaged in the business of well construction or reconstruction or other well services.
4. *“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.
5. *“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.
6. *“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. §§ 1251-1376, as amended through December 31, 1985.
7. *“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.

8. *“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.

9. *“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.

10. *“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.

11. *“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.

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. *“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.

15. *“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.

16. *“Production capacity”* means the amount of potable water which can be supplied to the distribution system in a twenty-four-hour period.

17. *“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.

18. *“Reconstruction”* of a water well means replacement or removal of all or a portion of the casing of the water well.

19. *“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.

20. “*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).

21. “*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.

22. “*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.

23. “*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.*

24. “*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.

25. “*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.

26. “*Water pollution*” means the contamination or alteration of the physical, chemical, biological, or radiological integrity of any water of the state by a source resulting in whole or in part from the activities of humans, which is 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.

27. “*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.

28. “*Water well*” means an excavation that is drilled, cored, bored, augered, washed, driven, dug, jetted or otherwise constructed for the purpose of exploring for groundwater, monitoring groundwater, utilizing the geothermal properties of the ground, or extracting water from or injecting water into the aquifer. “*Water well*” does not include an open ditch or drain tiles or an excavation made for obtaining or prospecting for oil, natural gas, minerals, or products mined or quarried.

91 Acts ch 224, §3 HF 325
 *See 76 Acts, ch 1204
 Subsections renumbered to alphabetize
 Subsections 3 and 28 amended

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 shall carry out the responsibilities of the state related to private water supplies and private sewage disposal systems for the protection of the environment and the public health and safety of the citizens of the state.

3. Each county board of health shall adopt standards for private water supplies and private sewage disposal facilities. These standards shall be at least as stringent but consistent with the standards adopted by the commission. If a county board of health has not adopted standards for private water supplies and private sewage disposal facilities, the standards adopted by the commission shall be applied and enforced within the county by the county board of health.

4. Each county board of health shall regulate the private water supply and private sewage disposal facilities located within the county board’s jurisdiction, including the enforcement of standards adopted pursuant to this section.

5. The department shall maintain jurisdiction over and regulate the direct discharge to a water of the state. The department shall retain concurrent authority to enforce state standards for private water supply and private sewage disposal facilities within a county, and exercise departmental authority if the county board of health fails to fulfill board responsibilities pursuant to this section.

The department shall by rule adopt standards for the commercial cleaning of private sewage disposal facilities, including but not limited to septic tanks and pits used to collect waste in livestock confinement structures, and for the disposal of waste from the facilities. The standards shall not be in conflict with the state building code. A person shall not commercially clean such facilities or dispose of waste from such facilities unless the person has been issued a license by the department. The department shall be exclusively responsible for adopting the standards and issuing licenses. However, county boards of health shall enforce the standards and licensing requirements established by the department. Applica-

tion for the license shall be made in the manner provided by the department. Licenses expire one year from the date of issue unless revoked and may be renewed in the manner provided by the department. The license or license renewal fee is twenty-five dollars. A person violating this section or the rules adopted pursuant to this section, is subject to a civil penalty of not more than twenty-five dollars. Each day that a violation continues constitutes a separate offense. However, the total civil penalty shall not exceed five hundred dollars per year. The penalty shall be assessed for a violation occurring ten days following written notice of the violation delivered to the person by the department or a county board of health. Moneys collected by the department or a county board of health from the imposition of civil penalties shall be deposited in the general fund of the state.

The commission shall make grants to counties for the purpose of conducting programs for the testing of private, rural water supply wells and for the proper closing of abandoned, rural, private water supply wells within the jurisdiction of the county. Grants shall be funded through allocation of the agriculture management account of the groundwater protection fund. Grants awarded, continued, or renewed shall be subject to the following conditions:

a. An application for a grant shall be in a form and shall contain information as prescribed by rule of the commission.

b. Nothing in this section shall be construed to prohibit the department from making grants to one or more counties to carry out the purpose of the grant on a joint, multicounty basis.

c. A grant shall be awarded on an annual basis to cover a fiscal year from July 1 to June 30 of the following calendar year.

d. The continuation or renewal of a grant shall be contingent upon the county's acceptable performance in carrying out its responsibilities, as determined by the director. The director, subject to approval by the commission, may deny the awarding of a grant or withdraw a grant awarded if, by determination of the director, the county has not carried out the responsibilities for which the grant was awarded, or cannot reasonably be expected to carry out the responsibilities for which the grant would be awarded.

6. 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 section 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.

7. The department is the state agency to regulate the registration or certification of water well contractors pursuant to section 455B.187 or section 455B.190A.

8. Pursuant to chapter 28E, the department may delegate its authority for regulation of the construction, reconstruction and abandonment of water wells specified in subsection 6 or the registration of water well contractors specified in subsection 7 to boards of health or other agencies which have adequate authority and ability to administer and enforce the requirements established by law or rule.

91 Acts, ch 224, §4 HF 325
Subsection 7 amended

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, 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 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 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. a. Adopt rules relating to inspection, monitoring, recordkeeping, 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.

b. Adopt rules which require each public water system regulated under chapter 455B to test the source water of that supply for the presence of syn-

thetic organic chemicals and pesticides every three years. The rules shall enumerate the synthetic organic chemicals and pesticides, but not more than ten of each, for which the samples are to be tested; shall specify the approved analytical methods for conducting the analysis of water samples; and shall require the reporting of the analytical test results to the department. Priority for testing in the first year shall be those public water supplies for which none of the specified contaminants have been analyzed within the past five years. All of the laboratory analysis and data management shall be conducted by the center for health effects of environmental contamination. Sample collection shall be conducted using a standard sampling protocol by personnel within the department and the center for health effects of environmental contamination in conjunction with other ongoing field activities. Samples from private wells and samples from privately owned public water supplies shall be allowed to undergo the same analysis. The cost for the analysis provided for samples from private wells and privately owned public water supplies shall not exceed one hundred ninety-five dollars for the first year of testing. The department shall submit a report to the general assembly, by September 1 of each year, of the findings of the tests and the conclusions which may be drawn from the tests.

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 or certification 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 or certification 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 or certification program.

10. Adopt, modify, or repeal rules relating to the awarding of grants to counties for the purpose of carrying out responsibilities pursuant to section 455B.172 relative to private water supplies and private sewage disposal facilities.

91 Acts ch 224, §5 HF 325
Subsection 9 amended

455B.187 Water well construction.

A contractor shall not engage in well construction or reconstruction without first registering or being certified as required in department rules. If a well contractor is registered prior to July 1, 1991, the well contractor shall meet the requirements of certification by July 1, 1993. Following adoption of the rules establishing a well contractor certification program, a person seeking initial well contractor status shall meet the requirements established for certification. Beginning July 1, 1993, the department shall replace the registration program with the well certification program. 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.

A landowner or the landowner's agent shall not drill for or construct a new water well without first obtaining a permit for this activity from the department. The department shall not issue a permit to any person for this activity unless the person first registers with the department all wells, including abandoned wells, on the property. The department may delegate the authority to issue a permit to a county board of supervisors or the board's designee. In the event of such delegation, the department shall retain concurrent authority. The commission shall

adopt rules pursuant to chapter 17A to implement this paragraph.

Notwithstanding the provisions of this section, a county board of supervisors or the board's designee may grant an exemption from the permit requirements to a landowner or the landowner's agent if an emergency drilling is necessary to meet an immediate need for water. The exemption shall be effective immediately upon approval of the county board of supervisors or the board's designee. The board of supervisors or the board's designee shall notify the director within thirty days of the granting of an exemption.

In the case of property owned by a state agency, a person shall not drill for or construct a new water well without first registering with the department the existence of any abandoned wells on the property. The department shall develop a prioritized closure program and time frame for the completion of the program, and shall adopt rules to implement the program.

91 Acts ch 224 §6 HF 325
Unnumbered paragraph 1 amended

455B.190 Abandoned wells properly plugged.

1. As used in this section:

a "Class 1 well" means a well one hundred feet or less in depth and eighteen inches or more in diameter.

b "Class 2 well" means a well more than one hundred feet in depth or less than eighteen inches in diameter or a bedrock well.

c "Class 3 well" means a sandpoint well or a well fifty feet or less in depth constructed by joining a screened drive point with lengths of pipe and driving the assembly into a shallow sand and gravel aquifer.

d "Department" means the department of natural resources.

e "Designated agent" means a person other than the state, designated by a county board of supervisors to review and confirm that a well has been properly plugged.

f "Filling materials" means agricultural lime. Filling materials may also include other materials, including soil, sand, gravel, crushed stone, and pea gravel as approved by the department.

g "Owner" means the titleholder of the land where a well is located.

h "Plug" means the closure of an abandoned well with plugging materials which will permanently seal the well from contamination by surface drainage, or permanently seal off the well from contamination into an aquifer.

i "Plugging materials" means filling and sealing materials.

j "Sealing materials" means bentonite. Sealing materials may also include neat cement, sand cement grout, or concrete as approved by the department.

k "Well" means an abandoned well as defined in section 455B.171.

2 All wells shall be properly plugged in accordance with the schedule established by the department. The department shall develop a prioritized closure program and a time frame for the completion of the program and shall adopt rules to implement the program. The schedule established by the department shall provide that to the fullest extent technically and economically feasible, all wells shall be properly plugged not later than July 1, 2000.

3 Wells shall be plugged as follows:

a Class 1 wells shall be plugged by placing filling materials up to one foot below the static water level. At least one foot of sealing materials shall be placed on top of the filling materials up to the static water level, as a seal. Filling materials shall be added up to four feet below the ground surface. However, sealing materials may be used to fill the entire well up to four feet below the ground surface. The casing pipe shall be removed down to at least four feet below the ground surface and shall be capped with at least one foot of sealing materials. Obstructions shall be removed from the top four feet of the ground surface and the top four feet shall be backfilled with soil and graded.

b Class 2 wells shall be plugged by placing filling materials at the bottom of the well up to four feet below the static water level. At least four feet of sealing material shall be added on top of the filling material up to the original static water level. Filling materials shall be placed up to four feet below the ground surface and the well shall be capped with at least one foot of sealing material. However, sealing materials may be used to fill the entire well up to four feet below the ground surface. The upper four feet of the casing pipe below the ground surface shall be removed. The top four feet of the ground surface shall be removed of obstructions and backfilled with soil and graded.

c Class 3 wells shall be plugged by pulling the casing and sandpoint out of the ground, and collapsing the hole. The well may also be plugged by placing sealing materials up to four feet below the ground surface and by removing the upper four feet of casing pipe below the ground surface. The top four feet of the ground surface shall be removed of obstructions and backfilled with soil and graded.

4 The department shall sponsor an advertising campaign directed to persons throughout the state by print and electronic media designed to notify owners of the deadline for plugging wells, penalties for noncompliance, and information about receiving assistance in plugging wells.

5 An owner may, independent of a contractor, plug a well pursuant to this section subject to review and confirmation by a designated agent of the county or a well driller registered with the department.

6 A person who fails to properly plug a well on property the person owns, in accordance with the program established by the department, or as reported by a designated agent or a registered or certified well contractor, is subject to a civil penalty of up to one hundred dollars per every five calendar days that

the well remains unplugged or improperly plugged. However, the total civil penalty shall not exceed one thousand dollars. The penalty shall only be assessed after the one thousand dollar limit is reached. If the owner plugs the well in compliance with this section, including applicable departmental rules, before the date that the one thousand dollar limit is reached, the civil penalty shall not be assessed. The penalty shall not be imposed upon a person for improperly plugging a well until the department notifies the person of the improper plugging. The moneys collected shall be deposited in the financial incentive portion of the agriculture management account. The department of agriculture and land stewardship may provide by rule for financial incentive moneys, through expenditure of the moneys allocated to the financial incentive-program portion of the agriculture management account, to reduce a person's cost in properly plugging wells abandoned prior to July 1, 1987.

91 Acts, ch 224, §7, HF 375
 Subsection 6 amended

455B.190A Well contractor certification program.

1 As used in this section:

a "Groundwater" means groundwater as defined in section 455E.2.

b "Water well" or "well" means water well as defined in section 455B.171.

c "Well contractor" means contractor as defined pursuant to section 455B.171, subsection 3.

d "Well contractors' council" means the council established in subsection 3.

e "Well services" means new well construction, well reconstruction, installation of pitless equipment, or well plugging.

f "Examination" means an examination for well contractors which includes, but is not limited to, relevant aspects of Iowa groundwater law, well construction, well maintenance, and well abandonment practices which protect groundwater and water supplies.

2 The department shall establish a well contractor certification program which shall include all of the following provisions:

a Specification of certification requirements, including minimum work experience levels, successful completion of an examination, and continuing education requirements.

b A certified well contractor shall be present at the well site and in direct charge of the services whenever well services are provided.

c A person shall not act as a well contractor on or after July 1, 1993, unless the person is certified by the department pursuant to this section.

d Violation of the rules regarding well construction, maintenance, or plugging are grounds for suspension or revocation of certification.

e Provisional certification may be obtained by an applicant in instances of shortages of certified personnel if all of the following conditions are met:

(1) The applicant provides documentation of at

least one year of work experience in well services performed under the direct supervision of a certified well contractor.

(2) The applicant successfully completes the examination.

(3) A certified well contractor who employs an applicant for well contractor certification cosigns the application for provisional certification. An employer who cosigns an application for provisional certification is jointly liable for a violation of the rules regarding well construction, maintenance, or plugging by the provisionally certified well contractor and the violation is grounds for the suspension or revocation of certification of the certified well contractor and the provisionally certified well contractor.

f. The department shall develop continuing education requirements for certification of a well contractor in consultation with the well contractors' council.

g. The examination shall be developed by the department in consultation with the well contractors' council. The examination shall be updated as necessary to reflect current groundwater law and well construction, maintenance, and abandonment practices.

h. The department may provide for multiyear certification of well contractors.

3. A well contractors' council is established.

a. The council shall consist of the following members:

(1) One well drilling contractor appointed by the governor and subject to confirmation by the senate.

(2) One pump installation contractor appointed by the governor and subject to confirmation by the senate.

(3) One citizen member of the Iowa groundwater association or its successor, appointed by the governor and subject to confirmation by the senate.

(4) One citizen member of the Iowa environmental health association or its successor, appointed by the governor and subject to confirmation by the senate.

(5) The director of the Iowa department of public health or the director's designee.

(6) The state geologist or the state geologist's designee.

(7) The director of the state hygienic laboratory or the director's designee.

b. Citizen members of the council shall serve two-year terms beginning and ending as provided in section 69.19. A citizen member of the council shall not serve more than two consecutive terms. The council shall be gender balanced, to the extent possible, pursuant to section 69.16A.

c. The well contractors' council shall be dissolved six months after completion of all of the following:

(1) Publication of the consumer information pamphlet.

(2) Adoption of rules by the commission.

(3) Administration of the second certification examination.

4. The department shall develop, in consultation with the well contractors' council, a consumer infor-

mation pamphlet regarding well construction, well maintenance, well plugging, and Iowa groundwater laws. The department and the council shall review and revise the consumer information pamphlet as necessary. The consumer information pamphlet shall be supplied to well contractors, at cost, and well contractors shall supply one copy at no cost to potential customers prior to initiation of well services.

5. The department shall establish by rule and collect, in consultation with the well contractors' council, the following fees to be used to implement and administer the provisions of this section:

a. An annual certification fee to be paid by certified well contractors. The initial annual certification fee is one hundred fifty dollars. The fee may be increased by rule, as necessary, to reflect the costs of administration of the program. The department may establish a fee for multiyear certification.

b. The department may also charge and collect fees for testing, the provision of continuing education, and other fees related to and based on the actual costs of the well contractor certification program.

6. Rules adopted by the commission shall be developed in consultation with the council. If a majority of the council does not endorse the rules adopted by the commission, notice shall be sent to the administrative rules review committee indicating the council's position.

91 Acts, ch 224, §2 HF 325

Goals of program, 91 Acts, ch 224 §1 HF 325

Confirmation, §2.32

NEW section

455B.301 Definitions.

As used in this part 1 of division IV, unless the context clearly indicates a contrary intent:

1. "Actual cost" means the operational, remedial and emergency action, closure, postclosure, and monitoring costs of a sanitary disposal project for the lifetime of the project.

2. "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 10, wine cooler or drink, tea, potable water, soda water and similar carbonated soft drinks, mineral water, fruit juice, vegetable juice, or fruit or vegetable drinks, which are intended for human consumption.

3. "Beverage container" means a sealed glass, plastic, or metal bottle, can, jar, or carton containing a beverage.

4. "Biodegradable" means degradable through a process by which fungi or bacteria secrete enzymes to convert a complex molecular structure to simple gasses and organic compounds.

5. "Closure" means actions that will prevent, mitigate, or minimize the threat to public health and the environment posed by a closed sanitary landfill, including, but not limited to, application of final cover, grading and seeding of final cover, installation of an adequate monitoring system, and construction of ground and surface water diversion structures, if necessary.

6. “*Closure plan*” means the plan which specifies the methods and schedule by which an operator will complete or cease disposal operations of a sanitary disposal project, prepare the area for long-term care, and make the area suitable for other uses.

7. “*Degradable*” means capable of decomposing by biodegradation, photodegradation, or chemical process into harmless component parts after exposure to natural elements for not more than three hundred sixty-five days.

8. “*Financial assurance instrument*” means an instrument submitted by an applicant to ensure the operator’s financial capability to provide reasonable and necessary response during the lifetime of the project and for the thirty years following closure, and to provide for the closure of the facility and postclosure care required by rules adopted by the commission in the event that the operator fails to correctly perform closure and postclosure care requirements. The form may include the establishment of a secured trust fund, use of a cash or surety bond, or the obtaining of an irrevocable letter of credit.

9. “*Leachate*” means fluid that has percolated through solid waste and which contains contaminants consisting of dissolved or suspended materials, chemicals, or microbial waste products from the solid waste.

10. “*Lifetime of the project*” means the projected period of years that a landfill will receive waste, from the time of opening until closure, based on the volume of waste to be received projected at the time of submittal of the initial project plan and the calculated refuse capacity of the landfill based upon the design of the project.

11. “*Manufacturer*” means a person who by labor, art, or skill transforms raw material into a finished product or article of trade.

12. “*Photodegradable*” means degradable through a process in which ultraviolet radiation in sunlight causes a chemical change in a material.

13. “*Postclosure*” and “*postclosure care*” mean the time and actions taken for the care, maintenance, and monitoring of a sanitary disposal project after closure that will prevent, mitigate, or minimize the threat to public health, safety, and welfare and the threat to the environment posed by the closed facility.

14. “*Postclosure plan*” means the plan which specifies the methods and schedule by which the operator will perform the necessary monitoring and care for the area after closure of a sanitary disposal project.

15. “*Private agency*” means a private agency as defined in section 28E.2.

16. “*Public agency*” means a public agency as defined in section 28E.2.

17. “*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.

18. “*Sanitary disposal project*” means all facili-

ties 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.

19. “*Sanitary landfill*” means a sanitary disposal project where solid waste is buried between layers of earth.

20. “*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 project. 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, or petroleum contaminated soil which has been remediated to acceptable state or federal standards.

91 Acts, ch 252, § 4 SF 362
Subsection 20 amended

455B.305B Appeal from decision. Repealed by 90 Acts, ch 1191, § 8.

Repeal effective June 30, 1991, 90 Acts, ch 1191, § 8 HF 2534

455B.310 Tonnage fee imposed — appropriations — exemptions.

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. a. The tonnage fee is twenty-five cents per ton of solid waste. However, for the year beginning July 1, 1988, the tonnage fee is one dollar and fifty cents per ton of solid waste and shall increase annually in the amount of fifty cents per ton through July 1, 1992. A county in which a privately operated landfill accepts solid waste from outside of the county may charge an additional tonnage fee for the disposal of solid waste at the sanitary landfill which is not more than one hundred percent of the fee otherwise established in this section. The additional fee charged and the moneys collected shall be used exclusively for the development and implementation of alternatives to sanitary landfills or for the costs incurred by the county to abate problems associated with the operation of the sanitary landfill.

b. In addition to the tonnage fee amounts imposed under this subsection, in the year beginning July 1, 1991, the tonnage fee shall be increased by

seventy-five cents per ton of solid waste. The moneys collected under this paragraph are appropriated and shall be used for the following purposes:

(1) Ten cents per ton per year is appropriated to the department of natural resources to establish a program to provide competitive grants to regional coordinating councils for projects in regional economic development centers related to a by-products and waste exchange system. Grantees under this program shall coordinate activities with other available state or multistate waste exchanges, including but not limited to the by-products and waste search service at the university of northern Iowa. The department shall consult with the department of economic development and the waste reduction center at the university of northern Iowa in establishing criteria for and the awarding of grants under this program. The department of natural resources shall expend not more than thirty thousand dollars of the moneys appropriated under this subparagraph to contract with the by-products and waste search service at the university of northern Iowa to provide training and other technical services to grantees under the program. If regional economic development centers cease to exist, the department shall revise the criteria and rules for this program to allow councils of governments or regional planning councils to be applicants for competitive grants.

(2) Fifteen cents per ton per year is appropriated to the department of natural resources to establish three permanent household hazardous waste collection sites so that both urban and rural population are served and so that collection services are available to the public on a regular basis. An additional five cents per ton per year is appropriated to the department to be used for the payment of transportation costs related to household hazardous waste collection programs.

(3) Twelve and one-half cents per ton per year is appropriated to the department to provide additional toxic cleanup days.

Departmental rules adopted for implementation of toxic cleanup days shall provide sufficient flexibility to respond to the household hazardous material collection needs of both small and large communities.

(4) Twenty-seven and one-half cents per ton per year is appropriated to the department to provide low or no interest loans to Iowa businesses for the manufacture or remanufacture of products from postconsumer materials or to Iowa businesses which purchase equipment to achieve source reductions. The department, in consultation with the department of economic development, shall develop rating criteria for the program including criteria which give priority in the approval of loans to firms involved in tire recycling. The department, in cooperation with the department of economic development, shall provide technical assistance to and monitoring of the technical operations of projects funded under this section.

(5) Five cents per ton per year is appropriated to

the department of economic development to establish, in cooperation with the department of natural resources, a marketing initiative to assist Iowa businesses producing recycling or reclamation equipment or services, recyclable products, or products from recycled materials to expand into national markets. Efforts shall include the reuse and recycling of sawdust. For the fiscal year beginning July 1, 1991, and ending June 30, 1992, fifty thousand dollars of the moneys appropriated under this subparagraph shall be allocated for the purposes of developing advanced microbiological technologies for reduction, destruction, or disposal of wet solid waste. For the fiscal year beginning July 1, 1992, and thereafter, fifty thousand dollars of the moneys appropriated under this subparagraph shall be used by the department of economic development to provide grants or loans to Iowa businesses which have participated in the waste reduction assistance program of the department of natural resources or the program provided by the waste reduction center at the university of northern Iowa, and which have identified needs for equipment or retooling to achieve waste reduction.

3. Solid waste disposal facilities with special provisions which limit the site to the disposal of construction and demolition waste, landscape waste, and coal combustion waste, or foundry sand, or 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. However, solid waste disposal facilities under this subsection are subject to the fees imposed pursuant to section 455B.105, subsection 11, paragraph "a". Notwithstanding the provisions of section 455B.105, subsection 11, paragraph "b", the fees collected pursuant to this subsection shall be used by the department for the regulation of these solid waste disposal facilities.

4. All tonnage fees received by the department under this section shall be deposited in the solid waste account of the groundwater protection fund created under section 455E.11.

5. Fees imposed by this section prior to July 1, 1988, are due on April 15, 1988, for the previous calendar year and are due on July 30, 1988, for the period January 1, 1988, through June 30, 1988. The fees shall be paid to the department and shall be accompanied by a return in the form prescribed by the department. Fees imposed by this section beginning July 1, 1988, shall be paid to the department on a quarterly basis. The initial payment of fees collected beginning July 1, 1988, shall be paid to the department by January 1, 1989, and on a quarterly basis thereafter. 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 two percent of the fee due for each month the fee is overdue. The penalty shall be paid in addition to the fee due.

7 The department shall grant exemptions from the fee requirements of subsection 2, paragraph "a", for receipt of solid waste meeting all of the following criteria

a Receipt of the solid waste is pursuant to a written contract between the owner or operator of the sanitary landfill and another person

b The contract was lawfully executed prior to January 1, 1987

c The contract expressly prohibits an increase in the compensation or fee payable to the owner or operator of the landfill and does not allow voluntary cancellation or renegotiation of the compensation or fee during the term of the contract

d The contract has not been amended at any time after January 1, 1987

e The owner or operator of the sanitary landfill applying for exemption demonstrates to the satisfaction of the department that good faith efforts were made to renegotiate the contract notwithstanding its terms, and has been unable to agree on an amendment allowing the fee provided in subsection 2, paragraph "a", to be added to the compensation or fee provisions of the contract

f Applications for exemption must be submitted on forms provided by the department with proof of satisfaction of all criteria

g Notwithstanding the time specified within the contract, an exemption from payment of the fee increase requirements for a multiyear contract shall terminate by January 1, 1989

8 In the case of a sanitary disposal project other than a sanitary landfill, no tonnage fee shall apply for five years beginning July 1, 1987 or for five years from the commencement of operation, whichever is later. By July 1, 1992, the department shall provide the general assembly with a recommendation regarding appropriate fees for alternative sanitary disposal projects

9 The department shall grant exemptions from the fee requirements of subsection 2, paragraph "b", for receipt of solid waste meeting all of the following criteria

a Receipt of the solid waste is pursuant to a written contract between the owner or operator of the sanitary landfill and another person

b The contract was lawfully executed prior to January 1, 1991

c The contract expressly prohibits an increase in the compensation or fee payable to the owner or operator of the landfill and does not allow voluntary cancellation or renegotiation of the compensation or fee during the term of the contract

d The contract has not been amended at any time after January 1, 1991

e The owner or operator of the sanitary landfill applying for exemption demonstrates to the satisfaction of the department that good faith efforts were made to renegotiate the contract notwithstanding its terms, and has been unable to agree on an amendment allowing the fee provided in subsection 2, paragraph "b", to be added to the compensation or fee provisions of the contract

f Applications for exemption must be submitted on forms provided by the department with proof of satisfaction of all criteria

g Notwithstanding the time specified within the contract, an exemption from payment of the fee increase requirements for a multiyear contract shall terminate by January 1, 1993

10 Notwithstanding the tonnage fee schedule prescribed under subsection 2, foundry material that is deposited at a permitted sanitary landfill and used to replace material that would otherwise be purchased and transported from off site for daily cover, shall be subject to the following fees

a For the fiscal year beginning July 1, 1991, and ending June 30, 1992, the tonnage fee is one dollar for each ton of foundry material which is not more than forty percent of the total amount of foundry material deposited at the sanitary landfill for daily cover by any one source. The amount of foundry material deposited at the sanitary landfill which is greater than forty percent of the total amount deposited by any one source is subject to the tonnage fee imposed in subsection 2 on other solid waste

b For the fiscal year beginning July 1, 1992, and ending June 30, 1993, the tonnage fee is one dollar and fifty cents for each ton of foundry material which is not more than forty percent of the total amount of foundry material deposited at the sanitary landfill for daily cover by any one source. The amount of foundry material deposited at the sanitary landfill which is greater than forty percent of the total amount deposited by any one source is subject to the tonnage fee imposed in subsection 2 on other solid waste

c For each fiscal year beginning on or after July 1, 1993, the tonnage fee imposed is the tonnage fee imposed in subsection 2 on other solid waste

91 Acts ch 257 §2 5 HF 706
Subsection 2 NEW paragraph b and subparagraphs (1) (5)
Subsection 7 unnumbered paragraph 1 and paragraph e amended
NEW subsections 9 and 10

455B.335A Pathological waste incineration facilities — radioactive materials — requirements.

1 The director shall require that a person who operates or proposes to operate a waste incinerator which provides for the incineration of pathological radioactive materials conduct dispersion modeling, under the direction of the Iowa department of public health, for radiological isotopes to measure the emission levels of alpha and gamma rays. The director shall allow a three-month period during which time the operator or person proposing operation of such an incinerator shall conduct the required dispersion modeling. In order to initiate or continue such incineration, the results of the modeling shall provide that the existing incinerator meets or the proposed incinerator will meet the emission standards established by the United States environmental protection agency for a selected isotope

2 The department shall conduct a public hear-

ing following submission to the director of the results of the dispersion modeling conducted by an operator or person proposing operation of a waste incinerator which provides for or will provide for the incineration of pathological radioactive materials.

3. If the dispersion modeling results do not meet the standards for emission limitations prescribed under subsection 1, the director shall require the operator or the person who proposes to operate a waste incinerator which provides for the incineration of pathological radioactive materials to employ or conduct an additional dispersion modeling test employing the best available control technology. Following employment of the best available control technology or the conducting of the additional dispersion modeling, if the incinerator or proposed incinerator does not or will not meet the standards prescribed under subsection 2, the operator's permit for incineration of pathological radioactive materials shall be revoked or the permit for such proposed incineration shall be denied.

91 Acts, ch 242, §2 HF 302
NEW section

455B.381 Definitions.

As used in this part 4 unless the context otherwise requires:

1. "*Cleanup*" means actions necessary to contain, collect, control, identify, analyze, clean up, treat, disperse, remove, or dispose of a hazardous substance.

2. "*Cleanup costs*" means costs incurred by the state or its political subdivisions or their agents, or by any other person participating with the approval of the director in the prevention or mitigation of damages from a hazardous condition or the cleanup of a hazardous substance involved in a hazardous condition.

3. "*Corrosive*" means causing or producing visible destruction or irreversible alterations in human skin tissue at the site of contact, or in the case of leakage of a hazardous substance from its packaging, causing or producing a severe destruction or erosion of other materials through chemical processes.

4. "*Hazardous condition*" means any situation involving the actual, imminent, or probable spillage, leakage, or release of a hazardous substance onto the land, into a water of the state, or into the atmosphere, which creates an immediate or potential danger to the public health or safety or to the environment. For purposes of this division, a site which is a hazardous waste or hazardous substance disposal site as defined in section 455B.411, subsection 1, is a hazardous condition.

5. "*Hazardous substance*" means any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant or that generates pressure through decomposition, heat, or other means. "*Hazardous substance*" may include any hazardous waste identified or listed by the administra-

tor of the United States environmental protection agency under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, or any toxic pollutant listed under section 307 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous substance designated under section 311 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous material designated by the secretary of transportation under the Hazardous Materials Transportation Act.

6. "*Irritant*" means a substance causing or producing dangerous or intensely irritating fumes upon contact with fire or when exposed to air.

7. "*Person having control over a hazardous substance*" means a person who at any time produces, handles, stores, uses, transports, refines, or disposes of a hazardous substance the release of which creates a hazardous condition, including bailees, carriers, and any other person in control of a hazardous substance when a hazardous condition occurs, whether the person owns the hazardous substance or is operating under a lease, contract, or other agreement with the legal owner of the hazardous substance.

8. "*Release*" means a threatened or real emission, discharge, spillage, leakage, pumping, pouring, emptying, or dumping of a hazardous substance into or onto the land, air, or waters of the state unless one of the following applies:

a. The release is done in compliance with the conditions of a federal or state permit.

b. The hazardous substance is confined and expected to stay confined to property owned, leased or otherwise controlled by the person having control over the hazardous substance.

c. In the use of pesticides, the application is done in accordance with the product label.

9. "*Toxic*" means causing or producing a dangerous physiological, anatomic, or biochemical change in a biological system.

10. "*Waters of the state*" means rivers, streams, lakes and any other bodies of surface and subsurface water lying within or forming a part of the boundaries of the state which are not entirely confined and located completely upon lands owned, leased or otherwise controlled by a single person or by two or more persons jointly or as tenants in common. "*Waters of the state*" includes waters of the United States lying within the state.

91 Acts, ch 155, §1 HF 649
Subsections renumbered to alphabetize
Subsection 4 amended

455B.411 Definitions.

As used in this part 5, unless the context otherwise requires:

1. "*Hazardous waste or hazardous substance disposal site*" means real property which has been used for the disposal of hazardous waste or hazardous substances either illegally or prior to regulation as a hazardous waste or a hazardous substance under this part and any adjoining real property and groundwater affected by the disposal activities.

2. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of a hazardous waste or hazardous substance into or on land or water so that the hazardous waste or hazardous substance or a constituent of the hazardous waste or hazardous substance may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

3. "Hazardous substance" means a hazardous substance as defined in 42 U.S.C. § 9601 of the federal Comprehensive Environmental Response, Compensation, and Liability Act and any element, compound, mixture, solution, or substance designated pursuant to 40 C.F.R. § 302.4.

4. a "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, biological degradation, leaching from precipitation, or physical, chemical, or infectious characteristics, has either of the following effects:

(1) Causes, or significantly contributes to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

(2) Poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. "Hazardous waste" may include but is not limited to wastes that are toxic, corrosive or flammable or irritants, strong sensitizers or explosives.

b "Hazardous waste" does not include:

(1) Agricultural wastes, including manures and crop residues that are returned to the soil as fertilizers or soil conditioners.

(2) Source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979.

5. "Lubricating oil" means the fraction of crude oil or re-refined oil which is sold for purposes of reducing friction in an industrial or mechanical device.

6. "Manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.

7. "Recycled oil" means used oil which is reused, following its original use, for any purpose, including the purpose for which the oil was originally used. Recycled oil includes oil which is refined, reclaimed, burned, or reprocessed.

8. "Re-refined oil" means used oil from which the physical and chemical contaminants acquired through previous use have been removed through a refining process.

9. "Storage" means the containment of a hazardous waste, either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the hazardous waste.

10. "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical or biological character or composition of a hazardous waste so as to neutralize the waste or to render the waste nonhazardous, safer

for transport, amenable for recovery, amenable for storage, or to reduce the waste in volume. Treatment includes any activity or processing designed to change the physical form or chemical composition of hazardous waste to render the waste nonhazardous.

11. "Used oil" means oil which has been refined from crude oil, has then been used, and as a result of the use, is contaminated by physical or chemical impurities.

91 Acts ch 155 §2 HF 649
Subsection 1 amended

455B.423 Hazardous substance remedial fund.

1. A hazardous substance remedial fund is created within the state treasury. Moneys received from fees, penalties, general revenue, federal funds, gifts, bequests, donations, or other moneys so designated shall be deposited in the state treasury to the credit of the fund. Any unexpended balance in the remedial fund at the end of each fiscal year shall be retained in the fund. However, any unexpended balance shall be transferred to the general fund to replace funds appropriated from the general fund during fiscal year 1985 and fiscal year 1986 for the purposes for which expenditures from the remedial fund are allowed.

2. The director may use the fund for any of the following purposes:

a Administrative services for the identification, assessment and cleanup of hazardous waste or hazardous substance disposal sites.

b Payments to other state agencies for services consistent with the management of hazardous waste or hazardous substance disposal sites.

c Emergency response activities as provided in part 4 of this division.

d Financing the nonfederal share of the cost of cleanup and site rehabilitation activities as well as postclosure operation and maintenance costs, pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980.

e Financing the cost of cleanup and site rehabilitation activities as well as postclosure operation and maintenance costs of hazardous waste or hazardous substance disposal sites that do not qualify for federal cost-sharing pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980.

f Through agreements or contracts with other state agencies, work with private industry to develop alternatives to land disposal of hazardous waste or hazardous substances including, but not limited to, resource recovery, recycling, neutralization, and reduction.

However, at least seventy-five percent of the fund shall be used for the purposes stated in paragraphs "d" and "e"

3. Neither the state nor its officers, employees, or agents are liable for an injury caused by a dangerous condition at a hazardous waste or hazardous substance disposal site unless the condition is the result of gross negligence on the part of the state, its officers, employees, or agents.

4. The director may contract with any person to perform the acts authorized in this section.

5. Moneys shall not be used from the fund for hazardous waste or hazardous substance disposal site cleanup unless the director has made all reasonable efforts to secure voluntary agreement to pay the costs of necessary remedial actions from owners or operators of hazardous waste or hazardous substance disposal sites or other responsible persons.

6. The director shall make all reasonable efforts to recover the full amount of moneys expended from the fund through litigation or cooperative agreements with responsible persons. Moneys recovered pursuant to this subsection shall be deposited with the treasurer of state and credited to the remedial fund.

91 Acts, ch 155, §3-5 HF 649
Subsections 2, paragraphs a, b and e amended
Subsections 3 and 5 amended

455B.424 Hazardous waste fees.

1. The person who generates hazardous waste or the owner or operator of a hazardous waste disposal facility who transports hazardous wastes off of the site where the hazardous waste was generated or off the disposal facility site shall pay a fee of ten dollars for each ton of hazardous waste transported off the site, excluding the water content of any waste that is transported to another facility under the ownership of the generator for the purposes of waste treatment or recycling.

2. A person who generates hazardous waste or owns or operates a facility which treats or disposes of hazardous waste at the facility shall pay the following fees:

a. Forty dollars for each ton of hazardous wastes placed, deposited, dumped or disposed of onto or into the land at a disposal facility in Iowa.

b. Two dollars for each ton of hazardous waste destroyed or treated at the generator's site or at the disposal facility to render the hazardous waste non-hazardous.

3. Fees specified in subsections 1 and 2 shall not be imposed on the state or any of its political subdivisions.

4. Fees specified in subsections 1 and 2 shall not be imposed on any of the following:

a. Hazardous waste that is reclaimed or reused for energy or materials.

b. Hazardous waste that is transformed into new products which are not wastes.

c. Hazardous wastes created or retrieved as a result of remedial actions at a hazardous waste or hazardous substance disposal site.

d. Influent waste water to a treatment facility which is subject to regulation under either 33 U.S.C. 1317(b) or 33 U.S.C. 1342.

e. A hazardous waste which due to its intrinsic physical, chemical or biological composition degrades, decomposes or changes physical characteristics so as to be rendered or considered nonhazardous without any form of external mechanical, physical or

chemical treatment being introduced. However, such change to a nonhazardous nature must occur within twenty-four hours of the generation of the hazardous waste before the exemption granted in this paragraph is applicable.

5. In addition to other fees imposed by this section, a person that is required to obtain a United States environmental protection agency identification number shall pay the following fees:

a. If the person generates more than one thousand kilograms of hazardous waste per month, a fee of two hundred fifty dollars.

b. If the person generates hazardous waste but does not generate more than one thousand kilograms of hazardous waste per month, a fee of twenty-five dollars.

c. If the person is a transporter of hazardous waste, a fee of twenty-five dollars.

d. If the person operates a hazardous waste treatment, storage, or disposal facility, a fee of twenty-five dollars.

6. 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.

7. 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.

8. Moneys collected or received by the department pursuant to this section shall be transmitted to the treasurer of state for deposit in the hazardous waste remedial fund.

9. The fees imposed by this section shall be suspended if after collection of the fees due from the previous quarter, the hazardous waste remedial fund has a balance in excess of six million dollars. If the balance falls below three million dollars, the fees shall be reimposed commencing the beginning of the next calendar quarter.

91 Acts, ch 155, §6 HF 649
Subsection 4, paragraph c amended

455B.426 Registry of hazardous waste or hazardous substance disposal sites.

1. The director shall maintain and make available for public inspection a registry of confirmed hazardous waste or hazardous substance disposal sites in the state. The director shall take all necessary action to ensure that the registry provides a complete listing of all sites. The registry shall contain the exact location of each site and identify the types of waste found at each site.

2. The director shall investigate all known or suspected hazardous waste or hazardous substance disposal sites and determine whether each site should be included in the registry. In the evaluation of known or suspected hazardous waste or hazardous substance disposal sites, the director may enter private property and perform tests and analyses in the manner provided in section 455B.416.

91 Acts, ch 155, §7 HF 649
Section amended

455B.427 Annual report on hazardous waste or hazardous substance disposal sites.

1. The director shall annually on January 1 transmit a report to the general assembly and the governor identifying all hazardous waste or hazardous substance disposal sites in the state listed on the registry. A copy of the report shall also be sent to the board of supervisors of every county containing a site.

2. The annual report shall include, but is not limited to, the following information for each site:

a A general description of the site, including the name and address of the site, the type and quantity of the hazardous waste or hazardous substance disposed of at the site and the name of the current owners of the site.

b A summary of significant environmental problems at or near the site.

c A summary of serious health problems in the immediate vicinity of the site and health problems deemed by the director in cooperation with the Iowa department of public health to be related to conditions at the site.

d The status of testing, monitoring, or remedial actions in progress or recommended by the director.

e The status of pending legal actions and federal, state, or local government permits concerning the site.

f The relative priority for remedial action at each site.

g The proximity of the site to private residences, public buildings or property, school facilities, places of work, or other areas where individuals may be regularly present.

3. In developing and maintaining the annual report, the director shall assess the relative priority of the need for action at each site to remedy environmental and health problems resulting from the presence of hazardous wastes or hazardous substances at the sites. In making assessments of relative priority, the director, in cooperation with the Iowa department of public health on matters relating to public health, shall place every site in one of the following classifications:

a Causing or presenting an imminent danger of causing irreversible or irreparable damage to the public health or environment—immediate action required.

b Significant threat to the environment—action required.

c Not a significant threat to the public health or environment—action may be deferred.

d Site properly closed—requires continued management.

e Site properly closed, no evidence of present or potential adverse impact—no further action required.

4. A site classified as properly closed under subsection 3, paragraph “e”, shall be removed from all subsequent annual reports and the register of hazardous waste or hazardous substance disposal sites.

5. The director shall work with the Iowa department of public health when assessing the effects of

a hazardous waste or hazardous substance disposal site on human health.

91 Acts ch 155 §8 HF 649
Subsections 1 4 and 5 amended

455B.428 Investigation of sites.

1. The director shall investigate each hazardous waste or hazardous substance disposal site listed in the registry to determine its relative priority.

2. The director shall identify each hazardous waste or hazardous substance disposal site by providing all of the following:

a The address and site boundaries.

b The time period of use for disposal of hazardous waste or hazardous substances.

c The name of the current owner and operator and names of reported owners and operators during the time period of use for disposal of hazardous waste or hazardous substances.

d The names of persons responsible for the generation and transportation of the hazardous waste or hazardous substances disposed of at the site.

e The type, quantity and manner of hazardous waste or hazardous substances disposal.

3. When preliminary evidence suggests further assessment is necessary, the director may assess any of the following:

a The depth of the water table at the site.

b The nature of soils at the site.

c The location, nature, and size of aquifers at the site.

d The direction of present and historic groundwater flows at the site.

e The location and nature of surface waters at and near the site.

f The levels of contaminants in groundwater, surface water, air, and soils at and near the site resulting from hazardous wastes or hazardous substances disposed of at the site.

g The current quality of all drinking water drawn from or distributed through the area in which the site is located, if the director determines that water quality may have been affected by the site.

4. The director shall maintain a site assessment file for each site listed in the registry. The file shall contain all information obtained pursuant to this section and shall be open to the public. Information in the file may be reproduced by any person at a charge not to exceed the actual cost of reproduction for copies of file information.

91 Acts ch 155 §9 HF 649
Subsections 1 and 2 amended

455B.430 Use and transfer of sites — penalty — financial disclosure.

1. A person shall not substantially change the manner in which a hazardous waste or hazardous substance disposal site on the registry pursuant to section 455B.426 is used without the written approval of the director.

2. A person shall not sell, convey, or transfer title to a hazardous waste or hazardous substance disposal

al site which is on the registry pursuant to section 455B 426 without the written approval of the director. The director shall respond to a request for a change of ownership within thirty days of its receipt.

3 Decisions of the director concerning the use or transfer of a hazardous waste or hazardous substance disposal site may be appealed in the manner provided in section 455B 429.

4 If the director has reason to believe this section has been violated, or is in imminent danger of being violated, the director may institute a civil action in district court for injunctive relief to prevent the violation and for the assessment of a civil penalty not to exceed one thousand dollars per day for each day of violation. Moneys collected under this subsection shall be deposited in the remedial fund.

5 Immediately upon the listing of real property in the registry of hazardous waste or hazardous substance disposal sites, a person liable for cleanup costs shall submit to the director a report consisting of documentation of the responsible person's liabilities and assets, including if filed, a copy of the annual report submitted to the secretary of state pursuant to chapter 490. A subsequent report pursuant to this section shall be submitted annually on April 15 for the period the site remains on the registry.

91 Acts ch 155 §10 HF 649
Subsections 1, 2, 3 and 5 amended

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 hazardous waste or hazardous substance disposal sites.

91 Acts ch 155 §11 HF 649
Subsection 2 amended

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 Establishing criteria for classifying sites ac-

ording to the release of a regulated substance in connection with an underground storage tank.

(1) The classification system shall consider the actual or potential threat to public health and safety and to the environment posed by the contaminated site and shall take into account relevant factors, including the presence of contamination in soils, groundwaters, and surface waters, and the effect of conduits, barriers, and distances on the contamination found in those areas according to the following factors:

(a) Soils shall be evaluated based upon the depth of the existing contamination and its distance from the ground surface to the contamination zone and the contamination zone to the groundwater, the soil type and permeability, including whether the contamination exists in clay, till or sand and gravel, and the variability of the soils, whether the contamination exists in soils of natural variability or in a disturbed area.

(b) Groundwaters shall be evaluated based upon the depth of the contamination and its distance from the ground surface to the groundwater and from the contamination zone to the groundwater, the flow pattern of the groundwater, the direction of the flow in relation to the contamination zone and the interconnection of the groundwater with the surface or with surface water and with other groundwater sources, the nature of the groundwater, whether it is located in a high yield aquifer, an isolated, low yield aquifer, or in a transient saturation zone, and use of the groundwater, whether it is used as a drinking water source for public or private drinking water supplies, for livestock watering, or for commercial and industrial processing.

(c) Surface water shall be evaluated based upon its location, its distance in relation to the contamination zone, the groundwater system and flow, and its location in relation to surface drainage.

(d) The effect of conduits, barriers, and distances on the contamination found in soils, groundwaters, and surface waters. Consideration should be given to the following: the effect of contamination on conduits such as wells, utility lines, tile lines and drainage systems, the effect of conduits on the transport of the contamination, whether a well is active or abandoned, what function the utility line serves, whether it is a sewer line, a water distribution line, telephone line, or other line, the existence of barriers such as buildings and other structures, pavement, and natural barriers, including rock formations and ravines, and the distance which separates the contamination found in the soils, groundwaters, or surface waters from the conduits and barriers.

(2) A site shall be classified as either high risk, low risk, or no action required.

(a) A site shall be considered high risk under any of the following conditions:

(i) Contamination is affecting or likely to affect groundwater which is used as a source water for public or private water supplies, to a level rendering them unsafe for human consumption.

(ii) Contamination is actually affecting or is likely to affect surface water bodies to a level where surface water quality standards, under section 455B.173, will be exceeded.

(iii) Harmful or explosive concentrations of petroleum substances or vapors affecting structures or utility installations exist or are likely to occur.

(b) A site shall be considered low risk under any of the following conditions:

(i) Contamination is present and is affecting groundwater, but high risk conditions do not exist and are not likely to occur.

(ii) Contamination is above action level standards, but high risk conditions do not exist and are not likely to occur.

(c) A site shall be considered no action required if contamination is below action level standards and high or low risk conditions do not exist and are not likely to occur.

(d) A site shall be reclassified as a site with a higher or lower classification when the site falls within a higher or lower classification as established under this subparagraph.

e. The closure of tanks to prevent any future release of a regulated substance into the environment. If consistent with federal environmental protection agency technical standard regulations, state tank closure rules shall include, at the tank owner's election, an option to fill the tank with an inert material. Removal of a tank shall not be required if the tank is filled with an inert material pursuant to department of natural resources rules. A tank closed, or to be closed and which is actually closed, within one year of May 13, 1988, shall be required to complete monitoring or testing as required by the department to ensure that the tank did not leak prior to closure, but shall not be required to have a monitoring system installed.

f. Establishing corrective action response requirements for the release of a regulated substance in connection with an underground storage tank. The corrective action response requirements shall include, but not be limited to, all of the following:

(1) A requirement that the site cleanup report do all of the following:

(a) Identify the nature and level of contamination resulting from the release.

(b) Provide supporting data and a recommendation of the degree of risk posed by the site relative to the site classification system adopted pursuant to paragraph "d".

(c) Provide supporting data and a recommendation of the need for corrective action.

(d) Identify the corrective action options which shall address the practical feasibility of implementation, costs, expected length of time to implement, and environmental benefits.

(2) To the fullest extent practicable, allow for the use of generally available hydrological, geological, topographical, and geographical information and minimize site specific testing in preparation of the site cleanup report.

(3) Require that at a minimum the source of a release be stopped either by repairing, upgrading, or closing the tank and that free product be removed or contained on site.

(4) High risk sites shall comply with corrective action standards.

(5) Low risk sites shall be monitored according to the following schedule:

(a) Up to three times per year from years one through three.

(b) Up to two times per year from years four through six.

(c) One time per year from years seven through nine.

(d) In the twelfth year the site shall be monitored one time. If there has been no significant increase in contamination or the contamination has not moved, the site shall be reclassified as a no action required site. If at any time the contamination has increased or moved by a significant amount, the site shall be monitored according to the previous higher monitoring schedule as established under this subparagraph.

(e) The department shall have the authority to order monitoring in addition to the requirements as specified in this subparagraph with approval by the board.

(f) If at any time monitoring indicates that contamination has fallen below action level standards, the site shall be reclassified as a no action required site.

(6) No action required sites shall not be required to be remediated or monitored.

(7) Notwithstanding other provisions to the contrary and to the extent permitted by federal law, the department shall allow for bioremediation of soils and groundwater. For purposes of this subparagraph, "bioremediation" means the use of biological organisms, including microorganisms or plants, to degrade organic pollutants to common natural products.

(8) Replacement or upgrade of a tank on a site classified as a high or low risk site shall be equipped with a secondary containment system with monitoring of the space between the primary and secondary containment structures or other board approved tank system or methodology.

(9) The commission and the board shall cooperate to ensure that remedial measures required by the corrective action rules adopted pursuant to this paragraph are reasonably cost-effective and shall, to the fullest extent possible, avoid duplicating and conflicting requirements.

(10) The director may order an owner or operator to immediately take all corrective actions deemed reasonable and necessary by the director if the corrective action is consistent with the prioritization rules adopted under this paragraph. Any order taken by the director pursuant to this subparagraph shall be reviewed at the next meeting of the environmental protection commission.

g. 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 January 14, 1987. The effective date of the rules adopted shall be January 14, 1989. 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. Unless the federal environmental protection agency adopts final rules to the contrary, rules adopted pursuant to this section shall not apply to hydraulic lift reservoirs, such as for automobile hoists and elevators, containing hydraulic oil.

h. Issuance of a monitoring certificate for sites classified as low risk pursuant to paragraph “*f*”. A monitoring certificate shall be valid until the site is reclassified as a no action required site. A site which has been issued a monitoring certificate shall not be eligible to receive a clean site certificate under section 455B.304, subsection 15, until the site is reclassified as a no risk site.*

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.

The department may issue a variance, which includes an enforceable compliance schedule, from the mandatory monitoring requirement for an owner or operator who demonstrates plans for tank removal, replacement, or filling with an inert material pursuant to a department approved variance. A variance may be renewed for just cause.

2. The maintenance of evidence of financial responsibility as the 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.

A person who establishes financial responsibility by self-insurance shall not require or shall not enforce an indemnification agreement with an operator or owner of the tank covered by the self-insurance obligation, unless the owner or operator has committed a substantial breach of a contract between the self-insurer and the owner or operator, and that substantial breach relates directly to the operation of the tank in an environmentally sound manner. This paragraph applies to all contracts between a self-insurer and an owner or operator entered into on or after May 5, 1989.

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.

e. If an owner or operator is required to uncover or remove an underground storage tank based upon a determination of the department that the underground storage tank presents a hazard to the public health, safety, or the environment, and if upon inspection of the tank the determination is unfounded, the state may reimburse reasonable costs incurred in the inspection of the tank. Claims for reimbursement shall be filed on forms provided by the commission. The commission shall adopt rules pursuant to chapter 17A relating to determinations of reasonableness in approval or rejection of claims in cases of dispute. Claims shall be paid from the general fund of the state. When any one of the tanks or the

related pumps and piping at a multiple tank facility are found to be leaking, the state shall not reimburse costs for uncovering or removing any of the other tanks, piping, or pumps that are not found to be leaking.

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 January 14, 1987. 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. Tanks installed on or after January 14, 1987, shall continue to be considered new tanks for purposes of this chapter and are subject to state monitoring requirements unless federal requirements are more restrictive.

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 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.

91 Acts, ch 252, § 5, 6 SF 362

**"No action required site" probably intended, corrective legislation is pending

Subsection 1, paragraphs d and f stricken and rewritten

Subsection 1, NEW paragraph h

455B.502 Infectious medical waste incinerators — regents universities — requirements.

1. The director shall require that a regents university which operates an infectious medical waste incinerator shall conduct periodic monitoring, under the direction of the Iowa department of public health, and as required by the department of natural resources, to measure compliance with the emission limitations standards for toxic air pollutants adopted by rule of the department of natural resources. In order to continue incineration, the existing incinerator shall continue to meet the emission limitations standards for toxic air pollutants adopted by rule of the department of natural resources.

2. If monitoring results do not meet the emission limitations standards established, the director of the department of natural resources shall require that the university employ the best available control technology for toxics as defined by rule of the department of natural resources. Following employment of the best available control technology for toxics, if the incinerator does not meet the standards established, the permit for operation of the infectious medical waste incinerator shall be revoked.

91 Acts, ch 242, § 3 HF 302

NEW section

455B.503 Infectious waste treatment and disposal facilities — permits required — rules.

The commission shall adopt rules which require a person who owns or operates an infectious waste treatment or disposal facility to obtain an operating

permit before initial operation of the facility. The rules shall specify the information required to be submitted with the application for a permit and the conditions under which a permit may be issued, suspended, modified, revoked, or renewed. The rules shall address but are not limited to the areas of operator safety, recordkeeping and tracking procedures, best available appropriate technologies, emergency response and remedial action procedures, waste minimization procedures, and long-term liability. The department shall submit proposed rules to the commission by January 15, 1992.

91 Acts, ch 242, §4 HF 302

Department not to grant permits for construction or operation of commercial infectious waste treatment or disposal facilities until department adopts rules, and in any event not earlier than July 1, 1992, exceptions, precautionary requirements for small quantity generators, 91 Acts, ch 242, §7 HF 302

Conditions for the construction or operation of facilities, existing facilities to comply by July 1, 1993, facilities which are established or become operational on or after May 1, 1991, to comply with standards and limitations as they are adopted, 91 Acts, ch 242, §7 HF 302

NEW section

455B.504 Collection and transportation of infectious medical waste — permits required — rules.

The commission shall adopt rules which require a person who owns or operates an infectious medical waste collection or transportation operation to obtain an operating permit prior to initial operation. The rules shall address but are not limited to the areas of operator safety, recordkeeping and tracking procedures, best available appropriate technologies, emergency response and remedial action procedures, waste minimization procedures, and long-term liability.

91 Acts, ch 242, §5 HF 302

NEW section

455B.505 Infectious waste treatment and disposal facilities — national register of historic places.

The department of natural resources shall not grant a permit for the construction or operation of a commercial infectious waste treatment or disposal facility within one mile of a site or building which has been placed on the national register of historic places. This section does not apply to hospitals, health care facilities licensed pursuant to chapter 135C, physicians' offices or clinics, and other health service-related entities.

91 Acts, ch 242, §6 HF 302

NEW section

455B.506 through 455B.515 Reserved.

DIVISION VII

TOXICS POLLUTION PREVENTION PROGRAM

Findings, goal and policy;
91 Acts, ch 255, § 1, 2 HF683

455B.516 Definitions.

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

1. "Authority" means the waste management authority created pursuant to section 455B.483.

2. "Commission" means the environmental protection commission established pursuant to section 455A.6.

3. "Department" means the department of natural resources created pursuant to section 455A.2.

4. "Emergency Planning and Community Right-to-know Act" or "EPCRA" means the federal Emergency Planning and Community Right-to-know Act as defined in section 30.1.

5. "Environmental waste" means a pollutant, waste, or release regardless of the type or existence of regulation and regardless of the media affected by the pollutant, waste, or release.

6. "Existing toxics user" means a toxics user installation or source constructed prior to July 1, 1991.

7. "Multimedia" means any combination of air, water, land, or workplace environments into which toxic substances or wastes are released.

8. "Release" means emission, discharge, or disposal into any environmental media including air, water, or land.

9. "Toxics pollution prevention" means employment of a practice which reduces the industrial use of toxic substances or reduces the environmental and health hazards associated with an environmental waste without diluting or concentrating the waste before the release, handling, storage, transport, treatment, or disposal of the waste. The term includes toxics pollution prevention techniques but does not include a practice which is applied to an environmental waste after the waste is generated or comes into existence on or after the waste exits a production or commercial operation.

"Toxics pollution prevention" does not include, promote, or require any of the following:

a. Waste burning in industrial furnaces, boilers, smelters, or cement kilns for the purpose of energy recovery.

b. The transfer of an environmental waste from one environmental medium to another environmental medium, the workplace environment, or a product.

c. Offsite waste recycling.

d. Any other method of end-of-pipe management of environmental wastes including waste exchange and the incorporation or embedding of regulated environmental wastes into products or by-products.

10. "Toxics pollution prevention techniques" means any of the following practices by a toxics user:

a. Input substitution, which refers to replacing a toxic substance or raw material used in a production process with a nontoxic or less toxic substance.

b. Product reformulation, which refers to substituting for an existing end product an end product which is nontoxic or less toxic upon use or release.

c. Production process redesign or modification, which refers to developing and using production processes of a different design other than those currently in use.

d. Production process modernization, which refers to upgrading or replacing existing production process equipment or methods with other equipment or methods based on the same production process.

e. Improved operation and maintenance of existing production process equipment and methods, which refers to modifying or adding to existing equipment or methods, including but not limited to, such techniques as improved housekeeping practices, system adjustments, product and process inspections, and production process control equipment or methods.

f. Recycling, reuse, or extended use of toxic substances by using equipment or methods which become an integral part of the production process.

11. "Toxic substance" means any chemical substance in a gaseous, liquid, or solid state which is identified as a reportable substance under the federal Resource Conservation and Recovery Act, EPCRA, or defined as a hazardous air pollutant under the Clean Air Act of 1990. However, "toxic substance" does not include a chemical substance present in the article; used as a structural component of a facility; present in a product used for routine janitorial or facility grounds maintenance; present in foods, drugs, cosmetics, or other personal items used by employees or other persons at a toxics user facility; present in process water or noncontact cooling water as drawn from the environment or from municipal sources; present in air used either as compressed air or as part of combustion; present in a pesticide or herbicide when used in agricultural applications; or present in crude, fuel, or lube oils for direct wholesale or retail sale.

12. "Toxics" means toxic substances.

13. "Toxics user" means a large quantity generator as defined pursuant to the federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. or a person required to report pursuant to Title III of the federal Superfund Amendments and Reauthorization Act of 1986.

14. "Waste exchange" means a method of end-of-pipe management of environmental wastes that involves the transfer of environmental wastes between businesses or facilities owned or operated by the same business for recovery or to serve a productive purpose.

91 Acts, ch 255, §3 HF 683
NEW section

455B.517 Duties of waste management authority.

The waste management authority shall do all of the following:

1. Establish the criteria for the development of the toxics pollution prevention program.
2. Develop and implement a toxics pollution prevention program.
3. Assist toxics users in the completion of toxics pollution prevention plans and inventories, and provide technical assistance as requested by the toxics user.

4. a. Seek, receive, and accept funds in the form of appropriations, grants, awards, wills, bequests, endowments, and gifts for the uses designated pursuant to section 455B.133B. The authority shall also coordinate existing resources and oversee the disbursement of federal grant moneys to provide consistency in achieving the toxics pollution prevention goal of the state.

b. Provide, through the use of moneys collected pursuant to section 455B.133A, the state matching funds for grants under the federal Pollution Prevention Act of 1990, Pub. L. No. 101-508, § 6604 and 6605.

5. Develop and implement guidelines regarding assistance to toxics users to ensure that the plans are multimedia in approach and are not duplicated by the department or other agencies of the state.

6. Identify obstacles to the promotion, within the toxics user community, of toxics pollution prevention techniques and practices.

7. Compile an assessment inventory, through solicitation of recommendations of toxics users and owners and operators of air contaminant sources, of the informational and technical assistance needs of toxics users and air contaminant sources.

8. Function as a repository of research, data, and information regarding toxics pollution prevention activities throughout the state.

9. Provide a forum for public discussion and deliberation regarding toxic substances and toxics pollution prevention.

10. Promote increased coordination between the department, the Iowa waste reduction center at the university of northern Iowa, and other departments, agencies, and institutions with responsibilities relating to toxic substances.

11. Coordinate state and federal efforts of clear-houses established to provide access to toxics reduction and management data for the use of toxics users.

12. Make recommendations to the general assembly by January 1, 1992, regarding a funding structure for the long-term implementation and continuation of a toxics pollution prevention program.

13. Work with the Iowa waste reduction center at the university of northern Iowa to assist small business toxics users with plan preparation and technical assistance.

91 Acts, ch 255, §4 HF 683
NEW section

455B.518 Toxics pollution prevention plans.

1. A toxics user required to report under section 313 of EPCRA, 42 U.S.C. § 11023, or a large quantity generator, as defined pursuant to the federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., shall be encouraged to develop a facility-wide multimedia toxics pollution prevention plan, as described pursuant to this section.

2. The authority shall adopt criteria for the information required in a multimedia toxics pollution

prevention plan To the extent possible, the plans shall coordinate reporting requirements in order to minimize unnecessary duplication The plans shall include, but are not limited to, all of the following

a A policy statement which articulates upper management and corporate support for the toxics pollution prevention plan and its implementation

b The identification and quantities of toxic substances used and released by groups of related production processes or by processes used in producing an identifiable product

c An assessment of the applicability of the approaches designated as toxics pollution prevention techniques including the following input substitution, production reformulation, production process redesign or modification, production process modernization, improved operation and maintenance of existing production process equipment and methods, and recycling, reuse, or extended use of toxic substances, to the toxics users' production processes as identified in paragraph "b"

d A description of current and previous techniques used to reduce or eliminate toxics used or released

e An economic analysis of the proposed toxics

pollution prevention plan The economic analysis shall also include an evaluation of the impact upon the toxics user's existing labor force by division or department, and the projected impact upon future expansion of the toxics user's labor force

f A clear statement listing specific reduction objectives

g A method for employees of a toxics user to provide input and to be involved in the development of the plans If the employees are represented by a labor union, organization, or association, a representative of the union, organization, or association shall be included in the development of the plans

3 The plans developed under this section shall not promote the use of pollution control or waste management approaches that address waste or pollution after the creation of the waste or pollution

4 A toxics pollution prevention plan developed under this section shall be reviewed by the authority for completeness, adequacy, and accuracy

5 A toxics user shall maintain a copy of the plan on the premises, and shall submit a summary of the plan to the department

91 Acts ch 255 §5 HF 683
NEW section

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 10, 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 "*Commission*" means the environmental protection commission of the department

4 "*Consumer*" means any person who purchases a beverage in a beverage container for use or consumption

5 "*Dealer*" means any person who engages in the sale of beverages in beverage containers to a consumer

6 "*Dealer agent*" means a person who solicits or picks up empty beverage containers from a dealer for the purpose of returning the empty beverage containers to a distributor or manufacturer

7 "*Department*" means the department of natural resources created under section 455A 2

8 "*Director*" means the director of the department

9 "*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 The alcoholic beverages division of the department of commerce is not a distributor for purposes of this chapter

10 "*Geographic territory*" means the geographical area within a perimeter formed by the outermost boundaries served by a distributor

11 "*Manufacturer*" means any person who bottles, cans, or otherwise fills beverage containers for sale to distributors or dealers

12 "*Nonrefillable beverage container*" means a beverage container not intended to be refilled for sale by a manufacturer

13 "*Redemption center*" means a facility at which consumers may return empty beverage containers and receive payment for the refund value of the empty beverage containers

91 Acts ch 268 §433 SF 529

1989 amendment strikes the second sentence of subsection 9 effective July

1 1992 89 Acts ch 272 §42 90 Acts ch 1261 §43 44 91 Acts ch 268 § 442 SF 529

Subsections renumbered to alphabetize
Subsection 9 amended

455C.2 Refund values.

1. Except purchases of alcoholic liquor as defined in section 123.3, subsection 8, by holders of class "A", "B", "C", and "E" liquor control licenses, a refund value of not less than five cents shall be paid by the consumer on each beverage container sold in this state by a dealer for consumption off the premises. Upon return of the empty beverage container upon which a refund value has been paid to the dealer or person operating a redemption center and acceptance of the empty beverage container by the dealer or person operating a redemption center, the dealer or person operating a redemption center shall return the amount of the refund value to the consumer.

2. In addition to the refund value provided in subsection 1 of this section, a dealer, or person operating a redemption center who redeems empty beverage containers or a dealer agent shall be reimbursed by the distributor required to accept the empty beverage containers an amount which is one cent per container. A dealer, dealer agent, or person operating a redemption center may compact empty metal beverage containers with the approval of the distributor required to accept the containers.

91 Acts ch 268 §434 SF 529

1989 amendment strikes the reference to holders of class 'E' licenses effective July 1, 1992. 89 Acts ch 272 §42 90 Acts ch 1261 §43 44 91 Acts ch 268 §442 SF 529

Subsection 1 amended

455C.3 Payment of refund value.

Except as provided in section 455C.4:

1. A dealer shall not refuse to accept from a consumer any empty beverage container of the kind, size and brand sold by the dealer, or refuse to pay to the consumer the refund value of a beverage container as provided under section 455C.2.

2. A distributor shall accept and pick up from a dealer served by the distributor or a redemption center for a dealer served by the distributor at least weekly, or when the distributor delivers the beverage product if deliveries are less frequent than weekly, any empty beverage container of the kind, size and brand sold by the distributor, and shall pay to the dealer or person operating a redemption center the refund value of a beverage container and the reim-

bursement as provided under section 455C.2 within one week following pickup of the containers or when the dealer or redemption center normally pays the distributor for the deposit on beverage products purchased from the distributor if less frequent than weekly. A distributor or employee or agent of a distributor is not in violation of this subsection if a redemption center is closed when the distributor attempts to make a regular delivery or a regular pickup of empty beverage containers. This subsection does not apply to a distributor selling alcoholic liquor to the alcoholic beverages division of the department of commerce.

3. A distributor shall not be required to pay to a manufacturer a deposit or refund value on a non-refillable beverage container.

4. A distributor shall accept from a dealer agent any empty beverage container of the kind, size, and brand sold by the distributor and which was picked up by the dealer agent from a dealer within the geographic territory served by the distributor and the distributor shall pay the dealer agent the refund value of the empty beverage container and the reimbursement as provided in section 455C.2.

5. The alcoholic beverages division of the department of commerce shall enter into an agreement with a private entity to meet the division's obligations under subsection 2. The agreement shall include the acceptance and picking up of the division's empty beverage containers and payment of the refund value and reimbursement of the agreement does not result in a net cost to the state. The agreement shall provide that the refund paid by the dealers to the division shall be assigned and transferred to the private entity. Any surplus refund values retained by the dealer shall be remitted to the waste volume reduction and recycling fund.

Subsection 5 takes effect July 1, 1992. 89 Acts ch 272 §42 90 Acts ch 1261 §43 44 91 Acts ch 268 §442 SF 529

Footnote updated section not amended

455C.16 Beverage containers — disposal at sanitary landfill prohibited.

Beginning July 1, 1990, the final disposal of beverage containers by a dealer, distributor, or manufacturer, or person operating a redemption center, in a sanitary landfill, is prohibited, except for beverage containers containing alcoholic liquor as defined in section 123.3, subsection 8.

91 Acts ch 268 §435 SF 529

Section amended

CHAPTER 455D

WASTE VOLUME REDUCTION AND RECYCLING

455D.9A Disposal of baled solid waste at a sanitary landfill — prohibited.

Beginning January 1, 1992, a person shall not dispose of baled solid waste at a sanitary landfill and a sanitary landfill shall not accept baled solid waste for final disposal. Solid waste which is baled on site may be disposed of at the sanitary landfill. The department shall develop rules which define baled solid waste and provide for the safe and proper method of disposal of such waste.

91 Acts ch 113 §1 HF 37b
NEW section

455D.11 Waste tires — land disposal prohibited.

1 As used in this section, unless the context otherwise requires

a "Permit" means a permit issued by the department to establish, construct, modify, own, or operate a tire stockpiling facility

b "Processing" means producing or manufacturing usable materials from waste tires

c "Processing site" means a site which is used for the processing of waste tires and which is owned or operated by a tire processor who has a permit for the site

d "Tire collector" means a person who owns or operates a site used for the storage, collection, or deposit of more than fifty waste tires

e "Tire processor" means a person engaged in the processing of waste tires

f "Waste tire" means a tire that is no longer suitable for its originally intended purpose due to wear, damage, or defect

g "Waste tire collection site" means a site which is used for the storage, collection, or deposit of waste tires

2 Land disposal of waste tires is prohibited beginning July 1, 1991, unless the tire has been processed in a manner established by the department. A sanitary landfill shall not refuse to accept a waste tire which has been properly processed

3 The department shall conduct a study and make recommendations to the general assembly by January 1, 1991, concerning a waste tire abatement program which includes but is not limited to the following

a The number and geographic distribution of waste tires generated and existing in the state

b The development of markets for the recycling and processing of waste tires, in the midwestern states

c The methods to establish reliable sources of waste tires for users of waste tires

d The permitting of waste tire collection sites, waste tire processing facilities, and waste tire haulers

e The methods for the cleanup of existing stockpiles of waste tires

4 Upon completion of the study pursuant to subsection 3, the department shall determine the number of stockpiling facilities which are necessary and shall develop rules for stockpiling facilities which include but are not limited to the following

a The prohibition of burning within one hundred yards of a tire stockpile

b The maximum height, width, and length of a tire stockpile

c Plans to control mosquitos and rodents

d A facility closure plan

e Specifications for fire lanes between stockpiles

f Limitations of the total number of tires allowed at a single stockpile site

5 The department shall develop criteria for the issuance of permits and shall issue permits to qualified stockpiling facilities

6 The department shall provide financial assistance to persons who establish recycling and processing sites for waste tires, subject to the rules established by the department for the establishment of such sites and subject to the conditions prescribed by the department for application for and awarding of such financial assistance

7 The commission shall adopt rules which provide the following

a That a person who contracts with another person to transport more than forty waste tires is required to contract only with a person registered as a waste tire hauler pursuant to section 9B 1

b That a person who transports waste tires for final disposal is required to only dispose of the tires at a permitted sanitary disposal facility

c A person who does not comply with this subsection is subject to the penalty imposed pursuant to section 9B 1 and the moneys allocated shall be deposited and used pursuant to section 9B 1

91 Acts ch 25 § HF 06
NEW subsection 7

455D.19 Packaging — heavy metal content.

1 The general assembly finds and declares all of the following

a The management of solid waste can pose a wide range of hazards to public health and safety and to the environment

b Packaging comprises a significant percentage of the overall solid waste stream

c The presence of heavy metals in packaging is a concern in light of the likely presence of heavy metals in emissions or ash when packaging is incinerated or in leachate when packaging is landfilled

d Lead, mercury, cadmium, and hexavalent chromium, on the basis of available scientific and medical evidence, are of particular concern.

e It is desirable as a first step in reducing the toxicity of packaging waste to eliminate the addition of heavy metals to packaging.

f The intent of the general assembly is to achieve reduction in toxicity without impeding or discouraging the expanded use of postconsumer materials in the production of packaging and its components.

2. As used in this section unless the context otherwise requires:

a "Distributor" means a person who takes title to products or packaging purchased for resale.

b "Manufacturer" means a person who offers for sale or sells products or packaging to a distributor.

c "Package" means a container which provides a means of marketing, protecting, or handling a product including a unit package, intermediate package, or a shipping container. "Package" also includes but is not limited to unsealed receptacles such as carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs.

d "Packaging component" means any individual assembled part of a package including but not limited to interior and exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, or labels.

3. No later than July 1, 1992, a manufacturer or distributor shall not offer for sale or sell, or offer for promotional purposes a package or packaging component, in this state, which includes, in the package itself, or in any packaging component, inks, dyes, pigments, adhesives, stabilizers, or any other additives, any lead, cadmium, mercury, or hexavalent chromium which has been intentionally introduced as an element during manufacturing or distribution as opposed to the incidental presence of any of these elements and which exceed the concentration level established by the department.

4. No later than July 1, 1992, a manufacturer or distributor shall not offer for sale or sell, or offer for promotional purposes, in this state, a product in a package which includes in the package itself or in any of the packaging components, inks, dyes, pigments, adhesives, stabilizers, or any other additives, any lead, cadmium, mercury, or hexavalent chromium which has been intentionally introduced as an element during manufacturing or distribution as opposed to the incidental presence of any of these elements and which exceed the concentration level established by the department.

5. The concentration levels of lead, cadmium, mercury, and hexavalent chromium present in a package or packaging component shall not exceed the following:

a Six hundred parts per million by weight by July 1, 1992.

b Two hundred fifty parts per million by weight by July 1, 1993.

c One hundred parts per million by weight by July 1, 1994.

Concentration levels of lead, cadmium, mercury, and hexavalent chromium shall be determined using American standard of testing materials test methods, as revised, or United States environmental protection agency test methods for evaluating solid waste, S-W 846, as revised.

6. The following packaging and packaging components are exempt from the requirements of this section:

a Packaging or packaging components with a code indicating a date of manufacture prior to July 1, 1990, and packaging or packaging components used by the alcoholic beverage industry or the wine industry prior to July 1, 1992.

b Packages or packaging components to which lead, cadmium, mercury, or hexavalent chromium have been added in the manufacturing, forming, printing, or distribution process in order to comply with health or safety requirements of federal law or for which there is no feasible alternative if the manufacturer of a package or packaging component petitions the department for an exemption from the provisions of this paragraph for a particular package or packaging component. The department may grant a two year exemption, if warranted, by the circumstances, and an exemption may, upon meeting either criterion of this paragraph be renewed for two years. For purposes of this paragraph, a use for which there is no feasible alternative is one in which the regulated substance is essential to the protection, safe handling, or function of the package's contents.

Packages and packaging components that would not exceed the maximum contaminant levels established but for the addition of postconsumer materials.

7. By July 1, 1992, a manufacturer or distributor of packaging or packaging components shall make available to purchasers, to the department, and to the general public upon request, certificates of compliance which state that the manufacturer's or distributor's packaging or packaging components comply with, or are exempt from, the requirements of this section.

If the manufacturer or distributor of the package or packaging component reformulates or creates a new package or packaging component, the manufacturer or distributor shall provide an amended or new certificate of compliance for the reformulated or new package or packaging component.

8. The commission shall adopt rules to implement this section and report to the general assembly on the effectiveness of this section no later than forty-two months following July 1, 1990, and recommend any other toxic substances contained in packaging to be added to the list in order to further reduce the toxicity of packaging waste.

9. A manufacturer or distributor who does not comply with the requirements of this section is guilty of a simple misdemeanor.

91 Acts ch 203 §5 SF 273 91 Acts ch 255 §15 HF 683
See Code editor's note to §15 287
Subsection 6 paragraph a amended

CHAPTER 455E

GROUNDWATER PROTECTION

455E.11 Groundwater protection fund established — appropriations.

1. A groundwater protection fund is created in the state treasury. Moneys received from sources designated for purposes related to groundwater monitoring and groundwater quality standards shall be deposited in the fund. Notwithstanding section 8.33, any unexpended balances in the groundwater protection fund and in any of the accounts within the groundwater protection fund at the end of each fiscal year shall be retained in the fund and the respective accounts within the fund. Notwithstanding section 453.7, subsection 2, interest or earnings on investments or time deposits of the moneys in the groundwater protection fund or in any of the accounts within the groundwater protection fund shall be credited to the groundwater protection fund or the respective accounts within the groundwater protection fund. The fund may be used for the purposes established for each account within the fund.

The director shall include in the departmental budget prepared pursuant to section 455A.4, subsection 1, paragraph "c", a proposal for the use of groundwater protection fund moneys, and a report of the uses of the groundwater protection fund moneys appropriated in the previous fiscal year.

The secretary of agriculture shall submit with the report prepared pursuant to section 17.3 a proposal for the use of groundwater protection fund moneys, and a report of the uses of the groundwater protection fund moneys appropriated in the previous fiscal year.

2. The following accounts are created within the groundwater protection fund:

a. A solid waste account. Moneys received from the tonnage fee imposed under section 455B.310 and from other sources designated for environmental protection purposes in relation to sanitary disposal projects shall be deposited in the solid waste account.

The department shall use the funds in the account for the following purposes:

(1) The moneys received from the tonnage fee imposed under section 455B.310 for the fiscal year beginning July 1, 1987, and ending June 30, 1988, shall be used for the following purposes:

(a) An amount equal to fifty percent of the moneys received from the tonnage fee imposed pursuant to section 455B.310 shall be reserved for the purpose of providing grants to cities and counties required to provide for sanitary disposal projects under section 455B.302 for the purpose of developing or updating plans required to be filed under section 455B.306. Grants shall be governed by section 455B.311.

(b) An amount equal to twenty-five percent of the moneys received from the tonnage fee imposed under section 455B.310 shall be reserved for the purpose of providing grants to public water supply systems to abate or eliminate threats to public health and safety resulting from contamination of the water supply source. However, a public water supply shall not receive a grant for more than ten percent of the moneys available for those purposes.

(c) An amount equal to twenty-five percent of the moneys received from the tonnage fee imposed under section 455B.310 shall be appropriated to the waste management authority.

(2) The first fifty cents per ton of funds received from the tonnage fee imposed under section 455B.310 for the fiscal year beginning July 1, 1988 and ending June 30, 1989, shall be used for the following:

(a) Six cents per ton of the amount allocated under this subparagraph is appropriated to the waste management authority within the department of natural resources.

(b) Fourteen cents per ton of the amount allocated under this subparagraph is appropriated to the University of Northern Iowa to develop and maintain the small business assistance center for the safe and economic management of solid waste and hazardous substances established at the University of Northern Iowa.

(c) Eight thousand dollars of the amount allocated under this subparagraph is appropriated to the Iowa department of public health for carrying out the departmental duties pursuant to section 135.11, subsections 20 and 21, and section 139.35.

(d) The remainder of the amount allocated under this subparagraph is appropriated to the department of natural resources for the following purposes:

(i) The development of guidelines for groundwater monitoring at sanitary disposal projects as defined in section 455B.301, subsection 18.

(ii) Abatement and cleanup of threats to the public health, safety, and the environment resulting from a sanitary landfill if an owner or operator of the landfill is unable to facilitate the abatement or cleanup. However, not more than ten percent of the total funds allocated under this subparagraph may be used for this purpose without legislative authorization.

(3) An additional fifty cents per ton from the fees imposed under section 455B.310 for the fiscal year beginning July 1, 1988 and ending June 30, 1989 shall be used by the department to develop and im-

plement demonstration projects for landfill alternatives to solid waste disposal including recycling programs.

(4) The additional fifty cents per ton collected from the fee imposed under section 455B.310 for the fiscal year beginning July 1, 1988 and ending June 30, 1989 may be retained by the agency making the payments to the state provided that a separate account is established for these funds and that they are used in accordance with the requirements of section 455B.306.

(5) The first fifty cents per ton of funds received from the tonnage fee imposed under section 455B.310 for the fiscal year beginning July 1, 1989 and ending June 30, 1990, shall be used for the following:

(a) Six cents per ton of the amount allocated under this subparagraph is appropriated to the waste management authority within the department of natural resources.

(b) Fourteen cents per ton of the amount allocated under this subparagraph is appropriated to the University of Northern Iowa to develop and maintain the small business assistance center for the safe and economic management of solid waste and hazardous substances established at the University of Northern Iowa.

(c) Eight thousand dollars of the amount allocated under this subparagraph is appropriated to the Iowa department of public health for carrying out the departmental duties pursuant to section 135.11, subsections 20 and 21, and section 139.35.

(d) The remainder of the amount allocated under this subparagraph is appropriated to the department of natural resources for the following purposes:

(i) The development of guidelines for groundwater monitoring at sanitary disposal projects as defined in section 455B.301, subsection 18.

(ii) Abatement and cleanup of threats to the public health, safety, and the environment resulting from a sanitary landfill if an owner or operator of the landfill is unable to facilitate the abatement or cleanup. However, not more than ten percent of the total funds allocated under this subparagraph may be used for this purpose without legislative authorization.

(6) One dollar per ton from the fees imposed under section 455B.310 for the fiscal year beginning July 1, 1989 and ending June 30, 1990 shall be used by the department to develop and implement demonstration projects for landfill alternatives to solid waste disposal including recycling programs.

(7) The additional fifty cents per ton collected from the fee imposed under section 455B.310 for the fiscal year beginning July 1, 1989 and ending June 30, 1990 may be retained by the agency making the payments to the state provided that a separate account is established for these funds and that they are used in accordance with the requirements of section 455B.306.

(8) The first fifty cents per ton of funds received

from the tonnage fee imposed for the fiscal year beginning July 1, 1990, and thereafter shall be used for the following:

(a) Twenty cents per ton of the amount allocated under this subparagraph is appropriated to the university of northern Iowa to develop and maintain the Iowa waste reduction center for the safe and economic management of solid waste and hazardous substances established at the university of northern Iowa.

(b) Thirty cents per ton of the amount allocated under this subparagraph is appropriated to the department of natural resources for the following purposes:

(i) Eight thousand dollars of the amount allocated under this subparagraph shall be transferred to the Iowa department of public health for carrying out the departmental duties pursuant to section 135.11, subsections 20 and 21, and section 139.35.

(ii) The administration and enforcement of a groundwater monitoring program and other required programs which are related to solid waste management.

(iii) The development of guidelines for groundwater monitoring at sanitary disposal projects as defined in section 455B.301, subsection 18.

(iv) The waste management authority of the department of natural resources.

(9) One dollar per ton from the fees imposed under section 455B.310 for the fiscal year beginning July 1, 1990 and thereafter shall be used by the department to develop and implement demonstration projects for landfill alternatives to solid waste disposal including recycling programs.

(10) Fifty cents per ton per year of funds received from the tonnage fee imposed under section 455B.310 for the fiscal year beginning July 1, 1990, and thereafter may be retained by the agency making the payments to the state provided that a separate account is established for these funds and that they are used in accordance with the requirements of section 455B.306.

(11) Each additional fifty cents per ton per year of funds received from the tonnage fee for the fiscal period beginning July 1, 1990 and thereafter is allocated for the following purposes:

(a) Thirty-five cents per ton per year shall be allocated to the department of natural resources for the following purposes:

(i) Twenty-five cents per ton per year shall be used to develop and implement demonstration projects for landfill alternatives to solid waste disposal including recycling programs.

(ii) No more than ten cents of the thirty-five cents per year may be used for the administration of a groundwater monitoring program and other required programs which are related to solid waste management, if the amount of funds generated for administrative costs in this fiscal period is less than the amount generated for the costs in the fiscal year beginning July 1, 1988.

(b) Fifteen cents per ton per year shall be used as follows:

(i) If the fees are collected by a city or county or public agency, the moneys shall be retained by the city, county, or public agency. Upon receipt of the moneys, the city, county, or public agency shall return the moneys to a city, county, or public agency served by the sanitary disposal project for the purpose of implementation of the waste volume reduction and recycling requirements of the comprehensive plans filed pursuant to section 455B 306.

(ii) If the fees are collected by a private agency which provides for the final disposal of solid waste by the residents of a city or county, the moneys shall be remitted to the department. Upon receipt of the moneys, the department shall return the moneys to the city, county, or public agency served by the sanitary disposal project for the implementation of the waste volume reduction and recycling requirements of the comprehensive plans filed pursuant to section 455B 306. Notwithstanding the remittance requirement under this subparagraph subdivision part (ii), if a private agency is designated to develop and implement the comprehensive plan pursuant to section 455B 306, the fees collected under this subparagraph subdivision part (ii) shall be retained by the private agency for the purpose of implementation of the waste volume reduction and recycling requirement of the comprehensive plans filed pursuant to section 455B 306.

Each sanitary landfill owner or operator shall submit to the department a return regarding the use of the fees allocated under this subparagraph subdivision (b) concurrently with the return submitted pursuant to section 455B 310, subsection 5.

(12) Cities, counties, and private agencies subject to fees imposed under section 455B 310 may use the funds collected in accordance with the provisions of this section and the conditions of this subsection. The funds used from the account may only be used for any of the following purposes:

(a) Development and implementation of an approved comprehensive plan.

(b) Development of a closure or postclosure plan.

(c) Development of a plan for the control and treatment of leachate which may include a facility plan or detailed plans and specifications.

(d) Preparation of a financial plan, but these funds may not be used to actually contribute to any fund created to satisfy financial requirements, or to contribute to the purchase of any instrument to meet this need.

On January 1 of the year following the first year in which the funds from the account are used, and annually thereafter, the agency shall report to the department as to the amount of the funds used, the exact nature of the use of the funds, and the projects completed. The report shall include an audit report which states that the funds were, in fact, used entirely for purposes authorized under this subsection.

(13) If moneys appropriated to the portion of the solid waste account to be used for the administration of groundwater monitoring programs and other required programs that are related to solid waste man-

agement remain unused at the end of any fiscal year, the moneys remaining shall be allocated to the portion of the account used for abatement and cleanup of threats to the public health, safety, and the environment, resulting from sanitary landfills. If the balance of the moneys in the portion of the account used for abatement and cleanup exceeds three million dollars, the moneys in excess shall be used to fund the development and implementation of demonstration projects for landfill alternatives to solid waste disposal including recycling.

b. An agriculture management account. Moneys collected from the groundwater protection fee levied pursuant to section 200 8, subsection 4, the portion of the fees collected pursuant to sections 206 8, subsection 2, and 206 12, subsection 3, and other moneys designated for the purpose of agriculture management shall be deposited in the agriculture management account. The agriculture management account shall be used for the following purposes:

(1) Nine thousand dollars of the account is appropriated to the Iowa department of public health for carrying out the departmental duties under section 135 11, subsections 20 and 21, and section 139 35.

(2) Two hundred thousand dollars of the moneys deposited in the agriculture management account is appropriated to the department of agriculture and land stewardship for the fiscal year beginning July 1, 1987, and ending June 30, 1988, for the demonstration projects regarding agriculture drainage wells and sinkholes. Any remaining balance of the appropriation made for the purpose of funding such demonstration projects for the fiscal year beginning July 1, 1987, and ending June 30, 1988, shall not revert to the account, notwithstanding section 8 33, but shall remain available for the purpose of funding such demonstration projects during the fiscal year beginning July 1, 1988, and ending June 30, 1990.

(3) Of the remaining moneys in the account:

(a) Thirty five percent is appropriated annually for the Leopold center for sustainable agriculture at Iowa State University of science and technology.

(b) Two percent is appropriated annually to the department of natural resources for the purpose of administering grants to counties and conducting oversight of county-based programs relative to the testing of private water supply wells and the proper closure of private abandoned wells. Not more than seventeen and one half percent of the moneys is appropriated annually to the department of natural resources for grants to counties for the purpose of conducting programs of private, rural water supply testing, not more than six percent of the moneys is appropriated annually to the state hygienic laboratory to assist in well testing, and not more than seventeen and one-half percent of the moneys is appropriated annually to the department of natural resources for grants to counties for the purpose of conducting programs for properly closing abandoned, rural water supply wells and cisterns. A county receiving

a grant for purposes of conducting programs of private, rural water supply testing, and receiving a grant for purposes of conducting programs for properly closing abandoned rural water supply wells and cisterns, may transfer moneys dedicated to support one grant program to support the other grant program. However, in order to make the transfer, the county must have exhausted its grant moneys dedicated to support the program and the county board of supervisors must find good cause justifying the transfer. For purposes of this subparagraph subdivision, "cistern" means an artificial reservoir constructed underground for the purpose of storing rainwater.

(c) The department shall allocate a sum not to exceed seventy-nine thousand dollars of the moneys appropriated for the fiscal year beginning July 1, 1987, and ending June 30, 1988, for the preparation of a detailed report and plan for the establishment on July 1, 1988, of the center for health effects of environmental contamination. The plan for establishing the center shall be presented to the general assembly on or before January 15, 1988. The report shall include the assemblage of all existing data relating to Iowa drinking water supplies, including characteristics of source, treatment, presence of contaminants, precise location, and usage patterns to facilitate data retrieval and use in research; and detailed organizational plans, research objectives, and budget projections for the anticipated functions of the center in subsequent years. The department may allocate annually a sum not to exceed nine percent of the moneys of the account to the center, beginning July 1, 1988.

(d) Thirteen percent of the moneys is appropriated annually to the department of agriculture and land stewardship for financial incentive programs related to agricultural drainage wells and sinkholes, for studies and administrative costs relating to sinkholes and agricultural drainage wells programs. Of the thirteen percent allocated for financial incentive programs, not more than fifty thousand dollars is appropriated for the fiscal year beginning July 1, 1987, and ending June 30, 1988, to the department of natural resources for grants to county conservation boards for the development and implementation of projects regarding alternative practices in the remediation of noxious weeds or other vegetation within highway rights-of-way. Any remaining balance of the appropriation made for the purpose of funding of projects regarding alternative practices in the remediation of noxious weeds or other vegetation within highway rights-of-way for the fiscal year beginning July 1, 1987, and ending June 30, 1988, shall not revert to the account, notwithstanding section 8.33, but shall remain available for the purpose of funding the projects during the fiscal period beginning July 1, 1988, and ending June 30, 1990.

c. A household hazardous waste account. The moneys collected pursuant to section 455F.7 and moneys collected pursuant to section 29C.8A which are designated for deposit, shall be deposited in the

household hazardous waste account. Two thousand dollars is appropriated annually to the Iowa department of public health to carry out departmental duties under section 135.11, subsections 20 and 21, and section 139.35. The remainder of the account shall be used to fund Toxic Cleanup Days and the efforts of the department to support a collection system for household hazardous materials, including public education programs, training, and consultation of local governments in the establishment and operation of permanent collection systems, and the management of collection sites, education programs, and other activities pursuant to chapter 455F, including the administration of the household hazardous materials permit program by the department of revenue and finance.

The department shall submit to the general assembly, annually on or before January 1, an itemized report which includes but is not limited to the total amount of moneys collected and the sources of the moneys collected, the amount of moneys expended for administration of the programs funded within the account, and an itemization of any other expenditures made within the previous fiscal year.

d. A storage tank management account. All fees collected pursuant to section 455B.473, subsection 5, and section 455B.479, shall be deposited in the storage tank management account, except those moneys deposited into the Iowa comprehensive petroleum underground storage tank fund pursuant to section 455B.479. Funds shall be expended for the following purposes:

(1) One thousand dollars is appropriated annually to the Iowa department of public health to carry out departmental duties under section 135.11, subsections 20 and 21, and section 139.35.

(2) Twenty-three percent of the proceeds of the fees imposed pursuant to section 455B.473, subsection 5, and section 455B.479 shall be deposited in the account annually, up to a maximum of three hundred fifty thousand dollars. If twenty-three percent of the proceeds exceeds three hundred fifty thousand dollars, the excess shall be deposited into the fund created in section 455G.3. Three hundred fifty thousand dollars is appropriated from the storage tank management account to the department of natural resources for the administration of a state storage tank program pursuant to chapter 455B, division IV, part 8, and for programs which reduce the potential for harm to the environment and the public health from storage tanks.

(3) The remaining funds in the account are appropriated annually to the Iowa comprehensive petroleum underground storage tank fund.

e. An oil overcharge account. The oil overcharge moneys distributed by the United States department of energy, and approved for the energy related components of the groundwater protection strategy available through the energy conservation trust created in section 93.11, shall be deposited in the oil overcharge account as appropriated by the general assembly. The oil overcharge account shall be used for the following purposes:

(1) The following amounts are appropriated to the department of natural resources to implement its responsibilities pursuant to section 455E.8:

(a) For the fiscal year beginning July 1, 1987 and ending June 30, 1988, eight hundred sixty thousand dollars is appropriated.

(b) For the fiscal year beginning July 1, 1988 and ending June 30, 1989, six hundred fifty thousand dollars is appropriated.

(c) For the fiscal year beginning July 1, 1989 and ending June 30, 1990, six hundred thousand dollars is appropriated.

(d) For the fiscal year beginning July 1, 1990 and ending June 30, 1991, five hundred thousand dollars is appropriated.

(e) For the fiscal year beginning July 1, 1991 and ending June 30, 1992, five hundred thousand dollars is appropriated.

(2) For the fiscal year beginning July 1, 1987 and ending June 30, 1988, five hundred sixty thousand dollars is appropriated to the department of natural resources for assessing rural, private water supply quality.

(3) For the fiscal period beginning July 1, 1987 and ending June 30, 1989, one hundred thousand dollars is appropriated annually to the department of natural resources for the administration of a groundwater monitoring program at sanitary landfills.

(4) The following amounts are appropriated to the Iowa state water resources research institute to provide competitive grants to colleges, universities, and private institutions within the state for the development of research and education programs regarding alternative disposal methods and groundwater protection:

(a) For the fiscal year beginning July 1, 1987 and ending June 30, 1988, one hundred twenty thousand dollars is appropriated.

(b) For the fiscal year beginning July 1, 1988 and ending June 30, 1989, one hundred thousand dollars is appropriated.

(c) For the fiscal year beginning July 1, 1989 and ending June 30, 1990, one hundred thousand dollars is appropriated.

(5) The following amounts are appropriated to

the department of natural resources to develop and implement demonstration projects for landfill alternatives to solid waste disposal, including recycling programs:

(a) For the fiscal year beginning July 1, 1987 and ending June 30, 1988, seven hundred sixty thousand dollars is appropriated.

(b) For the fiscal year beginning July 1, 1988 and ending June 30, 1989, eight hundred fifty thousand dollars is appropriated.

(6) For the fiscal period beginning July 1, 1987 and ending June 30, 1988, eight hundred thousand dollars is appropriated to the Leopold center for sustainable agriculture.

(7) Seven million five hundred thousand dollars is appropriated to the agriculture energy management fund created under chapter 467E for the fiscal period beginning July 1, 1987 and ending June 30, 1992, to develop nonregulatory programs to implement integrated farm management of farm chemicals for environmental protection, energy conservation, and farm profitability; interactive public and farmer education; and applied studies on best management practices and best appropriate technology for chemical use efficiency and reduction.

(8) The following amounts are appropriated to the department of natural resources to continue the Big Spring demonstration project in Clayton county.

(a) For the fiscal period beginning July 1, 1987 and ending June 30, 1990, seven hundred thousand dollars is appropriated annually.

(b) For the fiscal period beginning July 1, 1990 and ending June 30, 1992, five hundred thousand dollars is appropriated annually.

(9) For the fiscal period beginning July 1, 1987 and ending June 30, 1990, one hundred thousand dollars is appropriated annually to the department of agriculture and land stewardship to implement a targeted education program on best management practices and technologies for the mitigation of groundwater contamination from or closure of agricultural drainage wells, abandoned wells, and sinkholes.

91 Acts, ch 257, §6 HF 706, 91 Acts, ch 268, §237 SF 529

Subsection 2, paragraph a, subparagraph (11), subparagraph subdivision (b) amended

Subsection 2 paragraph b, subparagraph (3), subparagraph subdivision (b) amended

CHAPTER 455G

IOWA COMPREHENSIVE PETROLEUM
UNDERGROUND STORAGE TANK FUND ACT**455G.1 Title — scope.**

1. This chapter is entitled the “*Iowa Comprehensive Petroleum Underground Storage Tank Fund Act*”.

2. This chapter applies to petroleum underground storage tanks for which an owner or operator is required to maintain proof of financial responsibility under federal or state law, from the effective date of the regulation of the federal environmental protection agency governing that tank, and not from the effective compliance date, unless the effective compliance date of the regulation is the effective date of the regulation. An owner or operator of a petroleum underground storage tank required by federal or state law to maintain proof of financial responsibility for that underground storage tank is subject to this chapter and chapter 424.

a. As of May 5, 1989, tanks excluded by the federal Resource Conservation and Recovery Act, subtitle I, included the following:

(1) A farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes.

(2) A tank used for storing heating oil for consumptive use on the premises where stored.

(3) A septic tank.

(4) A pipeline facility, including gathering lines, regulated under any of the following:

(a) The federal Natural Gas Pipeline Safety Act of 1968.

(b) The federal Hazardous Liquid Petroleum Pipeline Safety Act of 1979.

(c) State laws comparable to the provisions of the law referred to in subparagraph subdivision (a) or (b).

(5) A surface impoundment, pit, pond, or lagoon.

(6) A storm water or wastewater collection system.

(7) A flow-through process tank.

(8) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(9) A storage tank situated in an underground area, such as a basement, cellar, mine working, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor to permit inspection of its entire surface.

b. As of May 5, 1989, tanks exempted or excluded by United States environmental protection agency financial responsibility regulations, 40 C.F.R. § 280.90, included the following:

(1) Underground storage tank systems not in operation on or after the applicable compliance date.

(2) Those owned or operated by state and federal governmental entities whose debts and liabilities are the debts and liabilities of a state or the United States.

(3) Any underground storage tank system holding hazardous wastes listed or identifiable under subtitle C of the federal Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.

(4) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) or 402 of the federal Clean Water Act.

(5) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and reservoirs and electrical equipment tanks.

(6) Any underground storage tank system whose capacity is one hundred ten gallons or less.

(7) Any underground storage tank system that contains a de minimis concentration of regulated substances.

(8) Any emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use.

(9) Any underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 C.F.R. pt. 50, appendix A.

(10) Airport hydrant fuel distribution systems.

(11) Underground storage tank systems with field-constructed tanks.

c. If and when federal law changes, the department of natural resources shall adopt by rule such additional requirements, exemptions, deferrals, or exclusions as required by federal law. It is expected that certain classes of tanks currently exempted or excluded by federal regulation will be regulated by the United States environmental protection agency in the future. A tank which is not required by federal law to maintain proof of financial responsibility shall not be subject to department of natural resources rules on proof of financial responsibility.

91 Acts, ch 252, §7, 8 SF 362

Subsection 2, unnumbered paragraph 1 amended

Subsection 2, paragraph b, subparagraph (1) stricken and rewritten

455G.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. “*Authority*” means the Iowa finance authority created in chapter 220.

2. “*Board*” means the Iowa comprehensive petroleum underground storage tank fund board.

3. “*Bond*” means a bond, note, or other obligation issued by the authority for the fund and the purposes of this chapter.

4. “*Claimant*” means an owner or operator who has received assistance under the remedial account or who has coverage under the insurance account with respect to a release, or an installer or inspector who has coverage under the insurance account.

5. “*Community remediation*” means a program of coordinated testing, planning, or remediation, involving two or more tank sites potentially connected with a continuous contaminated area, pursuant to rules adopted by the board. A community remediation does not expand the scope of coverage otherwise available or relieve liability otherwise imposed under state or federal law.

6. “*Corrective action*” means an action taken to minimize, eliminate, or clean up a release to protect the public health and welfare or the environment. Corrective action includes, but is not limited to, excavation of an underground storage tank for the purposes of repairing a leak or removal of a tank, removal of contaminated soil, and cleansing of groundwaters or surface waters. Corrective action does not include replacement of an underground storage tank or other capital improvements to the tank. Corrective action specifically excludes third-party liability. Corrective action includes the expenses incurred to prepare a site cleanup report for approval by the department of natural resources detailing the planned response to a release or suspected release, but not necessarily all actions proposed to be taken by a site cleanup report.

7. “*Diminution*” is the amount of petroleum which is released into the environment prior to its intended beneficial use.

8. “*Diminution rate*” is the presumed rate at which petroleum experiences diminution, and is equal to one-tenth of one percent of all petroleum deposited into a tank.

9. “*Free product*” means a regulated substance that is present as a nonaqueous phase liquid.

10. “*Fund*” means the Iowa comprehensive petroleum underground storage tank fund.

11. “*Improvement*” means the acquisition, construction, or improvement of any tank, tank system, or monitoring system in order to comply with state and federal technical requirements or to obtain insurance to satisfy financial responsibility requirements.

12. “*Insurance*” includes any form of financial assistance or showing of financial responsibility sufficient to comply with the federal Resource Conservation and Recovery Act or the Iowa department of natural resources’ underground storage tank financial responsibility rules.

13. “*Insurance premium*” includes any form of premium or payment for insurance or for obtaining other forms of financial assurance, or showing of financial responsibility.

14. “*Petroleum*” means 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).

15. “*Potentially responsible party*” means a person who may be responsible or liable for a release for which the fund has made payments for corrective action or third-party liability.

16. “*Pre corrective action value*” means the assessed value of the tank site immediately prior to the discovery of a petroleum release.

17. “*Release*” means any spilling, leaking, emitting, discharging, escaping, leaching, or dispersing from an underground storage tank into groundwater, surface water, or subsurface soils.

18. “*Small business*” means a business that meets all of the following requirements:

a. Is independently owned and operated.

b. Owns at least one, but no more than twelve tanks at no more than two different tank sites.

c. Has a net worth of four hundred thousand dollars or less.

19. “*Tank*” means an underground storage tank for which proof of financial responsibility is, or on a date definite will be, required to be maintained pursuant to the federal Resource Conservation and Recovery Act and the regulations from time to time adopted pursuant to that Act or successor Acts or amendments.

20. “*Third-party liability*” means both of the following:

a. Property damage including physical injury to tangible property, but not including loss of use, other than costs to remediate.

b. Bodily injury including sickness, bodily injury, illness, or death.

91 Acts, ch 252, §9-12 SF 362
 Subsections renumbered to alphabetize
 NEW subsections 4, 5, 9, 15, and 17
 Subsection 6 amended
 Subsection 20, unnumbered paragraph 2 stricken

455G.3 Establishment of Iowa comprehensive petroleum underground storage tank fund.

1. The Iowa comprehensive petroleum underground storage tank fund is created as a separate fund in the state treasury, and any funds remaining in the fund at the end of each fiscal year shall not revert to the general fund but shall remain in the Iowa comprehensive petroleum underground storage tank fund. Interest or other income earned by the fund shall be deposited in the fund. The fund shall include moneys credited to the fund under this section and sections 423.24, 455G.8, 455G.9, 455G.10, 455G.11, and 455G.13, and other funds which by law may be credited to the fund. The moneys in the fund are appropriated to and for the purposes of the board as provided in this chapter. Amounts in the fund shall not be subject to appropriation for any other purpose by the general assembly, but shall be used only for the purposes set forth in this chapter. The treasurer of state shall act as custodian of the fund and dis-

burse amounts contained in it as directed by the board including automatic disbursements of funds as received pursuant to the terms of bond indentures and documents and security provisions to trustees and custodians. The treasurer of state is authorized to invest the funds deposited in the fund at the direction of the board and subject to any limitations contained in any applicable bond proceedings. The income from such investment shall be credited to and deposited in the fund. The fund shall be administered by the board which shall make expenditures from the fund consistent with the purposes of the programs set out in this chapter without further appropriation. The fund may be divided into different accounts with different depositories as determined by the board and to fulfill the purposes of this chapter.

2 The board shall assist Iowa's owners and operators of petroleum underground storage tanks in complying with federal environmental protection agency technical and financial responsibility regulations by establishment of the Iowa comprehensive petroleum underground storage tank fund. The authority may issue its bonds, or series of bonds, to assist the board, as provided in this chapter.

3 The purposes of this chapter shall include but are not limited to any of the following:

a To establish a remedial account to fund corrective action for petroleum releases as provided by section 455G 9.

b To establish a loan guarantee account, as provided by and to the extent permitted by section 455G 10.

c To establish an insurance account for insurable underground storage tank risks within the state as provided by section 455G 11.

4 The state, the general fund of the state, or any other fund of the state, other than the Iowa comprehensive petroleum underground storage tank fund, is not liable for a claim or cause of action in connection with a tank not owned or operated by the state, or agency of the state. All expenses incurred by the fund shall be payable solely from the fund and no liability or obligation shall be imposed upon the state. The liability of the fund is limited to the extent of coverage provided by the account under which a claim is submitted, subject to the terms and conditions of that coverage. The liability of the fund is further limited by the moneys made available to the fund, and no remedy shall be ordered which would require the fund to exceed its then current funding limitations to satisfy an award or which would restrict the availability of moneys for higher priority sites. The state is not liable for a claim presented against the fund.

5 For purposes of payment of refunds of the environmental protection charge under section 424 15 by the department of revenue and finance, the treasurer of state shall allocate to the department of revenue and finance the total amount budgeted by the fund's board for environmental protection charge refunds. Any unused funds shall be remitted to the treasurer of state.

455G.4 Governing board.

1 *Members of the board.* The Iowa comprehensive petroleum underground storage tank fund board is established consisting of the following members:

a The director of the department of natural resources, or the director's designee.

b The treasurer of state, or the treasurer's designee.

c The commissioner of insurance, or the commissioner's designee.

d Two public members appointed by the governor and confirmed by the senate to staggered four-year terms, except that of the first members appointed, one public member shall be appointed for a term of two years and one for a term of four years. A public member shall have experience, knowledge, and expertise of the subject matter embraced within this chapter. Two public members shall be appointed with experience in either, or both, financial markets or insurance.

A public member shall not have a conflict of interest. For purposes of this section a "conflict of interest" means an affiliation, within the twelve months before the member's appointment, with the regulated tank community, or with a person or property and casualty insurer offering competitive insurance or other means of financial assurance or which previously offered environmental hazard insurance for a member of the regulated tank community.

The filling of positions reserved for public representatives, vacancies, membership terms, payment of compensation and expenses, and removal of members are governed by chapter 69. Members of the board are entitled to receive reimbursement of actual expenses incurred in the discharge of their duties within the limits of funds appropriated to the board or made available to the fund. Each member of the board may also be eligible to receive compensation as provided in section 7E 6. The members shall elect a voting chairperson of the board from among the members of the board.

2 *Department cooperation with board.* The director of the department of natural resources shall cooperate with the board in the implementation of this part so as to minimize unnecessary duplication of effort, reporting, or paperwork and maximize environmental protection.

3 *Rules and emergency rules.*

a The board shall adopt rules regarding its practice and procedures, develop underwriting standards, establish premiums for insurance account coverage and risk factors, procedures for investigating and settling claims made against the fund, determine appropriate deductibles or retentions in coverages or benefits offered, and otherwise implement and administer this chapter.

b The board may adopt administrative rules under section 17A 4, subsection 2, and section 17A 5, subsection 2, paragraph "b", to implement this subsection for one year after May 5, 1989.

c Rules necessary for the implementation and

91 Acts ch 159 §29 SF 356
NEW subsection 5

collection of the environmental protection charge shall be adopted on or before June 1, 1989.

d. Rules necessary for the implementation and collection of insurance account premiums shall be adopted prior to offering insurance to an owner or operator of a petroleum underground storage tank or other person.

e. Rules related to the establishment of the insurance account and the terms and conditions of coverage shall be adopted as soon as practicable to permit owners and operators to meet their applicable compliance date with federal financial responsibility regulations.

f. Rules to facilitate and encourage the use of community remediation whenever possible shall be adopted.

91 Acts, ch 252, §13 SF 362
Subsection 3, NEW paragraph f

455G.9 Remedial program.

1. *Limits of remedial account coverage.* Moneys in the remedial account shall only be paid out for the following:

a. (1) Corrective action for an eligible release reported to the department of natural resources on or after July 1, 1987, but prior to May 5, 1989. Third-party liability is specifically excluded from remedial account coverage. For a claim for a release for a small business under this subparagraph, the remedial program shall pay in accordance with subsection 4. For all other claims under this subparagraph, the remedial program shall pay the lesser of fifty thousand dollars of the total costs of corrective action for that release or total corrective action costs for that release as determined under subsection 4. For a release to be eligible for coverage under this subparagraph the following conditions must be satisfied:

(a) The owner or operator applying for coverage shall not be a person who is maintaining, or has maintained, proof of financial responsibility for federal regulations through self-insurance.

(b) The owner or operator applying for coverage shall not have claimed bankruptcy any time on or after July 1, 1987.

(c) The claim for coverage pursuant to this subparagraph must have been filed with the board prior to January 31, 1990, except that cities and counties must have filed their claim with the board by September 1, 1990.

(d) The owner or operator at the time the release was reported to the department of natural resources must have been in compliance with then current monitoring requirements, if any, or must have been in the process of compliance efforts with anticipated requirements, including installation of monitoring devices, a new tank, tank improvements or retrofit, or any combination.

(2) Corrective action, up to one million dollars total, and subject to prioritization rules as established pursuant to section 455G.12A, for a release reported to the department of natural resources after May 5, 1989, and on or before October 26, 1990.

Third-party liability is specifically excluded from remedial account coverage. Corrective action coverage provided pursuant to this paragraph may be aggregated with other financial assurance mechanisms as permitted by federal law to satisfy required aggregate and per occurrence limits of financial responsibility for both corrective action and third-party liability, if the owner's or operator's effective financial responsibility compliance date is prior to October 26, 1990. School districts who reported a release to the department of natural resources prior to December 1, 1990, shall have until July 1, 1991, to report a claim to the board for remedial coverage under this subparagraph.

(3) Corrective action for an eligible release reported to the department of natural resources on or after January 1, 1985, but prior to July 1, 1987. Third-party liability is specifically excluded from remedial account coverage. For a claim for a release for a small business under this subparagraph, the remedial program shall pay in accordance with subsection 4. For all other claims under this subparagraph, the remedial program shall pay the lesser of fifty thousand dollars of the total costs of corrective action for that release or total corrective action costs for that release as determined under subsection 4. For a release to be eligible for coverage under this subparagraph the following conditions must be satisfied:

(a) The owner or operator applying for coverage must be currently engaged in the business for which the tank connected with the release was used prior to the report of the release.

(b) The owner or operator applying for coverage shall not be a person who is maintaining, or has maintained, proof of financial responsibility for federal regulations through self-insurance.

(c) The owner or operator applying for coverage shall not have claimed bankruptcy any time on or after January 1, 1985.

(d) The claim for coverage pursuant to this subparagraph must have been filed with the board prior to September 1, 1990.

(e) The owner or operator at the time the release was reported to the department of natural resources must have been in compliance with then current monitoring requirements, if any, or must have been in the process of compliance efforts with anticipated requirements, including installation of monitoring devices, a new tank, tank improvements or retrofit, or any combination.

(4) One hundred percent of the costs of corrective action for a release reported to the department of natural resources on or before July 1, 1991, if the owner or operator is not a governmental entity and is a not-for-profit organization exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code with a net annual income of twenty-five thousand dollars or less for the year 1990, and if the tank which is the subject of the corrective action is a registered tank and is under one thousand one hundred gallons capacity.

(5) For the purposes of calculating corrective ac-

tion costs under this paragraph, corrective action shall include the cost of a tank system upgrade required by section 455B.474, subsection 1, paragraph "f", subparagraph (8). Payments under this subparagraph shall be limited to a maximum of ten thousand dollars for any one site.

(6) For the purposes of calculating corrective action costs under this paragraph, corrective action shall include the costs associated with monitoring required by the rules adopted under section 455B.474, subsection 1, paragraph "f", but corrective action shall exclude monitoring used for leak detection required by rules adopted under section 455B.474, subsection 1, paragraph "a"

b Corrective action and third-party liability for a release discovered on or after January 24, 1989, for which a responsible owner or operator able to pay cannot be found and for which the federal underground storage tank trust fund or other federal monies do not provide coverage. For the purposes of this section property shall not be deeded or quitclaimed to the state or board in lieu of cleanup. Additionally, the ability to pay shall be determined after a claim has been filed. The board is not liable for any cost where either the responsible owner or operator, or both, have a net worth greater than fifteen thousand dollars, or where the responsible party can be determined. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

c Corrective action and third-party liability for a tank owned or operated by a financial institution eligible to participate in the remedial account under section 455G.16 if the prior owner or operator is unable to pay, if so authorized by the board as part of a condition or incentive for financial institution participation in the fund pursuant to section 455G.16. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

d One hundred percent of the costs of corrective action and third-party liability for a release situated on property acquired by a county for delinquent taxes pursuant to chapters 445 through 448, for which a responsible owner or operator able to pay, other than the county, cannot be found. A county is not a "responsible party" for a release in connection with property which it acquires in connection with delinquent taxes, and does not become a responsible party by sale or transfer of property so acquired. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

e For the costs of any other activities which the board determines are necessary and convenient to facilitate compliance with and to implement the intent of federal laws and regulations and this chapter.

f Corrective action for a release reported to the department of natural resources after May 5, 1989, and on or before October 26, 1990, in connection with a tank owned or operated by a state agency or department which elects to participate in the remedial account pursuant to this paragraph. A state agency or department which does not receive a standing unlimited appropriation which may be used to pay for the costs of a corrective action may opt, with the approval of the board, to participate in the remedial account. As a condition of opting to participate in the remedial account, the agency or department shall pay all registration fees, storage tank management fees, environmental protection charges, and all other charges and fees upon all tanks owned or operated by the agency or department in the same manner as if the agency or department were a person required to maintain financial responsibility. Once an agency has opted to participate in the remedial program, it cannot opt out, and shall continue to pay all charges and fees upon all tanks owned or operated by the agency or department so long as the charges or fees are imposed on similarly situated tanks of a person required to maintain financial responsibility. The board shall by rule adopted pursuant to chapter 17A provide the terms and conditions for a state agency or department to opt to participate in the remedial account. A state agency or department which opts to participate in the remedial account shall be subject to the minimum copayment schedule of subsection 4, as if the state agency or department were a person required to maintain financial responsibility.

g One hundred percent of the costs up to twenty thousand dollars incurred by the board under section 455G.12A, subsection 2, unnumbered paragraph 2, for site cleanup reports. Costs of a site cleanup report which exceed twenty thousand dollars shall be considered a cost of corrective action and the amount shall be included in the calculations for corrective action cost copayments under section 455G.9, subsection 4. The board shall have the discretion to authorize a site cleanup report payment in excess of twenty thousand dollars if the site is participating in community remediation.

h Corrective action for the costs of a release under all of the following conditions:

(1) The property upon which the tank causing the release was situated was transferred by inheritance, devise, or bequest.

(2) The property upon which the tank causing the release was situated has not been used to store or dispense petroleum since January 1, 1974.

(3) The person who received the property by inheritance, devise, or bequest was not the owner of the property during the period of time when the release which is the subject of the corrective action occurred.

(4) The release was reported to the board by July 1, 1991.

Corrective action costs and copayment amounts under this paragraph shall be paid in accordance with subsection 4.

A person requesting benefits under this paragraph may establish that the conditions of subparagraphs (1), (2), and (3) are met through the use of supporting documents, including a personal affidavit.

i. One hundred percent of the costs of corrective action for a governmental subdivision in connection with a tank which was in place on the date the release was discovered or reported if the governmental subdivision did not own or operate the tank which caused the release and if the governmental subdivision did not obtain the property upon which the tank giving rise to the release is located on or after May 3, 1991. Property acquired pursuant to eminent domain in connection with a United States department of housing and urban development approved urban renewal project is eligible for payment of costs under this paragraph whether or not the property was acquired on or after May 3, 1991.

2. Remedial account funding. The remedial account shall be funded by that portion of the proceeds of the use tax imposed under chapter 423 and other moneys and revenues budgeted to the remedial account by the board.

3. Trust fund to be established. When the remedial account has accumulated sufficient capital to provide dependable income to cover the expenses of expected future releases or expected future losses for which no responsible owner is available, the excess capital shall be transferred to a trust fund administered by the board and created for that purpose.

4. Minimum copayment schedule.

a. An owner or operator who reports a release to the department of natural resources after May 5, 1989, and on or before October 26, 1990, shall be required to pay the following copayment amounts:

(1) If a site's total anticipated expenses are not reserved for more than, or actual expenses do not exceed, eighty thousand dollars, the owner or operator shall pay the greater of five thousand dollars or eighteen percent of the total costs of corrective action for that release.

(2) If a site's total anticipated expenses are reserved for more than, or actual expenses exceed, eighty thousand dollars, the owner or operator shall pay the amount as designated in subparagraph (1) plus thirty-five percent of the total costs of the corrective action for that release which exceed eighty thousand dollars.

b. The remedial account shall pay the remainder, as required by federal regulations, of the total costs of the corrective action for that release, except that a county shall not be required to pay a copayment in connection with a release situated on property acquired in connection with delinquent taxes, as provided in subsection 1, paragraph "d", unless subsequent to acquisition the county actively operates a tank on the property for purposes other than risk assessment, risk management, or tank closure.

5. Priority of claims. The board shall adopt rules to prioritize claims and allocate available money if funds are not available to immediately settle all current claims.

6. Recovery of gain on sale of property. If an owner or operator ceases to own or operate a tank site for which remedial account benefits were received within ten years of the receipt of any account benefit and sells or transfers a property interest in the tank site for an amount which exceeds one hundred twenty percent of the precorrective action value, adjusted for equipment and capital improvements, the owner or operator shall refund to the remedial account an amount equal to ninety percent of the amount in excess of one hundred twenty percent of the precorrective action value up to a maximum of the expenses incurred by the remedial account associated with the tank site plus interest, equal to the interest for the most recent twelve-month period for the most recent bond issue for the fund, on the expenses incurred, compounded annually. An owner or operator under this subsection shall notify the board of the sale or transfer of the property interest in the tank site. Expenses incurred by the fund are a lien upon the property recordable and collectible in the same manner as the lien provided for in section 424.11 at the time of sale or transfer, subject to the terms of this section.

This subsection shall not apply if the sale or transfer is pursuant to a power of eminent domain, or benefits. When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.

7. Recurring releases treated as a newly reported release. A release shall be treated as a release reported on or after May 5, 1989, if prior to May 5, 1989, a release was reported to the department, corrective action was taken pursuant to a site cleanup report approved by the department, and the work performed was accepted by the department. For purposes of this subsection, work performed is accepted by the department if the department did not order further action within ninety days of the date on which the department had notice that the work was completed, unless the department clearly indicated in writing to the owner, operator, contractor, or other agent that additional work would be required beyond that specified in the site cleanup report or in addition to the work actually performed.

8. Expenses of cleanup not required. When an owner or operator who is eligible for benefits under this chapter is allowed by the department of natural resources to monitor in place, the expenses incurred for cleanup beyond the level required by the department of natural resources are not covered under any of the accounts established under the fund. The cleanup expenses incurred for work completed beyond what is required is the responsibility of the person contracting for the excess cleanup.

9. Owner or operator defined. For purposes of receiving benefits under this section, "owner or op-

erator” means the then current tank owner or operator or the owner of the land for which a covered release was reported or application for benefits was submitted on or before the relevant application deadlines of this section.

10. *Self-insureds.* For a self-insured as determined under IAC 567-136.6, to qualify for remedial benefits under this section, tanks shall be upgraded by January 1, 1995, as specified by the United States environmental protection agency in 40 C.F.R. § 280.21, as amended through January 1, 1989. A self-insured who qualifies for benefits under this section shall repay any benefits received if the upgrade date is not met.

91 Acts, ch 252, §14-24 SF 362
 Subsection 1, paragraph a, subparagraphs (1) and (2) amended
 Subsection 1, paragraph a, subparagraph (3), unnumbered paragraph 1 amended
 Subsection 1, paragraph a, NEW subparagraphs (4), (5), and (6)
 Subsection 1, paragraphs b, c and d amended
 Subsection 1, NEW paragraphs g, h and i
 Subsection 4 stricken and rewritten
 Subsection 6, unnumbered paragraph 1 amended
 Subsection 7 amended
 NEW subsections 8, 9 and 10

455G.10 Loan guarantee account.

1. The board may create a loan guarantee account to offer loan guarantees to small businesses for the following purposes:

- a. All or a portion of the expenses incurred by the applicant small business for its share of corrective action.
- b. Tank and monitoring equipment improvements necessary to satisfy federal technical standards to become insurable.

Moneys from the revenues derived from the use tax imposed under chapter 423 may be used to fund the loan guarantee account according to the fund budget as approved by the board. Loan guarantees shall be made on terms and conditions determined by the board to be reasonable, except that in no case may a loan guarantee satisfy more than ninety percent of the outstanding balance of a loan.

2. A separate nonlapsing loan guarantee account is created within the fund. Any funds remaining in the account at the end of each fiscal year shall not revert to the general fund but shall remain in the account. The loan account shall be maintained by the treasurer of state. All expenses incurred by the loan account shall be payable solely from the loan account and no liability or obligation shall be imposed upon the state beyond this amount.

3. The board shall administer the loan guarantee account. The board may delegate administration of the account, provided that the administrator is subject to the board’s direct supervision and direction. The board shall adopt rules regarding the provision of loan guarantees to financially qualified small businesses for the purposes permitted by subsection 1. The board may impose such terms and conditions as it deems reasonable and necessary or appropriate. The board shall take appropriate steps to publicize the existence of the loan account.

4. In calculating the net worth of an applicant for

a loan guarantee, the board shall use the fair market value of any property on which a tank is sited, and not the precorrective action value required for recovery of gain upon later sale of the same property under section 455G.9, subsection 6.

5. As a condition of eligibility for financial assistance from the loan guarantee account, a small business shall demonstrate satisfactory attempts to obtain financing from private lending sources. When applying for loan guarantee account assistance, the small business shall demonstrate good faith attempts to obtain financing from at least two financial institutions. The board may first refer a tank owner or operator to a financial institution eligible to participate in the fund under section 455G.16; however, if no such financial institution is currently willing or able to make the required loan, the small business shall determine if any of the previously contacted financial institutions would make the loan in participation with the loan guarantee account. The loan guarantee account may offer to guarantee a loan, or provide other forms of financial assistance to facilitate a private loan.

6. The maturity for each financial assistance package made by the board pursuant to this chapter shall be the shortest feasible term commensurate with the repayment ability of the small business borrower. However, the maturity date of a loan shall not exceed twenty years and the guarantee is ineffective beyond the agreed term of the guarantee or twenty years from initiation of the guarantee, whichever term is shorter.

7. The source of funds for the loan account shall be from the following:

- a. Loan guarantee account income, including loan guarantee service fees, if any, and investment income attributed to the account by the board.
- b. Moneys allocated to the account by the board according to the fund budget approved by the board.
- c. Moneys appropriated by the federal government or general assembly and made available to the loan account.

8. A loan loss reserve account shall be established within the loan guarantee account. A default on a loan guaranteed under this section shall be paid from such reserve account. In administering the program, the board shall periodically determine the necessary loan loss reserve needed and shall set aside the appropriate moneys in the loan loss reserve account for payment of loan defaults. This reserve shall be determined based on the credit quality of the outstanding guaranteed loans at the time that the reserve requirement is being determined. A default is not eligible for payment until the lender has satisfied all administrative and legal remedies for settlement of the loan and the loan has been reduced to judgment by the lender. After the default has been reduced to judgment and the guarantee paid from the reserve account, the board is entitled to an assignment of the judgment. The board shall take all appropriate action to enforce the judgment or may enter into an agreement with the lender to provide

for enforcement. Upon collection of the amount guaranteed, any excess collected shall be deposited into the fund. The general assembly is not obligated to appropriate any moneys to pay for any defaults or to appropriate any moneys to be credited to the reserve account. The loan guarantee program does not obligate the state or the board except to the extent provided in this section, and the board in administering the program shall not give or lend the credit of the state of Iowa.

91 Acts ch 252 §25 SF 362
Subsection 6 amended

455G.11 Insurance account.

1 *Insurance account as a financial assurance mechanism.* The insurance account shall offer financial assurance for a qualified owner or operator under the terms and conditions provided for under this section. Coverage may be provided to the owner or the operator, or to each separately. The board is not required to resolve whether the owner or operator, or both are responsible for a release under the terms of any agreement between the owner and operator.

The source of funds for the insurance account shall be from the following:

a Moneys allocated to the board or moneys allocated to the account by the board according to the fund budget approved by the board.

b Moneys collected as an insurance premium including service fees, if any, and investment income attributed to the account by the board.

2 *Limits of coverage available.* An owner or operator required to maintain proof of financial responsibility may purchase coverage up to the federally required levels for that owner or operator subject to the terms and conditions under this section and those adopted by the board.

3 *Eligibility of owners and operators for insurance account coverage.* An owner or operator, subject to underwriting requirements and such terms and conditions deemed necessary and convenient by the board, may purchase insurance coverage from the insurance account to provide proof of financial responsibility provided that a tank to be insured satisfies one of the following conditions:

a Satisfies performance standards for new underground storage tank systems as specified by the federal environmental protection agency in 40 C F R § 280.20, as amended through January 1, 1989.

b Has satisfied on or before the date of the application standards for upgraded underground storage tank systems as specified by the federal environmental protection agency in 40 C F R § 280.21, as amended through January 1, 1989.

c The applicant certifies in writing to the board that the tank to be insured will be brought into compliance with either paragraph "a" or "b", on or before October 26, 1993, provided that prior to the provision of insurance account coverage, the tank site tests release free. For a tank qualifying for insurance

coverage pursuant to this paragraph at the time of application or renewal, the owner or operator shall pay a per tank premium equal to two times the normally scheduled premium for a tank satisfying paragraph "a" or "b". An owner or operator who fails to comply as certified to the board on or before October 26, 1993, shall not insure that tank through the insurance account unless and until the tank satisfies the requirements of paragraph "a" or "b".

d The applicant either:

(1) Is maintaining financial responsibility pursuant to current or previously applicable federal or state financial responsibility requirements on petroleum underground storage tanks within the state.

(2) Complies with the applicable following date for financial responsibility:

(a) On or before April 26, 1990, for a petroleum marketing firm owning at least thirteen, but no more than ninety nine petroleum underground storage tanks.

(b) On or before October 26, 1990, for an owner or operator not described in subparagraph subdivision (a), and not currently or previously required to maintain financial responsibility by federal or state law on tanks within the state.

4 *Actuarially sound premiums based on risk factor adjustments after five years.* The annual premium for insurance coverage shall be:

a For the year July 1, 1989, through June 30, 1990, one hundred dollars per tank.

b For the year July 1, 1990, through June 30, 1991, one hundred fifty dollars per tank.

c For the year July 1, 1991, through June 30, 1992, two hundred dollars per tank.

d For the year July 1, 1992, through June 30, 1993, two hundred fifty dollars per tank.

e For the year July 1, 1993, through June 30, 1994, three hundred dollars per tank.

f For subsequent years, an owner or operator applying for coverage shall pay an annually adjusted insurance premium for coverage by the insurance account. The board may only approve fund coverage through the payment of a premium established on an actuarially sound basis. Risk factors shall be taken into account in establishing premiums. It is the intent of the general assembly that an actuarially sound premium reflect the risk to the insurance account presented by the insured. Risk factor adjustments should reflect the range of risk presented by the variety of tank systems, monitoring systems, and risk management practices in the general insurable tank population. Premium adjustments for risk factors should at minimum take into account lifetime costs of a tank and monitoring system and insurance account premiums for that tank system so as to provide a positive economic incentive to the owner or operator to install the more environmentally safe option so as to reduce the exposure of the insurance account to loss. Actuarially sound is not limited in its meaning to fund premium revenue equaling or exceeding fund expenditures for the general tank population.

If coverage is purchased for any part of a year the purchaser shall pay the full annual premium

g The insurance account may offer, at the buyer's option, a range of deductibles. A ten thousand dollar deductible policy shall be offered

5 Future repeal The future repeal of this section shall not terminate the following obligations or authorities necessary to administer the obligations until these obligations are satisfied

a The payment of claims filed prior to the effective date of any future repeal, against the insurance account until moneys in the account are exhausted. Upon exhaustion of the moneys in the account, any remaining claims shall be invalid. If following satisfaction of the obligations pursuant to this section, moneys remain in the account, the remaining moneys and moneys due the account shall be prorated and returned to premium payers on an equitable basis as determined by the board

b The resolution of a cost recovery action filed prior to the effective date of the repeal

6 Installer's and inspector's insurance coverage

a Coverage The board shall offer insurance coverage under the fund's insurance account to installers and inspectors of certified underground storage tank installations within the state for an environmental hazard arising in connection with a certified installation as provided in this subsection. Coverage shall be limited to environmental hazard coverage for both corrective action and third party liability for a certified tank installation within the state in connection with a release from that tank

b Annual premiums The annual premium shall be

(1) For the year July 1, 1991, through June 30, 1992, two hundred dollars per insured tank

(2) For the year July 1, 1992, through June 30, 1993, two hundred fifty dollars per insured tank

(3) For the year July 1, 1993, through June 30, 1994, three hundred dollars per insured tank

(4) For subsequent years, installers and inspectors shall pay an annually adjusted insurance premium to maintain coverage on each tank previously installed or newly insured by the insurance account. The board may only approve fund coverage through the payment of a premium established on an actuarially sound basis. The premium paid shall be fully earned and is not subject to refund or cancellation. If coverage is purchased for any part of a year the purchaser shall pay the full annual premium

(5) The board may offer coverage at rates based on sales if the qualifying installer or inspector cannot be rated on a per tank basis, or if the work the installer or inspector performs involves more than tank installation. The rates to develop premiums shall be based on the premium charged per tank under subparagraphs (1), (2), and (3)

c Limits of coverage available Installers and inspectors may purchase coverage up to one million dollars per occurrence and two million dollars aggregate, subject to the terms and conditions under this section and those adopted by the board

d Deductible The insurance account may offer, at the buyer's option, a range of deductibles. A ten thousand dollar deductible policy shall be offered

e Excess coverage Installers and inspectors may purchase excess coverage of up to five million dollars upon such terms and conditions as determined by the board

f Certification of tank installations The board shall adopt certification rules requiring certification of a new tank installation as a precondition to offering insurance to an owner or operator or an installer or inspector. The board shall set in the rule the effective date for the certification requirement. Certification rules shall at minimum require that an installation be personally inspected by an independent licensed engineer, local fire marshal, state fire marshal's designee, or other person who is unaffiliated with the tank owner, operator, installer or inspector, who is qualified and authorized by the board to perform the required inspection and that the tank and installation of the tank comply with applicable technical standards and manufacturer's instructions and warranty conditions. An inspector may be an owner or operator of a tank, or an employee of an owner, operator, or installer

7 Coverage alternatives The board shall provide for insurance coverage to be offered to installers and inspectors for a tank installation certified pursuant to subsection 6, through both of the following methods

a Directly through the fund with premiums and deductibles as provided in subsection 6

b In cooperation with a private insurance carrier with excess or stop loss coverage provided by the fund to reduce the cost of insurance to such installers or inspectors, and including such other terms and conditions as the board deems necessary and convenient to provide adequate coverage for a certified tank installation at a reasonable premium. An installer or inspector obtaining insurance coverage pursuant to this paragraph, may purchase excess coverage of up to five million dollars, subject to the terms and conditions as determined by the board

The insurance coverage offered pursuant to this subsection shall, at a minimum, cover environmental hazards for both corrective action and third-party liability

8 Account expenditures Moneys in the insurance account may be expended for the following purposes

a To take corrective action for and to compensate a third party for damages, including but not limited to payment of a judgment for bodily injury or property damage caused by a release from a tank, where coverage has been provided to the owner or operator from the insurance account, up to the limits of coverage extended. A personal injury is not a compensable third-party liability damage

b For the costs of any other activities as the board may determine are necessary and convenient to facilitate compliance with and to implement the

intent of federal laws and regulations and this chapter.

9. *Conditions to receive premium discount.* A person engaged in the wholesale or retail sale of petroleum shall receive a discount of eight percent on that person's annual insurance premium for all tanks located at a site which meets all of the following conditions:

a. The person maintains a tank for the purpose of storing waste oil.

b. The person accepts waste oil from the general public.

c. The person posts a notice at the site in a form and manner approved by the administrator advertising that the person will accept waste oil from the general public.

10. *Property transfer insurance.*

a. *Additional cleanup requirements.* An owner, operator, landowner, or financial institution may purchase insurance coverage under the insurance account to cover environmental damage caused by a tank in the event that governmental action requires additional cleanup beyond action level standards in effect at the time a certificate of clean was issued under section 455B.304, subsection 15, or a monitoring certificate was issued under section 455B.474, subsection 1, paragraph "h".

b. *Eligibility for coverage.* An owner, operator, landowner, or financial institution, subject to underwriting requirements and such terms and conditions deemed necessary and convenient by the board, may purchase insurance coverage from the insurance account to provide proof of financial responsibility if the following conditions are satisfied:

(1) A certificate of clean has been issued for the site under section 455B.304, subsection 15, or a monitoring certificate has been issued for the site under section 455B.474, subsection 1, paragraph "h". Property transfer coverage shall be effective on a monitored site only for the time period for which monitoring is allowed as specified in the monitoring certificate. A site which has not been issued a certificate of clean or a monitoring certificate shall not be eligible for property transfer coverage.

(2) The tank location is not covered by other environmental hazard liability insurance coverage, or is eligible for remedial benefits as provided under section 455G.9.

(3) The environmental damage is not caused by a new release.

(4) The additional cleanup is required to meet new corrective action level standards mandated by governmental action.

c. *Premiums.* The annual premium for insurance coverage shall be two hundred fifty dollars per party, per location, with an overall limit of liability per site of five hundred thousand dollars. The premiums are fully earned. Each party purchasing coverage at that site will have the total limit of liability prorated over the total limit among the policies issued, so as to avoid stacking beyond the total coverage limit of five hundred thousand dollars. If cover-

age is purchased for any part of a year, the purchaser shall pay the full annual premium.

After June 30, 1994, an owner, operator, landowner, or financial institution applying for coverage shall pay an annually adjusted insurance premium for coverage by the insurance account. The board may only approve fund coverage through the payment of a premium established on an actuarially sound basis.

d. *Coverage exclusions.* Property transfer insurance coverage offered under this subsection does not include coverage of the following:

(1) Third-party liability.

(2) Cleanup beyond the actual costs associated with the site.

(3) Loss of use of the property and other economic damages.

(4) Costs associated with additional remediation required by a voluntary change in usage of the site.

(5) Cleanup costs for additional corrective action required due to the spread of contamination on a site which has been issued a monitoring certificate.

e. *Annual monitoring.* Annual monitoring is required for any site for which coverage is purchased. Failure to comply with monitoring as prescribed by the board will invalidate insurance coverage under this subsection. For a site which has been issued a monitoring certificate, the annual monitoring requirements imposed under this paragraph shall be satisfied by the annual monitoring requirements imposed under the corrective action rules for a site which is allowed to monitor in place.

f. *Transfer of coverage.* Coverage may be transferred upon payment of a transfer fee.

g. *Rules.* The board shall adopt rules pursuant to chapter 17A as necessary to implement this subsection.

h. *Federal approval.* Property transfer insurance coverage issued under this subsection is conditioned upon continued approval by the United States environmental protection agency of the state's underground storage tank program.

11. *Limitations on third-party liability.* To the extent that coverage under this section includes third-party liability, third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

91 Acts, ch 252, §26 30 SF 362
 Subsection 3, paragraph c amended
 Subsection 6 stricken and rewritten
 Subsection 7 amended
 NEW subsections 10 and 11

455G.12A Cost containment authority.

1. *Validity of contracts.* A contract in which one of the parties to the contract is an owner or operator of a petroleum underground storage tank, for goods or services which may be payable or reimbursable from the fund, is invalid unless and until the administrator has approved the contract as fair and equitable to the tank owner or operator, and found that

the contract terms are within the range of usual and customary rates for similar or equivalent goods or services within the state, and found that the goods or services are necessary for the owner or operator to comply with fund or regulatory standards. An owner or operator may appoint the administrator as an agent for the purposes of negotiating contracts with suppliers of goods or services compensable by the fund. The administrator may select another contractor for goods or services other than the one offered by the owner or operator, if the scope of the proposed work or actual work of the offered contractor does not reflect the quality of workmanship required, or the costs are determined to be excessive.

2. *Contract approval* In the course of review and approval of a contract pursuant to this section, the administrator may require an owner or operator to obtain and submit three bids, provided that the administrator coordinates bid submission with the department. The administrator may require specific terms and conditions in a contract subject to approval.

The board shall have authority to contract for site cleanup reports. The board's responsibility for site cleanup reports is limited to those site cleanup reports subject to approval by the department of natural resources and required in connection with the remediation of a release which is eligible for benefits under section 455G.9. The site cleanup report shall address existing and available remedial technologies and the costs associated with the use of each technology. The board shall not have the authority to affect a contract which has been given written approval under this section.

3. *Exclusive contracts* The administrator may enter into a contract or an exclusive contract with the supplier of goods or services required by a class of tank owners or operators in connection with an expense payable or reimbursable from the fund, to supply a specified good or service for a gross maximum price, fixed rate, on an exclusive basis, or subject to another contract term or condition reasonably calculated to obtain goods or services for the fund or for tank owners and operators at a reasonable cost. A contract may provide for direct payment from the fund to a supplier.

The administrator may retain, subject to board approval, an independent person to assist in the review of work required in connection with a release or tank system for which fund benefits are sought, and to establish prevailing cost of goods and services needed. Nothing in this section is intended to preempt the regulatory authority of the department.

4. *Prior approval by administrator* Unless emergency conditions exist, a contractor performing services pursuant to this section shall have the budget for the work approved by the administrator prior to commencement of the work. No expense incurred which is above the budgeted amount shall be paid unless the administrator approves such expense prior to its being incurred. All invoices or bills shall be submitted with appropriate documentation as

deemed necessary by the board, no later than thirty days after the work has been performed. Neither the board nor an owner or operator is responsible for payment for work incurred which has not been previously approved by the board.

91 Acts ch 252 §31 32 SF 362
Subsection 2 NEW unnumbered paragraph 2
NEW subsection 4

455G.13 Cost recovery enforcement.

1. *Full recovery sought from owner* The board shall seek full recovery from the owner, operator, or other potentially responsible party liable for the released petroleum which is the subject of a corrective action, for which the fund expends moneys for corrective action or third-party liability, and for all other costs, including reasonable attorney fees and costs of litigation for which moneys are expended by the fund in connection with the release. When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.

2. *Limitation of liability of owner or operator* Except as provided in subsection 3:

a The board or the department of natural resources shall not seek recovery for expenses in connection with corrective action for a release from an owner or operator eligible for assistance under the remedial account except for any unpaid portion of the deductible or copayment. This section does not affect any authorization of the department of natural resources to impose or collect civil or administrative fines or penalties or fees. The remedial account shall not be held liable for any third-party liability.

b An owner or operator's liability for a release for which coverage is admitted under the insurance account shall not exceed the amount of the deductible.

3. *Owner or operator not in compliance, subject to full and total cost recovery* Notwithstanding subsection 2, the liability of an owner or operator shall be the full and total costs of corrective action and bodily injury or property damage to third parties, as specified in subsection 1, if the owner or operator has not complied with the financial responsibility or other underground storage tank rules of the department of natural resources or with this chapter and rules adopted under this chapter.

4. *Treble damages for certain violations* Notwithstanding subsections 2 and 3, the owner or operator, or both, of a tank are liable to the fund for punitive damages in an amount equal to three times the amount of any cost incurred or moneys expended by the fund as a result of a release of petroleum from the tank if the owner or operator did any of the following:

a Failed, without sufficient cause, to respond to a release of petroleum from the tank upon, or in accordance with, a notice issued by the director of the department of natural resources.

b After May 5, 1989, failed to perform any of the following:

(1) Failed to register the tank, which was known to exist or reasonably should have been known to exist

(2) Intentionally failed to report a known release

The punitive damages imposed under this subsection are in addition to any costs or expenditures recovered from the owner or operator pursuant to this chapter and in addition to any other penalty or relief provided by this chapter or any other law

However, the state, a city, county, or other political subdivision shall not be liable for punitive damages

5 *Lien on tank site* Any amount for which an owner or operator is liable to the fund, if not paid when due, by statute, rule, or contract, or determination of liability by the board or department of natural resources after hearing, shall constitute a lien upon the real property where the tank, which was the subject of corrective action, is situated, and the liability shall be collected in the same manner as the environmental protection charge pursuant to section 424 11

6 *Joinder of parties* The department of natural resources has standing in any case or contested action related to the fund or a tank to assert any claim that the department may have regarding the tank at issue in the case or contested action, upon motion and sufficient showing by a party to a cost recovery or subrogation action provided for under this section, the court or the administrative law judge shall join to the action any potentially responsible party who may be liable for costs and expenditures of the type recoverable pursuant to this section

7 *Strict liability* The standard of liability for a release of petroleum or other regulated substance as defined in section 455B 471 is strict liability

8 *Third party contracts not binding on board, proceedings against responsible party* An insurance, indemnification, hold harmless, conveyance, or similar risk sharing or risk-shifting agreement shall not be effective to transfer any liability for costs recoverable under this section The fund, board, or department of natural resources may proceed directly against the owner or operator or other allegedly responsible party This section does not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any costs or expenditures under this chapter, and does not modify rights between the parties to an agreement, except to the extent the agreement shifts liability to an owner or operator eligible for assistance under the remedial account for any damages or other expenses in connection with a corrective action for which another potentially responsible party is or may be liable Any such provision is null and void and of no force or effect

9 *Later proceedings permitted against other parties* The entry of judgment against a party to the action does not bar a future action by the board or the department of natural resources against another person who is later alleged to be or discovered to be liable for costs and expenditures paid by the

fund Notwithstanding section 668 5 no other potentially responsible party may seek contribution or any other recovery from an owner or operator eligible for assistance under the remedial account for damages or other expenses in connection with corrective action for a release for which the potentially responsible party is or may be liable Subsequent successful proceedings against another party shall not modify or reduce the liability of a party against whom judgment has been previously entered

10 *Claims against potentially responsible parties* Upon payment by the fund for corrective action or third party liability pursuant to this chapter, the rights of the claimant to recover payment from any potentially responsible party, are assumed by the board to the extent paid by the fund A claimant is precluded from receiving double compensation for the same injury

In an action brought pursuant to this chapter seeking damages for corrective action or third-party liability, the court shall permit evidence and argument as to the replacement or indemnification of actual economic losses incurred or to be incurred in the future by the claimant by reason of insurance benefits, governmental benefits or programs, or from any other source

A claimant may elect to permit the board to pursue the claimant's cause of action for any injury not compensated by the fund against any potentially responsible party, provided the attorney general determines such representation would not be a conflict of interest If a claimant so elects, the board's litigation expenses shall be shared on a pro rata basis with the claimant, but the claimant's share of litigation expenses are payable exclusively from any share of the settlement or judgment payable to the claimant

11 *Exclusion of punitive damages* The fund shall not be liable in any case for punitive damages

12 *Recovery or subrogation — installers and inspectors* Notwithstanding any other provision contained in this chapter, the board or a person insured under the insurance account has no right of recovery or right of subrogation against an installer or an inspector insured by the fund for the tank giving rise to the liability other than for recovery of any deductibles paid

91 Acts ch 252 §33 36 SF 362
See Code editor's note to §15 287
Subsections 1 6 8 9 and 10 amended
Subsection 10 NEW unnumbered paragraph 3
NEW subsection 12

455G.16 Financial institution participation in fund.

The board may impose conditions on the participation of a financial institution in the fund Conditions shall be reasonably intended to increase the quantity of private capital available for loans to tank owners or operators who are small businesses within the meaning of section 455G 2 Additionally, the board may offer incentives to financial institutions meeting conditions imposed by the board Incentives may include extended fund coverage of corrective ac

tion or third-party liability expenses, waiver of co payment or deductible requirements, or other benefits not offered to other participants, if reasonably intended to increase the quantity of private capital available for loans by an amount greater than the increased costs of the incentives to the fund

Third party liability expenses under this section specifically exclude any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution

91 Acts ch 259 § 37 SF 362
NEW unnumbered paragraph 2

455G.17 Inspectors — education — registration.

1 The board shall adopt certification procedures and standards for the following classes of persons as underground storage tank installation inspectors

a A licensed engineer, except that if underground storage tank installation is within the scope of practice of a particular class of licensed engineer, additional training shall not be required for that class A licensed engineer for whom underground storage tank installation is within the scope of practice shall be an "authorized inspector", rather than a "certified inspector"

b A fire marshal, or other person unaffiliated with the tank owner, operator, or installer

2 The board shall adopt approved curriculum for training both engineers and fire marshals or other unaffiliated persons as a precondition to their certification as underground storage tank installation inspectors

3 The board shall adopt approved curricula for training persons to install underground storage tanks in such a manner that the resulting installation may be certified under section 455G 11, subsection 6, and provide fire safety and environmental protection guidelines for persons removing tanks

4 The board shall require by rule that all certified or authorized underground storage tank inspectors register with the board and that all persons trained to perform or performing certified tank installations register with the board A person's failure to register shall not affect the person's certification, or the certification of an otherwise eligible installation performed by that person, but rules may provide for a civil penalty of no more than fifty dollars The board may provide a list of registrants to any interested person The board may impose a fee for registration to recover the costs of administering the registration account

91 Acts ch 202 § 38 39 SF 362
Subsection 4 amended
Subsection 4 stricken and former subsection 5 renumbered as 4

455G.18 Groundwater professionals — registration.

1 The department of natural resources shall adopt rules pursuant to chapter 17A requiring that groundwater professionals register with the department of natural resources

2 A groundwater professional is a person who provides subsurface soil contamination and groundwater consulting services or who contracts to perform remediation or corrective action services and is one or more of the following

a A person certified by the American institute of hydrology, the national water well association, the American board of industrial hygiene, or the association of groundwater scientists and engineers

b A professional engineer registered in Iowa

c A professional geologist certified by a national organization

d Any person who has five years of direct and related experience and training as a groundwater professional or in the field of earth sciences as of June 10, 1991

e Any other person with a license, certification, or registration to practice hydrogeology or groundwater hydrology issued by any state in the United States or by any national organization, provided that the license, certification, or registration process requires, at a minimum, all of the following

(1) Possession of a bachelor's degree from an accredited college

(2) Five years of related professional experience

3 The department of natural resources may provide for a civil penalty of no more than fifty dollars for the failure to register An interested person may obtain a list of registrants from the department of natural resources The department of natural resources may impose a fee for the registration of persons under this section

4 The registration of groundwater professionals shall not impose liability on the board, the department, or the fund for any claim or cause of action of any nature, based on the action or inaction of groundwater professionals registered pursuant to this section

91 Acts ch 252 § 40 SF 362
NEW section

455G.19 Environmental damage offset.

1 The fund's payment of a remedial claim by an owner or operator reporting a release under section 455G 9, subsection 1, paragraph "a", subparagraph (2), shall be subject to an environmental damage offset if the owner or operator closed or removed the tank and did not replace it An owner or operator who has declared bankruptcy shall not be subject to the offset A site which is not being used for commercial purposes is not subject to the offset unless offered for sale If a site is exempt under this subsection from the offset, but is later subject to the lien imposed under section 455G 13, subsection 5, the amount of the lien shall include the amount of the offset which would have been imposed if the site was not exempt during remediation

2 The offset shall be equal to the average annual environmental protection charge on diminution imposed under chapter 424 which would be paid for tanks of similar size The offset shall be based on the rate of diminution presently in force, regardless of

the date on which the tank was closed. The offset shall apply to the release which is still subject to remedial fund payments under section 455G.9.

3. Offsets under this section shall be credited to cost recovery enforcement proceeds under section 455G.8, subsection 5.

4. The board shall adopt rules as necessary and convenient for the implementation and administration of the offset.

91 Acts ch 252 §41 SF 362
NEW section

CHAPTER 467A

SOIL AND WATER CONSERVATION

467A.48 Application for public cost-sharing funds.

1. *a* An owner or occupant of land in this state is not required to establish any new permanent or temporary soil and water conservation practice unless public or other cost-sharing funds have been specifically approved for that land and actually made available to the owner or occupant.

b The owner or occupant of land is eligible to receive state cost-sharing funds to establish a permanent grass and buffer zone, including an erosion control structure or an erosion control practice to mitigate the effects of concentrated runoff on surface water quality.

c Except as otherwise provided in this chapter, the amount of cost-sharing funds made available shall not exceed fifty percent of the estimated cost as established by the commissioners of a permanent soil and water conservation practice, or fifty percent of the actual cost, whichever is less, or an amount set by the committee for a temporary soil and water conservation practice, except as otherwise provided by law with respect to land classified as agricultural land under conservation cover.

The amount of cost-sharing funds made available to establish a permanent grass and buffer zone may be up to one hundred percent of the estimated cost as established by the commissioners or one hundred percent of the actual cost, whichever is less.

The commissioners shall establish the estimated cost of permanent soil and water conservation practices in the district based upon one and two-tenths of the average cost of the practices installed in the district during the previous year. The average costs shall be reviewed and approved by the commissioners each calendar year.

2. The committee shall review these requirements once each year, and may authorize soil and water conservation district commissioners to make the mandatory establishment of any specified soil and water conservation practice in any particular case conditional on a higher proportion of public cost-sharing than is required by this section. When

the commissioners have been so authorized, they shall, in determining the amount of cost-sharing for establishment of a specified soil and water conservation practice to comply with an administrative order issued pursuant to section 467A.47, consider the extent to which the practice will contribute benefits to the public in relation to the benefits that will accrue to the individual owner or occupant of the land on which the practice is to be established. Evidence that an application for public or other cost-sharing funds, from a source or sources having authority to pay a portion of the cost of work needed to comply with an administrative order issued pursuant to section 467A.47, has been submitted to the proper officer or agency constitutes commencement of the work within the meaning of sections 467A.43 through 467A.53.

3. Upon receiving evidence of the submission of an application, the commissioners shall forward to the officer or agency to which the application was made a written request to receive notification of the disposition of the application. When notified of the approval of the application, the commissioners shall issue to the same parties who received the original administrative order, or their successors in interest, a supplementary order, to be delivered in the same manner as provided by sections 467A.43 to 467A.53 for delivery of original administrative orders. The supplementary order shall state a time, not more than six months after approval of the application for public cost-sharing funds, by which the work needed to comply with the original administrative order shall actually be commenced, and a time thereafter when the work is to be satisfactorily completed. If feasible, that time shall be within one year after the date of the supplementary order, but the owner of land on which a soil and water conservation practice is being established under this section is not required to incur a cost for the practice in any one calendar year which exceeds ten dollars per acre for each acre of land belonging to that owner and located in the county containing the land on which the required practice is being established or in counties contiguous to that county.

91 Acts, ch 268 §238 SF 529
Subsection 1 paragraph c unnumbered paragraph 1 amended

467A.71 Conservation practices revolving loan fund.

1. The division 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 and water 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 are 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 division 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 and from fees 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.

91 Acts ch 260 §1234 HF 173
Subsection 3 paragraph b amended

CHAPTER 467F

WATER PROTECTION PROJECTS AND PRACTICES

467F.4 Water protection fund.

A water protection fund is created within the division. The fund is composed of money appropriated by the general assembly for that purpose, and moneys available to and obtained or accepted by the state soil conservation committee from the United States or private sources for placement in the fund. The fund shall be divided into two accounts, the water quality protection account and the water protection practices account. The first account shall be used to carry out water quality protection projects to protect the state's surface and groundwater from point and nonpoint sources of contamination. The second account shall be used to establish water protection practices with individual landowners including but not limited to woodland establishment and protection, establishment of native grasses and forbs, sink-hole management, agricultural drainage well management, streambank stabilization, grass waterway establishment, stream buffer strip establishment,

and erosion control structure construction. Twenty-five percent of funds appropriated to the water protection practices account shall be used for woodland establishment and protection, and establishment of native grasses and forbs. Soil and water conservation district commissioners shall give priority to applications for practices that implement their soil and water resource conservation plan. The fund shall be a revolving fund from which moneys may be used for loans, grants, administrative costs, and cost-sharing.

In administering the fund the division may:

1. Contract, sue and be sued, and adopt rules necessary to carry out the provisions of this section, but the division or committee shall not in any manner directly or indirectly pledge the credit of this state.

2. Authorize payment from the water protection fund and from fees for costs, commissions, and other reasonable expenses.

91 Acts, ch 260, §1235 HF 173
Subsection 2 amended

CHAPTER 468

LEVEE AND DRAINAGE DISTRICTS AND IMPROVEMENTS

468.27 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 468.11 and 468.12 or as shown on the permanent survey, plat and profile, if one is made. The filing of the survey and report or permanent survey, plat and profile, as set forth in sections 468.172 and 468.173, shall constitute constructive notice to all persons of the rights conferred by this section. 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 except within the right-of-way of the drainage district.

Upon the establishment of the drainage district, the petitioners shall file with the county auditor the survey and report or the permanent survey, plat, and profile, if one was made, and this filing shall be constructive notice of a permanent right-of-way easement.

91 Acts, ch 80, §1 HF 480, 91 Acts, ch 191, §121 HF 687
Unnumbered paragraph 3 effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
Unnumbered paragraphs 2 and 3 amended

468.38 Commissioners to classify and assess.

When a levee or drainage district has been located and finally established or, unless otherwise provided by law, when the required proceedings have been taken to enlarge, deepen, widen, change, or extend any of the ditches, laterals, settling basins, or drains of a district, or the required proceedings have been taken to annex additional lands to a district, or a plan of the United States government for original construction of the improvements in a district has been adopted by the district under sections 468.201 through 468.216, the board shall appoint three commissioners to assess benefits and classify the lands affected by the improvement. One of the commissioners shall be a competent civil engineer and two of them shall be resident freeholders of the county in which the district is located, but not living within, nor interested in, any lands included in the district, nor related to any party whose land is affected by the district. The commissioners shall take and subscribe an oath of their qualifications and to perform the duties of classification of the lands, to fix the percentages of benefits, apportion and assess the costs and expenses of constructing the improvement, divide and rename original improvements, and, if included in the board's resolution, adopt special common outlet classifications to be maintained independent of the district's regular assessment schedules, according to law and their best judgment, skill, and ability. If the commissioners or any of them fail or neglect to act or perform the duties in the time and as required of them by law, the board shall appoint others with like qualifications to take their places and perform the duties.

91 Acts, ch 80, §2 HF 480
Section amended

468.65 Reclassification.

When, after a drainage or levee district has been established, except districts established by mutual agreement in accordance with section 468.142, and the improvements thereof constructed and put in operation, there has been a material change as to lands occupied by highway or railroad right of way or in the character of the lands benefited by the improvement, or when a repair, improvement, or extension has become necessary, the board may consider whether the existing assessments are equitable as a basis for payment of the expense of maintaining the district and of making the repair, improvement or extension. If they find the same to be inequitable in any particular, they shall by resolution express such finding, appoint three commissioners possessing the qualifications prescribed in section 468.38 and order a reclassification as follows:

1. If they find the assessments to be generally inequitable they shall order a reclassification of all property subject to assessment, such as lands, highways, and railroads in said district.

2. If the inequity ascertained by the board is limited to the proportion paid by highways or railroads,

a general reclassification of all lands shall not be necessary but the commissioners may evaluate and determine the fair proportion to be paid by such highways or railroads or both as provided in sections 468.42 and 468.43.

3. Any benefits of a character for which levee or drainage districts may be established and which are attributable to or enhanced by the improvement or by the repair, improvement, or extension thereof, shall be a proper subject of consideration in a reclassification notwithstanding the district may have been originally established for a limited purpose.

4. If after a district has been reclassified, the board in its judgment concludes there were errors in the reclassification or there is an inequitable assessment of benefits, the board may on its own motion, after notice to the landowners involved as provided in sections 468.14 through 468.18 and by resolution, order the district or any portion of the district to again be reclassified as prescribed in this section and in section 468.67.

The board may include in its resolution an order to the commissioners that they prepare special common outlet classifications, if needed, in conjunction with the reclassification of the district.

Such reclassification when finally adopted shall remain the basis for all future assessments unless revised as provided in this subchapter, parts 1 through 5.

91 Acts, ch 80, §3 HF 480
NEW unnumbered paragraph 2

468.516 Election — canvass of votes — returns.

On the day designated for said election the polls shall open at one o'clock p.m. and remain open until five o'clock p.m. unless otherwise provided under section 468.522. If no convenient polling place is to be found within the district, the election may be held at some convenient place outside the district. The judges of election shall canvass the vote and certify the result, and deposit with the auditor the ballots cast, together with the pollbooks showing the names of the voters; but if there is more than one county in the district, the returns shall be filed with the auditor of the county having the greatest acreage of said district.

91 Acts, ch 54, §1 SF 419
Section amended

468.522 Change of date and time.

The date on which the annual election shall be held and the polling hours may be changed by the choice of a majority of electors of the district expressed by ballot at any annual election, and the return of the vote shall be certified in the same manner as the returns for election of trustees. The polling hours may vary from the requirements of section 468.516, but the polls shall be open for at least three consecutive hours between the hours of 8:00 a.m. and 5:00 p.m. on the election day.

91 Acts, ch 54, §2 SF 419
Section amended

CHAPTER 470

LIFE CYCLE COST ANALYSIS OF PUBLIC FACILITIES

470.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. "Commissioner" means the state building code commissioner.
2. "Department" means the department of natural resources.
3. "Director" means the director of the department of natural resources.
4. "Economic life" means the projected or anticipated useful life of a facility as expressed by a term of years.
5. "Energy system" includes but is not limited to the following equipment or measures:
 - a. Equipment used to heat or cool the facility.
 - b. Equipment used to heat water in the facility.
 - c. On-site equipment used to generate electricity for the major facility.
 - d. On-site equipment that uses the sun, wind, oil, natural gas, coal or electricity as a power source.
 - e. Energy conservation measures in the facility design and construction that decrease the energy requirements of the facility.
6. "Facility" means a building having twenty thousand square feet or more of usable floor space that is heated or cooled by a mechanical or electrical system or any building, system, or physical operation which consumes more than forty thousand British thermal units (BTUs) per square foot per year.
7. "Initial cost" means the moneys required for the capital construction or renovation of a facility.
8. "Life cycle cost analysis" means an analytical technique that considers certain costs of owning, using and operating a facility over its economic life including but not limited to the following:
 - a. Initial costs.
 - b. System repair and replacement costs.
 - c. Maintenance costs.
 - d. Operating costs, including energy costs.
 - e. Salvage value.
9. "Public agency" means a state agency, political subdivision of the state, school district, area education agency, or community college.
10. "Renovation" means a project where additions or alterations exceed fifty percent of the value of a facility and will affect an energy system.

91 Acts, ch 253, §17, 18 SF 508
Subsections renumbered to alphabetize
NEW subsections 1-3
Subsections 6 and 9 amended

470.3 Elements of analysis.

1. A life cycle cost analysis shall include but is not limited to the following elements:

- a. Specification of energy management objectives and health, safety and functional constraints. The facility design shall comply with applicable state or local building code requirements.
- b. Identification of the energy needs of the facility and energy system alternatives to meet those needs.
- c. Cost of the energy system alternatives identified in paragraph "b" of this subsection.
- d. Determination of amounts and timing of cash flow.
- e. Calculation of life cycle cost using an economic model such as, but not limited to, rate of return, annual equivalent cost or present equivalent cost.
- f. Evaluation of design and system alternatives using a method such as, but not limited to, design matrixes, ranking tables or network analysis.

2. A public agency or a person preparing a life cycle cost analysis for a public agency shall consider the methods and analytical models provided by the department and available through the commissioner, which are suited to the purpose for which the project is intended. Within sixty days of final selection of a design architect or engineer, a public agency, which is also a state agency under section 19.34, shall notify the commissioner and the department of the methodology to be used to perform the life cycle cost analysis, on forms provided by the department.

91 Acts, ch 253, §19 SF 508
Subsection 2 amended

470.7 Life cycle cost analysis — approval.

The public agency responsible for the new construction or renovation of a public facility shall submit a copy of the life cycle cost analysis for review by the commissioner who shall consult with the department. If the public agency is also a state agency under section 19.34, comments by the department or the commissioner, including any recommendation for changes in the analysis, shall, within thirty days of receipt of the analysis, be forwarded in writing to the public agency. If either the department or the commissioner disagrees with any aspects of the life cycle cost analysis, the public agency affected shall timely respond in writing to the commissioner and the department. The response shall indicate whether the agency intends to implement the recommenda-

tions and, if the agency does not intend to implement them, the public agency shall present its reasons. The reasons may include, but are not limited to, a description of the purpose of the facility or renovation, preservation of historical architectural features, architectural and site considerations, and health and safety concerns.

Within thirty days of receipt of the response of the public agency affected, the department, the commissioner, or both, shall notify in writing the public agency affected of the department's, the commissioner's, or both's agreement or disagreement with the response. In the event of a disagreement, the department, the commissioner, or both, shall at the same time transmit the notification of disagreement with response and related papers to the executive council for resolution pursuant to section 19.34. The life cycle cost analysis process, including submittal and approval, and implementation exemption requests pursuant to section 470.8, shall be completed prior to the letting of contracts for the construction or renovation of a facility.

91 Acts ch 253 §20 SF 508
Section amended

470.8 Life cycle cost analysis — implementation and exemptions.

The public agency responsible for the new construction or renovation of a public facility shall implement the recommendations of the life cycle cost analysis.

The commissioner, in consultation with the director, shall, by rule, develop criteria to exempt facilities from the implementation requirements of this section. Using the criteria, the commissioner, in cooperation with the director, shall exempt facilities on a case by case basis. Factors to be considered when developing the exemption criteria shall include, but not be limited to, a description of the purpose of the facility or renovation, the preservation of historical architectural features, site considerations, and health and safety concerns. The commissioner and the director shall grant or deny a request for exemption from the requirements of this section within thirty days of receipt of the request.

91 Acts ch 253 §21 SF 508
NEW section

CHAPTER 472

PROCEDURE UNDER POWER OF EMINENT DOMAIN

472.37 Form of record — certificate.

Said papers shall be securely fastened together, arranged in the order named above, and be accompanied by a certificate of the officer filing the papers that the papers are true and correct copies of the original files in the proceedings and that the statements accompanying the papers are true.

91 Acts ch 116 §3 HF 534
Section amended

472.38 Record of proceedings.

The county recorder shall record the papers, state-

ments, and certificate in the record of deeds and properly index them. The recorder may return the recorded instrument to the sender or dispose of that instrument if the sender does not wish to have the instrument returned. A document filed in the recorder's office before July 1, 1990, may be returned to the sender or disposed of if the sender does not wish to have the document returned and if there is an official copy of that document in the recorder's office.

91 Acts ch 116, §4 HF 534
Section amended

CHAPTER 476

PUBLIC UTILITY REGULATION

476.1 Applicability of authority.

The utilities board within the utilities division of the department of commerce shall regulate the rates and services of public utilities to the extent and in the manner hereinafter provided.

As used in this chapter, “board” or “utilities board” means the utilities board within the utilities division of the department of commerce.

As used in this chapter, “public utility” shall include any person, partnership, business association, or corporation, domestic or foreign, owning or operating any facilities for:

1. Furnishing gas by piped distribution system or electricity to the public for compensation.
2. Furnishing communications services to the public for compensation.
3. Furnishing water by piped distribution system to the public for compensation.

Mutual telephone companies in which at least fifty percent of the users are owners, co-operative telephone corporations or associations, telephone companies having less than fifteen thousand customers and less than fifteen thousand access lines, municipally owned utilities, and unincorporated villages which own their own distribution systems are not subject to the rate regulation provided for in this chapter.

This chapter does not apply to waterworks having less than two thousand customers, municipally owned waterworks, joint water utilities established pursuant to chapter 389, rural water districts incorporated and organized pursuant to chapters 357A and 504A, cooperative water associations incorporated and organized pursuant to chapter 499, or to a person furnishing electricity to five or fewer customers either by secondary line or from an alternate energy production facility or small hydro facility, from electricity that is produced primarily for the person’s own use.

A telephone company otherwise exempt from rate regulation and having telephone exchange facilities which cross state lines may elect, in a writing filed with the board, to have its rates regulated by the board. When a written election has been filed with the board, the board shall assume rate regulation jurisdiction over the company.

The jurisdiction of the board under this chapter shall include programs designed to promote the use of energy efficiency strategies by rate or service-regulated gas and electric utilities. These programs shall be cost effective. The board may initiate these programs as pilot projects to accumulate sufficient data to determine if the programs meet the requirements of this paragraph.

91 Acts ch 150 §1 SF 504 91 Acts ch 168, §9 HF 689
 Unnumbered paragraph 5 amended
 Unnumbered paragraph 8 stricken

476.1D Regulation and deregulation of communications services.

1. Except as provided in this section, the jurisdiction of the board as to the regulation of communications services is not applicable to a service or facility that is provided or is proposed to be provided by a telephone utility that is or becomes subject to effective competition, as determined by the board. In determining whether a service or facility is or becomes subject to effective competition, the board shall consider, among other factors, whether a comparable service or facility is available from a supplier other than the telephone utility and whether market forces are sufficient to assure just and reasonable rates without regulation.

2. Deregulation of a service or facility for a utility is effective only after all of the following:

a A finding of effective competition by the board.

b Election by a utility providing the service or facility to file a deregulation accounting plan.

c Approval of a utility’s deregulation accounting plan by the board.

3. If the board determines a service or facility is subject to effective competition and approves the utility’s deregulation accounting plan, the board shall deregulate the service or facility within a reasonable time.

4. Upon deregulation, all investment, revenues, and expenses associated with the service or facility shall be removed from the telephone utility’s regulated operations and shall not be considered by the board in setting rates for the telephone utility unless they continue to affect the utility’s regulated operations. If the board considers investment, revenues, and expenses associated with unregulated services or facilities in setting rates for the telephone utility, the board shall not use any profits or costs from such unregulated services or facilities to determine the rates for regulated services or facilities. This section does not preclude the board from considering the investment, revenues, and expenses associated with the sale of classified directory advertising by a telephone utility in determining rates for the telephone utility.

5. Notwithstanding the presence of effective competition, if the board determines a service or facility is an essential communications service or facility and the public interest warrants retention of service regulation, the board shall deregulate rates and may continue service regulation.

6. The board may reimpose rate and service regulation on a deregulated service or facility if it determines the service or facility is no longer subject to effective competition.

7. The board may reimpose service regulation only on a deregulated service or facility if the board determines the service or facility is an essential communications service or facility and the public interest warrants service regulation, notwithstanding the presence of effective competition.

8. If the board reimposes regulation pursuant to subsection 6 or 7, the reimposition of regulation shall apply to all providers of the service or facility.

9. The board may investigate and obtain information from providers of deregulated services or facilities to determine whether the services or facilities are subject to effective competition or whether the service or facility is an essential communications service or facility and the public interest warrants service regulation. However, the board shall not, for purposes of this subsection, request or obtain information related to the provider's costs or earnings.

91 Acts, ch 150, §2 SF 504
NEW section

476.6 Changes in rates, charges, schedules and regulations — supply and cost review — water costs for fire protection.

1. *Filing with board.* A public utility subject to rate regulation shall not make effective a new or changed rate, charge, schedule or regulation until the rate, charge, schedule, or regulation has been approved by the board, except as provided in subsections 11 and 13.

A subscriber of a telephone exchange or service, who is declared to be legally blind under section 422.12, subsection 1, paragraph "e", is exempt from any charges for telephone directory assistance that may be approved by the board.

2. *Telephone directory assistance charges — record provided.* The board shall not approve a schedule of directory assistance charges unless the schedule provides that residential customers be provided a record of the date and time of each directory assistance call made from their residence.

3. *Telephone directory assistance charges — approval by board.* Notwithstanding contrary provisions of this section, a public utility shall not implement a charge for telephone directory assistance or implement a new or changed rate for telephone directory assistance except pursuant to a tariff that has been filed with the board and finally approved by the board.

4. *First seven calls exempted.* A telephone directory assistance tariff that is approved by the board on or after July 1, 1981, shall be subject to the limitation that a subscriber shall not be charged for the first seven directory assistance calls made from the subscriber's station during each of the first twelve months in which the tariff is in effect, and a charge made in violation of this limitation is an unlawful charge within the meaning of this chapter.

5. *Written notice of increase.* All public utilities, except those exempted from rate regulation by section 476.1, shall give written notice of a proposed increase of any rate or charge to all affected custom-

ers served by the public utility no more than sixty-two days prior to and prior to the time the application for the increase is filed with the board. Public utilities exempted from rate regulation by section 476.1 shall give written notice of a proposed increase of any rate or charge to all affected customers served by the public utility at least thirty days prior to the effective date of the increase. If the public utility is subject to rate regulation, the notice to affected customers shall also state that the customer has a right to file a written objection to the rate increase and that the affected customers may request the board to hold a public hearing to determine if the rate increase should be allowed. The board shall prescribe the manner and method that the written notice to each affected customer of the public utility shall be served.

6. *Facts and arguments submitted.* At the time a public utility subject to rate regulation files with the board an application for any new or changed rates, charges, schedules, or regulations, the public utility also shall submit factual evidence and written argument offered in support of the filing. If the filing is an application for a general rate increase, the utility shall also file affidavits containing testimonial evidence to be offered in support of the filing, although this requirement does not apply if the public utility is a rural electric cooperative.

7. *Hearing set.* After the filing of an application for new or changed rates, charges, schedules, or regulations by a public utility subject to rate regulation, the board, prior to the expiration of thirty days after the filing date, shall docket the case as a formal proceeding and set the case for hearing unless the new or changed rates, charges, schedules, or regulations are approved by the board. However, if an application presents no material issue of fact subject to dispute, and the board determines that the application violates a relevant statute, or is not in substantial compliance with a board rule lawfully adopted pursuant to chapter 17A, the application may be rejected by the board without prejudice and without a hearing, provided that the board issues a written order setting forth all of its reasons for rejecting the application. In the case of a gas public utility having less than two thousand customers, the board shall docket a case as a formal proceeding and set the case for hearing as provided in section 476.1C. In the case of a rural electric cooperative, the board may docket the case as a formal proceeding and set the case for hearing prior to the proposed effective date of the tariff. The board shall give notice of formal proceedings as it deems appropriate. The docketing of a case as a formal proceeding suspends the effective date of the new or changed rates, charges, schedules, or regulations until the rates, charges, schedules, or regulations are approved by the board, except as provided in subsection 13.

8. *Utility hearing expenses reported.* When a case has been docketed as a formal proceeding under subsection 7, the public utility, within a reasonable time thereafter, shall file with the board a report out-

lining the utility's expected expenses for litigating the case through the time period allowed by the board in rendering a decision. At the conclusion of the utility's presentation of comments, testimony, exhibits, or briefs the utility shall submit to the board a listing of the utility's actual litigation expenses in the proceeding. As part of the findings of the board under subsection 9, the board shall allow recovery of costs of the litigation expenses over a reasonable period of time to the extent the board deems the expenses reasonable and just.

9 *Finding by board* If, after hearing and decision on all issues presented for determination in the rate proceeding, the board finds the proposed rates, charges, schedules, or regulations of the utility to be unlawful, the board shall by order authorize and direct the utility to file new or changed rates, charges, schedules, or regulations which, when approved by the board and placed in effect, will satisfy the requirements of this chapter. The rates, charges, schedules, or regulations so approved are lawful and effective upon their approval.

10 *Limitation on filings* A public utility shall not make a subsequent filing of an application for a new or changed rate, charge, schedule, or regulation which relates to services for which a rate filing is pending within twelve months following the date the prior application was filed or until the board has issued a final order on the prior application, whichever date is earlier, unless the public utility applies to the board for authority and receives authority to make a subsequent filing at an earlier date.

11 *Automatic adjustments permitted* This chapter does not prohibit a public utility from making provision for the automatic adjustment of rates and charges for public utility service provided that a schedule showing the automatic adjustment of rates and charges is first filed with the board.

12 *Rate levels for telephone utilities* The board may approve a schedule of rate levels for any regulated service provided by a utility providing communication services.

13 *Temporary authority* Upon the request of a public utility, the board shall, when required by this subsection, grant the public utility temporary authority to place in effect any or all of the suspended rates, charges, schedules or regulations by filing with the board a bond or other undertaking approved by the board conditioned upon the refund in a manner to be prescribed by the board of any amounts collected in excess of the amounts which would have been collected under rates, charges, schedules or regulations finally approved by the board. In determining that portion of the new or changed rates, charges, schedules or regulations to be placed in effect prior to a final decision, the board shall apply previously established regulatory principles and shall, at a minimum, permit rates and charges which will allow the utility the opportunity to earn a return on common stock equity equal to that which the board held reasonable and just in the most recent rate case involving the same utility or

the same type of utility service, provided that if the most recent final decision of the board in an applicable rate case was rendered more than twelve months prior to the date of filing of the request for temporary rates, the board shall in addition consider financial market data that is filed or that is otherwise available to the board and shall adjust the rate of return on common stock equity that was approved in that decision upward or downward as necessary to reflect current conditions. The board shall render a decision on a request for temporary authority within ninety days after the date of filing of the request. The decision shall be effective immediately. If the board has not rendered a final decision with respect to suspended rates, charges, schedules or regulations upon the expiration of ten months after the filing date, plus the length of any delay that necessarily results either from the failure of the public utility to exercise due diligence in connection with the proceedings or from intervening judicial proceedings, plus the length of any extension permitted by section 476.33, subsection 3, then those portions that were approved by the board on a temporary basis shall be deemed finally approved by the board and the utility may place them into effect on a permanent basis, and the utility also may place into effect subject to refund and until the final decision of the board any portion of the suspended rates, charges, schedules or regulations not previously approved on a temporary basis by filing with the board a bond or other undertaking approved by the board.

If the board finds that an extension of the ten-month period is necessary to permit the accumulation of necessary data with respect to the operation of a newly constructed electric generating facility that has a capacity of one hundred megawatts or more of electricity and that is proposed to be included in the rate base for the first time, the board may extend the ten-month period up to a maximum extension of six months, but only with respect to that portion of the suspended rates, charges, schedules or regulations that are necessarily connected with the inclusion of the generating facility in the rate base. If a utility is proposing to include in its rate base for the first time a newly constructed electric generating facility that has a capacity of one hundred megawatts or more of electricity, the filing date of new or changed rates, charges, schedules or regulations shall, for purposes of computing the ninety-day and ten-month limitations stated above, be the date as determined by the board that the new plant went into service, but only with respect to that portion of the suspended rates, charges, schedules or regulations that are necessarily connected with the inclusion of the generating facility in the rate base.

The board shall determine the rate of interest to be paid by a public utility to persons receiving refunds. The interest rate to be applied to refunds of moneys collected subject to refund under this subsection is two percent per annum plus the average quarterly interest rate at commercial banks for twenty-four month loans for personal expenditures,

as determined by the board, compounded annually. The board shall consider federal reserve statistical release G 19 or its equivalent when determining interest to be paid under this subsection.

14 *Refunds passed on to customers* If pursuant to federal law or rule a rate-regulated public utility furnishing gas to customers in the state receives a refund or credit for past gas purchases, the savings shall be passed on to the customers in a manner approved by the board. Similarly, if pursuant to federal law or rule a rate-regulated public utility furnishing gas to customers in the state receives a rate for future gas purchases which is lower than the price included in the public utility's approved rate application, the savings shall be passed on to the customers in a manner approved by the board.

15 *Natural gas supply and cost review* The board shall periodically, but not less than annually, conduct a proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's natural gas procurement and contracting practices. The natural gas supply and cost review shall be conducted as a contested case pursuant to chapter 17A.

Under procedures established by the board, each rate-regulated public utility furnishing gas shall periodically file a complete natural gas procurement plan describing the expected sources and volumes of its gas supply and changes in the cost of gas anticipated over a future twelve-month period specified by the board. The plan shall describe all major contracts and gas supply arrangements entered into by the utility for obtaining gas during the specified twelve-month period. The description of the major contracts and arrangements shall include the price of gas, the duration of the contract or arrangement, and an explanation or description of any other term or provision as required by the board. The plan shall also include the utility's evaluation of the reasonableness and prudence of its decisions to obtain gas in the manner described in the plan, an explanation of the legal and regulatory actions taken by the utility to minimize the cost of gas purchased by the utility, and such other information as the board may require.

During the natural gas supply and cost review, the board shall evaluate the reasonableness and prudence of the gas procurement plan. In evaluating the gas procurement plan, the board shall consider the volume, cost, and reliability of the major alternative gas supplies available to the utility, the cost of alternative fuels available to the utility's customers, the availability of gas in storage, the appropriate legal and regulatory actions which the utility could take to minimize the cost of purchased gas, the gas procurement practices of the utility, and other relevant factors. If a utility is not taking all reasonable actions to minimize its purchase gas costs, consistent with assuring an adequate long-term supply of natural gas, the board shall not allow the utility to recover from its customers purchase gas costs in excess of those costs that would be incurred under reasonable and prudent policies and practices.

16 *Annual electric energy supply and cost review* The board shall conduct an annual proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's procurement and contracting practices related to the acquisition of fuel for use in generating electricity. The proceeding shall be conducted as a contested case pursuant to chapter 17A. Under procedures established by the board, the utility shall file information as the board deems appropriate. If a utility is not taking all reasonable actions to minimize its fuel costs, the board shall not allow the utility to recover from its customers fuel costs in excess of those costs that would be incurred under reasonable and prudent policies and practices.

17 *Comprehensive energy management required for electric utilities* An electric utility shall not have an increased revenue requirement finally approved under this section in any application for increased rates filed on or after January 1, 1992, unless the utilities board finds that the electric utility has in effect a comprehensive energy management program which meets the primary objectives of section 476A 6, subsection 4.

18 *Water costs for fire protection in certain cities*

a Application A city furnished water by a public utility subject to rate regulation may apply to the board for inclusion of all or a part of the costs of fire hydrants or other improvements, maintenance, and operations for the purpose of providing adequate water production, storage, and distribution for public fire protection in the rates or charges assessed to consumers covered by the applicant's fire protection service. The application shall be made in a form and manner approved by or as directed by the board. The applicant shall provide such additional information as the board may require to consider the application.

b Review The board shall review the application, and may in its discretion consider additional evidence, beyond that supplied in the application or provided by the applicant in response to a request for additional information pursuant to paragraph "a", including, but not limited to, soliciting oral or written testimony from other interested parties.

c Notice Written notice of a proposed rate increase shall be provided by the public utility pursuant to subsection 5, except that notice shall be provided within ninety days of the date of application. Costs of the notice shall be paid for by the applicant.

d Conditions for approval As a condition to approving an application to include water-related fire protection costs in the utility's rates or charges, the board shall make an affirmative determination that the following conditions will be met.

(1) That the service area currently charged for fire protection, either directly or indirectly, is substantially the same service area containing those persons who will pay for water related fire protection through inclusion of such costs within the utility's rates or charges.

(2) That the inclusion of such costs within the utility's rates or charges will not cause substantial inequities among the utility's customers

(3) That all or a portion of the costs sought to be included in the utility's rates or charges by the applicant are reasonable in the circumstances, and limited to the purposes specified in paragraph "a"

(4) That written notice has been provided pursuant to paragraph "c" and that the costs of the notice have been paid by the applicant

e Inclusion within rates or charges If the board affirmatively determines that the conditions of paragraph "d" are or will be satisfied, the board shall include the reasonable costs in the rates or charges assessed to consumers covered by the applicant's fire protection service

f Written order The board shall issue a written order within six months of the date of application. The written order shall include a recitation of the facts found pursuant to consideration of the application

19 *Energy efficiency implementation, cost review, and cost recovery*

a The board shall conduct contested case proceedings for review of energy efficiency plans and budgets filed by rate-regulated gas or electric utilities. The board may approve, reject, or modify the plans and budgets. Notwithstanding the provisions of section 17A 19, subsection 5, in an application for judicial review of the board's decision concerning a utility's energy efficiency plan or budget, the reviewing court shall not order a stay. Whenever a request to modify an approved plan or budget is filed subsequently by the office of consumer advocate or a rate-regulated gas or electric public utility, the board shall promptly initiate a formal proceeding if the board determines that any reasonable ground exists for investigating the request. The formal proceeding may be initiated at any time by the board on its own motion. Implementation of board approved plans or budgets shall be considered continuous in nature and shall be subject to investigation at any time by the board or the office of the consumer advocate

b An energy efficiency plan and budget shall be designed to expend annually, at a minimum, the following designated percentage of the gas and electric rate-regulated utility's gross operating revenues during the previous calendar year derived from intra state public utility operations

(1) For electric rate-regulated utilities, two percent

(2) For gas rate-regulated utilities, one and one half percent

A rate-regulated electric utility or rate-regulated gas utility shall have the designated expenditure requirement included in its energy efficiency plan and budget on or before January 1, 1992. The board may waive the spending requirement for an individual utility if the board determines after the contested case proceeding in paragraph "a", that the expenditure level of the energy efficiency programs included in the utility's approved energy efficiency plan is less than the spending requirement

Energy efficiency expenditures incurred on or after July 1, 1990, may be included in a utility's initial energy efficiency plan and budget submitted pursuant to paragraph "a"

c A rate-regulated utility shall submit for consideration in its energy efficiency plan, at a minimum, the following programs, where relevant to the utility's services

(1) A hot water heater insulation blanket distribution program

(2) A commercial lighting program

(3) A rebate, coupon, or other program for purchases of goods, including but not limited to light bulbs, which contribute to energy efficiency

(4) A tree planting program to moderate the physical environment and to consume atmospheric carbon dioxide resulting from burning fossil fuels within the state for energy, provided, however, that the tree planting program is not required to itself be energy efficient or cost effective

(5) A cooperative program with any community action agency within the utility's service area to implement countywide or communitywide energy efficiency programs for qualified low income persons

Each of these programs, except the tree planting program contained in subparagraph (4), shall be approved as part of the utility's plan only if the board determines the program to be cost effective for that utility

d The board may periodically conduct a contested case proceeding to evaluate the reasonableness and prudence of a gas or electric rate-regulated public utility's implementation of the utility's approved energy efficiency plan and budget and provide for the recovery of expenditures and related costs of the provision of energy efficiency projects. Notice to customers shall be in a manner prescribed by the board, provided, however, that the board shall not allow energy efficiency to be represented in customer billings as a separate cost or expense. The board shall consider the cost effectiveness of the projects and shall allow the utility to recover the reasonable expenditures and related costs of the projects determined to be cost effective. A utility shall also recover the reasonable expenditures and related costs of an energy efficiency project which is not cost-effective if the board determines the utility was prudent and reasonable in the planning and implementation of the energy efficiency project. The board may treat the expenditures and related costs incurred by a utility pursuant to the utility's approved energy efficiency plan and budget as capital items for ratemaking purposes. Recovery pursuant to this paragraph shall not be allowed until eighteen months after the board's final order in the initial contested case to review a utility's proposed energy efficiency plan and budget pursuant to paragraph "a"

e In addition to the expenditures and related costs collected pursuant to paragraph "d", if the board determines sufficient justification exists for assessing a reward or penalty on the utility for its performance regarding energy efficiency, the board

may allow the utility to collect an amount as a reward or may require an amount to be deducted from the recovery of expenditures and related costs as a penalty. The rewards and penalties of this paragraph shall be in addition to the provisions of section 476.52.

f. The legislative council shall consider the appointment of a legislative interim study committee in 1996 to review the success or failure of the substantive and procedural provisions for energy efficiency cost recovery contained in this section. The interim study committee, if appointed, shall make recommendations to the general assembly on any required changes due to the experience gained from the previous two biennial energy efficiency plan and budget cycles.

g. A rate-regulated utility required to submit an energy efficiency plan under this subsection shall, upon the request of a state agency or political subdivision to which it provides service, provide advice and assistance regarding measures which the state agency or political subdivision might take in achieving improved energy efficiency results. The cooperation shall include assistance in accessing financial assistance for energy efficiency measures.

20. *Filing of forecasts.* The board shall periodically require each rate-regulated gas or electric public utility to file a forecast of future gas requirements or electric generating needs and the board shall evaluate the forecast. The forecast shall include, but is not limited to, a forecast of the requirements of its customers, its anticipated sources of supply, and its anticipated means of addressing the forecasted gas requirements or electric generating needs.

21. *Energy efficiency program financing.* The board may require each rate-regulated gas or electric public utility to offer qualified customers the opportunity to enter into an agreement for the amount of moneys reasonably necessary to finance cost-effective energy efficiency improvements to the qualified customers' residential dwellings or businesses.

91Acts, ch 253, §22 SF 508
Subsection 19, NEW paragraph g

476.10 Investigations — expense — appropriation.

When the board deems it necessary in order to carry out the duties imposed upon it by this chapter for the purpose of determining rate matters to investigate the books, accounts, practices, and activities of, or make appraisals of the property of any public utility, or to render any engineering or accounting services to any public utility, or to review the operations or annual reports of the public utility under section 476.31 or 476.32, or to evaluate a proposal for reorganization under section 476.73, the public utility shall pay the expense reasonably attributable to the investigation, appraisal, service, or review. The board shall ascertain the expenses including certified expenses incurred by the consumer advocate division of the department of justice directly chargeable to the public utility under section 475A.6, and shall

render a bill to the public utility, either at the conclusion of the investigation, appraisal, services, or review, or from time to time during its progress, which bill is notice of the assessment and shall demand payment. The total amount of such expense in any one calendar year, for which any public utility shall become liable, shall not exceed two-tenths of one percent of its gross operating revenues derived from intrastate public utility operations in the last preceding calendar year.

The board shall ascertain the total of the division's expenditures during each year which are reasonably attributable to the performance of its duties under this chapter. The board shall add to this total the certified expenses of the consumer advocate as provided under section 475A.6 and shall deduct all amounts chargeable directly to any specific utility under any law. The remainder shall be assessed by the board to the public utilities in proportion to their respective gross operating revenues during the last calendar year derived from intrastate public utility operations and may be assessed by the board on a quarterly basis. Assessments may be made quarterly based upon estimates of the utilities division's and the consumer advocate's expenditures for the fiscal year. Beginning with the fiscal year beginning July 1, 1987, the first assessment for any fiscal year may be made by the utilities division by May 15 of the preceding fiscal year and shall be paid by the utility on or before the following July 1. Not more than ninety days following the close of the fiscal year, the utilities division shall conform the amount of the prior fiscal year's assessments to the requirements of this section. Public utilities exempt from rate regulation under this chapter shall not be assessed for remainder expenses incurred during review of rate-regulated public utilities under section 476.31 or 476.32, but such remainder expenses shall be assessed proportionally as provided in this section among only the rate-regulated public utilities. The total amount which may be assessed to the public utilities under authority of this paragraph shall not exceed two-tenths of one percent of the total gross operating revenues of the public utilities during the calendar year derived from intrastate public utility operations. However, the total amount which may be assessed in any one calendar year to a public utility under this section shall not exceed three-tenths of one percent of the utility's total gross operating revenues derived from intrastate public utility operation in the last preceding year. For public utilities exempted from rate regulation under this chapter, the assessments under this paragraph shall be computed at one-half the rate used in computing the assessment for other utilities.

Each utility shall pay the division the amount assessed against it within thirty days from the time the division mails notice to it of the amount due unless it shall file with the board objections in writing setting out the grounds upon which it claims that such assessment is excessive, erroneous, unlawful, or invalid. Upon the filing of such objections the board

shall set the matter down for hearing and issue its order in accordance with its findings in such proceeding, which order shall be subject to review in the manner provided in this chapter. All amounts collected by the division pursuant to the provisions of this section shall be deposited with the state treasurer and credited to the general fund of the state. Such amounts shall be spent in accordance with the provisions of chapter 8.

Whenever the board shall deem it necessary in order to carry out the duties imposed upon it in connection with rate regulation under section 476.6, investigations under section 476.3, or review proceedings under section 476.31, the board may employ additional temporary or permanent staff, or may contract with persons who are not state employees for engineering, accounting, or other professional services, or both. The costs of these additional employees and contract services shall be paid by the public utility whose rates are being reviewed in the same manner as other expenses are paid under this section. For the fiscal period beginning on July 1, 1991, and ending June 30, 1993, there is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as may be necessary to enable the board to hire additional staff and contract for services under this section. The board shall increase quarterly assessments specified in unnumbered paragraph 2, by amounts necessary to enable the board to hire additional staff and contract for services under this section. The authority to hire additional temporary or permanent staff that is granted to the board by this section shall not be subject to limitation by any administrative or executive order or decision that restricts the number of state employees or the filling of employee vacancies, and shall not be subject to limitation by any law of this state that restricts the number of state employees or the filling of employee vacancies unless that law is made applicable to this section by express reference to this section. Before the board expends or encumbers an amount in excess of the funds budgeted for rate regulation and before the board increases quarterly assessments pursuant to this paragraph, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the director of the department of management shall determine that the expenses exceed the funds budgeted by the general assembly to the board for rate regulation and that the board does not have other funds from which the expenses can be paid. Upon approval of the director of the department of management the board may expend and encumber funds for the excess expenses, and increase quarterly assessments to raise the additional funds. The board and the office of consumer advocate may add additional personnel or contract for additional assistance to review and evaluate energy efficiency plans and the implementation of energy efficiency programs including, but not limited to, professionally trained engineers, accountants, attorneys, skilled examiners and inspectors, and secretaries and

clerks. The board and the office of the consumer advocate may expend additional sums beyond those sums appropriated. However, the authority to add additional personnel or contract for additional assistance must first be approved by the department of management. The additional sums shall be provided to the board and the office of the consumer advocate by the utilities subject to the energy efficiency requirements in this chapter. The assessments shall be in addition to and separate from the quarterly assessment.

Fees paid to the utilities division shall be deposited in a utilities trust fund. The treasurer of state shall hold these funds in an account that shall be established in the names of the administrator of the utilities division and the consumer advocate for the payment, upon appropriation by the general assembly, of the expenses of the utilities division and the consumer advocate division of the department of justice. This fund is subject at all times to the warrant of the director of revenue and finance, drawn upon written requisition of the administrator of the utilities division, the administrator's designated representative, the consumer advocate, or the consumer advocate's designated representative for the payment of all salaries and other expenses necessary to carry out the duties of the utilities division or the consumer advocate division. Subject to this section, the utilities division or the consumer advocate division may keep on hand with the treasurer of state funds in excess of the current needs of the utilities division or the consumer advocate division. Transfers shall not be made from the general fund of the state or any other fund for the payment of the expenses of the divisions. No part of the funds held by the treasurer of state for the account shall be transferred to the general fund of the state or any other fund. The funds held by the treasurer of state for the account shall be invested by the treasurer of state and the income derived from these investments shall be credited to the general fund of the state. The authority to modify allotments provided in section 8.31 shall not apply to funds appropriated from the fund created in this section.

The utilities division shall transfer at the beginning of each fiscal quarter from appropriated trust funds to the administrative services trust fund an amount which represents the division's share of the estimated cost of consolidated administrative services within the department of commerce, such share to be in the same proportion as established by agreement in the fiscal year beginning July 1, 1986, and ending June 30, 1987, with the first quarterly transfer to occur between July 1 and July 31 annually. At the close of the fiscal year, actual versus estimated expenditures shall be reconciled and any overpayment shall be returned to the division or any underpayment shall be paid by the division.

The administrator and consumer advocate shall account for receipts and disbursements according to the separate duties imposed upon the utilities and consumer advocate divisions by the laws of this state

and each separate duty shall be fiscally self-sustaining.

Notwithstanding the provisions of this section and sections 478.4, 479.16, and 479A.9 directing that fees paid to the utilities division or other moneys be deposited into the utilities trust fund and not be transferred to the general fund of the state, and directing that expenses be paid from the utilities trust fund, for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, all such fees and other moneys collected under those sections shall be deposited into the general fund of the state and expenses required to be paid under this section shall be paid from funds appropriated for those purposes.

91 Acts ch 260 §1236 1237 HF 173
Restrictions on use of moneys deposited in state general fund, 91 Acts ch 263 §38 SF 209

Availability of general fund for payment of expenses see 91 Acts ch 264 §905 SF 532

See also §546 11

Unnumbered paragraph 4 amended
NEW unnumbered paragraph 8

476.10A Funding for Iowa energy center and global warming center.

The board shall direct all gas and electric utilities to remit to the treasurer of state one-tenth of one percent of the total gross operating revenues during the last calendar year derived from their intrastate public utility operations. The board shall by rule provide a schedule for remittances which shall require that the first remittance be made not before July 1, 1991. The amounts collected pursuant to this section shall be in addition to the amounts permitted to be assessed pursuant to section 476.10. The board shall allow inclusion of these amounts in the budgets approved by the board pursuant to section 476.6, subsection 19, paragraph "a" Eighty-five percent of the remittances collected pursuant to this section is appropriated to the Iowa energy center created in section 266.39C. Fifteen percent of the remittances collected pursuant to this section is appropriated to the center for global warming established by the state board of regents.

Notwithstanding section 8.33, any unexpended moneys remitted to the treasurer of state under this section shall be retained for the purposes designated. Notwithstanding section 453.7, subsection 2, interest or earnings on investments or time deposits of the moneys remitted under this section shall be retained and used for the purposes designated.

91 Acts ch 253 §23 SF 508
NEW unnumbered paragraph 2

476.51 Civil penalty.

A public utility which willfully violates a provision of this chapter, a rule adopted by the board, or a provision of an order lawfully issued by the board, is subject to a civil penalty, which may be levied by the board, of not more than one hundred dollars per violation or one thousand dollars per day of a continuing violation, whichever is greater. Civil penalties collected pursuant to this section shall be forwarded by the executive secretary of the board to the trea-

surer of state to be credited to the energy research and development fund and to be used only for the low income home energy assistance program and the weatherization assistance program administered by the division of community action agencies of the department of human rights. Penalties paid by a rate-regulated public utility pursuant to this section shall be excluded from the utility's costs when determining the utility's revenue requirement, and shall not be included either directly or indirectly in the utility's rates or charges to customers.

Notwithstanding the provisions of this section directing that civil penalties collected be deposited into the energy research and development fund, for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, all funds collected shall be deposited into the general fund of the state.

91 Acts ch 260, §1238 HF 173

Restrictions on use of moneys deposited in state general fund, see 91 Acts ch 263 §38 SF 209
NEW unnumbered paragraph 2

476.57 Limitations on use of ADAD equipment — penalty.

1. *Definition.* As used in this section, "ADAD equipment" means automatic dialing-announcing device equipment which is a device or system of devices used, either alone or in conjunction with other equipment, for the purpose of automatically selecting or dialing telephone numbers without the use of a live operator to disseminate prerecorded messages to the numbers selected or dialed.

2. *Prohibition*

a. Except as provided in paragraph "b", a person shall not use, employ, or direct another person to use, or contract for the use of ADAD equipment.

b. Except for ADAD equipment which randomly or sequentially selects the telephone numbers for calling, the prohibition in paragraph "a" does not apply to any of the following:

(1) Calls made with ADAD equipment by a non-profit organization or by an individual using the calls other than for commercial profit-making purposes or fund-raising, if the calls do not involve the advertisement or offering for sale, lease, or rental of goods, services, or property.

(2) Calls made with ADAD equipment relating to payment for, service of, or warranty coverage of previously ordered or purchased goods or services or to persons or organizations with a prior business relationship with the persons or organizations using the calls.

(3) Calls made with ADAD equipment relating to the collection of lawful debts.

(4) Calls made with ADAD equipment to members or employees of the organization making the calls.

(5) Calls made with ADAD equipment which use an initial prerecorded message of a duration no greater than seven seconds prior to a live operator intercept, or calls which involve an initial message from a live operator.

3 *Termination* Calls made with ADAD equipment must terminate the connection with any call within ten seconds after the person receiving the call acts to disconnect the call

4 *Penalty* A violation of this section is a serious misdemeanor

91 Acts ch 141 §1 HF 770
NFW section

476.58 through 476.60 Reserved

476.77 Time and standards for review.

1 A reorganization shall not take place if the board disapproves Prior to reorganization, the applicant shall file with the board a proposal for reorganization with supporting testimony and evidence to establish that the reorganization is not contrary to the interests of the public utility's ratepayers and the public interest

2 A proposal for reorganization shall be deemed to have been approved unless the board disapproves the proposal within ninety days after its filing However, the board shall not disapprove a proposal for reorganization without providing for notice and opportunity for hearing The notice of hearing shall be provided no later than fifty days after the proposal for reorganization has been filed

3 In its review of a proposal for reorganization, the board may consider all of the following

a Whether the board will have reasonable access to books, records, documents, and other information relating to the public utility or any of its affiliates

b Whether the public utility's ability to attract capital on reasonable terms, including the maintenance of a reasonable capital structure, is impaired

c Whether the ability of the public utility to provide safe, reasonable, and adequate service is impaired

d Whether ratepayers are detrimentally affected

e Whether the public interest is detrimentally affected

4 The board may adopt rules which exempt a public utility or class of public utility or class of reorganization from this section if the board finds that with respect to the public utility or class of public utility or class of reorganization review is not necessary in the public interest The board may adopt rules necessary to protect the interest of the customers of the exempt public utility These rules may include, but are not limited to, notification of a proposed sale or transfer of assets or stock The board may waive the requirements of this section, if the board finds that board review is not necessary in the public interest

91 Acts ch 68 §1 HF 386
Section amended

CHAPTER 477B

ENHANCED 911 EMERGENCY TELEPHONE COMMUNICATION SYSTEMS

477B.6 Referendum on E911 in proposed service area.

1 Before a joint E911 service board may request imposition of the surcharge by the administrator, the board shall submit the following question to voters, as provided in subsection 2, in the proposed E911 service area, and the question shall receive a favorable vote from a simple majority of persons submitting valid ballots on the following question within the proposed E911 service area

Shall the following public measure be adopted? YES
NO

Enhanced 911 emergency telephone service shall be funded, in whole or in part, by a monthly surcharge of (an amount determined by the local joint E911 service board of up to one dollar) on each telephone access line collected as part of each telephone

subscriber's monthly phone bill if provided within (description of the proposed E911 service area)

2 The referendum required as a condition of the surcharge imposition in subsection 1 shall be conducted using the following electoral mechanism

At the request of the joint E911 service board a county commissioner of elections shall include the question on the next eligible general election ballot in each electoral precinct to be served, in whole or in part, by the proposed E911 service area, provided the request is timely submitted to permit inclusion The question may be included in the next election in which all of the voters in the proposed E911 service area will be eligible to vote on the same day The county commissioner of elections shall report the results to the joint E911 service board The joint E911 service board shall compile the results if subscribers from more than one county are included within the proposed service area The joint E911 service board

shall announce whether a simple majority of the compiled votes reported by the commissioner approved the referendum question.

3. The secretary of state, in consultation with the administrator of the office of disaster services of the department of public defense, shall adopt rules

for the conduct of joint E911 service referendums as required by and consistent with subsections 1 and 2.

91 Acts, ch 129, §27, 28 HF 420
 Subsection 1. NEW unnumbered paragraph 2 and unnumbered paragraph 3 amended
 Subsection 2, unnumbered paragraph 2 amended

CHAPTER 477C

DUAL PARTY RELAY SERVICE

477C.1 Dual party relay service — purpose.

The general assembly finds that the provision of a statewide dual party relay service will further the public interest and protect the health, safety, and welfare of the people of Iowa through an increase in the usefulness and availability of the telephone system. Many deaf, hearing-impaired, and speech-impaired persons are not able to utilize the telephone system without this type of service. Therefore, it is the purpose of this chapter to enable the orderly development, operation, promotion, and funding of a statewide dual party relay service.

91 Acts, ch 194, §1 SF 318
 NEW section

477C.2 Definitions.

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

1. “Board” means the utilities board within the department of commerce created in section 474.1.
2. “Communication impairment” means the inability to use the telephone for communication without a telecommunications device for the deaf.
3. “Council” means the dual party relay council established in section 477C.5.
4. “Dual party relay service” or “relay service” means a communication service which provides communication-impaired persons access to the telephone system functionally equivalent to the access available to persons not communication-impaired.
5. “Telecommunications device for the deaf” means any specialized or supplemental telephone equipment used by communication-impaired persons to provide access to the telephone system.

91 Acts, ch 194, §2 SF 318
 NEW section

477C.3 Dual party relay service.

With the advice of the council, the board shall plan, establish, administer, and promote a statewide program to provide dual party relay service as follows:

1. The board may enter into the necessary contracts and arrangements with private entities to provide for the delivery of relay service.

2. The relay service, to the extent reasonably possible, shall allow persons with communication impairments to use the telephone system in a manner and at a rate equivalent to persons without communication impairments.

3. The relay service may be provided on a stand-alone basis within the state, with other states, or with telephone utilities providing relay service in other states.

4. The board may employ additional personnel, pursuant to section 476.10, to plan, establish, administer, and promote the relay service.

91 Acts, ch 194, §3 SF 318
 NEW section

477C.4 Telecommunications devices for the deaf.

With the advice of the council, the board may plan, establish, administer, and promote a program to secure, finance, and distribute telecommunications devices for the deaf. The board may establish eligibility criteria for persons to receive telecommunications devices for the deaf, including, but not limited to, requiring certification that the recipient cannot use the telephone for communication without a telecommunications device for the deaf.

91 Acts, ch 194, §4 SF 318
 NEW section

477C.5 Dual party relay service council.

1. A dual party relay service council is established, consisting of eleven members appointed by the board. The council shall advise the board on all matters concerning relay service and equipment distribution programs.

2. The council shall consist of:
 - a. Six consumers who have communication impairments.
 - b. Two representatives from telephone companies.
 - c. One representative from the division of deaf services of the department of human rights.
 - d. One representative from the office of the consumer advocate of the department of justice.

e One member of the board or a designee of the board.

3. Council members who are not state or local government officers or employees shall be reimbursed for their necessary and actual expenses incurred in performance of their duties and shall receive a per diem of fifty dollars when the council is meeting, payable from moneys available to the board pursuant to section 477C.7.

91 Acts, ch 194, §5 SF 318
NEW section

477C.6 Budget.

The board shall review and approve the proposed annual budget of the relay service program authorized in section 477C.3 and the equipment distribution program authorized in section 477C.4.

91 Acts, ch 194, §6 SF 318
NEW section

477C.7 Funding.

The board shall impose an annual assessment to fund the programs upon all telephone utilities providing service in the state as follows:

1. The total assessment shall be allocated one-half to local exchange telephone utilities and one-half to the following telephone utilities:

- a* Interexchange carriers.
- b* Centralized equal access providers.
- c* Alternative operator services companies.

2. The assessment shall be levied upon revenues from all intrastate regulated, deregulated services, and exempt telephone services under section 476.1.

3. The telephone utilities shall remit the assessed amounts quarterly to a special fund, as defined under section 8.2, subsection 9. The moneys in the fund are appropriated solely to plan, establish, administer, and promote the relay service and equipment distribution programs.

4. The telephone utilities subject to assessment shall provide the information requested by the board necessary for implementation of the assessment.

5. The local exchange telephone utilities shall not recover from intrastate access charges any portion of such utilities assessment imposed under this section.

91 Acts, ch 194, §7 SF 318
NFW section

CHAPTER 478

ELECTRIC TRANSMISSION LINES

478.22 Action for violation.

When the board determines that a person is in violation of this chapter, the board may commence an action in the district court of the county in which the violation is alleged to have occurred, for injunctive relief or other appropriate remedy.

91 Acts, ch 112, §1 HF 343
Section stricken and rewritten

478.29 Civil penalties.

A person who violates a provision of this chapter is subject to a civil penalty, which may be levied by the board, of not more than one hundred dollars per violation or one thousand dollars per day of a continuing violation, whichever is greater. Civil penalties

collected pursuant to this section shall be forwarded by the executive secretary of the board to the treasurer of state to be credited to the Iowa energy center created in section 266.39C.

Any civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in compromise, the board shall consider the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance after notification of a violation.

91 Acts, ch 112, §2 HF 343
Section stricken and rewritten

CHAPTER 479

PIPELINES AND UNDERGROUND GAS STORAGE

479.31 Civil penalty.

Any person who violates any provision of this chapter or any regulation issued pursuant to this chapter shall be subject to a civil penalty of not to exceed ten thousand dollars for each violation. Each day that the violation continues shall constitute a separate offense. However, the maximum civil penalty shall not exceed five hundred thousand dollars for any related series of violations. Civil penalties collected pursuant to this section shall be credited to the Iowa energy center created in section 266.39C.

Any civil penalty may be compromised by the

board. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owed by the state to the person charged, or may be recovered in a civil action.

91 Acts, ch 112, §3, HF 343
Unnumbered paragraph 1 amended

CHAPTER 490

IOWA BUSINESS CORPORATION ACT

490.130 Recording of documents with county recorder. Repealed by 91 Acts, ch 211, § 13. HF 556. See § 9.7.

490.140 Definitions.

In this chapter, unless the context requires otherwise

1 “Articles of incorporation” include amended and restated articles of incorporation and articles of merger.

2 “Authorized shares” means the shares of all classes a domestic or foreign corporation is authorized to issue.

3 “Conspicuous” means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

4 “Corporation” or “domestic corporation” means a corporation for profit, which is not a foreign corporation, incorporated under or subject to this chapter.

5 “Deliver” includes mail delivery.

6 “Distribution” means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend,

a purchase, redemption, or other acquisition of shares, a distribution of indebtedness, or otherwise.

7 “Effective date of notice” is defined in section 490.141.

8 “Employee” includes an officer but not a director. A director may accept duties that make the director also an employee.

9 “Entity” includes corporation and foreign corporation, not-for-profit corporation, profit and not-for-profit unincorporated association, business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest, and state, United States, and foreign government.

10 “Foreign corporation” means a corporation for profit incorporated under a law other than the law of this state.

11 “Governmental subdivision” includes authority, city, county, district, township, and other political subdivision.

12 “Includes” denotes a partial definition.

13 “Individual” includes the estate of an incompetent, a ward, or a deceased individual.

14 “Means” denotes an exhaustive definition.

15 “Notice” is defined in section 490.141.

16 “Person” means a person as defined in section 4.1.

17 “Principal office” means the office, in or out of this state, so designated in the annual report, where the principal executive offices of a domestic or foreign corporation are located.

18. "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

19. "Record date" means the date established under division VI or VII on which a corporation determines the identity of its shareholders for purposes of this chapter.

20. "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under section 490.840, subsection 3, for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

21. "Share" means the unit into which the proprietary interests in a corporation are divided.

22. "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

23. "State", when referring to a part of the United States, includes a state and commonwealth and their agencies and governmental subdivisions, and a territory and insular possession and their agencies and governmental subdivisions, of the United States.

24. "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

25. "United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.

26. "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

91 Acts, ch 211, §3 HF 556
Subsection 16 amended

490.632 Reacquired shares as issued but not outstanding shares.

1. A corporation which, as of December 30, 1989, treated any of its shares which it had reacquired as issued but not outstanding shares may continue to treat those shares as issued but not outstanding shares.

2. If a corporation reacquires its own shares after December 30, 1989, but before January 1, 1991, those shares constitute issued but not outstanding shares as of and after their reacquisition if either of the following is applicable:

a. When the shares are reacquired, the articles of incorporation contain a provision specifying that reacquired shares constitute issued but not outstanding shares.

b. Prior to January 1, 1991, the board of directors adopts a resolution specifying that shares reacquired after December 30, 1989, and prior to January 1, 1991, constitute issued but not outstanding shares.

3. If a corporation reacquires its own shares after December 31, 1990, those shares constitute issued but not outstanding shares if, at the time they are reacquired by the corporation, either of the following is applicable:

a. The articles of incorporation contain a provision specifying that reacquired shares constitute issued but not outstanding shares.

b. The board of directors has adopted a resolution specifying that reacquired shares constitute issued but not outstanding shares.

4. Unless otherwise provided in its articles of incorporation, a corporation may at any time, by resolution adopted by its board of directors, cancel or otherwise restore to the status of authorized but unissued shares any of its shares which it has previously reacquired and treated as issued but not outstanding shares.

91 Acts, ch 97, §54 HF 198

Subsection 2, unnumbered paragraph 1 and paragraph a amended

490.720 Shareholders' list for meeting.

1. After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group and within each voting group by class or series of shares, and show the address of and number of shares held by each shareholder.

2. The shareholders' list must be available for inspection by any shareholder beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, or a shareholder's agent or attorney, is entitled on written demand to inspect and, subject to the requirements of section 490.1602, subsection 3, to copy the list, during regular business hours and at the person's expense, during the period it is available for inspection.

3. The corporation shall make the shareholders' list available at the meeting, and any shareholder, or a shareholder's agent or attorney, is entitled to inspect the list at any time during the meeting or any adjournment.

4. If the corporation refuses to allow a shareholder, or a shareholder's agent or attorney, to inspect the shareholders' list before or at the meeting, or copy the list as permitted by subsection 2, the district court of the county where a corporation's principal office or, if none in this state, its registered office, is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

5. Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

91 Acts, ch 211, §4 HF 556
Subsection 4 amended

490.803 Number and election of directors.

1. A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

2. If a board of directors has power to fix or change the number of directors, the board may increase or decrease by thirty percent or less the number of directors last approved by the shareholders, but only the shareholders may increase or decrease by more than thirty percent the number of directors last approved by the shareholders.

3. The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the shareholders or the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed to a variable-range size board or vice versa.

4. Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under section 490.806.

91 Acts, ch 211, §5 HF 556
Subsection 3 amended

490.808 Removal of directors by shareholders.

1. The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

2. If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove that director.

3. If cumulative voting is authorized, a director shall not be removed if the number of votes sufficient to elect that director under cumulative voting is voted against the director's removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove that director exceeds the number of votes cast not to remove the director.

4. A director may be removed by the shareholders only at a meeting called for the purpose of removing the director and after notice stating that the purpose, or one of the purposes, of the meeting is removal of the director. A director shall not be removed pursuant to written consents under section 490.704 unless written consents are obtained from the holders of all the outstanding shares of the corporation entitled to vote on the removal of the director.

91 Acts, ch 211, §6 HF 556
Subsection 4 amended

490.843 Resignation and removal of officers.

1. An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date. A resignation may be orally communicated provided that the resignation is effective only if written notice of the resignation is delivered within twenty-four hours of such oral communication.

2. A board of directors may remove any officer at any time with or without cause.

91 Acts, ch 211, §7 HF 556
Subsection 1 amended

490.1322 Dissenters' notice.

1. If proposed corporate action creating dissenters' rights under section 490.1302 is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of section 490.1321.

2. The dissenters' notice must be sent no later than ten days after the proposed corporate action is authorized at a shareholders' meeting, or, if the corporate action is taken without a vote of the shareholders, no later than ten days after the corporate action is taken, and must do all of the following:

a. State where the payment demand must be sent and where and when certificates for certificated shares must be deposited.

b. Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received.

c. Supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not the person acquired beneficial ownership of the shares before that date.

d. Set a date by which the corporation must receive the payment demand, which date shall not be fewer than thirty nor more than sixty days after the date the dissenters' notice is delivered.

e. Be accompanied by a copy of this division.

91 Acts, ch 211, §8 HF 556
Subsection 2 amended

490.1325 Payment.

1. Except as provided in section 490.1327, at the time the proposed corporate action is taken, or upon receipt of a payment demand, whichever occurs later, the corporation shall pay each dissenter who complied with section 490.1323 the amount the corporation estimates to be the fair value of the dissenter's shares, plus accrued interest.

2. The payment must be accompanied by all of the following:

a. The corporation's balance sheet as of the end

of a fiscal year ending not more than sixteen months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any.

b. A statement of the corporation's estimate of the fair value of the shares.

c. An explanation of how the interest was calculated.

d. A statement of the dissenter's right to demand payment under section 490.1328.

e. A copy of this division.

91 Acts, ch 211, §9 HF 556
Subsection 1 amended

490.1326 Failure to take action.

1. If the corporation does not take the proposed

action within sixty days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.

2. If after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it must send a new dissenters' notice under section 490.1322 as if the corporate action was taken without a vote of the shareholders and repeat the payment demand procedure.

91 Acts, ch 211, §10 HF 556
Subsection 2 amended

CHAPTER 497

CO-OPERATIVE ASSOCIATIONS

497.35 Statement to estate of stockholder.

The board of directors, upon receiving actual notice of a stockholder's death, shall provide a statement to the administrator or executor of the stockholder's estate, or to the attorney representing the stockholder's estate. The statement shall describe agricultural products owned by the stockholder which are in the possession of the association.

This section shall not require an association to conduct a search of the status of its stockholders. The association shall exercise reasonable diligence in

determining to whom the statement must be delivered. The statement shall be delivered to the administrator, executor, or attorney, within thirty days following a determination as to whom the statement must be delivered. A statement is not required to be prepared or delivered, if the association is not notified of the stockholder's death within one year after the date of death, or by the date that the stockholder's estate is closed, whichever is later.

91 Acts, ch 230, §1 SF 276
NEW section

CHAPTER 498

NONPROFIT-SHARING CO-OPERATIVE ASSOCIATIONS

498.37 Statement to estate of stockholder.

The board of directors, upon receiving actual notice of a member's death, shall provide a statement to the administrator or executor of the member's estate, or to the attorney representing the member's estate. The statement shall describe agricultural products owned by the member which are in the possession of the association.

This section shall not require an association to conduct a search of the status of its members. The association shall exercise reasonable diligence in de-

termining to whom the statement must be delivered. The statement shall be delivered to the administrator, executor, or attorney, within thirty days following a determination as to whom the statement must be delivered. A statement is not required to be prepared or delivered, if the association is not notified of the member's death within one year after the date of death, or by the date that the member's estate is closed, whichever is later.

91 Acts, ch 230, §2 SF 276
NEW section

CHAPTER 499

CO-OPERATIVE ASSOCIATIONS

499.72 to 499.78 Reserved.

499.79 Statement to estate of members and stockholders.

The board of directors, upon receiving actual notice of the death of a member or stockholder, shall provide a statement to the administrator or executor of the member's or stockholder's estate, or to the attorney representing such estate. The statement shall describe agricultural products owned by the member or stockholder which are in the possession of the association.

This section shall not require an association to

conduct a search of the status of its members or stockholders. The association shall exercise reasonable diligence in determining to whom the statement must be delivered. The statement shall be delivered to the administrator, executor, or attorney, within thirty days following a determination as to whom the statement must be delivered. A statement is not required to be prepared or delivered, if the association is not notified of the member's or stockholder's death within one year after the date of death, or by the date that the member's or stockholder's estate is closed, whichever is later.

91 Acts, ch 230, §3 SF 276
NEW section

CHAPTER 499A

HOUSING COOPERATIVES

1991 additions, amendments, and repeals apply to cooperatives organized on or after December 1, 1990, for prior law, see Code 1991, 91 Acts, ch 30, § 18 SF 477

SUBCHAPTER I

1991 additions, amendments, and repeals apply to cooperatives organized on or after December 1, 1990, for prior law, see Code 1991, 91 Acts, ch 30, § 18 SF 477

499A.1 Articles.

Any two or more persons of full age, a majority of whom are citizens of the state, may organize themselves for the following or similar purposes: Ownership of residential, business property on a cooperative basis. A corporation is a person within the meaning of this chapter. The organizers shall adopt, and sign and acknowledge the articles of incorporation, stating the name by which the cooperative shall be known, the location of its principal place of business, its business or objects, the number of directors to conduct the cooperative's business or objects, the names of the directors for the first year, the time of the cooperative's annual meeting, the time of the annual meeting of its directors, and the manner in which the articles may be amended. The

articles of incorporation shall be filed with the secretary of state who shall, if the secretary approves the articles, endorse the secretary of state's approval on the articles, record the articles, and forward the articles to the county recorder of the county where the principal place of business is to be located, and there the articles shall be recorded, and upon recording be returned to the cooperative. The articles shall not be filed by the secretary of state until a filing fee of five dollars together with a recording fee of fifty cents per page is paid, and upon the payment of the fees and the approval of the articles by the secretary of state, the secretary shall issue to the cooperative a certificate of incorporation as a cooperative not for pecuniary profit.

Amendments to the articles shall be filed and receive approval as provided in this chapter for articles, and the fee for amendments shall be five dollars in each instance. An amendment is not effective until the amendment is approved and the fee is paid.

91 Acts, ch 30, §1 SF 477
Section amended

499A.2 Powers — duration.

Upon filing such articles the persons signing and acknowledging the same and their associates and successors shall become a body corporate with the name therein stated and shall have power:

1. To have perpetual succession by its name, unless a limited period of duration is stated in its articles of incorporation, or they are sooner dissolved by three-fourths vote of all the members thereof, or by act of the general assembly or by operations of law.
2. To sue and be sued in its corporate name.
3. To build and construct apartment houses or dwellings.
4. To purchase, take, receive, lease as lessee, take by gift, devise or bequest, or otherwise acquire, and to own, hold, use and otherwise deal in and with any real or personal property or any interest therein.
5. To sell, convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of its property and assets.
6. To make contracts and incur liabilities which may be appropriate to enable it to accomplish any or all of its purposes; to borrow money for its corporate purposes at such rates of interest as the cooperative may determine, to issue its notes, bonds and other obligations; and to secure any of its obligations by mortgage, pledge, or deed of trust of all or any of its property.
7. To elect or appoint officers and agents of the cooperative, and to define their duties and fix their compensation.
8. To make and alter bylaws not inconsistent with its articles of incorporation or with the laws of this state, for the administration and the regulation of the affairs of the cooperative.
9. To cease its cooperative activities and surrender its cooperative franchise.
10. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the cooperative is organized.

91 Acts, ch 30, §16 SF 477
Terminology changed

499A.2A Bylaws.

The initial bylaws of the cooperative shall be adopted by the cooperative's board of directors. Prior to the admission of members to the cooperative, the power to alter, amend, or repeal the bylaws or adopt new bylaws is vested in the board of directors. Following the admission of members to the cooperative, the power to alter, amend, or repeal the bylaws or adopt new bylaws is vested in the members in accordance with the method set forth in the bylaws.

The bylaws may contain any provisions for the regulation and management of the affairs of the cooperative not inconsistent with law or the articles of incorporation. However, the bylaws must provide for:

1. The number of members of the board of directors and the term of the members.
2. The election of a president, vice president, treasurer, and secretary by the board of directors.

3. The qualifications, powers and duties, terms of office, and manner of electing and removing board members and officers and filling vacancies of such members.

4. The method of amending the bylaws.

91 Acts, ch 30, §7 SF 477
NEW section

499A.3 Members.

A cooperative shall have only one class of members. The designation of that class and the rights of the members of the class shall be set forth in the articles of incorporation or the bylaws. The cooperative must issue membership certificates evidencing the ownership interest of each member of the cooperative.

91 Acts, ch 30, §2 SF 477
Section amended

499A.3A Meetings of members.

Meetings of members may be held at such places as may be provided in the articles of incorporation or the bylaws, or as may be fixed from time to time in accordance with the provisions of the articles or the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the cooperative.

An annual meeting of the members shall be held at such time as may be provided in the articles of incorporation or the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the cooperative.

Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such officers or persons, or by a number or proportion of members as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at the meeting.

91 Acts, ch 30, §8 SF 477
NEW section

499A.3B Notice of members meetings.

Unless the articles of incorporation or the bylaws otherwise provide, written notice stating the place, day, and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered no less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or persons calling the meeting, to each member entitled to vote at the meeting. If mailed, notice is deemed to be delivered when deposited in the United States mail addressed to the member at the member's address as it appears on the records of the cooperative, with postage prepaid.

91 Acts, ch 30, §9 SF 477
NEW section

499A.3C Voting.

Each member is entitled to one vote on each matter submitted to a vote of the members. A membership interest in the cooperative jointly owned by two or more persons is nevertheless entitled to one vote.

A member entitled to vote may vote in person or by proxy in the manner prescribed in the bylaws.

91 Acts, ch 30, §10 SF 477
NEW section

499A.4 Dividends.

A dividend or distribution of property among the members shall not be made until dissolution of the cooperative.

91 Acts, ch 30, §3 SF 477
Section amended

499A.5 Trustees or managers. Repealed by 91 Acts, ch 30, § 17, 18. SF 477

499A.6 Election of officers. Repealed by 91 Acts, ch 30, § 17, 18. SF 477

499A.7 Reorganizing prior to expiration of term.

The directors or members of any cooperative organized under this chapter may reorganize the cooperative, and all the property and rights of the cooperative shall vest in the cooperative as reorganized.

91 Acts, ch 30, §4 SF 477
Section amended

499A.8 Reorganizing after expiration of term.

When the term of a cooperative organized under this chapter has expired, but the organization has continued to act as such cooperative, the directors or members thereof may reorganize, and the property and rights therein shall vest in the reorganized cooperative for the use and benefit of all of the members in the original cooperative.

91 Acts, ch 30, §16 SF 477
Terminology changed

499A.9 Amendments of articles.

Any cooperative organized under this chapter may change its name or amend its articles of incorporation by a vote of a majority of the members, in such manner as may be provided in its articles; but if no such provision is made in the articles the same may be amended at any regular meeting or special meeting called for that purpose by the president or secretary or a majority of the board of directors. Notice of any meeting at which it is proposed to amend the articles of incorporation, shall be given by mailing to each member at the member's last known post-office address at least ten days prior to such meeting, a notice signed by the secretary setting forth the proposed amendments in substance, or by two publications of said notice in some daily or weekly newspaper in general circulation in the county wherein said cooperative has its principal place of business. The last publication of said notice shall be

not less than ten days prior to the date of said meeting. There shall be paid to the secretary of state at the time of the filing of such change or amendment a recording fee of fifty cents per page.

91 Acts, ch 30, §16 SF 477
Terminology changed

499A.10 Record — effect.

The change or amendment provided for in section 499A.9 shall be recorded as the original articles are recorded. From the date of filing such change or amendment for record, the provisions of said section having been complied with, the change or amendment shall take effect as a part of the original articles, and the cooperative thus constituted shall have the same rights, powers and franchises, be entitled to the same immunities, and liable upon all contracts to the same extent, as before such change or amendment.

91 Acts, ch 30, §16 SF 477
Terminology changed

499A.11 Ownership — certificate of membership.

The cooperative has the right to purchase real estate for the purpose of erecting, owning, and operating apartment houses or apartment buildings. The interest of each individual member in the cooperative shall be evidenced by the issuance of a certificate of membership. The certificate of membership is coupled with a possessory interest in the real and personal property of the cooperative, entitling each member to a proprietary lease with the cooperative under which each member has an exclusive possessory interest in an apartment unit and a possessory interest in common with all other members in that portion of the cooperative's real and personal property not constituting apartment units, and which creates a legal relationship of landlord and tenant between the cooperative and member. The certificate of membership shall be executed by the president of the cooperative and attested by its secretary in the name and in the behalf of the cooperative.

91 Acts, ch 30, §5 SF 477
Section amended

499A.12 Title in trustees. Repealed by 91 Acts, ch 30, § 17, 18. SF 477

499A.13 Sale and encumbrance of the premises. Repealed by 91 Acts, ch 30, § 17, 18. SF 477

499A.14 Taxation.

The real estate shall be taxed in the name of the cooperative, and each member of the cooperative shall pay that member's proportionate share of the tax in accordance with the proration formula set forth in the bylaws, and each member occupying an apartment as a residence shall receive that member's proportionate homestead tax credit and each veteran of the military services of the United States identified as such under the laws of the state of Iowa or the United States shall receive as a credit that mem-

ber's veterans tax benefit as prescribed by the laws of the state of Iowa.

91 Acts, ch 30, §6 SF 477
Section amended

499A.15 Rules. Repealed by 91 Acts, ch 30, § 17, 18. SF 477 See § 499A.2A.

499A.16 Board of directors. Repealed by 91 Acts, ch 30, § 17, 18. SF 477 See § 499A.18A and 499A.22.

499A.17 Contracts for utilities. Repealed by 91 Acts, ch 30, § 17, 18. SF 477

499A.18 Homestead.

Each individual apartment constitutes a homestead and is exempt from execution, provided the member otherwise qualifies within the laws of the state of Iowa for such exemption.

91 Acts, ch 30, §13 SF 477
Section amended

499A.18A Upkeep of the cooperative.

It is the duty of the cooperative to maintain generally all portions of the cooperative's real property other than the apartment units. The maintenance, repair, and replacement costs of the cooperative's real property shall be contributed to by each of the members in accordance with the proration formula set forth in the bylaws. Each member is responsible for maintenance and repair of the person's apartment unit in the manner provided for in the bylaws and as prescribed by each member's proprietary lease.

91 Acts, ch 30, §11 SF 477
NEW section

499A.19 Election of directors.

The directors shall be elected by the members of the cooperative. The election of officers shall be made by the board of directors. The annual election of the directors shall be held during the month of January of each year, and they shall serve until their successors are elected and qualified.

The board of directors shall elect as officers, a president, a vice president, a secretary, and a treasurer.

It is the duty of the secretary to keep the records of the cooperative, and a correct list of the members, and all such records shall be submitted to any member upon demand at any reasonable time.

91 Acts, ch 30, §14 SF 477
Section amended

499A.20 Title of Act. Transferred to § 499A.25 in Code Supplement 1991.

499A.21 Execution exemption. Repealed by 91 Acts, ch 30, § 17, 18. SF 477 See § 499A.22(6).

499A.22 Lien for assessments.

1. The cooperative has a lien on a member's interest in the cooperative for all operating charges or other assessments payable by the member pursuant to the member's proprietary lease from the time the operating charge or other assessment becomes due. If carrying charges and assessments are payable in installments, the full amount of the charge or assessment is a lien from the first time the first installment becomes due. Upon nonpayment of a carrying charge or assessment, the member may be evicted from the member's apartment unit in the same manner as provided by law in the case of an unlawful holdover by a tenant and the lien may be foreclosed by judicial sale in like manner as a mortgage on real estate, or may be foreclosed by the power of sale provided in this section.

A lien under this section is prior to all other liens and encumbrances on a member's cooperative interest except liens and encumbrances on the cooperative's real property which the cooperative creates, assumes, or takes subject to, and liens for real estate taxes and other governmental assessments or charges against the cooperative or the member's cooperative interest.

2. The cooperative, upon a member's nonpayment of carrying charges and assessments and the cooperative's compliance with this section, may sell the defaulting member's cooperative interest. Sale may be at a public sale or by private negotiation, and at any time and place, but every aspect of the sale, including the method, advertising, time, place, and terms must be reasonable. The cooperative shall give to the member and any sublessees of the member reasonable written notice of the time and place of a public sale or, if a private sale is intended, of the intention of entering into a contract to sell and of the time after which a private disposition may be made. The same notice shall also be sent to any other person who has a recorded interest in the defaulting member's cooperative interest which would be extinguished by the sale. The notices required by this paragraph may be sent to any address reasonable under the circumstances. Sale may not be held until five weeks after the sending of the notice. The cooperative may buy at a public sale, and, if the sale is conducted by a fiduciary or other person not related to the cooperative, at a private sale.

3. The proceeds of a sale under the preceding paragraph shall be applied in the following order:

- a. The reasonable expenses of sale.
- b. The reasonable expenses of securing possession before sale, and the reasonable expenses of holding, maintaining, and preparing the cooperative interest for sale. These expenses include, but are not limited to, the payment of taxes and other governmental charges, premiums on liability insurance, and to the extent provided for by agreement between the

cooperative and the member, reasonable attorneys' fees and other legal expenses incurred by the cooperative.

- c. Satisfaction of the cooperative's lien.
- d. Satisfaction in the order of priority of any subordinate claim of record.
- e. Remittance of any excess to the member.

Unless otherwise agreed, the member is liable for any deficiency.

4. If a cooperative interest is sold pursuant to this section, a good faith purchaser for value acquires the member's interest in the cooperative free of the debt that gave rise to the lien under which the sale occurred, and free of any subordinate interest.

5. At any time before the cooperative has disposed of the cooperative interest or entered into a contract for its disposition under the power of sale, the member or the holder of any subordinate security interest may cure the member's default and prevent sale or other disposition by tendering the performance due, including any amounts due arising

from the exercise of the rights under this section, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender, including reasonable attorneys' fees of the creditor.

6. The property of a member other than the member's membership interest in the cooperative is not subject to claims of the cooperative's creditors, whether or not the member's membership interest is subject to those claims.

91 Acts, ch 30, §12 SF 477
NEW section

499A.23 and 499A.24 Reserved.

499A.25 Title of Act.

This subchapter shall be known and cited as "*The Cooperative Housing Act*."

91 Acts, ch 30, §15 SF 477
Section amended

499A.26 through 499A.100 Reserved.

CHAPTER 502

IOWA UNIFORM SECURITIES ACT

(Blue Sky Law)

Retroactive applicability to exempt certain actions otherwise required of agricultural cooperatives and administrator, 91 Acts, ch 230, § 8 SF 276

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. 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.

3. "*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, 12, 13, or 17, 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 commis-

sion 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.

4. "*Agricultural cooperative association*" means any one of the following:

a. An association of persons organized pursuant to chapter 497 for purposes of conducting an agricultural or dairy business on a cooperative plan, as described in section 497.1.

b. A cooperative association organized pursuant to chapter 498 for purposes of conducting an agricultural, livestock, horticultural, or dairy business on a cooperative plan and acting as a cooperative selling agency, as described in section 498.2.

c. An agricultural association as defined in section 499.2, and organized pursuant to chapter 499.

d. Any other entity which is organized on a cooperative basis under the laws of this state for the pur-

pose of engaging in the activities of an agricultural association as defined in section 499.2.

5. "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 A bank when acting on its own account or when exercising trust or fiduciary powers permitted for banks under applicable state or federal laws and regulations providing for the organization, operation, supervision, and examination of such banks;

d An insurance company which effects transactions in its own accounts;

e Other persons not within the intent of this subsection whom the administrator by rule or order designates.

6. "Fraud", "deceit" and "defraud" are not limited to common law deceit.

7. "Guaranteed" means guaranteed as to payment of principal, interest or dividends.

8. "Interest at the legal rate" means the interest rate for judgments specified in section 535.3.

9. "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 a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty, the term "issuer" means the owner of an interest in the lease or payments out of production under a lease, right, or royalty, whether whole or fractional, who creates fractional interests for the purpose of sale.

10. "Nonissuer" means not directly or indirectly for the benefit of the issuer.

11. "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.

12. 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.

13. "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Company Act of 1940", "Internal Revenue Code" and "Agricultural Marketing Act" mean the federal statutes of those names.

14. "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; fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under such a lease, right, or royalty; 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 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.

15. "State" means any state, territory or possession of the United States, the District of Columbia and Puerto Rico.

16. For the purposes of sections 502.211 through 502.218, unless the context otherwise requires:

a "Associate" means a person acting jointly or in concert with another for the purpose of acquiring, holding or disposing of, or exercising any voting rights attached to the equity securities of a target company.

b "Beneficial owner" includes, but is not limited to, any person who directly or indirectly, through any contract, arrangement, understanding, or relationship, has or shares the power to vote or direct the voting of a security or has or shares the power to dispose of or otherwise direct the disposition of the security. A person is the beneficial owner of securities beneficially owned by any relative or spouse or relative of the spouse residing in the home of the person,

any trust or estate in which the person owns ten percent or more of the total beneficial interest or serves as trustee or executor, any corporation or entity in which the person owns ten percent or more of the equity, and any affiliate or associate of the person.

c. "Beneficial ownership" includes, but is not limited to, the right, exercisable within sixty days, to acquire securities through the exercise of options, warrants, or rights or the conversion of convertible securities. The securities subject to these options, warrants, rights, or conversion privileges held by a person are outstanding for the purpose of computing the percentage of outstanding securities of the class owned by the person, but are not outstanding for the purpose of computing the percentage of the class owned by any other person.

d. "Equity security" means any stock or similar security, and includes the following:

(1) Any security convertible, with or without consideration, into a stock or similar security.

(2) Any warrant or right to subscribe to or purchase a stock of similar security.

(3) Any security carrying a warrant or right to subscribe to or purchase a stock or similar security.

(4) Any other security which the administrator deems to be of a similar nature and considers necessary or appropriate, according to rules prescribed by the administrator for the public interest and protection of investors, to be treated as an equity security.

e. "Offeree" means the beneficial owner, who is a resident of this state, of equity securities which an offeror offers to acquire in connection with a takeover offer.

f. "Offeror" means a person who makes or in any manner participates in making a takeover offer. It does not include a supervised financial institution or broker-dealer loaning funds to an offeror in the ordinary course of its business, or any supervised financial institution, broker-dealer, attorney, accountant, consultant, employee, or other person furnishing information or advice to or performing ministerial duties for an offeror, and who does not otherwise participate in the takeover offer.

g. "Takeover offer".

(1) Means the offer to acquire any equity securities of a target company from a resident of this state pursuant to a tender offer or request or invitation for tenders, if after the acquisition of all securities acquired pursuant to the offer either of the following are true:

(a) The offeror would be directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding equity securities of the target company.

(b) The beneficial ownership by the offeror of any class of the outstanding equity securities of the target company would be increased by more than five percent. However, this provision does not apply if after the acquisition of all securities acquired pursuant to the offer, the offeror would not be directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding equity securities of the target company.

(2) Does not include the following:

(a) An offer in connection with the acquisition of a security which, together with all other acquisitions by the offeror of securities of the same class of equity securities of the target company, would not result in the offeror having acquired more than two percent of this class of securities during the preceding twelve-month period.

(b) An offer by the target company to acquire its own equity securities if such offer is subject to section 13(e) of the Securities Exchange Act of 1934.

(c) An offer in which the target company is an insurance company or insurance holding company subject to regulation by the commissioner of insurance, a financial institution subject to regulation by the superintendent of banking or the superintendent of savings and loan associations, or a public utility subject to regulation by the utilities division of the department of commerce.

h. "Target company" means an issuer of publicly traded equity securities which has at least twenty percent of its equity securities beneficially held by residents of this state and has substantial assets in this state. For the purposes of this chapter, an equity security is publicly traded if a trading market exists for the security. A trading market exists if the security is traded on a national securities exchange, whether or not registered pursuant to the Securities Exchange Act of 1934, or on the over-the-counter market.

91 Acts, ch 40, §3-5 SF 520, 91 Acts, ch 230, §4, 5 SF 276
1991 amendment to subsection 3 and new subsection 4 retroactive to January 1, 1988, for certain purposes, 91 Acts, ch 230, §8 SF 276
Subsections renumbered to alphabetize
Subsection 3, paragraph a amended
NEW subsection 4
Subsection 5, paragraphs c and d stricken and rewritten
Subsection 9, paragraph b stricken and rewritten
Subsection 14 amended
Subsection 16, paragraphs relettered to alphabetize

502.202 Exempt securities.

The following securities are exempt from sections 502.201 and 502.602:

1. Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing; but this exemption shall not include any revenue obligation payable from payments to be made in respect of property or money used under a lease, sale or loan arrangement by or for a nongovernmental industrial or commercial enterprise, unless such payments are or will be made or unconditionally guaranteed by a person whose securities are exempt from registration under this chapter by (a) this section, subsection 7 or 8, or (b) subsection 9 of this section, provided the issuer first files with the administrator a written notice specifying the terms of the offer and the administrator does not by order disallow the exemption within fifteen days thereafter.

2. Any security issued or guaranteed by Canada,

any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor.

3. Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank or trust company organized and supervised under the laws of this state.

4. Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any savings and loan or similar association organized and supervised under the laws of this state.

5. Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of this state and authorized to do business in this state.

6. Any security issued or guaranteed by any federal credit union or any credit union or similar association organized and supervised under the laws of this state.

7. Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is

a. Subject to the jurisdiction of the interstate commerce commission;

b. A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that Act; or

c. Regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province.

8. Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, the Pacific Coast Stock Exchange, or any other national securities exchange registered under the Securities Exchange Act of 1934 and designated by rule of the administrator; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing.

9. Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purposes, or as a chamber of commerce or trade or professional association; provided the issuer first files with the administrator a written notice specifying the terms of the offer and the administrator does not by order disallow the exemption within fifteen days thereafter.

10. Commercial paper which is a promissory note, draft, bill of exchange, or banker's acceptance which satisfies the following criteria:

a. It evidences an obligation to pay cash within nine months after the date of issuance, exclusive of days of grace.

b. It is issued in denominations of at least fifty thousand dollars.

c. It receives a rating in one of the three highest rating categories from a nationally recognized statistical rating organization.

The exemption under this subsection applies to a renewal of an obligation under this subsection which is likewise limited, and to a guarantee of such an obligation or of a renewal.

11. A security issued in connection with an employee stock purchase, option, savings, pension, profit sharing or similar benefit plan.

12. A stock or similar security, including a patronage refund certificate, issued by:

a. A cooperative housing corporation described in paragraph 1 of subsection "b" of section 216, of the Internal Revenue Code, if its activities are limited to the ownership, leasing, management, or construction of residential properties for its members, and activities incidental thereto; or

b. A mutual or cooperative organization, including a cooperative association organized in good faith under and for any of the purposes enumerated in chapters 497, 498, and 499, that deals in commodities or supplies goods or services in transactions primarily with and for the benefit of its members, if:

(1) Such stock or similar security is part of a class issuable only to persons who deal in commodities with, or obtain goods or services from, the issuer;

(2) Such stock or similar security is transferable only to the issuer or a successor in interest of the transferor who qualifies for membership in such mutual or cooperative organization; and

(3) No dividends other than patronage refunds are payable to holders of such stock or similar security except on a complete or partial liquidation.

13. A security issued by an agricultural cooperative association, provided the following conditions are satisfied:

a. A commission or remuneration must not be paid or provided either directly or indirectly for the sale, except as permitted by the administrator by rule or by order issued upon written application showing good cause for allowance of a commission or other remuneration.

b. If the securities to be issued are notes or other evidences of indebtedness and are issued after July 1, 1991, the issuer must file with the administrator a written notice specifying the name of the issuer, the date of the issuer's organization, the name of a contact person, a copy of the issuer's current audited financial statement, the types of security or securities to be offered, and the class of persons to whom the offer will be made in accordance with such rules as prescribed by the administrator.

14. Any security issued by a corporation formed under chapter 496B.

15. Any security issued by the agricultural development authority under chapter 175.

16. Any security representing a thrift certificate of an industrial loan company which is a member of the industrial loan thrift guaranty corporation of Iowa.

17. Any security representing a membership camping contract which is registered pursuant to section 557B.2 or exempt under section 557B.4.

18. On or after January 1, 1989, a security designated or approved for designation upon notice of issuance on the national association of securities dealers automated quotations — national market system (NASDAQ/NMS); any other security of the same issuer which is of senior or substantially equal rank; a security called for by subscription rights or warrants designated or approved for designation upon notice of issuance on the NASDAQ/NMS; or a warrant or right to purchase or subscribe to any of the foregoing categories in this subsection.

19. Any security representing a time-share interval as defined in section 557A.2.

91 Acts, ch 40, §6-9 SF 520, 91 Acts, ch 230, §6, 7 SF 276
 Subsections 3 and 11 amended
 Subsection 10 stricken and rewritten
 1991 amendments to subsections 12 and 13 retroactive to January 1, 1988,
 for certain purposes remedial action, 91 Acts, ch 230, §8 SF 276
 Subsection 12, paragraph a stricken and paragraphs b and c relettered as
 and b
 Subsection 13 stricken and rewritten
 NEW subsection 19

502.203 Exempt transactions.

The following transactions are exempted from sections 502.201 and 502.602:

1. Any isolated nonissuer transaction, whether effected through a broker-dealer or not.

2. Any nonissuer distribution of an outstanding security if:

a. A recognized securities manual approved by the administrator contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations;

b. The security was issued by an issuer which has a class of securities currently registered under the Securities Exchange Act of 1934;

c. The security was issued by an issuer which has had or currently has a class of securities registered under this chapter, or under chapter 502 of the Code as it existed prior to January 1, 1976; or

d. The security was issued by an issuer which is registered under the Investment Company Act of 1940.

3. Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the administrator may by rule require that the customer acknowledge that the sale was unsolicited in accordance with provisions of such rule.

4. Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

5. A sale of bonds or notes directly secured by a real estate mortgage, security interest, deed of trust,

or agreement for the sale of real estate or chattels, if the entire mortgage, security interest, deed of trust, or agreement, together with all the bonds or notes secured thereby, is offered and sold as a unit; provided that the entire mortgage, security interest, deed of trust or agreement, together with all of the bonds or notes secured thereby, shall not be deemed to be sold as a unit if:

a. Such bonds or notes are part of a single issue including other bonds or notes secured by interests in real estate or chattels owned or developed by the same person or by persons affiliated with such person; or

b. Such bonds or notes are offered or sold with any right to have substitution by or recourse against, or with guarantee by, the real estate developer or any person other than the person primarily obligated on the bond or note.

6. Any judicial sale or any transaction executed by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, custodian or conservator without any purpose of evading this chapter.

7. Any transaction executed by a bona fide pledgee without any purpose of evading this chapter.

8. An offer or sale to a bank, savings and loan association, credit union, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in a fiduciary capacity. However, the administrator, by rule or order, may grant this exemption to a person or class of persons based upon the factors of financial sophistication, net worth, and the amount of assets under investment.

9. The sale, as part of a single issue, of securities by the issuer of the securities if all of the following conditions are satisfied:

a. Within any period of twelve consecutive months, sales are made to less than thirty-six purchasers in this state, exclusive of purchases by bona fide institutional investors for their own account for investment.

b. Unless permitted by the administrator by rule, or by order issued upon written application showing good cause for the allowance of the sale, the issue is not an issue of:

(1) Fractional undivided interests in oil, gas, or other mineral leases, rights, or royalties.

(2) Interests in a partnership organized under the laws of or having its principal place of business in a foreign jurisdiction.

c. The issuer reasonably believes that all the buyers in this state are purchasing for investment.

d. Commission or other remuneration is not paid or given, directly or indirectly, for the sale, except as may be permitted by the administrator by rule, or by order issued upon written application showing good cause for allowance of commission or other remuneration.

e. The issuer or a person acting on behalf of the issuer does not offer or sell the securities by any form of general solicitation or advertising.

10. Any offer or sale of a preorganization certificate or subscription if:

a. No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;

b. The number of subscribers does not exceed ten;

c. No payment is made by any subscriber; and

d. No public advertisement of the offer is made.

11. Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants, exercisable within not more than ninety days of their issuance, if:

a. A commission or other remuneration (other than a standby commission) is not paid or given directly or indirectly for soliciting a security holder in this state; or

b. The issuer first files a notice specifying the terms of the offer and the administrator does not by order disallow the exemption within the next ten days.

12. An offer, but not a sale, of a security for which a registration statement has been filed under this chapter or a written notice has been filed pursuant to section 502.202, subsection 1, 9, or 11 if no stop order or suspension or denial order is in effect and no proceeding is pending under this chapter.

13. Any transaction incident to a vote by security holders of a person or incident to a written consent or resolution of some or all security holders of a person, pursuant to the articles of incorporation of such person, or pursuant to the applicable corporate statute or other statute governing such person, or pursuant to such person's partnership agreement, declaration of trust, or trust indenture, or pursuant to any agreement among security holders of such person, on a reclassification of securities, reverse stock split, reorganization involving the exchange of securities, merger, consolidation, or sale of assets, in consideration, in whole or in part, of the issuance of securities of such person or of any other person, if:

a. The securities to be distributed are registered under the Securities Act of 1933 before the consummation of the transaction; or

b. The securities to be distributed are not required to be registered under the Securities Act of 1933, written notice of the transaction, a filing fee of fifty dollars, and a copy of the materials by which approval of the transaction will be solicited, are given to the administrator at least ten days before the consummation of the transaction, and the administrator does not disallow, by order, the exemption within the next ten days.

14. Any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash.

15. The distribution of securities as a dividend, where the corporation distributing the dividend is the issuer of the securities distributed, if the only value given by shareholders for the dividend is the surrender of a right to a cash or property dividend when each shareholder may elect to take the dividend.

a. In cash or property, or

b. In such securities.

16. The administrator may create by rule a limited offering transactional exemption which furthers the objectives of compatibility with federal exemptions and uniformity among the states and provides criteria to determine and assure the suitability of investors.

17. The offer or sale of securities by a small business investment company under the federal Small Business Investment Act of 1958 if:

a. The securities are offered or sold in compliance with 17 C.F.R. §§ 230.601 through 230.610a; and

b. The issuer has filed with the administrator the offering document to be used in connection with the offer and sale of the securities not later than the first use of the offering document in this state, the issuer has filed with the administrator a copy of the notification of form "1-E" required by 17 C.F.R. § 230.604 to be filed with the federal securities and exchange commission, and the issuer has paid the administrator a fee of one hundred dollars.

91 Acts, ch 40, §10-14 SF 520

Subsection 2, paragraph c amended

Subsection 8 amended

Subsection 11 stricken and rewritten

Subsection 13, paragraphs a and b stricken and rewritten and paragraphs c and d stricken

NEW subsection 17

502.206 Registration by co-ordination.

1. Registration by co-ordination may be used for any offering for which a registration statement has been filed under the Securities Act of 1933, or for any proposed sale pursuant to the exemption contained in subsection "b" of section 3 of such Act where such registration statement or notification of proposed sale has not become effective.

2. A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 502.208, subsection 3, and the consent to service of process required by section 502.609:

a. Two copies of the most recent preliminary prospectus or offering circular filed under the Securities Act of 1933.

b. If the administrator by rule requires, a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security.

c. If the administrator requests, any other infor-

mation, or copies of any documents, filed under the Securities Act of 1933.

d. An undertaking to forward to the administrator all future amendments to the federal prospectus or offering circular, other than an amendment which merely delays the effective date of the registration statement, not later than the first business day after they are forwarded to or filed with the securities and exchange commission, or such longer period as the administrator permits.

3. Unless waived by a registrant, a registration statement under this section automatically becomes effective at the moment the federal registration statement or notification becomes effective if:

a. No stop order is in effect in this state and no proceeding is pending under section 502.209;

b. The registration statement has been on file with the administrator for at least twenty days;

c. A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for not less than two full business days, or such shorter period as the administrator permits; and

d. The offering is made within these limitations.

4. The registrant shall notify the administrator promptly by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall file a post-effective amendment promptly containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the administrator may enter a stop order, without notice or hearing, retroactively denying the effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection is effected, if the administrator promptly notifies the registrant by telephone or telegram of the issuance of such order. If the registrant proves compliance with the requirements of this subsection as to notice and post-effective amendment the stop order shall be vacated as of the time of its entry. The administrator may by rule or order waive any of the conditions specified in subsection 2 or 3.

5. If the federal registration statement becomes effective before all conditions in this section are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether the administrator then contemplates the institution of a proceeding under section 502.209 but

this advice by the administrator does not preclude the institution of such a proceeding at any time.

91 Acts, ch 40, §15 SF 520

Subsection 3, unnumbered paragraph 1 amended

502.208 Provisions applicable to registration generally.

1. A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer.

2. a. Every person filing a registration statement shall pay a filing fee of one-tenth of one percent of the maximum aggregate offering price at which the registered securities are to be offered in this state. Except as provided in paragraph "b", the fee shall in no case be less than fifty dollars or more than one thousand dollars.

b. A face-amount certificate company, an open-end management company, or a unit investment trust, as defined in the Investment Company Act of 1940, may register an indefinite amount of securities under a registration statement. The registrant, at the time of filing, may pay the maximum fee of one thousand dollars, or may pay a fee of two hundred fifty dollars and within ninety days after the end of each fiscal year during which its registration statement is effective and within ninety days after the registration is terminated do one of the following:

(1) Pay an additional fee of one thousand two hundred fifty dollars.

(2) File a report on a form that the administrator by rule adopts, reporting sales of securities to persons within this state during the fiscal year, and pay an additional filing fee of one-tenth of one percent of the maximum aggregate offering price at which the registered securities were offered in this state. However, the fee in no case shall be more than one thousand two hundred fifty dollars.

c. When a registration statement is withdrawn before the effective date or a pre-effective stop order is entered under section 502.209, the administrator shall retain the fee.

3. Every registration statement shall specify:

a. The amount of securities to be offered in this state;

b. The states in which a registration statement or application in connection with the offering has been or is to be filed; and

c. Any adverse order, judgment or decree entered in connection with the offering by the regulatory authorities in any state or by any court or the securities and exchange commission, or any withdrawal of a registration statement or application relating to the offering.

4. Any document filed under this chapter or a predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

5. The administrator may by rule or otherwise permit the omission of any item of information or document from any registration statement.

6. In the case of a nonissuer distribution, information may not be required under section 502.207, or subsection 9, paragraph "b" of this section, unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

7. The administrator may by rule or order require as a condition of registration that any security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; or that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere; or the administrator may impose both such requirements. The administrator may by rule or order determine the conditions of any escrow or impounding required hereunder, but the administrator may not reject a depository solely because of location in another state.

8. The administrator may by rule require that securities of designated classes shall be issued under a trust indenture containing such provisions as the administrator determines.

9. *a.* A registration statement shall remain effective for one year from its effective date unless it is extended by rule or order of the administrator. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any transaction by or on behalf of a person who is not the issuer, and who is not in control of the issuer or controlled by the issuer or under common control with the issuer, so long as the registration statement is effective, unless otherwise prescribed by order. A registration statement may not be withdrawn after its effective date if any of the securities has been sold in this state, unless permitted by rule or order of the administrator. A registration statement is not effective during the time a stop order is in effect under section 502.209. A registration statement which never became effective may be withdrawn without prejudice to the issuer upon request and for good cause as determined at the discretion of the administrator.

b. During the effective period of a registration statement, the administrator may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering. If any of the securities registered has been sold in this state, the administrator may by rule or order extend the period for filing the reports for an additional period not exceeding two years from the date the registration became effective or from the date of its last amendment or extension.

10. The administrator may by rule or order require as a condition of registration by qualification,

and at the expense of the applicant or registrant, that a report by an accountant, engineer, appraiser, or other professional person be filed. The administrator may also designate one or more employees of the securities bureau to make an examination of the business and records of an issuer of securities for which a registration statement has been filed by qualification, at the expense of the applicant or registrant.

11. A registration statement relating to any continuous offering of securities may be amended after its effective date so as to increase the specified amount of securities proposed to be offered. The amendment becomes effective when the administrator so orders. Every person filing such an amendment shall pay a filing fee, calculated in the manner specified in subsection 2, with respect to the additional securities proposed to be offered.

12. The administrator may by rule or order require as a condition of registration under this chapter that a prospectus containing any designated part of the information specified in section 502.207, subsection 2, or the final prospectus or offering circular required by section 502.206, subsection 2, be delivered to each person to whom an offer is made before or concurrently with

a. The first written offer made to the offeree otherwise than by means of a public advertisement by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken as a participant in the distribution;

b. The confirmation of any sale made by or for the account of any such person;

c. Payment pursuant to any such sale; or

d. Delivery of the security pursuant to any such sale, whichever first occurs.

13. If a registrant sells securities in excess of the aggregate amount registered for sale in this state, the registrant may file an amendment to the registration statement to include the excess sales. Every person filing such an amendment shall pay a filing fee of three times the amount calculated in the manner specified in subsection 2 as though the additional securities sold constituted a separate issue. The administrator may order the amendment effective retroactively as of the effective date of the registration statement being amended.

91 Acts, ch 40, §16, 17 SF 520, 91 Acts, ch 258, §54 HF 709

Subsection 2 amended

Subsection 9 stricken and rewritten

Subsection 10 amended

502.209 Denial, suspension and revocation of registration.

1. The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if the administrator finds that the order is in the public interest and that:

a. The registration statement as of its effective

date or as of any earlier date in the case of an order denying effectiveness, or any amendment filed under either subsection 9 or subsection 11 of section 502.208 as of its effective date, or any financial statement or report required under section 502.208, subsection 9 is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

b. Any provision of this chapter or any rule, order or condition lawfully imposed under this chapter has been willfully violated, in connection with the offering, by:

- (1) The person filing the registration statement;
- (2) The issuer;
- (3) Any partner, officer or director of the issuer, or any person occupying a similar status or performing similar functions;
- (4) Any affiliate of the issuer, but only if the person filing the registration statement is an affiliate of the issuer; or
- (5) Any broker-dealer;

c. The securities registered or sought to be registered are the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state Act applicable to the offering; but the administrator may not institute a proceeding against an effective registration statement under this section more than one year from the date of the order or injunction relied on, and the administrator may not enter an order under this section on the basis of an order or injunction entered under any other state Act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

d. The issuer's enterprise or method of business includes or would include activities which are illegal where performed;

e. The issuance or sale of the securities has worked or tended to work a fraud upon purchasers or would so operate;

f. The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options;

g. Advertising has been used in connection with the offering contrary to the provisions of section 502.602;

h. The financial condition of the issuer affects or would affect the soundness of the securities, except that applications for registration of securities by companies which are in the development stage shall not be denied based solely upon the financial condition of the company. For purposes of this rule, a "development stage company" is defined as a company which has been in existence for five years or less.

i. The applicant or registrant has failed to pay the proper filing fee; but the administrator may enter only a denial order under this subsection, and shall

vacate any such order when the deficiency has been corrected.

j. The applicant or registrant has abandoned the registration statement. The administrator may enter an order under this paragraph if notice is sent to the applicant or registrant, and either the administrator fails to receive a response from the applicant or registrant, or action is not taken by the applicant or registrant within the time specified by the administrator.

2. The administrator may not institute a stop order proceeding against an effective registration statement on the basis of a fact known to the administrator when the registration statement became effective unless the proceeding is instituted within thirty days after effectiveness.

3. The administrator may issue a summary order postponing, suspending or denying the effectiveness of a registration statement pending final determination of any proceeding under this section. Upon the entry of the order, the administrator shall promptly notify the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered that the order has been entered and of the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each of the aforementioned persons, may modify or vacate the order or extend it until final determination.

4. No stop order may be entered under any part of this section except the first sentence of subsection 3 without compliance with the Iowa administrative procedure Act.

5. The administrator may vacate or modify a stop order upon a finding that the conditions which promoted its entry have changed or that it is otherwise in the public interest to do so.

91 Acts, ch 40, §18 SF 520
Subsection 1, NEW paragraph j

502.210 Limits on securities registered by qualification. Repealed by 91 Acts, ch 40, § 36. SF 520

502.301 Registration requirement.

1. It is unlawful for any person to transact business in this state as a broker-dealer or agent unless at least one of the following conditions is satisfied:

- a. The person is registered under this chapter.
- b. The person is a broker-dealer who has no place of business in this state and the broker-dealer satisfies one of the following requirements:

(1) The broker-dealer effects transactions in this state exclusively with or through the issuers of the securities involved in the transaction, other broker-dealers, banks, trust companies, insurance companies, or investment companies as defined in the In-

vestment Company Act of 1940, pension or profit sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

(2) During any period of twelve consecutive months the broker-dealer does not effect transactions in this state in any manner with more than three persons other than those specified in subparagraph (1), whether or not the offeror or any of the offerees is then present in this state; or

(3) The administrator designates the broker-dealer as exempt from these requirements by either rule or order.

2. It is unlawful for any broker-dealer or issuer to employ an agent in this state unless the agent is registered. The registration of an agent is not effective during any period when the agent is not associated with a specified broker-dealer registered under this chapter or a specified issuer. Unless permitted by order of the administrator, no agent shall at any time represent more than one broker-dealer or issuer, except that where organizations affiliated by direct or indirect common control are registered as broker-dealers or are issuers of securities registered under this chapter, an agent may represent any such organization. When an agent begins or terminates employment with a broker-dealer or issuer or begins or terminates the activities which makes such person an agent, the agent as well as the broker-dealer or issuer shall promptly notify the administrator.

3. Every registration shall expire on the last day of December in each year.

91 Acts, ch 40, §19 SF 520
Subsection 1 amended

502.302 Registration procedures.

1. A broker-dealer or agent may obtain an initial or renewal license by filing with the administrator, or an organization which the administrator by rule designates, an application together with a consent to service of process pursuant to section 502.609 and the appropriate filing fee. The application shall contain the information the administrator requires by rule concerning the applicant's form and place of organization, proposed method of doing business and financial condition, the qualifications and experience of the applicant, including, in the case of a broker-dealer, the qualifications and experience of any partner, officer, director or controlling person, any injunction or administrative order or conviction of a misdemeanor involving securities and any conviction of a felony, and any other matters which the administrator determines are relevant to the application. If no denial order is in effect and no proceeding is pending under section 502.304, registration becomes effective at noon of the thirtieth day after a completed application or an amendment completing the application is filed, unless waived by the applicant. The administrator may by rule or order specify an earlier effective date.

2. Every applicant for initial or renewal registration as a broker-dealer shall pay a filing fee of two

hundred dollars. Every applicant for initial or renewal registration as an agent shall pay a filing fee of thirty dollars. A filing fee is not refundable.

3. A registered broker-dealer may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

4. The administrator may by rule require a minimum capital for broker-dealers and establish limitations on aggregate indebtedness of broker-dealers in relation to net capital and may classify broker-dealers for purposes of such requirements. The administrator may not, however, with respect to any broker-dealer who is a member of the national association of securities dealers, inc., or who is registered with the securities and exchange commission, require a higher minimum capital or lower ratio of aggregate indebtedness to net capital than is contained in the rules and regulations adopted by such association or commission.

5. Except as provided in this subsection, a broker-dealer and an issuer who employs agents in connection with any security or transaction not exempted either by section 502.202 or section 502.203, shall file and maintain with the administrator a bond conditioned that the broker-dealer or issuer shall properly account for any moneys or securities received from or belonging to another and shall pay, satisfy, and discharge any judgment or decree that may be rendered against such broker-dealer or issuer in a court of competent jurisdiction in a suit or action brought by a purchaser or seller of securities against such broker-dealer or issuer in which it shall be found or adjudged that such securities were sold or purchased by the broker-dealer or issuer in violation of this chapter. Such bond may be drawn to cover the original license and any renewals thereof, and may contain a provision authorizing the surety therein to cancel upon thirty days' notice to the principal and the administrator. A broker-dealer who is a member of the securities investor protection corporation is not required to furnish a bond.

Every such bond shall run in favor of the state of Iowa for the use and benefit of any person who sustains damages as a result of any breach of the conditions thereof, in the sum of fifteen thousand dollars and shall be in such form consistent with the provisions hereof as the administrator may prescribe, and shall be executed with surety or sureties satisfactory to the administrator. In suits against the surety upon such bond it shall not be necessary to join such broker-dealer or issuer as a party.

Banks or trust companies under the supervision of this state or of the United States which would otherwise be required under the provisions of this chapter to file and maintain the bond required herein may execute said bond without surety.

One or more recoveries upon any such bond shall not vitiate the same but it shall remain in full force and effect, but the aggregate recoveries from the surety upon any such bond shall not exceed the full amount of the penal sum of the bond, and upon suits

being commenced in excess of the amount of same the administrator may require additional bond, and if not given within ten days the administrator may revoke the registration of such broker-dealer or issuer.

6. The administrator may by rule or order impose such other conditions in connection with registration under this chapter as are deemed appropriate, in the public interest or for the protection of investors.

91 Acts, ch 40, §20-22 SF 520
Subsections 1 and 2 amended
Subsection 5, unnumbered paragraph 1 amended

502.303 Post-registration provisions.

1. Every registered broker-dealer shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the administrator by rule prescribes. All records so required shall be preserved for three years unless the administrator by rule prescribes otherwise for particular types of records. All required records shall be kept within this state or shall, at the request of the administrator, be made available at any time for examination at the administrator's option either in the principal office of the registrant or by production of exact copies thereof in this state.

2. Every registered broker-dealer shall file such financial reports as the administrator by rule prescribes.

3. If the information contained in any document filed with the administrator is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment unless notification of the correction has been given under section 502.301, subsection 2.

4. The administrator may make examinations, within or without this state, of the business and records of each registered broker-dealer, at the times and in the scope as the administrator determines. The examinations may be made without prior notice to the broker-dealer. The administrator may copy all records the administrator feels are necessary to conduct the examination. The expense reasonably attributable to an examination shall be paid by the broker-dealer whose business is examined, but the expense so payable shall not exceed an amount which the administrator by rule prescribes. For the purpose of avoiding unnecessary duplication of examinations, the administrator may co-operate with securities administrators of other states, the securities and exchange commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934. The administrator shall not make public the information obtained in the course of examinations, except when a duty under this chapter requires the administrator to take action regarding a broker-dealer or to make the information available to one of the agencies specified in this section, or except when the administrator is called as a witness in a criminal or civil proceeding.

91 Acts, ch 40, §23 SF 520
Subsection 4 amended

502.304 Denial, revocation, suspension, and withdrawal of registration.

1. The administrator may by order deny, suspend, or revoke a registration or may censure, impose a civil penalty upon, or bar an applicant, registrant, or any officer, director, partner, or person occupying a similar status or performing similar functions for a registrant. A person barred under this subsection may be prohibited by the administrator from employment with a registered broker-dealer. The administrator may restrict the person barred from engaging in any activity for which registration is required. Any action by the administrator under this subsection may be taken if the order is found to be in the public interest and it is found that the applicant or registrant or, in the case of a broker-dealer, a partner, an officer, or a director, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the broker-dealer:

a. Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

b. Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor act or any rule or order under this chapter or a predecessor act;

c. Has been convicted within the past ten years of

(1) Any misdemeanor involving a security or any aspect of the securities business, or

(2) Any felony;

d. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities, insurance, or commodities business;

e. Is the subject of an order of the administrator denying, suspending, or revoking registration as a broker-dealer or agent;

f. Is the subject of an adjudication or order entered after notice and opportunity for hearing, within the past ten years by a securities or commodities agency, an administrator of another state, or a court of competent jurisdiction, that reflects that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, a securities or commodities law of any other state, or a United States postal service fraud order. However, the administrator may not do either of the following:

(1) Institute a revocation or suspension proceeding under this paragraph more than one year from the final agency order relied on or, if the order has been appealed, the final court decision.

(2) Enter an order under this paragraph on the basis of an order under another state law unless that

order was based on facts which would currently constitute a ground for an order under this section.

g. Has engaged in dishonest or unethical practices in the securities business;

h. Is insolvent, either in the equity or bankruptcy sense; but the administrator may not enter an order against a broker-dealer under this paragraph without a finding of insolvency as to the broker-dealer;

i. Is not qualified on the basis of such factors as training, experience and knowledge of the securities business;

j. Has failed reasonably to supervise an agent or employee;

k. Has been denied the right to do business in the securities industry, or the person's authority to do business in the securities industry has been revoked for cause by another state, federal, or foreign governmental agency or by a self-regulatory organization; or

l. Has been the subject of a final order in a criminal, civil, injunctive, or administrative action for securities, commodities, or fraud-related violations of the laws of this state or another state, federal, or foreign governmental unit.

2. The administrator may not institute a suspension or revocation proceeding under subsection 1, paragraphs "c" through "f", on the basis of a fact known to the administrator when registration became effective unless the proceeding is instituted within sixty days after the effective date.

3. The administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent, that it has been entered and of the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

4. If the administrator finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, or agent, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after search, the administrator may by order revoke the registration or application.

5. Withdrawal from registration as a broker-dealer or agent becomes effective thirty days after receipt of an application to withdraw or within such shorter period of time as the administrator may by order determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose

conditions upon the withdrawal is instituted within thirty days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the administrator may nevertheless institute a revocation or suspension proceeding under subsection 1 paragraph "b" within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

6. No order may be entered under any part of this section except the first sentence of subsection 3 without compliance with the Iowa administrative procedure Act.

7. A civil penalty levied under subsection 1 shall not exceed one thousand dollars per violation per person and shall not exceed one hundred thousand dollars in a single proceeding against any one person. All administrative fines received shall be deposited in the general fund of the state.

91 Acts, ch 40, §24-30 SF 520

Subsection 1, unnumbered paragraph 1 amended

Subsection 1, paragraphs d and j amended

Subsection 1, paragraph f stricken and rewritten

Subsection 1, NEW paragraphs k and l

Subsections 2 and 7 amended

502.601 Administration.

1. This chapter shall be administered by the commissioner of insurance of the state of Iowa. The administrator shall appoint a deputy administrator who shall be exempt from the merit system provided for in chapter 19A. The deputy administrator is the principal operations officer of the securities bureau and is responsible to the administrator for the routine administration of the chapter and the management of the securities bureau. In the absence of the administrator, whether because of vacancy in the office, by reason of absence, physical disability, or other cause, the deputy administrator shall be the acting administrator and shall, for the time being, have and exercise the authority conferred upon the administrator. The administrator may by order from time to time delegate to the deputy administrator any or all of the functions assigned to the administrator in this chapter. The administrator shall employ officers, attorneys, accountants, and other employees as needed for the administration of the chapter.

2. It is unlawful for the administrator or any officer or employee of the securities bureau to use for personal benefit any information which is filed with or obtained by the administrator and which is not made public. This chapter does not authorize the administrator or any such officer or employee to disclose any such information except among themselves or to other securities administrators, regulatory authorities, or governmental agencies, or when necessary or appropriate in a proceeding or investigation under this chapter. This chapter neither creates nor derogates from any privileges which exist at common

law or otherwise when documentary or other evidence is sought under a subpoena directed to the administrator or any officer or employee of the securities bureau.

91 Acts, ch 258, §55 HF 709
Section amended

502.603 Investigations and subpoenas.

1. The administrator may

a. Make such public or private investigations within or outside of this state as the administrator deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder;

b. Require or permit any person to file a statement in writing, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning the matter to be investigated; and

c. Keep confidential the information obtained in the course of an investigation. However, if the administrator determines that it is necessary or appropriate in the public interest or for the protection of investors, the administrator may share information with other securities administrators, regulatory authorities, or governmental agencies or may publish information concerning a violation of this chapter or a rule or order under this chapter.

2. a. For the purpose of any investigation or proceeding under this chapter, the administrator or any officer designated by the administrator may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the administrator deems relevant or material to the inquiry, all of which may be enforced in accordance with chapter 17A.

b. The administrator may issue and bring an action in district court to enforce subpoenas in this state at the request of a securities agency or administrator of another state, if the activity constituting an alleged violation for which the information is sought would be a violation of this chapter had the activity occurred in this state.

3. No person is excused from attending and testifying or from producing any document or record before the administrator, or in obedience to the subpoena of the administrator or any officer designated by the administrator, or in any proceeding instituted by the administrator, on the ground that the testimony or evidence required, whether documentary or otherwise, may tend to incriminate such person or subject such person to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which such person is compelled, after claiming the privilege against self-incrimination, to testify or produce evidence, whether documentary or otherwise, except that the

individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

91 Acts, ch 40, §31 SF 520
Subsection 2 amended

502.603A Cooperation with other agencies.

1. To encourage uniform interpretation and administration of this chapter and effective securities regulation and enforcement, the administrator may cooperate with the securities agencies or administrators of any state, Canadian province or territory, another country, the securities and exchange commission, the commodity futures trading commission, the securities investor protection corporation, any self-regulatory organization, any national or international organization of securities officials or agencies, and any governmental law enforcement or regulatory agency.

2. The cooperation authorized by subsection 1 may include, but is not limited to, the following:

a. Establishing a central depository for licensing or registration under this chapter and for documents or records required or allowed to be maintained under this chapter.

b. Making a joint examination or investigation.

c. Holding a joint administrative hearing.

d. Filing and prosecuting a joint civil or administrative proceeding.

e. Sharing and exchanging personnel.

f. Sharing and exchanging information and documents subject to restriction of confidentiality in section 502.603, subsection 1.

g. Formulating, in accordance with chapter 17A, rules or proposed rules on matters such as statements of policy, guidelines, and interpretive opinions.

91 Acts, ch 40, §32 SF 520
NEW section

502.604 Cease and desist orders — injunctions.

If it appears to the administrator that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter or any rule or order adopted or issued pursuant to this chapter, the administrator may do either or both of the following:

1. Issue an order directed at the person requiring the person to cease and desist from engaging in such act or practice.

2. Bring an action in the district court to enjoin the act or practice and to enforce compliance with this chapter or a rule or order adopted or issued pursuant to this chapter. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. In addition, upon a proper showing by the administrator, the court may enter an order of rescission, restitution, or disgorgement directed at any person who has engaged in an act constituting a violation of this chapter, or a rule or

order adopted or issued pursuant to this chapter. The administrator shall not be required to post a bond.

91 Acts, ch 40, §33 SF 520
Section amended

502.604A Court action.

If a person fails or refuses to file any statement or report or to produce any books, papers, correspondence, memoranda, agreements, or other documents or records, or to obey any subpoena issued by the administrator, the administrator may refer the matter to the attorney general, who, after notice, may apply to a district court to enforce compliance. The court may order any or all of the following:

1. Injunctive relief, restricting or prohibiting the offer or sale of securities.
2. Revocation or suspension of any license or registration.
3. Production of documents or records, including but not limited to books, papers, correspondence, memoranda, or agreements.

4. Such other relief as may be required.

Such an order shall be effective until the person files the statement or report or produces the documents requested, or obeys the subpoena.

91 Acts, ch 40, §34 SF 520
NEW section

502.609 Service of process.

1. Every applicant for registration under this chapter, and every issuer which proposes to offer a security in this state, shall file with the administrator, in such form as the administrator by rule prescribes, an irrevocable consent appointing the administrator or the administrator's successor in office to be such person's attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against such person or the successor, executor or administrator of such person which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same validity as if served personally on the person filing the consent. The consent need not be filed by a person who has filed a consent in connection with a previous registration which is then in effect. Service may be

made by leaving a copy of the process in the office of the administrator, but it is not effective unless the plaintiff, including the administrator when acting as such,

a. Promptly sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at such person's last known address or takes other steps which are reasonably calculated to give actual notice; and

b. Files an affidavit of compliance with this subsection in the case on or before the return day of the process, or within such time as the court allows.

2. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order hereunder, has not filed a consent to service of process under subsection 1, and personal jurisdiction over such person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to the appointment by such person of the administrator or the administrator's successor in office to be that person's attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against that person or the successor, executor or administrator of that person which arises out of that conduct and which is brought under this chapter or by any rule or order hereunder, with the same validity as if served personally. Service may be made by leaving a copy of the process in the office of the administrator, and it is not effective unless the plaintiff, including the administrator when acting as such,

a. Promptly sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at such person's last known address or takes other steps which are reasonably calculated to give actual notice; and

b. Files an affidavit of compliance with this subsection in the case on or before the return day of the process or within such time as the court allows.

3. When process is served under this section, the court, or the administrator in a proceeding before the administrator, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

91 Acts, ch 40, §35 SF 520
Subsection 1, unnumbered paragraph 1 amended

CHAPTER 504A

IOWA NONPROFIT CORPORATION ACT

504A.25A Availability of certain information of nonprofit corporations and agencies.

A corporation organized pursuant to this chapter, or any other nonprofit agency, which receives federal or state funding, shall provide to any person, upon request, a list of the names of the members of the

corporation's or agency's board of directors, and the salary of each officer and director's fee of each director of the corporation or nonprofit agency.

91 Acts, ch 135, §1 SF 411
NEW section

CHAPTER 505

INSURANCE DIVISION

505.4 Deputy — assistants — bond.

The commissioner of insurance shall appoint a first and second deputy commissioner and such other clerks and assistants as shall be needed to assist the commissioner in the performance of the commissioner's duty, all of whom shall serve during the pleasure of the commissioner. Before entering upon the duties of their respective offices, deputy commissioners shall give a bond in the penal sum of ten thousand dollars.

The commissioner may appoint a deputy commissioner for supervision whom the commissioner may appoint as supervisory or special deputy pursuant to chapter 507C and who shall perform such other duties as may be assigned by the commissioner. The deputy commissioner for supervision shall receive a salary to be fixed by the commissioner. The deputy commissioner for supervision shall be an exempt employee under section 19A.3, subsection 17.

91 Acts, ch 26, §31 SF 518
NEW unnumbered paragraph 2

505.7 Fees — expenses of division.

1. All fees and charges which are required by law to be paid by insurance companies and associations shall be payable to the commissioner of the insurance division of the department of commerce or department of revenue and finance, as provided by law, whose duty it shall be to account for and pay over the same to the treasurer of state at the time and in the manner provided by law for deposit in the general fund of the state.

2. The commissioner shall account for receipts and disbursements according to the separate inspection and examination duties imposed upon the commissioner by the laws of this state and each separate

inspection and examination duty shall be fiscally self-sustaining.

3. Forty percent of the nonexamination revenues payable to the division of insurance or the department of revenue and finance in connection with the regulation of insurance companies or other entities subject to the regulatory jurisdiction of the division shall be subject to annual appropriation to the division for its operations and is also subject to expenditure under subsection 6.

4. The insurance division shall in determining charges and assessments include an amount which represents the division's share of the estimated cost of consolidated administrative services within the department of commerce, such share to be in the same proportion as established by agreement in the fiscal year beginning July 1, 1986, and ending June 30, 1987.

5. The insurance division may transfer moneys between budgeted line items of its appropriation, but such transfers may not reduce moneys budgeted for examinations or professional services, including but not limited to actuarial and legal services.

6. The insurance division may expend additional funds, including funds for additional personnel if those additional expenditures are actual expenses which exceed the funds budgeted for insurance solvency oversight under the following conditions:

a. The division may exceed the line item budgets for examinations and professional services, including but not limited to legal and actuarial services, provided that the division funds the increased expenditures through assessments or increased nonexamination revenues payable to the division under subsection 1 or otherwise. The amounts necessary to

fund the excess expenses may be collected from those regulated entities or classes of entities which either cause or benefit from the expenditure or encumbrance.

b. Before the division expends or encumbers an amount in excess of the funds budgeted for line items other than examinations and professional services, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the director of the department of management shall determine that the expenses can be paid from nonexamination revenues payable to the division under subsection 1 or otherwise. Upon the approval of the director of the department of management the division may expend and encumber funds for the excess expenses. The amounts necessary to fund the excess expenses may be collected from those regulated entities or classes of entities which either cause or benefit from the expenditure or encumbrance.

The annual salaries of the deputy commissioner for supervision and the chief examiner appointed pursuant to section 507.5 shall be expenses of examination of insurance companies and shall be charged to insurance companies examined on a proportionate basis as provided by rule adopted by the commissioner. Insurance companies examined shall pay the proportion of the salaries of the deputy commissioner for supervision and the chief examiner charged to

them as part of the costs of examination as provided in section 507.8.

91 Acts, ch 26, §32 SF 518, 91 Acts, ch 260, §1239 HF 173
Restrictions on use of moneys deposited in state general fund, see 91 Acts, ch 263, §38 SF 209

Availability of state general fund for payment of expenses, see 91 Acts, ch 264, §905 SF 532

Section stricken and rewritten
NEW unnumbered paragraph 1 (last paragraph)

505.13A Availability of certain rating information.

1. The division shall provide to any person requesting publicly available information relating to the financial condition of any insurance company licensed to do business in the state, including, but not limited to, the following:

a. Current ratings issued by a private rating organization.

b. Information on how to obtain such information from various sources.

c. Information on the state insurance guaranty funds.

2. The provision of such information by the division shall not be the basis to impose liability upon the division or any employee of the division. Information provided under this section is not an endorsement or guaranty of any insurance company.

91 Acts, ch 213, §1, 38 HF 634

Section effective only upon enactment of \$10,000 appropriation by Seventy-fourth General Assembly, 91 Acts, ch 213, §38 HF 634

NEW section

CHAPTER 507

EXAMINATION OF INSURANCE COMPANIES

507.5 Chief examiner.

The commissioner may appoint a chief examiner who shall supervise insurance company examinations and perform such other duties as may be assigned by the commissioner. The chief examiner shall receive a salary to be fixed by the commissioner. The chief examiner shall be an exempt employee under section 19A.3, subsection 17.

91 Acts, ch 26, §33 SF 518
NEW section

507.11 Procedure against nonlife companies. Repealed by 91 Acts, ch 26, § 61. SF 518

507.12 Procedure against life companies.

In case of companies organized under the provisions of chapter 508, the officers shall proceed as provided in sections 508.18 and 508.19.

91 Acts, ch 26, §57 SF 518
Section amended

507.14 Confidential documents — exceptions.

A report, preliminary or final, of an examination of a domestic or foreign insurer, and all notes, work papers, or other documents related to an examination of an insurer are not public records under chapter 22 except when sought by the insurer to whom they relate or an insurance regulator of another state, and shall be privileged and confidential in any judicial or administrative proceeding except any of the following:

1. An action commenced by the commissioner under chapter 507C.

2. An administrative proceeding brought by the insurance division under chapter 17A.

3. A judicial review proceeding under chapter 17A brought by an insurer to whom the records relate.

4. An action or proceeding which arises out of

the criminal provisions of the laws of this state or the United States.

5. An action brought in a shareholders' derivative suit against an insurer.

6. An action brought to recover moneys or to recover upon an indemnity bond for embezzlement, misappropriation, or misuse of insurer funds.

A report of an examination of a domestic or foreign insurer which is preliminary under the rules of the division is not a public record under chapter 22 except when sought by the insurer to which the report relates or an insurance regulator of another state, and is privileged and confidential in any judicial or administrative proceeding.

A financial statement filed by an employer self-insuring workers' compensation liability pursuant to

section 87.11, or the working papers of an examiner or the division in connection with calculating appropriate security and reserves for the self-insured employer are not public records under chapter 22 except when sought by the employer to which the financial statement or working papers relate or an insurance or workers' compensation self-insurance regulator of another state, and are privileged and confidential in any judicial or administrative proceeding. The financial information of a nonpublicly traded employer which self-insures for workers' compensation liability pursuant to section 87.11 is protected as proprietary trade secrets to the extent consistent with the commissioner's duties to oversee the security of self-insured workers' compensation liability.

91 Acts, ch 26, §34 SF 518
NEW unnumbered paragraphs 2 and 3

CHAPTER 507C

INSURERS SUPERVISION, REHABILITATION AND LIQUIDATION ACT

507C.12 Grounds for rehabilitation.

The commissioner may petition the district court for an order to rehabilitate a domestic insurer or an alien insurer domiciled in this state on any of the following grounds:

1. The insurer is in a condition that the further transaction of business would be financially hazardous to its policyholders, creditors, or the public.

2. There is reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer that, if established, would endanger assets in an amount threatening the solvency of the insurer.

3. The insurer has failed to remove a person, whether an officer, manager, general agent, employee, or other person, who in fact has executive authority in the insurer, if the person has been found after notice and hearing by the commissioner to be dishonest or untrustworthy in a way affecting the insurer's business.

4. Control of the insurer is in a person or persons found after notice and hearing to be untrustworthy. Control may be by stock ownership or by other means and may be direct or indirect.

5. A person who in fact has executive authority in the insurer, whether an officer, manager, general agent, director or trustee, employee, or other person has refused to be examined under oath by the commissioner concerning the insurer's affairs, in this state or elsewhere, and after reasonable notice of the fact the insurer has failed promptly and effectively

to terminate the employment and status of the person and all the person's influence on management.

6. After demand by the commissioner under chapter 507 or under this chapter, the insurer has failed to promptly make available for examination any of its property, books, accounts, documents, or other records, or those of a subsidiary or related company within the control of the insurer, or those of a person having executive authority in the insurer so far as they pertain to the insurer.

7. Without first obtaining the written consent of the commissioner, the insurer has transferred, or attempted to transfer, in a manner contrary to chapter 521 or 521A, substantially its entire property or business, or has entered into a transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person.

8. The insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator or sequestrator or similar fiduciary of the insurer of its property other than as authorized under the insurance laws of this state, and the appointment has been made or is imminent, and the appointment might oust the court of this state of jurisdiction or might prejudice orderly delinquency proceedings under this chapter.

9. Within the previous three years the insurer has willfully violated its charter or articles of incorporation, its bylaws, an insurance law of this state, or a valid order of the commissioner under section 507C.9.

10. The insurer has failed to pay within sixty

days after the due date an obligation to a state or any subdivision of a state or a judgment entered in a state, if the court in which the judgment was entered had jurisdiction over the subject matter. However, nonpayment shall not be a ground until sixty days after a good faith effort by the insurer to contest the obligation has been terminated whether the effort is before the commissioner or in the courts, or the insurer has systematically attempted to compromise or renegotiate previously agreed settlements with its creditors on the ground that it is financially unable to pay its obligations in full.

11. The insurer has failed to file its annual report or other financial report required within the time allowed and, after written demand by the commissioner, has failed to immediately give an adequate explanation.

12. The board of directors or the holders of a majority of the shares entitled to vote, or a majority of those individuals entitled to the control of those entities request or consent to rehabilitation under this chapter.

If the petition alleges that extraordinary circumstances exist and that there is imminent substantial risk to the insurer's solvency if the insurer is not immediately placed into rehabilitation, the court may issue, ex parte and without a hearing, the requested order of rehabilitation. An insurer subject to an ex parte order under this section may petition the court after the issuance of the order for a hearing and review of the order. The court shall hold the hearing and review not more than fifteen days after the request. A hearing under this section may be held privately in chambers. Upon the request of the insurer, the hearing shall be held privately in chambers.

91 Acts, ch 26, §35 SF 518
NEW unnumbered paragraph 2

507C.20A Redomestication of foreign insurer.

The commissioner may petition the court for an ancillary receivership or for an order redomesticating a foreign insurer which is the subject of a liquidation or other delinquency order in a reciprocal state. Only the corporate charter and rights to the licenses under such charter shall be redomesticated to Iowa. All claims against the foreign insurer shall remain a part of and be administered through the reciprocal state liquidation or other delinquency proceeding. Following notice as prescribed by the court and a hearing, the court may sell the corporation as an entity, together with any of its licenses, free and clear from the claims or interests of all claimants, creditors, policyholders, and stockholders of the corporation under liquidation or other delinquency proceedings, wherever located. The sale may be made on terms and conditions the court deems appropriate. The proceeds of the sale, less court costs, attorney fees, broker's fees, and the commissioner's expenses in effectuating the sale, shall become part of the as-

sets of the liquidation or other estate in the reciprocal state.

91 Acts, ch 213, §2 HF 634
NEW section

507C.33 Recovery of premiums owed.

1. *a.* An agent, broker, premium finance company or any other person responsible for the payment of a premium is obligated to pay an unpaid premium for the full policy term due the insurer at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. The liquidator shall also have the right to recover from the person any part of an unearned premium that represents commission of the person. Credits or set-offs or both shall not be allowed to an agent, broker, or premium finance company for amounts advanced to the insurer by the agent, broker, or premium finance company on behalf of, but in the absence of a payment by, the insured.

b. Notwithstanding paragraph "a", the agent, broker, premium finance company, or other person, is not liable for uncollected unearned premium of the insurer. A presumption exists that the premium as shown on the books of the insurer is collected and the burden is upon the agent, broker, premium finance company, or other person to demonstrate by a preponderance of the evidence that the unearned premium was not actually collected. For purposes of this paragraph, "unearned premium" means that portion of an insurance premium covering the unexpired term of the policy or the unexpired period of the policy period.

c. An insured is obligated to pay an unpaid earned premium due the insurer as shown on the records of the insurer at the time of the declaration of insolvency.

2. Upon satisfactory evidence of a violation of this section, the commissioner may pursue either one or both of the following courses of action:

a. Suspend or revoke or refuse to renew the licenses of the offending party or parties.

b. Impose a penalty of not more than one thousand dollars for each act in violation of this section by the party or parties.

3. Before the commissioner shall take any action as set forth in subsection 2, the commissioner shall give written notice to the person, company, association, or exchange accused of violating the law, stating specifically the nature of the alleged violation, and fixing a time and place, at least ten days thereafter, when a hearing on the matter shall be held. After such hearing, or upon failure of the accused to appear at the hearing, if a violation is found the commissioner shall impose those penalties under subsection 2 as deemed advisable.

4. When the commissioner shall take action in any or all of the ways set out in subsection 2, the party aggrieved may appeal from the action to court.

91 Acts, ch 213, §3 HF 634
Subsection 1, paragraph b, applies to any insurer subject to order under §507C 18 issued on or after July 1, 1991, 91 Acts, ch 213, §37 HF 634
Subsection 1, NEW paragraph b and former paragraph b relettered as c

CHAPTER 508

LIFE INSURANCE COMPANIES

508.7 Loans to officers.

Except as permitted in sections 508.8 and 508.8A, the capital or other funds shall not be loaned directly or indirectly to an officer, director, stockholder, or employee of the company or directly or indirectly to a relative of an officer or director of the company.

91 Acts, ch 213, §4 HF 634
Section amended

508.8A Loans to employees.

1. A life insurance company having a ratio of statutory surplus to admitted assets of at least four percent may make, acquire, and hold loans to employees, officers, and directors under the following terms and conditions:

a. The company may make a mortgage loan on real property owned by an employee of the company which is to serve as the employee's dwelling, provided the company is regularly and actively involved in making residential mortgage loans to the public.

b. The company may acquire a mortgage loan on real property owned by an employee of the company which is to serve as the employee's dwelling, provided the company acquiring such loan is regularly and actively involved in acquiring residential mortgage loans not involving employees from sources in the secondary market.

c. The company may acquire a mortgage loan on real property owned by an employee, officer, or director which is included in a portfolio of mortgages initiated by others and acquired by the life insurance company. The mortgage loans in any such acquired portfolio of mortgage loans must satisfy both of the following conditions:

(1) More than seventy-five percent of the dollar value of the mortgage loans must be for real property that is owned by persons who are not employees, officers, or directors of the company.

(2) More than seventy-five percent of the mortgage loans must be for real property that is owned by persons who are not employees, officers, or directors of the company.

d. The company may continue to hold a mortgage loan on real estate which is assumed by an employee, officer, or director if the mortgage was originally properly made or acquired by the life insurance company, provided that all terms and conditions of the mortgage loan remain unchanged and the mortgage loan is serviced in accordance with customary servicing practices of prudent lending institutions.

e. The company may continue to hold a mortgage on real estate owned by an officer or director which was properly made or acquired by the compa-

ny before the officer or director became an officer or director of the company, provided that all terms and conditions of the mortgage loan remain unchanged and the mortgage loan is serviced in accordance with customary servicing practices of prudent lending institutions.

2. As used in this section, "employee" does not include officers or directors of a life insurance company.

91 Acts, ch 213, §5 HF 634
NEW section

508.11 Annual statement.

The president or vice president and secretary or actuary, or a majority of the directors of each company organized under this chapter, shall annually, by the first day of March, prepare under oath and file in the office of the commissioner of insurance a statement of its affairs for the year terminating on the thirty-first day of December preceding, showing:

1. The name of the company and where located.
2. The names of officers.
3. The amount of capital, if a stock company.
4. The amount of capital paid in, if a stock company.
5. The value of real estate owned by the company.
6. The amount of cash on hand.
7. The amount of cash deposited in banks, giving the name of the bank or banks.
8. The amount of cash in the hands of agents, and in the course of transmission.
9. The amount of bank stock, with the name of each bank, giving par and market value of the same.
10. The amount of bonds of the United States, and all other bonds and securities, giving names and amounts, with the par and market value of each kind.
11. The amount of loans secured by first mortgage on real estate, and where such real estate is situated.
12. The amount of all other bonds, loans, how secured, and the rate of interest.
13. The amount of premium notes and their value on policies in force, if a mutual company.
14. The amount of notes given for unpaid stock, and their value in detail, if a stock company.
15. The amount of assessments unpaid on stock or premium notes.
16. The amount of interest due and unpaid.
17. The amount of all other securities.
18. The amount of losses due and unpaid.
19. The amount of losses adjusted but not due.

20. The amount of losses unadjusted.
21. The amount of claims for losses resisted.
22. The amount of money borrowed and evidences thereof.
23. The amount of dividends unpaid on stock.
24. The amount of dividends unpaid on policies.
25. The amount required to safely reinsure all outstanding risks.
26. The amount of all other claims against the company.
27. The amount of net cash premiums received.
28. The amount of notes received for premiums.
29. The amount of interest received from all sources.
30. The amount received from all other sources.
31. The amount paid for losses.
32. The amount of dividends paid to policyholders, and the amount to stockholders, if a stock company.
33. The amount of commissions and salaries paid to agents.
34. The amount paid to officers for salaries and other compensation.
35. The amount paid for taxes.
36. The amount of all other payments and expenditures.
37. The greatest amount insured on any one life.
38. The amount deposited in other states or territories as security for policyholders therein, stating the amount in each state or territory.
39. The amount of premiums received in this state during the year.
40. The amount paid for losses in this state during the year.
41. The whole number of policies issued during the year, with the amount of insurance effected thereby, and total amount of risk.
42. All other items of information necessary to enable the commissioner of insurance to correctly estimate the cash value of policies, or to judge of the correctness of the valuation thereof.
43. All other information as required by the national association of insurance commissioners' annual statement blank. The annual statement blank shall be prepared in accordance with instructions prescribed by the commissioner. All financial information reflected in the annual report shall be kept and prepared in accordance with accounting practices and procedures prescribed by the commissioner. The commissioner may adopt by reference the annual statement handbook and the accounting practices and procedures manual of the national association of insurance commissioners.

91 Acts, ch 26, §36 SF 518
Subsection 43 amended

508.15 Violation by foreign company.

Companies organized and chartered by the laws of

a foreign state or country, failing to file the evidence of investment and statement within the time fixed, or failing to timely file any financial statement required by rule of the commissioner of insurance, shall forfeit and pay five hundred dollars, to be collected in an action in the name of the state and paid to the treasurer of state for deposit in the general fund of the state as provided in section 505.7, and their right to transact further new business in this state shall immediately cease until the requirements of this chapter have been fully complied with. The commissioner may give notice to a company which has failed to file within the time fixed that the company is in violation of this section and if the company fails to file the evidence of investment and statement within ten days of the date of the notice the company shall forfeit and pay the additional sum of one hundred dollars for each day the failure continues, to be paid to the treasurer of state for deposit in the general fund of the state as provided in section 505.7.

91 Acts, ch 213, §6 HF 634
Section amended

508.15A Suspension and summary suspension.

The commissioner may do one or more of the following:

1. For a violation of Title XX, after a hearing provided pursuant to chapter 17A, order the suspension of the license or authority to transact the business of insurance within the state.

2. Upon three days' notice, if the commissioner has reason to believe that there is imminent substantial risk to an insurer's solvency, order the insurer to appear before the commissioner and show cause why its license or authority to do insurance business within the state should not be suspended. At the hearing to show cause, the commissioner may summarily suspend the license or authority of the insurer to do business within the state.

3. Summarily order an insurer to cease and desist from a violation, anticipated violation, or suspected violation of chapter 507B, 510, or 513A, if a hearing is provided pursuant to chapter 17A within thirty days of the summary cease and desist order.

91 Acts, ch 213, §7 HF 634
NEW section

508.17 Injunction — receivership — dissolution. Repealed by 91 Acts, ch 26, § 61. SF 518

508.19 Securities.

The securities that are on deposit of a defaulting or insolvent company, or a company against which proceedings are pending under section 508.18, shall vest in the state for the benefit of all policyholders of the company.

91 Acts, ch 26, §58 SF 518
Section amended

CHAPTER 508C

IOWA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

508C.8 Powers and duties of the association.

1. If a domestic, foreign, or alien insurer is an impaired insurer, the association, subject to conditions imposed by the association and approved by the impaired insurer and the commissioner, may:

a. Guarantee, assume, reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the covered policies of the impaired insurer.

b. Provide moneys, pledges, notes, guarantees, or other means as proper to effectuate paragraph “*a*” and assure payment of the contractual obligations of the impaired insurer pending action under paragraph “*a*”.

c. Loan money to the impaired insurer and guarantee borrowings by the impaired insurer, provided the association has concluded, based on reasonable assumptions, that there is a likelihood of repayment of the loan and a probability that unless a loan is made the association would incur substantial liabilities under subsection 2.

1A. If a domestic, foreign, or alien insurer is an insolvent insurer, subject to the approval of the commissioner, the association shall:

a. Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured the covered policies of the insolvent insurer.

b. Assure payment of the contractual obligations of the insolvent insurer.

c. Provide moneys, pledges, notes, guarantees, or other means as reasonably necessary to discharge the duties described in this subsection.

2. *a.* If a domestic, foreign, or alien insurer is an impaired insurer and the insurer is not paying claims timely, then, subject to the approval of the commissioner and to the preconditions specified in this subsection, the association may do either or both of the following:

(1) Take any of the actions specified in subsection 1, subject to the conditions in that subsection.

(2) Provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for health claims, periodic annuity benefits, death benefits, supplemental benefits, and cash withdrawals for policy or contract owners who petition for the benefits under claims of emergency or hardship in accordance with standards proposed by the association and approved by the commissioner.

b. The association is subject to this subsection only if all of the following conditions are met:

(1) The laws of the state of domicile provide that until all payments of or on account of the impaired insurer’s contractual obligations by all guaranty as-

sociations, along with all interest on the payments and expenses have been repaid to the guaranty associations or a plan of repayment by the impaired insurer has been approved by the guaranty associations all of the following apply:

(a) The delinquency proceeding shall not be dismissed.

(b) Neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management.

(c) The impaired insurer shall not be permitted to solicit or accept new business or have any suspended or revoked license restored.

(2) If the impaired insurer is a domestic insurer it has been placed under an order of rehabilitation by a court of competent jurisdiction in this state; or, if the impaired insurer is a foreign or alien insurer it has been prohibited from soliciting or accepting new business in this state, its certificate of authority has been suspended or revoked in this state, and a petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state or nation of domicile by the commissioner of that state or similar authority in an alien nation.

3. *a.* In carrying out its duties under subsection 2, permanent policy liens or contract liens may be imposed in connection with a guarantee, assumption, or reinsurance agreement, if the court does both of the following:

(1) Finds either that the amounts which can be assessed under this chapter are less than the amounts needed to assure full and prompt performance of the insolvent insurer’s contractual obligations, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to the public interest to justify the imposition of policy or contract liens.

(2) Approves the specific policy liens or contract liens to be used.

b. Before being obligated under subsection 2, the association may request the imposition of a temporary moratorium, not exceeding three years, or liens on payments of cash values, termination values, and policy loans in addition to any contractual provisions for deferral of cash values, termination values, or policy loans. The temporary moratoriums and liens may be imposed by the court as a condition of the association’s liability with respect to the insolvent insurer.

c. The obligations of the association under subsection 2 regarding a covered policy shall be reduced to the extent that the person entitled to the obliga-

tions has received payment of all or any part of the contractual benefits payable under the covered policy from any other source.

d The association may offer modifications to the owners of policies or contracts or classes of policies or contracts issued by the insolvent insurer, if the association finds that under the policies or contracts the benefits provided, provisions pertaining to renewal, or the premiums charged or which may be charged are not reasonable. If the owner of a policy or contract to be modified fails or refuses to accept the modification as approved by the court, the association may terminate the policy or contract as of a date not less than one hundred eighty days after the modification is sent to the owner. The association shall have no liability under the policy or contract for any claim incurred or continuing beyond the termination date.

4. If the association fails to act within a reasonable period of time as provided in subsection 2, the commissioner shall have the powers and duties of the association under this chapter with respect to insolvent insurers.

5. Upon request the association may give assistance and advice to the commissioner concerning the rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of an impaired or insolvent insurer.

6. The association has standing to appear before any court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this chapter. Standing shall extend to all matters germane to the powers and duties of the association including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations.

7. *a* A person receiving benefits under this chapter is deemed to have assigned the rights under the covered policy to the association to the extent of the benefits received under this chapter, whether the benefits are payments of contractual obligations or a continuation of coverage. The association may require an assignment to the association of the rights by a payee, policyholder or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this chapter upon the person. The association shall be subrogated to these rights against the assets of the insolvent insurer.

b The subrogation rights of the association under this subsection have the same priority against the assets of the insolvent insurer as that possessed by the person entitled to receive benefits under this chapter.

c In addition to the rights pursuant to subsection 3, paragraphs "a" and "b", the association shall have all common law rights of subrogation and any other equitable or legal remedy which would have been available to the insolvent insurer or holder of a policy or contract.

8. The contractual obligations of the insolvent insurer, for which the association becomes or may become liable, are as great as but not greater than the contractual obligations of the insolvent insurer would have been in the absence of an insolvency, unless the obligations are reduced as permitted in this chapter. However, with respect to any one life, the aggregate liability of the association shall not exceed one hundred thousand dollars in cash and termination values, or three hundred thousand dollars for all benefits, including cash and termination values, death benefits, annuity payments, accident and health benefits, and all other amounts payable under all policies or contracts of the insolvent insurer. With respect to any one holder of an unallocated annuity contract, the aggregate liability of the association shall not exceed one million dollars of contract benefits, irrespective of the number of contracts held by the contract holder.

9. The association has no obligation for either of the following:

a To continue coverage, or to pay a claim for benefits to any person under an individual accident, health, or disability policy accruing more than three years following the date the member insurer is adjudicated to be insolvent.

b To issue a group conversion policy of any nature to a person or to continue a group coverage in force for more than sixty days following the date the member insurer was adjudicated to be insolvent.

10. The association may do any of the following:

a Enter into contracts as necessary or proper to carry out this chapter.

b Sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under section 508C.9.

c Borrow money to effect the purposes of this chapter. Any notes or other evidence of indebtedness of the association held by domestic insurers and not in default qualify as investments eligible for deposit under section 511.8, subsection 16.

d Employ or retain persons as necessary to handle the financial transactions of the association, and to perform other functions as necessary or proper under this chapter.

e Negotiate and contract with a liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association.

f Take legal action as necessary to avoid payment of improper claims.

g For the purposes of this chapter and to the extent approved by the commissioner, exercise the powers of a domestic life or health insurer. However, the association shall not issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired or insolvent insurer.

h Join an organization of one or more other state associations of similar purposes to further the purposes and administer the powers and duties of the association.

508C.16 Immunity — indemnification.

A member insurer and its agents and employees, the association and its agents and employees, members of the board of directors, and the commissioner and the commissioner's representatives are not liable for any action taken by them or omission by them while acting within the scope of their employment

and in the performance of their powers and duties under this chapter

Sections 490 850 through 490 858 apply to the association

91 Acts ch 97 §55 HF 198
Unnumbered paragraph 2 amended

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 in-

dividual 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 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

d Group policies may include dependents of the employee, including the spouse

e 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 policy-

holder. 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.

8. A policy issued to a resident of this state under a group life, accident, or health insurance policy issued to a group other than one described in subsections 1 through 7, subject to the following requirements:

a. The commissioner determines that all of the following apply:

(1) The issuance of the group policy is not contrary to the best interest of the public.

(2) The issuance of the group policy will result in economies of acquisition or administration.

(3) The benefits under the group policy are reasonable in relation to the premium charged.

b. The commissioner need not make a determination under paragraph “a” if the commissioner determines that the group insurance coverage offered in this state by an insurer or other person is offered under a policy issued in another state and that state or another state in which the policy is offered, having requirements substantially similar to those in paragraph “a”, has determined that the policy meets those requirements.

c. The premium for the policy shall be paid either from the policyholder’s funds, or from funds contributed by the covered person, or both.

d. The insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer.

e. If compensation of any kind will or may be paid to the policyholder in connection with the group policy, the insurer shall provide to the prospective insured written notice that compensation will or may be paid. Notice shall be provided whether the compensation is direct or indirect, and whether the compensation is paid to or retained by the policyholder, or paid to or retained by a third party at the direction of the policyholder or any entity affiliated with the policyholder by ownership, contract, or employment. The notice shall be placed on or accompa-

ny any document designed for the enrollment of prospective insureds.

91 Acts, ch 244, §25 HF 688

Subsection 1, paragraph c stricken and former paragraphs d, e, and f relettered as c, d, and e

509.17A Small group rating. Repealed by 91 Acts, ch 244, § 27. HF 688 See ch 513B.

CHAPTER 510

MANAGING GENERAL AGENTS AND ADMINISTRATORS

MANAGING GENERAL AGENTS

1991 amendments to this division effective July 1, 1991, compliance required on and after that date regardless of date of original contract, rules, 91 Acts, ch 26, § 62 SF 518

510.1 Definition. Repealed by 91 Acts, ch 26, § 61. SF 518 See § 510.1B.

510.1A Short title.

This chapter may be cited as the “*Managing General Agents Act*.”

91 Acts, ch 26, §1 SF 518
NEW section

510.1B Definitions.

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

1. “*Actuary*” means a person who is a member in good standing of the American academy of actuaries.

2. “*Commissioner*” means the commissioner of insurance.

3. “*Insurer*” means a person duly licensed in this state as an insurance company pursuant to this title.

4. a. “*Managing general agent*” means any person who engages in all of the following:

(1) Negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office, and who acts as an agent for such insurer whether known as a managing general agent, manager, or other similar term or title.

(2) With or without authority and either separately or together with affiliates, directly or indirectly produces, and underwrites, an amount of gross direct written premium equal to or greater than five percent of the policyholder surplus in any one quarter or year as reported in the last annual statement of the insurer.

(3) Engages in either or both of the following:

(a) Adjusts or pays claims in excess of an amount determined by the commissioner.

(b) Negotiates reinsurance on behalf of the insurer.

b. Managing general agent does not include any of the following:

(1) An employee of the insurer.

(2) A manager of a United States branch of an alien insurer who resides in this country.

(3) An underwriting manager who, pursuant to contract, manages all insurance operations of the insurer, who is under common control with the insurer, subject to chapter 521A relating to the regulation of insurance holding company systems, and who is not compensated based upon the volume of premiums written.

(4) An insurance company, in connection with the acceptance or rejection of reinsurance on a block of business.

(5) The attorney-in-fact authorized by or acting for the subscribers of a reciprocal insurer or interinsurance exchange under power of attorney.

5. “*Underwrite*” means the authority to accept or reject risk on behalf of the insurer.

91 Acts, ch 26, §2 SF 518
NEW section

510.4 Licensure required — bond.

1. A person shall not act in the capacity of a managing general agent with respect to risks located in this state for an insurer licensed in this state unless the person is a licensed producer in this state.

2. A person shall not act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless the person is licensed as a resident or nonresident producer in this state pursuant to the provisions of this chapter.

3. The commissioner may require a bond for

each company represented by a managing general agent in an amount acceptable to the commissioner for the protection of the insurer

4 The commissioner may require a managing general agent to maintain an errors and omissions policy

91 Acts ch 26 §3 SF 518
NEW section

510.5 Required contract provisions — limitations.

1 A person acting in the capacity of a managing general agent shall not place business with an insurer unless a written contract is in force between the parties which sets forth the responsibilities of each party. If both parties share responsibility for a particular function, the contract must specify the division of such responsibilities, and must contain, at a minimum, all of the following provisions:

a The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of a managing general agent during the pendency of any dispute regarding the cause for termination. The insurer shall advise the commissioner of a termination or a suspension pursuant to this paragraph.

b A managing general agent shall render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.

c All funds collected for the account of an insurer shall be held by a managing general agent in a fiduciary capacity in a bank which is a member of the federal reserve system. This account shall be used for all payments on behalf of the insurer. A managing general agent may retain no more than three months' estimated claims payments and allocated loss adjustment expenses.

d Separate records of business written by a managing general agent shall be maintained. An insurer shall have access and a right to copy all accounts and records related to the insurer's business in a form usable by the insurer and the commissioner shall have access to all books, bank accounts, and records of a managing general agent in a form usable by the commissioner. Such records shall be retained at least until after completion by the insurance division of the next triennial examination of the insurer.

e Appropriate underwriting guidelines including, but not limited to, the following:

- (1) The maximum annual premium volume
- (2) The basis of the rates to be charged
- (3) The types of risks which may be written
- (4) Maximum limits of liability
- (5) Applicable exclusions
- (6) Territorial limitations
- (7) Policy cancellation provisions
- (8) The maximum length or duration of the policy period

The insurer may cancel or refuse to renew any policy of insurance produced or underwritten by a man-

aging general agent, subject to the applicable laws and rules concerning the cancellation and nonrenewal of insurance policies.

2 Permissible provisions in a contract and their requirements include the following:

a If the contract permits a managing general agent to settle claims on behalf of the insurer, all of the following requirements apply:

(1) All claims reported must be reported by the managing general agent to the insurer in a timely manner.

(2) A copy of the claim file must be sent to the insurer at its request or as soon as the managing general agent knows that the claim meets one or more of the following conditions:

(a) The claim has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the insurer, whichever is less.

(b) The claim involves a coverage dispute.

(c) The claim may exceed the claims settlement authority of the managing general agent.

(d) The claim is open for more than six months.

(e) The claim is closed by payment of an amount set by the commissioner or an amount set by the insurer, whichever is less.

(3) All claim files shall be the joint property of the insurer and the managing general agent. However, upon an order of liquidation of the insurer, the files become the sole property of the insurer or its estate. The managing general agent shall have reasonable access to and the right to copy the files on a timely basis.

(4) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

b If electronic claims files are in existence, the contract must address the timely transmission or transfer of the data contained in the files.

c If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of interim profits by establishing loss reserves, by controlling claim payments, or by determining the amount of interim profits in any other manner, interim profits shall not be paid to the managing general agent until one year after they are earned for property insurance business and five years after they are earned for casualty insurance business, and not until the interim profits have been verified pursuant to section 510.6.

3 A managing general agent shall not do any of the following:

a Bind reinsurance or retrocessions on behalf of the insurer, except that a managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed

and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

b. Commit the insurer to participate in insurance or reinsurance syndicates.

c. Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which the producer is appointed.

d. Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which exceeds one percent of the policyholder's surplus of the insurer as of December 31 of the previous calendar year.

e. Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded by the managing general agent to the insurer.

f. Permit its subproducer to serve on the insurer's board of directors.

g. Jointly employ an individual who is employed by the insurer.

h. Appoint a submanaging general agent.

91 Acts, ch 26, §4 SF 518
Contracts, see also §510.2
NEW section

510.6 Duties of insurers.

1. An insurer shall have on file an independent financial examination, in a form acceptable to the commissioner, of each managing general agent with which the insurer does or has done business.

2. If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by a managing general agent. This is in addition to any other required loss reserve certification.

3. An insurer shall periodically, but at least semi-annually, conduct an on-site review of the underwriting and claims processing operations of each managing general agent with which the insurer is currently doing business.

4. Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who is not affiliated with the managing general agent.

5. Within thirty days of entering into or termination of a contract with a managing general agent, the insurer shall provide written notification of the appointment or termination to the commissioner. A notice of appointment of a managing general agent must include a statement of duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the commissioner may request.

6. An insurer shall review its books and records each quarter and determine if any producer, as de-

finied by section 510A.2, has become, by operation of section 510.1B, subsection 4, a managing general agent as defined in that section. If the insurer determines that a producer has become a managing general agent by operation of section 510.1B, subsection 4, the insurer shall promptly notify the producer and the commissioner of such determination and the insurer and producer shall fully comply with the provisions of this chapter within thirty days.

7. An insurer shall not appoint to its board of directors an officer, director, employee, producer, or controlling shareholder of a managing general agent of the insurer. This subsection shall not apply to relationships governed by chapter 521A relating to the regulation of insurance company holding systems, or, if applicable, by chapter 510A relating to the regulation of producer controlled property and casualty insurers.

91 Acts, ch 26, §5 SF 518, 91 Acts, ch 258, §56 HF 709
NEW section
Subsection 6 amended

510.7 Examination authority.

The acts of a managing general agent are considered to be the acts of the insurer on whose behalf a managing general agent is acting. A managing general agent may be examined as if it were the insurer.

91 Acts, ch 26, §6 SF 518
NEW section

510.8 Penalties and liabilities.

1. If the commissioner finds, after a hearing conducted in accordance with chapter 17A, that any person has violated one or more provisions of this chapter, the commissioner may do one or more of the following:

a. For each separate violation, order the imposition of an administrative penalty of not more than ten thousand dollars.

b. Order the revocation or suspension of the producer's license.

c. Bring a civil suit seeking reimbursement by the managing general agent of the insurer, the rehabilitator, or the liquidator of the insurer for any losses incurred by the insurer caused by a violation of this chapter committed by the managing general agent.

2. The decision, determination, or order of the commissioner pursuant to subsection 1 is subject to judicial review pursuant to chapter 17A.

3. This section does not affect the right of the commissioner to impose any other penalties provided for under this title.

4. This chapter is not intended to and shall not in any manner limit or restrict the rights of policyholders, claimants, and auditors.

91 Acts, ch 26, §7 SF 518, 91 Acts, ch 213, §8 HF 634
NEW section
Subsection 1 amended

510.9 Rules.

The commissioner may adopt rules, pursuant to chapter 17A, as necessary or convenient for the implementation and administration of this chapter.

91 Acts, ch 26, §8 SF 518
NEW section

510.10 Exemption.

A managing general agent who complies with sections 510.1A through 510.9 for a block of business, shall not also be required to comply with sections

510.20 and 510.21 with regard to the same block of business.

91 Acts, ch 26, §9 SF 518, 91 Acts, ch 258, §57 HF 709
NEW section
Section amended

CHAPTER 510A

PRODUCER CONTROLLED PROPERTY AND CASUALTY INSURERS

Chapter effective July 1, 1991, compliance required
on and after that date regardless of date of original
contract, authority to suspend enforcement, 91 Acts,
ch 26, § 63 SF 518, 91 Acts, ch 213, § 32 HF 634

510A.1 Short title.

This chapter shall be known and may be cited as the "*Producer Controlled Property and Casualty Insurer Act*."

91 Acts, ch 26, §10 SF 518
NEW section

510A.2 Definitions.

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

1. "*Captive insurer*" means an insurance company which is owned by another organization for the exclusive purpose of insuring risks of the organization and any affiliated company, or in the case of groups and associations, an insurance organization owned by the insureds for the exclusive purpose of insuring risks of group and association members and any affiliates.

2. "*Control*" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a contract for goods or nonmanagement services, or otherwise. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the powers to vote or holds proxies representing a majority of the outstanding voting securities of any other person. A person is not deemed to control another person solely by reason of being an officer or director of the other person.

3. "*Independent casualty actuary*" means a casualty actuary who is a member of the American academy of actuaries and who is not an employee, principal, the direct or indirect owner of, affiliated with, or in any way controlled by the insurer or producer.

4. "*Licensed property and casualty insurer*" or "*insurer*" means a person licensed to transact a property and casualty insurance business in this state and which issues policies covered by chapter 515B, which establishes the insurance guaranty associa-

tion. The following are not licensed property and casualty insurers for the purposes of this chapter:

- a. All nonadmitted insurers.
- b. All risk retention groups as defined in the federal Superfund Amendments Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986), the federal Risk Retention Act, 15 U.S.C. § 3901 et seq. (1982 & Supp. 1986), or chapter 515E.
- c. All residual market pools and joint underwriting authorities or associations.
- d. All captive insurers.
5. "*Producer*" means an insurance broker or any other person when such person acts or aids in any manner in soliciting, negotiating, or procuring the making of an insurance contract on behalf of an insured, who is not that person, for any compensation, commission, or other thing of value. "*Producer*" does not include an exclusive agent or an independent agent acting on behalf of the controlled insurer or any subagent or representative of such agent, who acts as such in the solicitation of, negotiation for, or procurement or making of an insurance contract, if the agent, subagent, or representative is not also acting in the capacity of an insurance broker in the same transaction.
6. "*Reinsurance intermediary*" means a person who acts as a producer in soliciting, negotiating, or procuring the making of a reinsurance contract or binder on behalf of a ceding insurer, or acts as a producer in accepting a reinsurance contract or binder on behalf of an assuming insurer.
7. "*Violation*" means a finding by the commissioner that one or more of the following has occurred:
 - a. The controlling producer has not materially complied with section 510A.3.
 - b. The controlled insurer, with respect to business placed by the controlling producer, has engaged in a pattern of charging premiums that were lower than those being charged by the insurer or other in-

surers for similar risks written during the same period and placed by noncontrolling producers. When determining whether premiums were lower than those prevailing in the market, the commissioner shall take into consideration applicable industry or actuarial standards at the time the business was written.

c The controlling producer failed to maintain records, sufficient to demonstrate that the producer's dealings with its controlled insurer were fair and equitable and in compliance with chapter 521A or to accurately disclose the nature and details of its transactions with the controlled insurer, including such information as is necessary to support the charges or fees to the respective parties.

d The controlled insurer either failed to establish, or deviated from, its underwriting procedures with respect to business placed by the controlling producer.

e The controlled insurer's capitalization at the time the business was placed by the controlling producer and with respect to such business was not in compliance with criteria established by the commissioner or with this title.

f The controlling producer or the controlled insurer failed to substantially comply with chapter 521A.

91 Acts ch 26 §11 SF 518
NEW section

510A.3 Limitation on business placed with controlled insurer.

1 A producer which has control of a licensed property and casualty insurer shall not directly or indirectly place business with the insurer in any transaction in which the producer, at the time the business is placed, is acting as a producer on behalf of the insured for any compensation, commission, or other thing of value, unless all of the following conditions are satisfied:

a A written contract, which is subject to the commissioner's review and approval, has been entered into between the controlling producer and the insurer which has been approved by the board of directors of the insurer and filed with the commissioner.

b The producer, prior to the effective date of any policy, delivers written notice to the prospective insured disclosing the relationship between the producer and the controlled insurer. The disclosure notice shall be signed by the insured and retained in the underwriting file until the filing of the report on examination covering the period in which the coverage is in effect. However, if the business is placed through an agent of the producer who is not a controlling producer, the controlling producer shall retain in the controlling producer's records a signed commitment from the agent of the producer that the agent of the producer is aware of the relationship between the insurer and the producer and that the agent of the producer has or will notify the insured of the relationship.

c All funds collected for the account of the insurer by the controlling producer, after commission payments, cancellations, and other adjustments are made, must be paid to the insurer at least quarterly.

2 In addition to any other required loss reserve certification, the controlled insurer, on April 1 of each year, shall annually file with the commissioner an opinion of an independent casualty actuary, or of another independent loss reserve specialist acceptable to the commissioner, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of the end of the year, including incurred losses not reported, on business placed by the producer.

3 The controlled insurer shall annually report to the commissioner the amount of commissions paid to the producer, the percentage such amount represents of the net premiums written, and comparable amounts and percentages paid to noncontrolling producers for placements of the same kinds of insurance.

4 A controlled insurer must establish an audit committee of the board of directors composed of independent directors. Prior to approval of the annual financial statement, the audit committee shall meet with management, the insurer's independent certified public accountants, and an independent casualty actuary, or another independent loss reserve specialist acceptable to the commissioner, to review the adequacy of the insurer's loss reserves.

5 A reinsurance intermediary which has control of an assuming insurer shall not directly or indirectly place business with the assuming insurer in any transaction in which such reinsurance intermediary is acting as a broker on behalf of the ceding insurer. A reinsurance intermediary which has control of a ceding insurer shall not directly or indirectly accept business from the ceding insurer in any transaction in which such reinsurance intermediary is acting as a producer on behalf of the assuming insurer. The prohibitions in this subsection shall not apply to a reinsurance intermediary which makes a full and complete written disclosure to the parties of its relationship with the assuming or ceding insurer prior to completion of the transaction.

91 Acts ch 26 §12 SF 518
NEW section

510A.4 Liability of controlling producer in the event of insolvency of controlled insurer.

1 *a* If the commissioner has reason to believe that a controlling producer has committed or is committing an act which could be determined to be a violation, as defined in section 510A 2, the commissioner shall serve upon the controlling producer in the manner provided by chapter 17A, a statement of the charges and notice of a hearing to be conducted in accordance with chapter 17A.

b At such hearing the commissioner shall determine whether the controlling producer engaged in a violation, as defined in section 510A 2. The control-

ling producer shall have an opportunity to be heard and to present evidence rebutting the alleged violations. The final action of the commissioner is subject to judicial review pursuant to chapter 17A.

c. Upon the commissioner's finding of a violation by a controlling producer, the commissioner may bring a civil suit seeking reimbursement from the controlling producer as provided in paragraph "d". In the suit, the controlling producer shall have the burden of establishing that the insolvency of the controlled insurer arose out of events not attributable to the violation.

d. Upon a finding, pursuant to this section, that the controlling producer committed a violation and the controlling producer failed to establish that the violation did not substantially contribute to the in-

solveny, the controlling producer shall reimburse the state guaranty funds, created pursuant to chapter 515B for all payments made for losses, loss adjustment, and administrative expenses on the business placed by the producer in excess of gross earned premiums and investment income earned on premiums and loss reserves for such business.

e. This section does not affect the right of the commissioner to impose any other penalties provided for under this title.

2. This chapter does not alter or affect the rights of policyholders, claimants, creditors, or other third parties.

91 Acts, ch 26, §13 SF 518, 91 Acts, ch 213 §9 HF 634
NEW section
Subsection 1 amended

CHAPTER 511

PROVISIONS APPLYING TO LIFE INSURANCE COMPANIES AND ASSOCIATIONS

511.8 Investment of funds.

A 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 is the net present value of all outstanding policies and contracts involving life contingencies. This section does not prohibit a company or association from holding a portion of its legal reserve in cash.

The investment programs developed by companies shall take into account the safety of the company's principal, investment yield and return, stability in the value of the investment, and liquidity necessary to meet the company's expected business needs and investment diversification.

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.

The term "*corporation*" as used in this chapter includes a joint stock association, a partnership, or a trust.

The securities, real estate, and mortgages described in this section include participations, which means instruments evidencing partial or undivided collective interests in such securities, real estate, and mortgages.

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 noncumulative 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 nonrecurring 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, bonds, certificates, or other evidences of indebtedness secured by any transportation equipment used wholly or in part 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 or 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 government-

tal 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 commissioner. 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.

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 pay-

ment 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 fur-

nishing 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 section 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 from the deposit unless proceedings against the company or association are pending under section 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 an established foreign securities exchange or 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 guaran-

teed 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 Canada. Foreign investments authorized by this subsection are not eligible in excess of two 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 insur-

ers 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 section 508.18 whenever proceedings under that section 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.

91 Acts, ch 26, §38, 59, 60 SF 518

*48 Stat L 1246, 12 U S C §1701 et seq

**58 Stat L 291, repealed by Pub L No 85 857, §14(87) 72 Stat L 1273, see 38 U S C §1801 et seq

***60 Stat L 1062, repealed by Pub L No 87 128, §341(a), see 7 U S C §1921 et seq

NEW unnumbered paragraph 2

Subsection 16, unnumbered paragraphs 2 and 4 amended

Subsection 21, paragraph b, subparagraph (3) amended

CHAPTER 512A

REGULATION OF BENEVOLENT ASSOCIATIONS

512A.5 Fees to commissioner.

The following fees shall be paid to the commissioner for services required under this chapter, which shall be accounted for by the commissioner in the same manner as other fees received in the discharge of the duties of the office:

1. For filing and examination of amendments to the articles of incorporation in this state and the accompanying general plan of operation of any benevo-

lent association, and the issuing of the permission to do business, twenty dollars.

2. For filing an annual statement of a benevolent association, and issuing the renewal of the permission required by law to authorize continuance in business, twenty-five dollars per existing unit, not to exceed three hundred dollars in the aggregate.

91 Acts, ch 213, §10 HF 634

Section amended

CHAPTER 512B

FRATERNAL BENEFIT SOCIETIES

512B.15 Consolidations and mergers.

1. A domestic society may consolidate or merge with a domestic society, foreign society, or society chartered under the laws of Canada or a Canadian province or territory, by complying with this section. The society shall file with the commissioner all of the following:

a. A certified copy of the written contract containing in full the terms and conditions of the consolidation or merger.

b. A sworn statement by the president and secretary, or corresponding officers of each society, showing the financial condition of the society on a date fixed by the commissioner.

c. A certificate of each officer submitting a sworn statement pursuant to paragraph "b", duly verified, that the consolidation or merger contract has been approved by a two-thirds vote of the supreme governing body of each society, the vote having been conducted at a regular or special meeting of each such body, or, if the society's laws so permit, by mail.

d. Evidence that at least sixty days prior to the action of the supreme governing body of each society to approve the consolidation or merger contract, the text of the contract has been furnished to all members of each society either by mail or by publication in full in the official publication of each society.

2. If the commissioner finds that the contract is in conformity with this section, that the financial statements are correct, and that the consolidation or merger is just and equitable to the members of each society, the commissioner shall approve the contract and issue a certificate to that effect. Upon the commissioner's approval, the contract shall be in full force and effect unless a society which is a party to the contract is incorporated under the laws of another

state. In that event the consolidation or merger shall not become effective unless and until it has been approved as provided by the laws of the other state and a certificate of approval has been filed with the commissioner of this state or, if the laws of the other state contain no equivalent provision for issuing a certificate of consolidation or merger, then the consolidation or merger shall not become effective unless and until it has been approved by the commissioner of the other state and a certificate conforming with the laws of this state has been filed with the commissioner. If the contract is not approved it shall be inoperative, and the fact of submission and its contents shall not be disclosed by the commissioner. For the purposes of this subsection, "state" includes Canada and Canadian provinces and territories.

3. Upon the consolidation or merger becoming effective, all the rights, franchises, and interests of the consolidated or merged societies in and to every kind of property, real, personal, or mixed, belonging to the societies shall be vested in the successor society without any other instrument, except that conveyances of real property may be evidenced by proper deeds. The title to real property or an interest in real property, vested under the laws of this state in any of the societies consolidated or merged, shall not revert or be in any way impaired by reason of the consolidation or merger, but shall vest absolutely in the successor society.

4. The affidavit of an officer of the society or of a person authorized by the society to mail a notice or document, stating that the notice or document has been duly addressed and mailed, is prima facie evidence that the notice or document has been furnished the addressees.

91 Acts, ch 97, §56 HF 198
Subsection 2 amended

CHAPTER 513A

REGULATION OF THIRD-PARTY PAYORS OF HEALTH CARE BENEFITS

513A.1 Purpose.

The purpose of this chapter is to give the commissioner jurisdiction over third-party payors of health care benefits, to indicate how a third-party payor of health care benefits may show the jurisdiction to which the third-party payor is subject, to allow for examinations by the commissioner if the third-party payor of health care benefits is unable to establish that a third-party payor is subject to another jurisdiction, to make a third-party payor of health care benefits subject to the laws of this state if the third-party payor cannot show that it is subject to another jurisdiction, and to disclose to purchasers of such health care benefits whether or not the plans are fully insured.

91 Acts, ch 213, §11 HF 634
NEW section

513A.2 Authority and jurisdiction of commissioner.

Except as provided in this chapter, a third-party payor providing coverage in this state for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether the coverage is by direct payment, reimbursement, or otherwise, is presumed to be subject to the jurisdiction of the commissioner of insurance, unless the person shows that while providing such services the person is subject to the jurisdiction of another agency of the state or the federal government.

91 Acts, ch 213, §12 HF 634
NEW section

513A.3 How to show jurisdiction.

A third-party payor may establish that the third-party payor is subject to the jurisdiction of another agency of the state, any subdivision of the state, or the federal government, by providing to the insurance commissioner the appropriate certificate, license, or other document issued by the agency which permits or qualifies the third-party payor to provide those services.

91 Acts, ch 213, §13 HF 634
NEW section

513A.4 Examination.

A third-party payor unable to establish under section 513A.3 that the third-party payor is subject to the jurisdiction of another agency of the state, any subdivision of the state, or the federal government, shall submit to an examination by the insurance commissioner to determine the organization and solvency of the third-party payor or the entity, and to determine whether or not the third-party payor complies with the applicable provisions of state law.

91 Acts, ch 213, §14 HF 634
NEW section

513A.5 Subject to state laws.

A third-party payor unable to establish that the third-party payor is subject to the jurisdiction of another agency of the state, any subdivision of the state, or the federal government, is subject to all appropriate provisions of Title XX regarding the conduct of the business of the third-party payor.

91 Acts, ch 213, §15 HF 634
NEW section

513A.6 Production agency or administrator — disclosure.

A production agency or administrator which advertises, sells, transacts, or administers the coverage in this state as defined in section 513A.2 and which is required to submit to an examination by the insurance commissioner under section 513A.4, shall, if the coverage is not fully insured or otherwise fully covered by an admitted life or disability insurer, nonprofit hospital service plan, or nonprofit health care plan, advise every purchaser, prospective purchaser, and covered person of the lack of insurance or other coverage.

An administrator which advertises or administers the coverage in this state as defined in section 513A.2 and which is required to submit to an examination by the insurance commissioner under section 513A.4, shall advise any production agency of the elements of the coverage, including the amount of stop-loss insurance in effect.

91 Acts, ch 213, §16 HF 634
NEW section

CHAPTER 513B

SMALL GROUP HEALTH BENEFIT PLANS

513B.1 Title — purpose.

1. This chapter shall be known and may be cited as the Model Small Group Rating Law.

2. The intent of this chapter is to promote the availability of health insurance coverage to small employers, to prevent abusive rating practices, to require disclosure of rating practices to purchasers, to establish rules for continuity of coverage for employers and covered individuals, and to improve the efficiency and fairness of the small group health insurance marketplace.

91 Acts, ch 244, §1 HF 688
NEW section

513B.2 Definitions.

1. “*Actuarial certification*” means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance with the provisions of section 513B.4, based upon the person’s examination, including a review of the appropriate records and of the actuarial assumptions and methods utilized by the small employer carrier in establishing premium rates for applicable health benefit plans.

2. “*Base premium rate*” means, for each class of business as to a rating period, the lowest premium rate charged or which could have been charged under a rating system for that class of business, by the small employer carrier to small employers with similar case characteristics for health insurance plans with the same or similar coverage.

3. “*Carrier*” means any person who provides health insurance in this state. For the purposes of this chapter, carrier includes a licensed insurance company, a prepaid hospital or medical service plan, a health maintenance organization, a multiple employer welfare arrangement or any other person providing a plan of health insurance subject to state insurance regulation.

4. “*Case characteristics*” means demographic or other relevant characteristics of a small employer, as determined by a small employer carrier, which are considered by the insurer in the determination of premium rates for the small employer. Claim experience, health status, and duration of coverage since issue are not case characteristics for the purpose of this chapter.

5. “*Class of business*” means all or a distinct grouping of small employers as shown on the records of the small employer carrier.

a. A distinct grouping may only be established by the small employer carrier on the basis that the ap-

plicable health benefit plans meet one or more of the following requirements:

(1) The plans are marketed and sold through individuals and organizations which are not participating in the marketing or sales of other distinct groupings of small employers for the small employer carrier.

(2) The plans have been acquired from another small employer carrier as a distinct grouping of plans.

(3) The plans are provided through an association with membership of not less than fifty small employers which has been formed for purposes other than obtaining insurance.

b. A small employer carrier may establish no more than two additional groupings under each of the subparagraphs in paragraph “a” on the basis of underwriting criteria which are expected to produce substantial variation in the health care costs.

c. The commissioner may approve the establishment of additional distinct groupings upon application to the commissioner and a finding by the commissioner that such action would enhance the efficiency and fairness of the small employer insurance marketplace.

6. “*Commissioner*” means the commissioner of insurance.

7. “*Division*” means the division of insurance.

8. “*Health benefit plan*” or “*plan*” means any hospital or medical expense incurred policy or certificate, hospital or medical service plan contract, or health maintenance organization subscriber contract. Health benefit plan does not include accident-only, credit, dental, or disability income insurance, coverage issued as a supplement to liability insurance, workers’ compensation or similar insurance, or automobile medical-payment insurance.

9. “*Index rate*” means for each class of business for small employers with similar case characteristics the average of the applicable base premium rate and the corresponding highest premium rate.

10. “*New business premium rate*” means, for each class of business as to a rating period, the lowest premium rate charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

11. “*Rating period*” means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect, as determined by the small employer carrier.

12. “*Small employer*” means a person actively engaged in business who, on at least fifty percent of

the employer's working days during the preceding year, employed no more than twenty-five full-time equivalent eligible employees. In determining the number of eligible employees, companies which are affiliated companies or which are eligible to file a combined tax return for purposes of state taxation are considered one employer.

13. "Small employer carrier" means any carrier which offers health benefit plans covering the employees of a small employer.

91 Acts, ch 244, §2 HF 688
NEW section

513B.3 Small group health benefit plans subject to rating restrictions.

1. Except as provided in subsection 2, this chapter applies to any health benefit plan which provides coverage to two or more employees of a small employer.

2. This chapter does not apply to individual health insurance policies which are subject to policy form and premium rate approval by the commissioner.

3. A small employer group shall, at a minimum, have at least two participating employees at the date of issue of the health benefit plan.

91 Acts, ch 244, §3 HF 688
NEW section

513B.4 Restrictions relating to the premium rates.

1. Premium rates for health benefit plans subject to this chapter are subject to the following requirements:

a. The index rate for a rating period for any class of business shall not exceed the index rate for any other class of business by more than twenty percent.

b. For a class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage, or the rates which could be charged to such employers under the rating system for that class of business, shall not vary from the index rate by more than twenty-five percent of the index rate.

c. The percentage increase in the premium rate charged to a small employer for a new rating period shall not exceed the sum of the following:

(1) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the small employer carrier is not issuing new policies, the small employer carrier shall use the percentage change in the base premium rate.

(2) An adjustment, not to exceed fifteen percent annually and adjusted pro rata for rating periods of less than one year, due to the claim experience, health status, or duration of coverage of the employees or dependents of the small employer as determined from the small employer carrier's rate manual for the class of business.

(3) Any adjustment due to change in coverage or

change in the case characteristics of the small employer as determined from the small employer carrier's rate manual for the class of business.

d. In the case of health benefit plans issued prior to July 1, 1991, a premium rate for a rating period may exceed the ranges described in subsection 1, paragraph "a" or "b" of this section, for a period of five years following July 1, 1991. In such case, the percentage increase in the premium rate charged to a small employer in such a class of business for a new rating period may not exceed the sum of the following:

(1) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the small employer carrier is not issuing new policies, the small employer carrier shall use the percentage change in the base premium rate.

(2) Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the small employer carrier's rate manual for the class of business.

e. Rates for individual employees or dependents may be adjusted for claims experience or health status at the date of issue as long as the total rates for the small employer are in compliance with this section. An individual employee or dependent adjustment in rates for claims experience or health status shall not be increased subsequent to the date of issue. The commissioner may prohibit individual rating upon adoption of health insurance access rules pursuant to section 514H.11.

2. This section does not affect the use by a small employer carrier of legitimate rating factors other than claim experience, health status, or duration of coverage in the determination of premium rates. Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business.

3. A small employer shall not be involuntarily transferred by a small employer carrier into or out of a class of business. A small employer carrier shall not offer to transfer a small employer into or out of a class of business unless the offer is made to transfer all small employers in the class of business without regard to case characteristics, claim experience, health status, or duration since issue.

91 Acts, ch 244, §4 HF 688
NEW section

513B.5 Provisions on renewability of coverage.

1. Except as provided in subsection 2, a health benefit plan subject to this chapter is renewable to all eligible employees and dependents at the option of the small employer, except for one or more of the following reasons:

a. Nonpayment of required premiums.

b. Fraud or misrepresentation of the small employer, or with respect to coverage of an insured individual, fraud or misrepresentation by the insured individual or the individual's representative.

c. Noncompliance with plan provisions.

d. The number of individuals covered under the plan is less than the number or percentage of eligible individuals required by percentage requirements under the plan.

e. The small employer is no longer actively engaged in the business in which it was engaged on the effective date of the plan.

2. A small employer carrier may cease to renew all plans under a class of business, or all classes of business in a defined geographic region if the carrier is a health maintenance organization. The small employer carrier shall provide notice at least ninety days prior to termination of coverage to all affected health benefit plans and to the commissioner in each state in which an affected insured individual is known to reside. A small employer carrier which exercises its right to cease to renew all plans in a class of business shall not do either or both of the following:

a. Establish a new class of business for a period of five years after the nonrenewal of the plans without prior approval of the commissioner.

b. Transfer or otherwise provide coverage to any of the employers from the nonrenewed class of business unless the small employer carrier offers to transfer or provide coverage to all affected employers and eligible employees and dependents without regard to case characteristics, claim experience, health status, or duration of coverage.

91 Acts, ch 244, §5 HF 688
NEW section

513B.6 Disclosure of rating practices and renewability provisions.

A small employer carrier shall make reasonable disclosure in solicitation and sales materials provided to small employers of all of the following:

1. The extent to which premium rates for a specific small employer are established or adjusted due to the claim experience, health status, or duration of coverage of the employees or dependents of the small employer.

2. The provisions concerning the small employer carrier's right to change premium rates and factors, including case characteristics, which affect changes in premium rates.

3. A description of the class of business in which the small employer is or will be included, including the applicable grouping of plans.

4. The provisions relating to renewability of coverage.

91 Acts, ch 244, §6 HF 688
NEW section

513B.7 Maintenance of records.

1. A small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation which demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

2. A small employer carrier shall file each March 1 with the commissioner an actuarial certification that the small employer carrier is in compliance with this section and that the rating methods of the small employer carrier are actuarially sound. A copy of the certification shall be retained by the small employer carrier at its principal place of business.

3. A small employer carrier shall make the information and documentation described in subsection 1 available to the commissioner upon request. The information is not a public record or otherwise subject to disclosure under chapter 22, and is considered proprietary and trade secret information and is not subject to disclosure by the commissioner to persons outside of the division except as agreed to by the small employer carrier or as ordered by a court of competent jurisdiction.

91 Acts, ch 244, §7 HF 688
NEW section

513B.8 Discretion of the commissioner.

The commissioner may suspend all or any part of section 513B.4 as to the premium rates applicable to one or more small employers for one or more rating periods upon a filing by the small employer carrier and a finding by the commissioner that the suspension is reasonable in light of the financial condition of the carrier or that the suspension would enhance the efficiency and fairness of the marketplace for small employer health insurance.

91 Acts, ch 244, §8 HF 688
NEW section

513B.9 Effective date — applicability.

This chapter shall apply to a health benefit plan for a small employer that is delivered, issued for delivery, renewed, or continued in this state after July 1, 1991. For purposes of this section, the date a plan is continued is the first rating period which commences after July 1, 1991.

91 Acts, ch 244, §9 HF 688
NEW section

CHAPTER 514

NONPROFIT HEALTH SERVICE CORPORATIONS

514.4 Directors.

At least two-thirds of the directors of a hospital service corporation, medical service corporation, dental service corporation, or pharmaceutical or optometric service corporation subject to this chapter shall be at all times subscribers and not more than one-third of the directors shall be providers as provided in this section. The board of directors of each corporation shall consist of at least nine members.

A subscriber director is a director of the board of a corporation who is a subscriber and who is not a provider of health care pursuant to section 514B.1, subsection 5, a person who has material financial or fiduciary interest in the delivery of health care services or a related industry, an employee of an institution which provides health care services, or a spouse or a member of the immediate family of such a person. A subscriber director of a hospital or medical service corporation shall be a subscriber of the services of that corporation.

A provider director of a corporation subject to this chapter shall be at all times a person who has a material financial interest in or is a fiduciary to or an employee of or is a spouse or member of the immediate family of a provider having a contract with such corporation to render to its subscribers the services of such corporation or who is a hospital trustee.

A director may serve on a board of only one corporation at a time subject to this chapter.

The commissioner of insurance shall adopt rules pursuant to chapter 17A to implement the process of the election of subscriber directors of the board of directors of a corporation to ensure the representation of a broad spectrum of subscriber interest on each board and establish criteria for the selection of nominees. The rules shall provide for an independent subscriber nominating committee to serve until the composition of the board of directors meets the percentage requirements of this section. Once the composition requirements of this section are met, the nominations for subscriber directors shall be made by the subscriber directors of the board under proce-

dures the board establishes which shall also permit nomination by a petition of at least fifty subscribers. The board shall also establish procedures to permit nomination of provider directors by petition of at least fifty participating providers. A member of the board of directors of a corporation subject to this chapter shall not serve on the independent subscriber nominating committee. The nominating committee shall consist of subscribers as defined in this section. The rules of the commissioner of insurance shall also permit nomination of subscriber directors by a petition of at least fifty subscribers, and nomination of provider directors by a petition of at least fifty participating providers. These petitions shall be considered only by the independent nominating committee during the duration of the committee. Following the discontinuance of the committee, the petition process shall be continued and the board of directors of the corporation shall consider the petitions. The independent subscriber nominating committee is not subject to chapter 17A. The nominating committee shall not receive per diem or expenses for the performance of their duties.

Population factors, representation of different geographic regions, and the demography of the service area of the corporation subject to this chapter shall be considered when making nominations for the board of directors of a corporation subject to this chapter.

A corporation shall not reimburse or compensate a provider director or a subscriber director more than the per diem specified in section 7E.6 plus necessary and actual expenses for attendance at a meeting of the board of directors.

A corporation serving states in addition to Iowa shall be required to implement this section only for directors who are residents of Iowa and elected as board members from Iowa.

91 Acts, ch 258, §58 HF 709

1991 amendment to unnumbered paragraph 7 retroactively applicable to January 1, 1991; 91 Acts, ch 258, §73 HF 709

Unnumbered paragraph 7 amended

CHAPTER 514A

ACCIDENT AND HEALTH INSURANCE

514A.13 Filing requirement — prior approval.

A policy of insurance against loss or expense from sickness or from the bodily injury or death by accident of the insured shall not be issued or delivered to any person in this state and an application, rider, or endorsement shall not be used in connection with the policy until a copy of the policy form and of the classification of risks and the premium rates, or, in the case of cooperatives or assessment companies the estimated costs pertaining to the policy, have been filed with and approved by the commissioner.

A filing is deemed to be approved unless disapproved by the commissioner within thirty days of receipt of the filing by the commissioner.

91 Acts, ch 213, §17 HF 634
NEW section

514A.14 Disapproval of filing.

1. The commissioner shall notify an insurer which has filed a policy form pursuant to section 514A.13 that does not comply with this chapter or chapter 514D, or rules adopted pursuant to those chapters. The notice shall inform the insurer that it is unlawful for the insurer to issue the form or use it in connection with any policy, if the commissioner finds upon review of the form, either of the following:

a. The benefits provided are unreasonable in relation to the premium charged.

b. The form contains a provision which is unjust, unfair, inequitable, misleading, deceptive, or which encourages misrepresentation of the policy.

2. In a notice provided under subsection 1, the commissioner shall specify the reasons for disapproval and state that a hearing will be granted within twenty days after request in writing by the insurer.

91 Acts, ch 213, §18 HF 634
NEW section

514A.15 Withdrawal of approval.

The commissioner may at any time, after opportunity for hearing, withdraw the commissioner's previously given approval of any such form on any of the grounds stated in section 514A.14. It shall be unlawful for the insurer to issue a form or use the form in connection with any policy after the effective date of the withdrawal of approval. The notice of any hearing granted under this section shall specify the matters to be considered at the hearing. Any decision affirming disapproval or directing withdrawal of approval under this section shall be in writing and shall specify the reasons for the disapproval or withdrawal of approval.

91 Acts, ch 213, §19 HF 634
NEW section

CHAPTER 514B

HEALTH MAINTENANCE ORGANIZATIONS

514B.25 Financially impaired or insolvent health maintenance organizations.

The provisions of chapter 507C shall apply to health maintenance organizations, which shall be

considered insurers for the purposes of chapter 507C.

91 Acts, ch 26, §39 SF 518
Section stricken and rewritten

CHAPTER 514C

SPECIAL HEALTH AND ACCIDENT INSURANCE COVERAGES

514C.6 Uniformity of treatment — employee welfare benefit plans.

1 A statutory provision to mandate a health care coverage or service, or to mandate the offering of a health care coverage or service, applies to all state-regulated third-party payors and to employee welfare benefit plans described in 29 U S C § 1001 et seq. However, if an employee welfare benefit plan subject to federal regulation is not subject to a substantially similar requirement, the statutory provision does not apply to a state-regulated third-party payor until the employee welfare benefit plans are subject to a substantially similar standard under federal regulations as determined by the commissioner

2 For purposes of this section unless the context otherwise requires, a third-party payor means

a An accident and sickness insurer, subject to chapter 509 or 514A

b A nonprofit health service corporation, subject to chapter 514

c A health maintenance organization, subject to chapter 514B

d Any other entity engaged in the business of insurance, risk transfer, or risk retention, which is subject to the jurisdiction of the commissioner

91 Acts ch 213 §20 HF 634
NEW section

CHAPTER 514G

LONG TERM CARE INSURANCE

514G.7 Disclosure and performance standards for long-term care insurance.

1 *Rules* The commissioner may adopt rules for full and fair disclosure of the terms and benefits of a long-term care insurance policy, including but not limited to rules setting forth the manner, content, and required disclosures for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, non-duplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms

2 *Prohibitions* A long-term care insurance policy shall not

a Be cancelled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder

b Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder

c Provide coverage for skilled nursing care only, or provide significantly more coverage for skilled care in a facility than coverage for lower levels of care

d Be issued to an individual without obtaining one or more of the following

- (1) A report of a physical examination
- (2) An assessment of functional capacity
- (3) An attending physician's statement
- (4) Copies of medical records

3 *Preexisting conditions*

a A long-term care insurance policy or certificate shall not use a definition of "preexisting condition" which is more restrictive than the following "Preexisting condition" means the existence of symptoms which would cause an ordinarily prudent person to seek diagnosis, care, or treatment, or a condition for which medical advice or treatment was recommended by or received from a provider of health care services, within the limitation periods specified below

(1) Six months preceding the effective date of coverage of an insured person who is sixty-five years of age or older on the effective date of coverage

(2) Twenty-four months preceding the effective date of coverage of an insured person who is under age sixty-five on the effective date of coverage

b. A long-term care insurance policy shall not exclude coverage for a loss or confinement which is the result of a preexisting condition unless the loss or confinement begins within the shortest applicable period specified below:

(1) Six months following the effective date of coverage of an insured person who is sixty-five years of age or older on the effective date of coverage.

(2) Twenty-four months following the effective date of coverage of an insured person who is under age sixty-five on the effective date of coverage.

c. The commissioner may extend the limitation periods in paragraphs "a" and "b" of this subsection to specific age group categories in specific policy forms, upon findings that the extension is in the best interest of the public.

d. The definition of "preexisting condition" does not prohibit either of the following:

(1) An insurer from using an application form designed to elicit the complete health history of an applicant.

(2) An insurer from underwriting in accordance with that insurer's established underwriting standards based on the answers on an application conforming with subparagraph (1).

4. *Prior hospitalization — institutionalization.*

a. Effective July 1, 1989, a long-term care insurance policy shall not be delivered or issued for delivery in this state if the policy does either of the following:

(1) Conditions eligibility for any benefits on a requirement of prior hospitalization.

(a) Effective July 1, 1991, any holder of a long-term care insurance policy, which is not noncancelable or guaranteed renewable, was issued before July 1, 1989, and conditions eligibility for benefits on a requirement of prior hospitalization, shall, unless it has previously been offered by the insurer, be offered by the insurer a rider or endorsement that waives the requirement of prior hospitalization. If the rider or endorsement results in a concomitant increase in premium during the policy term, then it must be agreed to in writing and signed by the insured to become effective.

(b) The rider or endorsement under subparagraph subdivision (a) shall be subject to the insurer's underwriting guidelines as proof of insurability at the time of application for the rider or endorsement.

(c) Effective July 1, 1991, any holder of a noncancelable or guaranteed renewable long-term care insurance policy issued before July 1, 1989, which conditions eligibility for benefits on a requirement of prior hospitalization, shall, unless the holder has previously been notified by the insurer, be notified by the insurer in writing prior to or at the time of delivery of the next premium statement of the existence of the condition and that new policies issued by any insurance carrier may not condition benefits on a requirement of prior hospitalization. The insurer shall not solicit the replacement of the noncancelable or guaranteed renewable policy at the same time as the delivery of notice under this subparagraph subdivision.

(2) Conditions eligibility for benefits covering care provided in an institutional care setting on the receipt of a higher level of institutional care.

b. Effective July 1, 1989, a long-term care insurance policy containing any limitations or conditions for eligibility, other than those prohibited in paragraph 1, shall clearly label such limitations or conditions in a separate paragraph of the policy or certificate entitled "*Limitations or Conditions on Eligibility for Benefits*".

c. A long-term care insurance policy advertised, marketed, or offered as containing long-term care benefits at home shall not condition receipt of benefits on a requirement of prior hospitalization.

d. A long-term care insurance policy shall not condition eligibility for noninstitutional benefits on the prior receipt of institutional care.

5. *Rules.* The commissioner may adopt rules establishing loss ratio standards for long-term care insurance policies provided that a specific reference to long-term care insurance policies is contained in the rules.

6. *Right to return after examination.*

a. Except as provided in paragraph "b", an individual long-term care insurance policyholder has the right to return the policy within ten days of its delivery and to have the premium refunded, if, after examination of the policy, the policyholder is not satisfied for any reason. Individual long-term care insurance policies must have a notice prominently printed on the first page of the policy or attached to the first page stating in substance that the policyholder has the right to return the policy within ten days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason.

b. A person insured under a long-term care insurance policy issued pursuant to a direct response solicitation has the right to return the policy within thirty days of its delivery and to have the premium refunded if, after examination, the insured person is not satisfied for any reason. Long-term care insurance policies issued pursuant to a direct response solicitation must have a notice prominently printed on the first page or attached to the first page stating in substance that the insured person has the right to return the policy within thirty days of its delivery and to have the premium refunded if, after examination of the policy, the insured person is not satisfied for any reason.

7. *Outline of coverage.* An outline of coverage shall be delivered to an applicant for an individual long-term care insurance policy at the time of application. An outline of coverage must include all of the following:

a. A description of the principal benefits and coverage provided in the policy.

b. A statement of the principal exclusions, reductions, and limitations contained in the policy.

c. A statement of the renewal provisions, including any reservation in the policy of a right to change premiums. Continuation or conversion provisions of group coverage shall be specifically described.

d. A statement that the outline of coverage is a summary of the policy issued or applied for, not a contract of insurance, and that the policy or group master policy should be consulted to determine governing contractual provisions.

e. A description of the terms by which the policy or certificate may be returned and premium refunded.

f. A description of the cost of care and benefits.

8. *Certificates.* A certificate issued pursuant to a group long-term care insurance policy which is delivered or issued for delivery in this state shall include all of the following:

a. A description of the principal benefits and coverage provided in the policy.

b. A statement of the principal exclusions, reductions, and limitations contained in the policy.

c. A statement that the group master policy determines governing contractual provisions.

9. *Compliance required.* A policy shall not be advertised, marketed, or offered as long-term care or nursing home insurance unless it complies with this chapter.

91 Acts, ch 213, §21 23 HF 634
 Subsection 2, NEW paragraph d
 Subsection 4 paragraph a, subparagraph (1), NEW subparagraph subdivisions (a) (c)
 Subsection 4, paragraph d amended

514G.9 Reserved.

514G.10 Long-term care consumer guide.

An insurer offering a long-term care insurance policy to any person shall provide to the applicant the current long-term care insurance consumer guide prescribed by the insurance division of the department of commerce. The commissioner of insurance may by reference adopt or permit the use of the long-term care insurance consumer guide developed by the national association of insurance commissioners, the blue cross and blue shield association, or the health insurance association of America. Delivery of the long-term care insurance consumer guide shall be made if a policy is advertised, solicited, or issued as a policy as defined in this chapter, or if it is subject to this chapter, regardless of the label applied by the insurer. Except in the case of direct response insurers, delivery of the long-term care insurance consumer guide shall be made to the applicant at the time of application, and acknowledgment of receipt of the long-term care insurance consumer guide shall be obtained by the insurer. A direct response insurer shall deliver the long-term care insurance consumer guide to the applicant at the time the policy is delivered. An insurance company required to distribute the guide shall reimburse the state for all costs associated with the guide.

91 Acts, ch 213, §24 HF 634
 NEW section

CHAPTER 514H

BASIC BENEFIT HEALTH COVERAGE

Legislative intent, 91 Acts, ch 244, §10 HF 688
 Rules, 91 Acts, ch 244, §26 HF 688

514H.1 Definitions.

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

1. *“Basic benefit coverage”* means basic health care services rendered by health professionals licensed pursuant to state law together with hospital expenses.

2. *“Basic health care services”* means services which an enrollee might reasonably require in order to be maintained in good health, including at a minimum, emergency care, inpatient hospital and physician care, and outpatient medical services rendered within or outside of a hospital.

3. *“Commissioner”* means the commissioner of insurance.

4. *“Eligible dependent”* means an enrolled dependent of a subscriber entitled to coverage under a

basic benefit coverage policy or subscription contract.

5. *“Group”* means a group composed of eligible employees of a single employer and their dependents. A group shall not have more than twenty-five full-time equivalent employees in number. Employees may not be segregated by division, job responsibilities, employment status, employment location, or any other rationale. For purposes of this chapter, group size will be determined at the time of application for the basic benefit coverage policy, and on each anniversary of the date of issue of the basic benefit coverage policy. Carriers shall confirm the size of groups by certification of the employer which certification shall be maintained in the carrier’s file.

6. *“Insurer”* means any insurer issuing a group accident and sickness insurance policy on an ex-

pense incurred basis and any group hospital or medical service contract issued pursuant to chapter 509, 514, or 514A, or any group health maintenance organization contract under chapter 514B

7 “Policy” means the entire contract between the insurer and the insured, including the policy riders, endorsements, and the application, if attached, and includes individual subscriber contracts issued under chapter 514B

8 “Subscriber” means an enrolled eligible employee with coverage under a basic benefit coverage policy

91 Acts ch 244 §11 HF 688
NEW section

514H.2 Issuance of basic benefit coverage policies and subscription contracts permitted.

An insurer may issue a basic benefit coverage policy or subscription contract meeting the criteria set forth in this chapter

For purposes of this chapter, a basic benefit coverage policy or subscription contract means a policy or subscription contract which the insurer may choose to offer to individuals, spouses, families, or groups of twenty-five or less formed for purposes other than obtaining insurance coverage, and which meets the following criteria

1 The individual, spouse, family, or group obtaining coverage under the policy or subscription contract has been without hospital and medical insurance coverage, a health services plan, or employer-sponsored health care coverage for all of the twelve-month period immediately preceding the effective date of the basic hospital and medical coverage policy or subscription contract, provided that for groups in existence for less than twelve months, the group has been without hospital and medical insurance coverage, a health services plan, or employer-sponsored health care coverage since inception of the group

2 The insurer may include any or all of the following managed care provisions, subject to the approval of the commissioner, to control costs

a A procedure for preauthorization by the insurer, or its designees

b An exclusion for services that are not medically necessary or are not covered preventive health services

c First-dollar coverage for preventive and emergency care

d Except as otherwise provided, copayments for all other physician visits

e Exclusions or limitations upon benefits or direct pay requirements otherwise mandated

f Deductibles or copayments which vary based upon the service provided

3 The insurer may include any or all of the following managed care provisions to control costs

a A preferred panel of providers who have entered into written agreements with the insurer to provide services at specified levels of reimbursement. Any such written agreement between a provider and

an insurer shall contain a provision under which the parties agree that the insured individual or covered member will have no obligation to make payment for any medical service rendered by the provider that is determined not to be medically necessary

b Provisions requiring a second surgical opinion

c A procedure for utilization review by the insurer or its designees

This section does not prohibit an insurer from including in its policy or subscription contract additional managed care and cost control provisions which, subject to the approval of the commissioner, have the potential to control costs in a manner which does not result in inequitable treatment of insureds or subscribers

4 The policy or subscription contract shall provide basic levels of primary, preventive, and hospital care for covered individuals, including, but not limited to, all of the following

a A minimum of thirty days of inpatient hospitalization coverage per policy year

b Prenatal care, including a minimum of one prenatal office visit per month during the first two trimesters of pregnancy, two office visits per month during the seventh and eighth months of pregnancy, and one office visit per week during the ninth month and until term. Coverage for each such visit shall include necessary and appropriate screening, including history, physical examination, and such laboratory and diagnostic procedures as may be deemed appropriate by the physician based upon recognized medical criteria for the risk group of which the patient is a member

c Obstetrical care, including physician’s services, delivery room, and other medically necessary hospital services

d For covered individuals, a basic level of primary and preventive care, including but not limited to, two physician office visits per calendar year

e Such other coverages as the commissioner may determine are cost-effective pursuant to section 514H.7

5 The commissioner may also authorize the issuance of a basic benefit coverage family plan for spouses or dependents of employees, even if the employer currently provides individual health benefits exclusively for employees. The commissioner may also authorize the issuance of a basic benefit coverage plan for part-time employees or full-time, part-year employees, even if the employer currently offers health benefits for full-time employees

91 Acts ch 244 §12 HF 688
NEW section

514H.3 Disclosure requirements for basic benefit coverage policies and subscription contracts.

Upon offering coverage under a basic benefit coverage policy or subscription contract for an individual, spouse, family, or group member, the insurer shall provide such individual, spouse, family, or group

member with a written disclosure statement containing at least the following:

1. An explanation of those mandated benefits and providers not covered by the policy or subscription contract.
2. An explanation of the managed care and cost control features of the policy or subscription contract, along with all appropriate mailing addresses and telephone numbers to be utilized by insureds in seeking information or authorization.
3. The written statement shall be provided to the prospective policyholder no later than at the time of policy delivery, and the original of the written statement shall be retained in the files of the insurer for the longer of the following:
 - a. The period of time that the policy or subscription contract remains in effect.
 - b. Five years.
4. Any material statement made by an applicant for coverage under a basic benefit coverage policy or subscription contract which falsely certifies as to the applicant's eligibility for coverage pursuant to section 514H.2 is a basis for termination of coverage under the policy or subscription contract.
5. All marketing communications intended to be utilized in the marketing of a basic benefit coverage policy or subscription contract in this state shall be submitted for review and their use is conditioned upon the prior approval of the commissioner. Marketing communications shall contain the disclosures required by this section.

91 Acts, ch 244, §13 HF 688
NEW section

514H.4 Forms and rates to be filed with and approved by the commissioner.

1. All basic hospital and medical coverage policy forms including applications, enrollment forms, policies, subscription contracts, certificates, evidences of coverage, riders, amendments, endorsements, and disclosure forms shall be submitted to the commissioner.
2. A basic benefit coverage policy or subscription contract shall be filed with, and is subject to the approval of, the commissioner before the basic benefit coverage policy or subscription contract is issued or issued for delivery in this state.
3. Each form filing submitted to the commissioner for approval shall contain a transmittal page as prescribed by the commissioner and the following materials arranged in this order:
 - a. The printed form or forms, completed by using information concerning a fictitious applicant.
 - b. Actuarial memorandum.
 - c. Any additional enclosure required by the commissioner.

91 Acts, ch 244, §14 HF 688
NEW section

514H.5 Standards for loss ratios.

Basic benefit coverage policies shall return a cumulative loss ratio of at least seventy percent. Such

loss ratio is on the basis of incurred claims and earned premiums for all calculating or rating periods such that the cumulative loss ratio from inception equals or exceeds the seventy percent minimum loss ratio. Where coverage is provided on a direct service rather than indemnity basis, such loss ratio is on the basis of incurred health care expenses and earned premiums for such period. For purposes of achieving and maintaining the minimum cumulative loss ratio, the experience of all basic benefit coverage policies of an insurer is combined.

All claim experience for basic benefit coverage policies is pooled for the purposes of establishing premiums and rates, and the claim experience, and health status and duration from the date of issue of a given individual group shall not be a factor in determining the rates of a policy.

91 Acts, ch 244, §15 HF 688
NEW section

514H.6 Recordkeeping and reporting requirement.

Each basic benefit coverage policy or subscription contract in this state shall maintain separate and distinct records of enrollment, claim costs, premium income, utilization, and other information as required by the commissioner. Each insurer providing such policies or contracts shall furnish an annual report to the commissioner. The report shall be in a form prescribed by the commissioner and shall contain the information required by the commissioner to analyze the success of insurance coverage issued pursuant to this chapter.

91 Acts, ch 244, §16 HF 688
NEW section

514H.7 Cost-benefit analysis.

1. The commissioner may, based upon reasonable actuarial evidence as to cost-effectiveness, determine any of the following:
 - a. What benefits or direct pay requirements must be minimally included in a basic benefit coverage policy or subscription contract.
 - b. What otherwise mandated benefits or direct pay requirements may be exempted from coverage by a basic benefit coverage policy or subscription contract.
 - c. What cost containment procedures must be minimally included in a basic benefit coverage policy or subscription contract.
 - d. What cost containment procedures otherwise restricted may be utilized by a basic benefit coverage policy or subscription contract.
2. The commissioner may retain a consultant to assist in the analysis of any benefit or requirement, and may convene an advisory panel to assist the commissioner in the review of evidence and practices by the health care and insurance industries.
3. The commissioner may assess a fee against health insurers, hospital service plans, and health maintenance organizations issuing or issuing for delivery in this state basic benefit coverage policies or

subscription contracts to defray consulting fees and expenses incurred by the commissioner under this section.

4. The commissioner may also require medical professional societies or providers associations requesting the inclusion of a benefit or requirement in a basic benefit coverage policy or subscription contract to contribute on a proportionate and reasonable basis to the payment of the commissioner's consultants and expenses under this section as a condition of reviewing a benefit or requirement impacting upon such medical professionals or providers.

91 Acts, ch 244, §17 HF 688
NEW section

514H.8 Presumed exclusion of mandated benefits.

A mandated benefit or direct pay requirement otherwise imposed by state law, but excluded under section 514H.2, shall not be included in a basic benefit coverage policy or subscription contract unless the commissioner finds after actuarial review that the inclusion of the benefit or direct pay requirement is cost-effective. The commissioner's finding shall be based upon review of actuarial evidence, including a cost-benefit analysis, and the determination that inclusion of the mandated benefit or direct pay requirement is in the best interests of affordable health care coverage.

91 Acts, ch 244, §18 HF 688
NEW section

514H.9 Presumed allowance of cost-containment procedures.

A cost-containment restriction otherwise imposed by state law does not apply to a basic benefit coverage policy or subscription contract unless the commissioner finds after actuarial review that the restricted cost-containment measure is not cost-effective, and its exclusion is in the best interests of affordable health care coverage.

91 Acts, ch 244, §19 HF 688
NEW section

514H.10 Shared cost option for private employers basic benefit plan.

The commissioner, in cooperation with insurance carriers interested in participating, shall develop a group health insurance plan providing basic coverage, to be marketed to employers by insurance carriers approved by the commissioner, which employers have not offered health care benefits to their employees within the preceding twelve months and which are likely to have eligible employees under the employer-sponsored health care plan premium credit provided by section 514H.12. This shared cost option for private employers basic benefit coverage plan is subject to such additional requirements as the commissioner may impose to assure that an affordable policy is effectively marketed to benefit eligible low-income employees and their families. The premium credit under section 514H.12 is limited to

the shared cost option for private employers plan approved by the commissioner under this section, and is not available to other basic benefit coverage plans generally authorized by this chapter, in order to facilitate administration of the participation limits imposed by section 514H.12.

91 Acts, ch 244, §20 HF 688
Rules to implement plan, 91 Acts, ch 244, §26 HF 688
NEW section

514H.11 Health insurance access.

1. The commissioner shall with all due diligence adopt by rule the recommendations of the national association of insurance commissioners concerning health insurance access by small employer groups, provided that the final recommendations are generally consistent with the following principles:

a. Guaranteed transferability of benefits or eligibility, with no new preexisting condition waiting periods or individual underwriting, for employees transferring to new employers or employers switching insurance carriers, for persons who are receiving assistance pursuant to chapter 249A, or persons who are provided health insurance coverage pursuant to the person's service as a member of a branch of the armed forces of the United States of America.

b. A risk transfer or sharing device to equitably distribute the risk of adverse selection posed to insurers by guaranteed access.

2. Within six months of adopting any rule pursuant to subsection 1, the commissioner shall prepare and deliver a report to the general assembly regarding the success, if any, of the rules, and make such recommendations as necessary, including offering proposed legislation, to effectuate the general assembly's goals of guaranteeing access to health insurance by employees and employers and retention of currently insured persons within the private health insurance market, regardless of change in employer, employment status, or change in insurance carrier.

91 Acts, ch 244, §21 HF 688
NEW section

514H.12 Employer-sponsored health plan premium credit.

1. The division shall adopt rules to implement and administer the premium credit authorized by this section, which rules shall include the minimum standard application form for premium credit eligibility. Forms shall be printed by participating insurance companies and provided to employers and employers' employees wishing to apply for premium credit eligibility.

2. The amount of the premium credit is equal to twenty-five dollars per month, per participating eligible employee for which the employer provides an employer-sponsored group basic benefit plan approved by the commissioner of insurance pursuant to section 514H.10, provided that the employer satisfies all of the following conditions:

a. The employer has not provided health insurance coverage, in whole or in part, to employees within the immediately preceding twelve months be-

fore contracting with an insurance carrier for basic benefit insurance approved pursuant to section 514H 10

b The employer employs twenty-five or fewer full-time equivalent employees

c The employer paid either of the following

(1) Seventy-five percent or more of the premium for individual coverage of the participating eligible employee

(2) Fifty percent or more of the premium for family coverage of the participating eligible employee and the employee's spouse and dependents

3 An employee is eligible for participation in the subsidized insurance premium credit group health insurance plan if the family income of the employee is less than or equal to one hundred fifty percent of the federal poverty level as reported annually in the federal register. An employee application for eligibility is current for up to one year

4 Earned premium credit is limited to the first five thousand full-year equivalent participating eligible employee applications under this section preapproved by the division in any single fiscal year

5 The carrier shall credit to the participating employer's premium liability, an amount equal to the

premium credit earned pursuant to subsection 2, against the premium due in the year after the credit is earned

6 The premium credit provided by this section is only available in connection with a basic benefit plan approved by the commissioner which satisfies any conditions imposed by rules adopted pursuant to subsection 1 which the commissioner determines are necessary or convenient to implement and administer the premium credit

7 *a* A person submitting an intentionally fraudulent premium credit application forfeits the credit and shall pay to the division a liquidated damages penalty of one hundred percent of the credit forfeited

b A person submitting a premium credit application which that person should have known was false forfeits the credit and shall pay to the division a liquidated damages penalty of ten percent of the credit forfeited

8 The insurance carrier shall receive a premium tax credit equal to, at a minimum, the premium credit earned by the carrier's insureds pursuant to subsection 2

91 Acts ch 244 §22 HF 688
NF-W section

CHAPTER 515

INSURANCE OTHER THAN LIFE

515.23 Existing companies. Repealed by 91 Acts, ch 213, § 36 HF 634

515.26 Directors.

The affairs of a company organized as provided by this chapter shall be managed by a number of directors, of not less than five nor more than twenty-one, all of whom, in case of a stock company, shall be stockholders, or, in case of a mutual company, be policyholders, or before the company shall effect insurance, be subscribers for stock or for insurance as the case may be

91 Acts ch 213 §25 HF 634
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), subparagraph 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 invest-

ment 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.

Aggregate investments in below investment grade bonds shall not exceed five percent of assets.

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 two 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

515.63 Annual statement.

The president or the vice president and secretary of each company organized or authorized to do business in the state shall annually before the first day of March of each year prepare under oath and file with the commissioner of insurance a full, true, and complete statement of the condition of such company on the last day of the preceding year, which shall exhibit the following items and facts:

First — The amount of capital stock of the company.

Second — The names of the officers.

Third — The name of the company and where located.

Fourth — The amount of its capital stock paid up.

Fifth — The property or assets held by the company, specifying:

1. The value of real estate owned by the company.
2. The amount of cash on hand and deposited in banks to the credit of the company, and in what bank deposited.
3. The amount of cash in the hands of agents and in the course of transmission.
4. The amount of loans secured by first mortgage on real estate, with the rate of interest thereon.
5. The amount of all other bonds and loans and how secured, with the rate of interest thereon.
6. The amount due the company on which judgment has been obtained.
7. The amount of bonds of the state, of the United States, of any county or municipal corporation of the state, and of any other bonds owned by the company, specifying the amount and number thereof, and par and market value of each kind.
8. The amount of bonds, stock, and other evidences of indebtedness held by such company as collateral security for loans, with amount loaned on each kind, and its par and market value.
9. The amount of assessments on stock and premium notes, paid and unpaid.
10. The amount of interest actually due and unpaid.
11. All other securities and their value.
12. The amount for which premium notes have been given on which policies have been issued.

Sixth — Liabilities of such company, specifying:

1. Losses adjusted and due.
2. Losses adjusted and not due.
3. Losses unadjusted.
4. Losses in suspense and the cause thereof.
5. Losses resisted and in litigation.
6. Dividends in scrip or cash, specifying the amount of each, declared but not due.
7. Dividends declared and due.
8. The amount required to reinsure all outstanding risks on the basis of the unearned premium reserve as required by law.
9. The amount due banks or other creditors.
10. The amount of money borrowed and the security therefor.
11. All other claims against the company.

Seventh — The income of the company during the previous year, specifying:

1. The amount received for premiums, exclusive of premium notes.
2. The amount of premium notes received.
3. The amount received for interest.
4. The amount received for assessments or calls on stock notes, or premium notes.
5. The amount received from all other sources.

Eighth — The expenditures during the preceding year, specifying:

1. The amount of losses paid during said term, stating how much of the same accrued prior, and how much subsequent, to the date of the preceding statement, and the amount at which such losses were estimated in such statement.
2. The amount paid for dividends.
3. The amount paid for commissions, salaries, expenses, and other charges of agents, clerks, and other employees.
4. The amount paid for salaries, fees, and other charges of officers and directors.
5. The amount paid for local, state, national and other taxes and duties.
6. The amount paid for all other expenses, including printing, stationery, rents, furniture, or otherwise.

Ninth — The largest amount insured in any one risk.

Tenth — The amount of risks written during the year then ending.

Eleventh — The amount of risks in force having less than one year to run.

Twelfth — The amount of risks in force having more than one and not over three years to run.

Thirteenth — The amount of risks having more than three years to run.

Fourteenth — The dividends, if any, declared on premiums received for risks not terminated.

Fifteenth — All other information as required by the national association of insurance commissioners' annual statement blank. The annual statement blank shall be prepared in accordance with instructions prescribed by the commissioner. All financial information reflected in the annual report shall be kept and prepared in accordance with accounting practices and procedures prescribed by the commissioner. The commissioner may adopt by reference the annual statement handbook and the accounting practices and procedures manual of the national association of insurance commissioners.

91 Acts, ch 26, §41 SF 518
Unnumbered paragraph 16 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 five hundred dollars to be collected in the name of the state for deposit in the general fund of the state as provided in section 505.7. The company's right to transact further new business in this state shall immediately cease until the company has fully complied with this chapter. The commissioner may give notice to a company which has failed to file within the time required that the company is in violation of this section and if the company fails to file the evidence of investment and statement within ten days of the date of the notice the company shall forfeit and pay the additional sum of one hundred dollars for each day the failure continues, to be paid to the treasurer of state for deposit in the general fund of the state as provided in section 505.7.

91 Acts, ch 213, §26 HF 634
Section amended

515.77 Certificate to foreign company.

When a foreign company has fully complied with the requirements of law and become entitled to do business, the commissioner of insurance shall issue to the company a certificate of that fact, which certificate shall be renewed annually on the first day of June, if the commissioner is satisfied that the capital, securities, and investments of the company remain unimpaired, and the company has complied with the provisions of law applicable to the company. However, the commissioner shall not grant or continue authority to transact insurance in this state to an insurer the management of which is found by the commissioner, after a hearing is provided, in which the commissioner shall establish and consider any prior criminal records or any other matters, to be untrustworthy or so lacking in insurance experience as to make the proposed operation hazardous to the insurance-buying public; or which, after a hearing is provided, the commissioner has good reason to believe is affiliated directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations, with a person whose business operations are or have been marked, to the detriment of policyholders or stockholders or investors or creditors or of the public, by manipulation or dissipation of assets, or manipulation of accounts, or of reinsurance, or by similar injurious actions.

91 Acts, ch 213, §27 HF 634
Section amended

515.85 Examination — dissolution. Repealed by 91 Acts, ch 26, § 61. SF 518 See ch 507.

515.86 Requisition on stockholders — personal liability. Repealed by 91 Acts, ch 26, § 61. SF 518

515.87 Mutual companies — dissolution — personal liability. Repealed by 91 Acts, ch 26, § 61. SF 518

515.89 Revocation of certificate of foreign company.

The commissioner of insurance may examine the condition and affairs of any insurance company, as provided for in this chapter, doing business in this state, not organized under its laws, or cause such examination to be made by a person appointed by the commissioner having no interest in any insurance company; and if it appears to the commissioner's satisfaction that the affairs of a company are in an unsound condition or that a company has failed to maintain the capital and surplus required by section 515.69, the commissioner shall revoke or suspend the certificates granted in its behalf.

91 Acts, ch 213, §28 HF 634
Section amended

515.90 Suspension and summary suspension.

The commissioner may do one or more of the following:

1. For a violation of Title XX, after a hearing provided pursuant to chapter 17A, order the suspension of the license or authority to transact the business of insurance within the state.

2. Upon three days' notice, if the commissioner has reason to believe that there is imminent substantial risk to an insurer's solvency, order the insurer to appear before the commissioner and show cause why its license or authority to do insurance business within the state should not be suspended. At the hearing to show cause, the commissioner may summarily suspend the license or authority of the insurer to do business within the state.

3. Summarily order an insurer to cease and desist from a violation, anticipated violation, or suspected violation of chapter 507B, 510, or 513A, if a hearing is provided pursuant to chapter 17A within thirty days of the summary cease and desist order.

91 Acts, ch 213, §29 HF 634
NEW section

515.119 Compliance with law.

An insurance company organized under this chapter, or doing business in this state, or any foreign or alien company doing business in this state, shall conform to the provisions of this chapter and all other laws of this state applicable to the insurance company.

91 Acts, ch 26, §42 SF 518, 91 Acts, ch 258, §59 HF 709
Section stricken and rewritten and further amended

515.150 Demolition reserve on fire and casualty claims on property.

1. An insurer shall reserve ten thousand dollars or ten percent, whichever amount is greater, of the payment for damages to the property excluding personal property on which the insurer has issued a fire and casualty insurance policy as demolition cost reserve if the following are applicable:

- a. The property is located within the corporate limits of a city.
- b. The damage to the property renders it unin-

habitable or unfit for the purpose for which it was intended, without repair.

c. Proof of loss has been submitted by the policyholder for a sum in excess of seventy-five percent of the face value of the policy covering the building or other insured structure.

2. An insurer which has received a proof of loss in excess of seventy-five percent of the face value of the policy covering a building or other insured structure, shall notify the city council of the city within which the property is located. The notice shall be made by certified mail within five working days after receipt of the proof of loss.

3. The city shall release all interest in the demolition cost reserve within one hundred eighty days after receiving notice of the existence of the demolition cost reserve unless the city has instituted legal proceedings for the demolition of the building or other insured structure, and has notified the insurer in writing of the institution of the legal proceedings. Failure of the city to notify the insurer of the legal proceedings terminates the city's claim to any proceeds from the reserve.

4. A reserve for demolition costs is no longer required if as a result of either of the following:

a. The insurer has received notice from both the

insured and the city council that the insured has completed repairs to the property or has completed demolition of the property in compliance with all applicable statutes and local ordinances.

b. The city has failed to notify the insurer as provided under subsection 3.

5. If the city has instituted legal proceedings, undertaken emergency action, or is required to demolish the damaged property at city expense, the city shall present to the insurer costs incurred, since the date of the fire or other occurrence, including but not limited to legal costs, engineering costs, and demolition costs related directly to the enforcement of any local ordinance, and the insurer shall compensate the city for the incurred costs up to the amount in the demolition cost reserve. Any amount left from the demolition cost reserve after the cost of demolition of the property is paid to the city shall be paid to the insured if the insured is entitled to the remaining proceeds under the policy.

6. The insurer is not liable for any amount in excess of the limits of liability set out by the policy.

7. Insurers complying with this section or attempting in good faith to comply with this section shall be immune from civil and criminal liability.

91 Acts, ch 59, §1 HF 499
Subsections 1, 3, 4 and 5 amended

CHAPTER 515A

WORKERS' COMPENSATION LIABILITY INSURANCE

Sections 515A 1 through 515A 19, Code 1989, repealed effective
July 1, 1993, 90 Acts, ch 1234, § 76, 91 Acts, ch 213,
§ 35 HF 634

CHAPTER 515B

INSURANCE GUARANTY ASSOCIATION

515B.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. "Association" means the Iowa insurance guaranty association created pursuant to section 515B.3.

2. "Commissioner" means the commissioner of insurance of this state.

3. a. "Covered claim" means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if such insurer becomes an insolvent insurer after July 1, 1970, and one of the following conditions exists:

(1) The claimant or insured is a resident of this state at the time of the insured event. Other than an individual, the residence of the claimant or insured is the state in which its principal place of business is located.

(2) The claim is one by an insured for damage to property permanently located in this state.

b. "Covered claim" does not include any amount as follows:

(1) That is due any reinsurer, insurer, insurance pool, underwriting association, or other group assuming insurance risks, as subrogation, contribution, or indemnity recoveries, or otherwise.

(2) That constitutes the portion of a claim that is within an insured's deductible or self-insured retention.

(3) That is a claim for unearned premium calculated on a retrospective basis, experience-rated plan, or premium subject to adjustment after termination of the policy.

(4) That is due an attorney, adjuster, or witness as fees for services rendered to the insolvent insurer.

(5) That is a fine, penalty, interest, or punitive or exemplary damages.

(6) That constitutes a claim under a policy issued by an insolvent insurer with a deductible or self-insured retention of two hundred thousand dollars or more. However, such a claim shall be considered a covered claim, if as of the deadline set for the filing of claims against the insolvent insurer of its liquidator, the insured is a debtor under 11 U.S.C. § 701 et seq.

Notwithstanding the subparagraphs of this lettered paragraph, a person is not prevented from presenting a noncovered claim to the insolvent insurer or its liquidator, but the noncovered claim shall not be asserted against any other person, including the person to whom benefits were paid or the insured of the insolvent insurer, except to the extent that the claim is outside the coverage of the policy issued by the insolvent insurer.

4. "*Insurer*" means an insurer licensed to transact insurance business in this state under either chapter 515 or chapter 520, either at the time the policy was issued or when the insured event occurred. It does not include county or state mutual assessment associations licensed under chapter 518 or chapter 518A, or fraternal beneficiary societies, orders, or associations licensed under chapter 512B, or corporations operating nonprofit service plans under chapter 514, or life insurance companies or life, accident, or health associations licensed under chapter 508, or those professions under chapter 519.

5. "*Insolvent insurer*" means an insurer against which a final order of liquidation with a finding of insolvency has been entered on or after July 1, 1980, by a court of competent jurisdiction of this state or of the state of the insurer's domicile.

6. "*Net direct written premiums*" means direct gross premiums written in this state on insurance policies to which this chapter applies, less return premiums and dividends paid or credited to policyholders on such direct business. Such term does not include premiums on contracts between insurers or reinsurers.

7. "*Person*" means any individual, corporation, partnership, association, or voluntary organization.

91 Acts, ch 26, §43 SF 518

Subsection 3, unnumbered paragraph 2 stricken and rewritten and designated as paragraph b

515B.5 Duties and powers of the association.

1. The association shall:

a. Be obligated to the extent of the covered

claims existing prior to the determination of insolvency and arising within thirty days after the determination of insolvency, or before the policy expiration date if less than thirty days after the determination, or before the insured replaces the policy or on request effects cancellation if the insured does so within thirty days of the determination. This obligation includes only the amount of a covered claim which is in excess of one hundred dollars and less than three hundred thousand dollars for all damages arising out of any one accident, occurrence, or incident regardless of the number of persons making claims. If the policy of the insolvent insurer contained an aggregate limit, the association shall not be obligated for more than three hundred thousand dollars on an aggregate basis. However, the association shall pay the full amount of a covered claim arising out of a workers' compensation policy. In addition, the association is not liable for an amount in excess of the lesser of three hundred thousand dollars or the policy limits, regardless of the theory under which or the type of damages for which the association is alleged to be liable.

b. Be deemed the insurer to the extent of its obligations on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.

c. Assess member insurers amounts necessary to pay the obligations of the association under paragraph "a" of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under section 515B.10, and other expenses authorized by this chapter. The assessment of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bear to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year an amount greater than two percent of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other assets of the association, does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon as funds become available. The association may exempt or defer, in whole or in part, the assessment of any member insurer if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer serving as a servicing facility pursuant to this section may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer. In addition, the asso-

ciation shall have the authority to levy an administrative assessment of not more than fifty dollars per year per member insurer on a non pro rata basis, which assessment shall be credited against any future insolvency assessment. Such assessment shall be used to pay authorized expenses not directly attributable to any particular insolvency or insolvent insurer. All overdue and unpaid assessments shall draw interest at the rate of seven percent per annum.

d. Investigate claims brought against the fund and adjust, compromise, settle, defend and pay covered claims to the extent of the association's obligation and deny all other claims.

e. Notify such persons as the commissioner directs under section 515B.7, subsection 2, paragraph "a".

f. Process claims through its employees or through one or more member insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

g. Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association, and pay the other expenses of the association authorized by this chapter.

2. The association may:

a. Appear in, defend, and appeal any action on a claim brought against the association.

b. Employ or retain persons necessary to handle claims and perform other duties of the association.

c. Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation.

d. Sue or be sued.

e. Negotiate and become a party to contracts necessary to carry out the purpose of this chapter.

f. Perform such other acts necessary or proper to effectuate the purposes of this chapter.

g. If at any time the board of directors finds that the amount assessed for any insolvency exceeds the actual and projected liabilities of that insolvency, it may refund such excess to member insurers in the same proportion that each contributed to the original assessment or assessments. Any assessments or refunds of any member insurer in amounts not to exceed twenty-five dollars may, at the discretion of the board of directors, be waived.

h. Request that all future payments of workers' compensation weekly benefits, medical expenses, or other payments under chapter 85, 85A, 85B, 86, or 87 be commuted to a present lump sum and upon the

payment of which, either to the claimant or to a licensed insurer for purchase of an annuity or other periodic payment plan for the benefit of the claimant, the employer and the association shall be discharged from all further liability for the workers' compensation claim. Notwithstanding the provisions of section 85.45, any future payment of medical expenses, weekly compensation benefits, or other payment by the association under this chapter pursuant to chapter 85, 85A, 85B, 86, or 87, is deemed an undue expense, hardship, or inconvenience upon the employer for purposes of a full commutation pursuant to section 85.45, subsection 2, and the industrial commissioner shall fix the lump sum of the probable future medical expenses and weekly compensation benefits capitalized at their present value upon the basis of interest at the rate provided in section 535.3 for court judgments and decrees.

91 Acts, ch 26, §44 SF 518
Subsection 2, NEW paragraph h

515B.9 Nonduplication of recovery.

1. Any person having a claim under another policy, which claim arises out of the same facts which give rise to a covered claim, is first required to exhaust the person's right under the policy. Any amount recovered or recoverable by a person under another insurance policy shall be credited against the liability of the association under section 515B.5, subsection 1, paragraph "a". For purposes of this section, another insurance policy means a policy issued by any insurance company, whether a member insurer or not, which policy insures against any of the types of risks insured by an insurance company authorized to write insurance under chapter 515, 516A, or 520, or comparable statutes of another state, except those types of risks set forth in chapters 508 and 514.

2. A person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured. However, if the claim is a first party claim for damage to property with a permanent location, recovery shall be first sought from the association of the location of the property. If the claim is a workers' compensation claim, recovery shall be first sought from the association of the residence of the claimant. Any sums recovered from any other guaranty association or equivalent organization shall be subtracted from the maximum liability of the association under section 515B.5, subsection 1, paragraph "a".

91 Acts, ch 26, §45 SF 518
Subsection 1 amended

CHAPTER 516A

PROTECTION AGAINST UNINSURED, UNDERINSURED, OR HIT-AND-RUN MOTORISTS

516A.2 Construction — minimum coverage — stacking.

1. Except with respect to a policy containing both underinsured motor vehicle coverage and uninsured or hit-and-run motor vehicle coverage, nothing contained in this chapter shall be construed as requiring forms of coverage provided pursuant hereto, whether alone or in combination with similar coverage afforded under other automobile liability or motor vehicle liability policies, to afford limits in excess of those that would be afforded had the insured thereunder been involved in an accident with a motorist who was insured under a policy of liability insurance with the minimum limits for bodily injury or death prescribed in subsection 10 of section 321A.1. Such forms of coverage may include terms, exclusions, limitations, conditions, and offsets which are designed to avoid duplication of insurance or other benefits.

To the extent that *Hernandez v. Farmers Insurance Company*, 460 N.W.2d 842 (Iowa 1990), provided for interpolicy stacking of uninsured or underinsured coverages in contravention of specific contract or policy language, the general assembly declares such decision abrogated and declares that the enforcement of the antistacking provisions contained in a motor vehicle insurance policy does not frustrate the protection given to an insured under section 516A.1.

2. Pursuant to chapter 17A, the commissioner of insurance shall, by January 1, 1992, adopt rules to assure the availability, within the state, of motor vehicle insurance policies, riders, endorsements, or other similar forms of coverage, the terms of which shall provide for the stacking of uninsured and underinsured coverages with any similar coverage which may be available to an insured.

3. It is the intent of the general assembly that when more than one motor vehicle insurance policy is purchased by or on behalf of an injured insured and which provides uninsured, underinsured, or hit-and-run motor vehicle coverage to an insured injured in an accident, the injured insured is entitled to recover up to an amount equal to the highest single limit for uninsured, underinsured, or hit-and-run motor vehicle coverage under any one of the above described motor vehicle insurance policies insuring the injured person which amount shall be paid by the insurers according to any priority of coverage provisions contained in the policies insuring the injured person.

91 Acts, ch 213, §30 HF 634

1991 amendment applies to causes of action accruing on or after July 1, 1991, and to those accruing before July 1, 1991, which are filed on or after September 15, 1991, 91 Acts, ch 213, §39 HF 634

Section amended

516A.3 Definition.

For the purpose of this chapter, the term “*uninsured motor vehicle*” shall, subject to the terms and conditions of the coverage herein required, be deemed to include an insured motor vehicle with respect to which insolvency proceedings have been instituted against the liability insurer thereof by the insurance regulatory official of this or any other state or territory of the United States or of the District of Columbia.

An insurer’s insolvency protection is applicable only to accidents occurring during a policy period in which its insured’s uninsured motorist coverage is in effect and only if the liability insurer of the tortfeasor is insolvent at the time of such an accident.

91 Acts, ch 26, §46 SF 518

Unnumbered paragraph 2 amended

CHAPTER 516C

COLLISION DAMAGE WAIVERS

Repealed by 91 Acts ch 204, § 10 SF 491, see ch 516D

CHAPTER 516D

RENTAL OF MOTOR VEHICLES

516D.1 Title.

This chapter shall be known and may be cited as the “*Iowa Car Rental and Collision Damage Waiver Act*”.

91 Acts, ch 204, § 1 SF 491
NEW section

516D.2 Scope.

This chapter applies to advertising and business practices relating to vehicle rental agreements entered into in this state.

91 Acts, ch 204, § 2 SF 491
NEW section

516D.3 Definitions.

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

1. “*Authorized driver*” means any of the following:

- a. A customer to whom a vehicle is rented.
- b. A person expressly listed by a rental company on a rental agreement as an authorized driver.
- c. A customer’s spouse, if the spouse is a licensed driver and satisfies the rental company’s minimum age requirement.
- d. A customer’s employer or coworker, if the employer or coworker is engaged in a business activity with the customer to whom the vehicle is rented, is a licensed driver, and satisfies the rental company’s minimum age requirement.

2. “*Collision damage waiver*” means a contract or contractual provision, whether separate from or a part of a rental agreement, whereby the rental company agrees, for a charge, to waive claims against an authorized driver for all, or any portion of, damages to the rental vehicle, loss due to theft of the rental vehicle, or damages resulting from the loss of use of the rental vehicle.

3. “*Customer*” means a person entering into a rental agreement and obtaining the use of a rental vehicle from a rental company under the terms of the rental agreement.

4. “*Estimated time for repair*” means a good faith estimate of the reasonable number of hours of labor, or fraction of an hour, needed to repair a damaged vehicle or damaged vehicle parts.

5. “*Estimated time for replacement*” means the number of hours of labor, or fraction of an hour, needed to replace damaged vehicle parts as set forth in collision damage estimating guides generally used in the vehicle repair business and commonly known as crash books.

6. “*Mandatory charge*” means any charge, fee differential, or surcharge that all or a majority of customers must pay in order to obtain or operate a rental vehicle except as follows:

a. Mandatory charge does not include an optional airport imposed fee if the existence and amount of the fee are clearly and conspicuously disclosed immediately adjacent to any advertised rental price. The advertisement must clearly and conspicuously state the method of avoiding the airport access fee and the customer must be informed of the amount of the fee when the reservation is made. When an advertisement encompasses more than one rental location, the fee may be expressed as the maximum fee or range of fees.

b. Mandatory charge does not include taxes imposed directly upon the rental transaction by an authorized taxing authority. An airport imposed fee on gross receipts or an airport access fee is not such a tax.

c. Mandatory charge does not include mileage fees as long as the existence of any mileage limitation and cost per mile for excess mileage is clearly and conspicuously disclosed immediately adjacent to the advertised price.

7. “*Material restriction*” means a restriction, limitation, or other requirement which significantly affects the price of, normal anticipated use of, or a consumer’s financial responsibility for, a rental vehicle. Restrictions against any or all of the following activities in connection with the acquisition or use of a rental vehicle are not material restrictions:

a. Obtaining a rental vehicle by use of false or misleading information.

b. Operating a rental vehicle while intoxicated or under the influence of any drug.

c. Using a rental vehicle to transport persons or property for hire.

d. Using a rental vehicle to engage in a race,

training activity, contest, or use for an illegal purpose.

e. Using a rental vehicle to push or tow a vehicle or other object.

f. Operating a rental vehicle in an abusive or reckless manner.

g. Operating a rental vehicle other than on regularly maintained hard surface roadways, including private driveways and parking lots. For purposes of this chapter, "hard surface roadways" includes, but is not limited to, all regularly maintained gravel-covered surfaces.

h. Operating a rental vehicle outside the continental United States unless specifically authorized by the rental agreement.

8. "Placing a block" means any procedure or mechanism which reserves a specified amount of the customer's otherwise available credit on the customer's credit or charge card account so that the amount is not available for future credit purchases.

9. "Rental agreement" means a written contract containing the terms and conditions for the use of a rental vehicle by a customer for a term of sixty days or less.

10. "Rental company" means a person in the business of providing rental vehicles to customers.

11. "Rental vehicle" means a private passenger type vehicle which, upon the execution of a rental agreement, is made available to a customer for the customer's use or other authorized driver's use.

91 Acts, ch 204, §3 SF 491
NEW section

516D.4 Collision damage and loss.

1. A rental company shall not hold, or attempt to hold, an authorized driver liable for physical damage to a rental vehicle, loss due to theft of a rental vehicle, or damages resulting from the loss of use of a rental vehicle, unless the rental company offers the customer a collision damage waiver under the terms and conditions described in subsection 2 of this section, or unless one or more of the following applies:

a. The damage or loss is caused intentionally by an authorized driver or is a result of the authorized driver's willful, abusive, reckless, or wanton misconduct.

b. The damage or loss arises out of the authorized driver's operation of the rental vehicle while intoxicated or under the influence of a drug.

c. The damage or loss is caused while the authorized driver is engaged in a race, training activity, contest, or use of the rental vehicle for an illegal purpose.

d. The rental agreement is based on false or misleading information supplied by the customer or an authorized driver.

e. The damage or loss is caused by operating the rental vehicle other than on regularly maintained hard surface roadways, including private driveways and parking lots.

f. The damage or loss arises out of the use of the rental vehicle to transport persons or property for hire or to push or tow anything.

g. The damage or loss occurs while the rental vehicle is operated by a driver other than an authorized driver.

h. The damage or loss arises out of the use of the rental vehicle outside the continental United States unless such use is specifically authorized by the rental agreement.

i. The damage or loss is attributable to theft which occurs with the prior knowledge or knowing participation of an authorized driver, or which is attributable to the authorized driver leaving the rental vehicle unattended with the keys in the rental vehicle.

This section does not alter the liability of a customer or authorized driver for bodily injury or the death of another and for property damage other than to the rental vehicle in accordance with the rental agreement. This section does not prohibit a rental company from accepting or negotiating master contracts with companies or government entities in advance of need whereby the companies or government entities specifically agree to assume liability in exchange for rate concessions. This section does not prohibit a rental company from entering into agreements with insurance companies to provide replacement vehicles to insurance company customers whereby the insurance company agrees to assume the risk of loss.

If the rental vehicle is not repaired, damages shall not exceed the fair market value of the vehicle, as determined in the customary market for that vehicle, less salvage or actual sale value, plus additional license and tax fees incurred because of the sale, plus administrative fees. A claim shall not be made for loss of use if the rental vehicle is not repaired.

2. A rental company may offer a collision damage waiver under the following terms and conditions:

a. All restrictions, conditions, and exclusions must be printed in the rental agreement, or on a separate sheet or document, in ten-point type, or larger; or written in pen and ink or typewritten in or on the face of the rental agreement in a blank space provided for such restrictions, conditions, and exclusions. The rental agreement may provide that the collision damage waiver may be voided under the conditions set forth in subsection 1, paragraphs "a" through "i".

b. The rental agreement, separate sheet, or document must clearly and conspicuously state both the daily and estimated total charge for the collision damage waiver.

c. The rental agreement, separate sheet, or document given to the customer prior to entering into the rental agreement must display in ten-point type, or larger, the following notice:

NOTICE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A COLLISION DAMAGE WAIVER TO COVER ALL OR PART OF YOUR RESPONSIBILITY FOR DAMAGE TO THE RENTAL VEHICLE.

BEFORE DECIDING WHETHER TO PURCHASE THE COLLISION DAMAGE WAIVER, YOU MAY WISH TO DETERMINE WHETHER

YOUR OWN AUTOMOBILE INSURANCE AFFORDS YOU COVERAGE FOR DAMAGE TO THE RENTAL VEHICLE AND THE AMOUNT OF THE DEDUCTIBLE UNDER YOUR OWN INSURANCE COVERAGE. THE PURCHASE OF THIS COLLISION DAMAGE WAIVER IS NOT MANDATORY AND MAY BE DECLINED.

The customer must separately acknowledge that the customer received the above notice, that the customer desires to purchase the collision damage waiver, and the terms of the collision damage waiver to which the customer agrees.

d. The car rental company shall not pay commissions to a rental counter agent or representative for selling collision damage waivers and is prohibited from considering volume of sales of collision damage waivers in an employee evaluation or determination of promotion.

However, notwithstanding whether a rental company offers a collision damage waiver under the provisions of this subsection, the rental company shall not hold an authorized driver liable for damage or loss due to theft except where subsection 1, paragraph "i" applies.

91 Acts, ch 204, §4 SF 491
NEW section

516D.5 Recovery for damage or loss.

A claim against an authorized driver resulting from damage to a rental vehicle, loss due to theft of a rental vehicle, or damages resulting from the loss of use of a rental vehicle, must be reasonably and rationally related to the actual loss incurred. A rental company shall mitigate damages where possible and shall not assert or collect any claim for physical damage which exceeds the actual cost of the repair, including all discounts or price reductions. Administrative fees shall be limited to the reasonable administrative costs associated with processing the damage claim. A claim made for loss of use shall not exceed the daily rental rate stated in the customer's contract, excluding optional charges, multiplied by the total of the estimated time for replacement and the estimated time for repair, divided by eight.

91 Acts, ch 204, §5 SF 491
NEW section

516D.6 Disclosures.

1. All material restrictions on an advertised rate or on the use of the rental vehicle must be clearly and conspicuously disclosed in any price advertisement.

2. A rental company shall only advertise, quote, and charge a rental rate that includes all mandatory charges. A rental company shall not impose any mandatory charges in addition to the advertised or quoted rental rate.

91 Acts, ch 204, §6 SF 491
NEW section

516D.7 Prohibitions.

Unfair or deceptive acts or practices in the advertisement or rental of vehicles are prohibited. Unfair or deceptive acts or practices include, but are not limited to, the following:

1. A representation connected with the advertisement or rental of a vehicle that the purchase of a collision damage waiver is mandatory.

2. Failure to provide disclosures as required by this chapter.

3. Failure to disclose in a manner likely to be noticed and comprehended in an advertisement, as defined in section 714.16, subsection 1, paragraph "a", the availability of a collision damage waiver, and the cost of the waiver.

4. Misrepresentation of a customer's need for a collision damage waiver, personal accident insurance, or personal effects insurance.

5. Misrepresentation of the characteristics or availability of a reserved rental vehicle in order to rent a customer a more expensive vehicle than the one reserved.

6. Failure to provide a vehicle in the class reserved, or, if the reserved vehicle is out of stock, failure to provide another vehicle in the class reserved or a more expensive vehicle. A replacement vehicle for an out-of-stock reserved vehicle may be provided from the stock of the rental company or from another rental company but, in any event, must be provided at the rate quoted for the vehicle reserved.

7. Failure to disclose the following material restrictions, where applicable, in response to direct consumer inquiries regarding the price of renting a vehicle, when the rental company discloses a vehicle rental rate, and at the time the reservation is accepted:

a. Specific geographic restrictions and limitations, other than travel outside the continental United States.

b. Advance reservation and payment requirements.

c. The existence of penalties or higher rates that may apply for early or late returns.

d. Cost of an additional driver fee.

e. Credit or cash deposit requirements.

f. Extent of liability for damage or loss and price range of collision damage waiver.

g. Mileage limitations and charges.

8. Placement of a block against a customer's credit limit or charge against a customer's credit card in the following manner:

a. Placing a block or charge against a customer's credit limit without disclosing in the rental agreement in a clear and conspicuous manner the fact that a block or charge will be placed against the customer's credit card, and the amount of the block or charge. Such disclosure shall also be made orally whenever possible.

b. Placing a block or charge against a portion or the entirety of the credit limit of the card or otherwise placing a block or charge against the card in excess of the estimated total daily or weekly charges, including taxes and charges of optional services accepted by the customer, stated in the rental agreement multiplied by the number of days of the estimated rental if rented on a daily basis or, if rented on a weekly basis, multiplied by the number of weeks of the estimated rental.

c. Placing a block or charge against a customer's credit card and then failing to clear the unused amount of the block or charge against the customer's credit card after the customer returns the rental vehicle in the same amount of time, subject to credit card company or charge card company availability, as it took the rental company to place the block or charge against the customer's card when the customer rented the vehicle.

d. Placing or threatening to place a block or charge on a customer's credit card when seeking to recover any portion of a claim arising out of damage to, or loss of use of, the rental vehicle, unless, after the rental vehicle is damaged or lost, the rental company determines the exact amount of the repair or replacement costs and the customer authorizes the charge.

e. Charging an amount to a customer's credit card for damage to, or loss of use of, a rental vehicle after the customer has left the location where the rental vehicle was returned, unless the customer has authorized the specific charge, in a specific amount, to be charged to the customer's credit card. This subsection does not apply to a block in the amount of one dollar obtained for authorized charge amounts.

9. Assessment of additional driver fees for licensed drivers who are spouses or business associates engaged in business activities with the customer to whom the vehicle is rented, other than charges for a person who does not satisfy the rental company's minimum age requirement, if applicable.

91 Acts, ch 204, §7 SF 491
NEW section

516D.8 Rules.

The attorney general shall prescribe forms and adopt rules pursuant to chapter 17A as necessary to administer this chapter.

91 Acts, ch 204, §8 SF 491
NEW section

516D.9 Enforcement.

A violation of this chapter or any rules adopted by the attorney general pursuant to this chapter is a violation of section 714.16, subsection 2, paragraph "a". The provisions of section 714.16, including, but not limited to, provisions relating to investigation, injunctive relief, and penalties, apply to violations of this chapter.

91 Acts, ch 204, §9 SF 491
NEW section

CHAPTER 518

COUNTY MUTUAL INSURANCE ASSOCIATIONS

518.17 Reinsurance.

Any county mutual insurance association may re-insure a part or all of its risks with any association operating under the provisions of this chapter, or with any other association or company licensed in this state and authorized to write the kinds of insurance enumerated in section 518.11.

The commissioner of insurance may require any county mutual insurance association to obtain reinsurance coverage as provided for in this section if it

appears to the commissioner of insurance that the perils insured against and the classes of properties insured may seriously endanger the financial position of the association and the security of its members.

Reinsurance coverage obtained by a county mutual insurance association shall not expose the association to a loss of more than fifteen percent from surplus in any calendar year.

91 Acts, ch 26, §47 SF 518
NEW unnumbered paragraph 3

CHAPTER 521A

INSURANCE HOLDING COMPANY SYSTEMS

521A.2 Subsidiaries of insurers.

1 *Authorization* Any domestic insurer, either by itself or in co-operation with one or more persons, subject to the limitations set forth herein or elsewhere in this chapter, may organize or acquire one or more subsidiaries engaged or registered to engage in one or more of the following businesses or activities

a Any kind of insurance business authorized by the jurisdiction in which it is incorporated

b Acting as an insurance broker or as an insurance agent for its parent or for any of its parent's insurer subsidiaries or intermediate insurer subsidiaries

c Investing, reinvesting or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary

d Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services

e Acting as a broker dealer subject to or registered pursuant to the Securities Exchange Act of 1934 as amended

f Rendering financial services or advice to individuals, governments, government agencies, corporations, or other organizations or groups

g Rendering other services related to the operations of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal, and collection services

h Ownership and management of assets which the parent corporation could itself own and manage. However, the aggregate investment by the insurer and its subsidiaries acquired or organized pursuant to this paragraph shall not exceed the limitations applicable to the investments by the insurer

i Acting as administrative agent for a government instrumentality which is performing an insurance function

j Financing of insurance premiums, agents and other forms of consumer financing

k Any other business or service activity reasonably ancillary to an insurance business

l Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in paragraphs "a" to "k" inclusive

2 *Exception* Nothing contained in subsection 1 of this section shall prohibit a domestic insurer, either by itself or in co-operation with one or more persons, from investing amounts up to a total of ten

percent of surplus in one or more subsidiaries or affiliates organized to do any lawful business

3 *Additional investment authority* In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under all other sections of this Title, a domestic insurer may also

a Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent of the insurer's assets or fifty percent of the insurer's surplus as regards policyholders, if after the 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. In calculating the amount of the investments, investments in domestic or foreign insurance subsidiaries shall be excluded and both of the following shall be included

(1) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities

(2) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation

b Invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries provided that each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in paragraph "a" of this subsection or in chapters 511, 515, 518A, and 520 applicable to the insurer. For the purpose of this paragraph, "total investment of the insurer" shall include both

(1) Any direct investment by the insurer in an asset

(2) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership of such subsidiary

c With the approval of the commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries, if after the investment the insurer-

er's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs

4 *Exemption from investment restrictions* Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to subsection 3 of this section hereof shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in the Code applicable to such investments of insurers

5 *Qualification of investment — when determined* Whether any investment pursuant to subsection 3 meets the applicable requirements of the subsection is to be determined before the investment is made by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, excluding dividends

6 *Cessation of control* If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after such investment shall have been made, such investment shall have met the requirements for investment under any other section of the Code, and the insurer has notified the commissioner thereof

91 Acts ch 26 §48 SF 518

Subsection 3 paragraph a unnumbered paragraph 1 amended

521A.3 Acquisition of control of or merger with domestic insurer.

1 *Filing requirements* No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner hereinafter prescribed

For purposes of this section a domestic insurer shall include any other person controlling a domestic insurer unless the other person is either directly or through its affiliates primarily engaged in business

other than the business of insurance. However, for purposes of this section "person" does not include a securities broker holding, in the usual and customary broker's function, less than twenty percent of the voting securities of an insurance company or of a person which controls an insurance company

2 *Content of statement* The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information

a The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection 1 of this section is to be effected, hereinafter called "acquiring party"

(1) If such person is an individual, the individual's principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years

(2) If such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence, an informative description of the business intended to be done by such person and such person's subsidiaries, and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subparagraph (1) of this paragraph

b The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction in which funds were or are to be obtained for any such purpose including a pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing the consideration. However, if a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests

c Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar unaudited information as of a date not earlier than ninety days prior to the filing of the statement

d Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management

e The number of shares of any security referred to in subsection 1 of this section which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition

referred to in subsection 1 of this section, and a statement as to the method by which the fairness of the proposal was arrived at

f The amount of each class of any security referred to in subsection 1 of this section which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party

g A full description of any contracts, arrangements or understandings with respect to any security referred to in subsection 1 of this section in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantee of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into

h A description of the purchase of any security referred to in subsection 1 of this section during the twelve calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor

i A description of any recommendations to purchase any security referred to in subsection 1 of this section made during the twelve calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interview or at the suggestion of such acquiring party

j Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection 1 of this section, and, if distributed, of additional soliciting material relating thereto

k The terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in subsection 1 of this section for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto

l Additional information as the commissioner may by rule prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest

If the person required to file the statement referred to in subsection 1 of this section is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by paragraphs "a" through "l" of this subsection shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member or person is a corporation or the person required to file the statement referred to in subsection 1 of this section is a corporation, the commissioner may require that the information called for by paragraphs "a" through "l" of this subsection shall be given with respect to such corporation, each officer

and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of such corporation. If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within two business days after the person learns of such change. Such insurer shall send such amendment to its shareholders.

3 Alternative filing materials If any offer, request, invitation, agreement or acquisition referred to in subsection 1 of this section is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration, or disclosure, the person required to file the statement referred to in subsection 1 of this section may utilize such documents in furnishing the information called for by that statement.

4 Approval by the commissioner — hearings

a The commissioner shall approve any merger or other acquisition of control referred to in subsection 1 of this section unless, after a public hearing thereon, the commissioner finds any of the following:

(1) After the change of control the domestic insurer referred to in subsection 1 of this section would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed

(2) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein

(3) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders

(4) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest

(5) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control

b The public hearing referred to in paragraph "a" shall be held within thirty days after the statement required by subsection 1 is filed, and at least twenty days' notice of the public hearing shall be given by the commissioner to the person filing the statement. Not less than seven days' notice of the

public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The commissioner shall make a determination within thirty days after the conclusion of the hearing. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the district court of this state. All discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearing.

5. *Exemptions.* The provisions of this section shall not apply to any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt therefrom for one of the following reasons:

a. It has not been made or entered into for the purpose and does not have the effect of changing or influencing the control of a domestic insurer.

b. It is otherwise not comprehended within the purposes of this section.

6. *Violations.* The following shall be violations of this section:

a. The failure to file any statement, amendment, or other material required to be filed pursuant to subsection 1 or 2 of this section.

b. The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given approval thereto.

7. *Jurisdiction — consent to service of process.* The district court is hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this section, and over all actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the commissioner to be the person's true and lawful attorney upon whom may be served all lawful process, notice or demand in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process, notice or demand shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at the person's last known address.

91 Acts, ch 26, §49, 50 SF 518

Subsection 4, paragraph b amended

Subsection 5 stricken and former subsections 6-8 renumbered as 5-7

521A.4 Registration of insurers.

1. *Registration* An insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards

which are substantially similar to those contained in this section and section 521A.5, subsection 1, paragraph "a", and are adopted by statute or regulation in the jurisdiction of its domicile. The insurer shall also file a copy of the summary of its registration statement as required by subsection 4 in each state in which that insurer is authorized to do business if requested to do so by the commissioner of that state. An insurer which is subject to registration under this section shall register within fifteen days after it becomes subject to registration and annually thereafter by March 31 of each year for the previous calendar year unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurance company with the insurance regulatory authority of the company's domiciliary jurisdiction.

2. *Information and form required.* Every insurer subject to registration shall file a registration statement on a form prescribed by the commissioner, which may be a form provided by the national association of insurance commissioners, which shall contain current information about:

a. The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer.

b. The identity and relationship of every member of the insurance holding company system.

c. The following agreements in force, relationships subsisting, and transactions currently outstanding or which have occurred during the last calendar year between the insurer and its affiliates:

(1) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates.

(2) Purchases, sales, or exchanges of assets.

(3) Transactions not in the ordinary course of business.

(4) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business.

(5) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles.

(6) Reinsurance agreements.

(7) Dividends and other distributions to shareholders.

(8) Consolidated tax allocation agreements.

d. A pledge of the insurer's stock, including stock of a subsidiary or controlling affiliate, for a loan made to a member of the insurance holding company system.

e. Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

3 *Materiality* Information need not be disclosed on the registration statement filed pursuant to subsection 2 if the information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments or guarantees involving one half of one percent or less of an insurer's admitted assets as of the next preceding December 31 are not material for purposes of this section.

4 *Reporting of dividends to shareholders* Subject to section 521A 5, subsection 3, a registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen days following the declaration of the dividends or distributions.

5 *Summary of registration statement* All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the next preceding registration statement.

6 *Information of insurers* Any person within an insurance holding company system subject to registration is required to provide complete and accurate information to an insurer if the information is reasonably necessary to enable the insurer to comply with this chapter.

7 *Termination of registration* The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

8 *Consolidated filing* The commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

9 *Alternative registration* The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection 1 of this section and to file all information and material required to be filed under this section.

10 *Exemptions* The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule, regulation, or order shall exempt the same from the provisions of this section.

11 *Disclaimer* Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and basis for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall

disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

12 *Violations* The failure to file a registration statement or a summary of the registration statement required by this section within the time specified for the filing is a violation of this section.

91 Acts ch 26 §51 53 SF 518

Subsection 2 unnumbered paragraph 1 amended

Subsection 2 paragraph c NEW subparagraph (8)

NEW subsection 4 and former subsections 4 11 renumbered as 5 12

521A.5 Standards.

1 *Transactions within a holding company system affecting domestic insurers*

a Material transactions by registered insurers with their affiliates are subject to the following standards:

- (1) The terms shall be fair and reasonable.
- (2) Charges or fees for services performed shall be reasonable.
- (3) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary and consistently applied insurance accounting practices.
- (4) The books, accounts, and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions.
- (5) After any dividends or distributions to shareholder affiliates, the insurer's surplus as regards policyholders shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

b A domestic insurer and a person in its holding company system shall not enter into any of the following transactions between each other involving amounts equal to or exceeding the lesser of five percent of the insurer's admitted assets or twenty-five percent of the surplus as regards policyholders as of the next preceding December 31, unless the domestic insurer notifies the commissioner in writing of its intention to enter into the transaction at least thirty days prior to entering into the transaction or within a shorter time permitted by the commissioner and the commissioner has not disapproved of the transaction within the time period:

- (1) Sales
- (2) Purchases
- (3) Exchanges
- (4) Loans or extensions of credit
- (5) Guarantees
- (6) Investments
- (7) Loans or extensions of credit to a person who is not an affiliate, if the domestic insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, an affiliate of the domestic insurer making the loans or extensions of credit.

c A domestic insurer and a person in its holding company system shall not enter into any of the following transactions, unless the domestic insurer notifies the commissioner in writing of its intention to enter into the transaction at least thirty days prior to entering into the transaction or within a shorter time permitted by the commissioner and the commissioner has not disapproved of the transaction within the time period

(1) All reinsurance agreements which in the aggregate will or may require as consideration the net transfer of assets to or by the domestic insurer in an amount, as of the next preceding December 31, exceeding twenty-five percent of statutory surplus

(2) Any material transactions specified by rule which the commissioner determines may adversely affect the interests of the domestic insurer's policyholders

d This subsection does not authorize or permit any transactions which in the case of an insurer would be otherwise contrary to law

e A domestic insurer shall not enter into transactions which are part of a plan or series of like transactions with a person or persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that such separate transactions were entered into over a twelve-month period for that purpose, the commissioner may exercise the authority under section 521A 10

f The commissioner, in reviewing transactions pursuant to paragraphs "b" and "c", shall consider whether the transactions comply with the standards set forth in paragraph "a"

g A domestic insurer shall notify the commissioner within thirty days of an investment of the insurer in a corporation if the total investment in the corporation by the insurance holding company system exceeds ten percent of the corporation's voting securities

2 *Adequacy of surplus* For purposes of this chapter in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered

a The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria

b The extent to which the insurer's business is diversified among the several lines of insurance

c The number and size of risks insured in each line of business

d The extent of the geographical dispersion of the insurer's insured risks

e The nature and extent of the insurer's reinsurance program

f The quality, diversification, and liquidity of the insurer's investment portfolio

g The recent past and projected future trend in

the size of the insurer's surplus as regards policyholders

h The surplus as regards policyholders maintained by other comparable insurers

i The adequacy of the insurer's reserves

j The quality and liquidity of investments in subsidiaries made pursuant to section 521A 2 The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the commissioner's judgment such investment so warrants

3 *Dividends and other distributions* A domestic insurer subject to registration under section 521A 4 shall not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until either thirty days after the commissioner has received notice of the declaration of the payment and has not within the period disapproved the payment, or the commissioner shall have approved the payment within the thirty-day period

For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the greater of either ten percent of the insurer's surplus as regards policyholders as of the next preceding December 31, or the net gain from operations of the insurer if the insurer is a life insurer, or the net investment income if the insurer is not a life insurer, for the twelve-month period ending the next preceding December 31, but shall not include pro rata distributions of any class of the insurer's own securities. In determining whether a dividend or distribution is extraordinary, an insurer may carry forward income or gain from operations from the previous two calendar years that has not already been paid out as dividends

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until either the commissioner has approved the payment of such dividend or distribution, or the commissioner has not disapproved such payment within the thirty-day period referred to above

91 Acts ch 26 §54 SF 518

Subsection 1 paragraph b unnumbered paragraph 1 amended

521A.10 Sanctions and penalties.

1 If the commissioner finds after notice and hearing that a person subject to registration under section 521A 4 failed without just cause to file a registration statement as required in this chapter, the person shall be required to pay a penalty of one thousand dollars for each day's delay. The penalty shall be recovered by the commissioner and paid into the state general fund. The maximum penalty under this section is ten thousand dollars. The commissioner may reduce the penalty if the person demonstrates

that the imposition of the penalty would constitute a financial hardship to the person.

2. *a.* A director or officer of an insurance holding company system who does any of the following is subject to the civil penalty imposed under paragraph “*b*”:

(1) Knowingly participates in or assents to transactions or investments which have not been properly reported or submitted pursuant to section 521A.4 or section 521A.5, subsection 1, paragraph “*b*”.

(2) Knowingly permits any of the officers or agents of an insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to section 521A.4 or section 521A.5, subsection 1, paragraph “*b*”.

(3) Knowingly violates any other provision of this chapter.

b. An officer or director of an insurance holding company system who commits any of the acts or omissions listed in paragraph “*a*” shall pay, in the person’s individual capacity, a civil penalty of not more than one thousand dollars per violation, after notice and hearing before the commissioner. In determining the amount of the civil penalty, the commissioner shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

3. If it appears to the commissioner that an insurer subject to this chapter has engaged in a transaction or entered into a contract which is subject to

section 521A.5 and which would not have been approved had approval been requested, the commissioner may order the insurer to immediately cease and desist any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the insurer to void any contracts and restore the status quo if the commissioner finds that action is in the best interest of the policyholders, creditors, or the public.

4. If it appears to the commissioner that an insurer or a director, officer, agent, or employee of an insurer has committed a willful violation of this chapter, the commissioner may institute criminal proceedings against the insurer or the responsible director, officer, agent, or employee in the district court for the county in which the principal office of the insurer is located, or if the insurer has no office in this state, then in the district court for Polk county. An insurer or individual who willfully violates this chapter is guilty of a class “D” felony.

5. A director or officer, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements, false reports, or false filings with the intent to deceive the commissioner in the performance of the commissioner’s duties under this chapter is guilty of a class “D” felony. Any fines imposed shall be paid by the director, officer, or employee in the person’s individual capacity.

91 Acts, ch 26, §55, 56 SF 518
NEW subsections 2 and 5 and former subsections 2 and 3 renumbered as 3 and 4

CHAPTER 521B

CREDIT FOR REINSURANCE

Chapter applicable to all cessions and retrocessions under agreements with inception, anniversary, or renewal date not earlier than six months after July 1, 1991, 91 Acts, ch 26, § 64 SF 518

521B.1 Short title.

This chapter shall be known and may be cited as the “*Credit for Reinsurance Act.*”

91 Acts, ch 26, §14 SF 518
NEW section

521B.2 Credit allowed a domestic ceding insurer.

Credit for reinsurance is allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only if the reinsurer meets the requirements of subsection 1, 2, 3, 4, or 5. If the reinsurer meets the requirements of subsection 3 or 4, the requirements of subsection 6 must also be met.

1. Credit is allowed if the reinsurance is ceded to an assuming insurer which is licensed to transact the business of reinsurance in this state.

2. Credit is allowed if the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state. An accredited reinsurer is one which satisfies all of the following conditions:

a. Files with the commissioner evidence of submission to the jurisdiction of this state.

b. Submits to the authority of this state to examine its books and records.

c. Is licensed to transact reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, is entered through and li-

censed to transact the business of reinsurance in at least one state.

d. Files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement and does either of the following:

(1) Maintains a surplus with respect to policyholders in an amount which is not less than twenty million dollars and whose accreditation has not been denied by the commissioner within ninety days of its submission to the jurisdiction of this state.

(2) Maintains a surplus with respect to policyholders in an amount less than twenty million dollars and whose accreditation has been approved by the commissioner. Credit shall not be allowed a domestic ceding insurer, if the accreditation of the assuming insurer is revoked by the commissioner after notice and hearing.

To qualify as an accredited reinsurer, an assuming insurer must meet all of the requirements and the standards set forth in this subsection. If the commissioner determines that the assuming insurer has failed to continue to meet any of these requirements or standards, the commissioner may upon written notice and hearing revoke accreditation of the assuming insurer.

This section does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

3. *a.* Credit is allowed if the reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer is entered through, a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this section, and the assuming insurer or United States branch of an alien assuming insurer does both of the following:

(1) Maintains a surplus with respect to policyholders in an amount of not less than twenty million dollars.

(2) Submits to the authority of this state to examine its books and records.

b. However, the requirement of paragraph "a", subparagraph (1), does not apply to reinsurance ceded and assumed pursuant to a pooling arrangement among insurers in the same holding company system.

4. *a.* Credit is allowed if the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in section 521B.4, subsection 2, for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns, and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the national association of insurance commissioners' annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the

trust fund. In the case of a single assuming insurer, the trust shall consist of a trusted account representing the liabilities of the assuming insurer attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trusted surplus of not less than twenty million dollars. In the case of a group of individual unincorporated underwriters, the trust shall consist of a trusted account representing the liabilities of the group attributable to business written in the United States and, in addition, the group shall maintain a trusted surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers of any member of the group. The group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.

b. In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in paragraph "a", which is under the supervision of the department of trade and industry of the United Kingdom, which submits to the authority of this state to examine its books and records and bears the expense of the examination, and which has aggregate policyholders' surplus of at least ten billion dollars, the trust shall be in an amount equal to the several liabilities of the group attributable to business written in the United States. The group shall also maintain a joint trustee surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers of any member of the group, and each member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.

c. Such trust shall be established in a form approved by the commissioner. The trust instrument shall provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust vests legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer are subject to examination as determined by the commissioner. The trust described in this paragraph must remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

d. No later than February 28 of each year the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the end of the preceding calendar year and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the following December 31.

5. Credit is allowed if the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection 1, 2, 3, or 4, but only with respect to the

insurance of risks located in a jurisdiction where such reinsurance is required by applicable law or regulation of that jurisdiction. For purposes of this subsection, jurisdiction refers to a jurisdiction other than the United States, and any state, district, or territory of the United States. This subsection allows credit to ceding insurers which are mandated by such a jurisdiction to cede reinsurance to state owned or controlled insurance or reinsurance companies or to participate in pools, guaranty funds, or joint underwriting associations.

6. a. If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subsection 3 or 4 is not allowed unless the assuming insurer agrees in the reinsurance agreements to both of the following:

(1) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, shall comply with all requirements necessary to give such court jurisdiction, and shall abide by the final decision of such court or of any appellate court in the event of an appeal.

(2) That the commissioner or an attorney designated in the agreement is the true and lawful attorney of the assuming insurer upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

b. This subsection is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

91 Acts, ch 26, §15 SF 518, 91 Acts, ch 258, §60 HF 709
NEW section
Subsection 3, paragraph a amended

521B.3 Reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer.

A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 521B.2 is allowed in an amount not exceeding the liabilities carried by the ceding insurer and the reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations under the reinsurance contract, if such security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or in the case of a trust, held in a qualified United States financial institution, as defined in section 521B.4, subsection 2. This security may be held in the form of any of the following:

1. Cash.
2. Securities listed by the securities valuation of-

fice of the national association of insurance commissioners and qualifying as admitted assets.

3. Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in section 521B.4, subsection 2, no later than December 31 of the year for which filing is being made, and in the possession of the ceding insurer on or before the filing date of its annual statement.

Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the subsequent failure of the issuing or confirming institution or subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs.

4. Any other form of security acceptable to the commissioner.

91 Acts, ch 26, §16 SF 518
NEW section

521B.4 Qualified United States financial institutions.

1. For purposes of this chapter, a “qualified United States financial institution” means an institution that satisfies all of the following conditions:

a. The financial institution is organized or licensed under the laws of the United States or any state of the United States.

b. The financial institution is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

c. The financial institution has been determined by either the commissioner, or the securities valuation office of the national association of insurance commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

2. A “qualified United States financial institution” means, for purposes of those provisions of this chapter specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that is both of the following:

a. Organized or licensed under the laws of the United States or any state of the United States, and has been granted authority to operate with fiduciary powers.

b. Regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

91 Acts, ch 26, §17 SF 518
NEW section

521B.5 Rules.

The commissioner may adopt rules, pursuant to chapter 17A, as necessary or convenient to administer this chapter.

91 Acts, ch 26, §18 SF 518
NEW section

CHAPTER 521C

REINSURANCE INTERMEDIARIES

Chapter effective July 1, 1991, services of reinsurance intermediary not to be utilized on or after that date unless in compliance with this chapter, 91 Acts, ch 26, § 65 SF 518

521C.1 Short title.

This chapter shall be known and may be cited as the “*Reinsurance Intermediary Model Act.*”

91 Acts, ch 26, §19 SF 518
NEW section

521C.2 Definitions.

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

1. “*Actuary*” means a person who is a member in good standing of the American academy of actuaries.

2. “*Controlling person*” means a person who directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of the reinsurance intermediary.

3. “*Insurer*” means a person licensed to transact the business of insurance in this state.

4. “*Licensed producer*” means an agent, broker, or reinsurance intermediary licensed pursuant to the applicable provision of the insurance law of any jurisdiction.

5. “*Reinsurance intermediary*” means a reinsurance intermediary-broker or a reinsurance intermediary-manager.

6. “*Reinsurance intermediary-broker*” means a person, other than an officer or employee of the ceding insurer, who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the ceding insurer.

7. “*Reinsurance intermediary-manager*” means a person who has authority to bind or manage all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office, and acts as an agent for the reinsurer whether known as a reinsurance intermediary-manager or manager, or known by any other similar term or title. However, for the purposes of this chapter, the following persons shall not be considered a reinsurance intermediary-manager, with respect to the reinsurer:

a. An employee of the reinsurer.

b. A manager of a United States branch of an alien reinsurer who resides in this country.

c. An underwriting manager who, pursuant to contract, manages all the reinsurance operations of the reinsurer, who is under common control with the reinsurer, subject to chapter 521A relating to the regulation of insurance holding company systems, and who is not compensated based upon the volume of premiums written.

d. The manager of a group, association, pool, or organization of insurers who engages in joint underwriting or joint reinsurance and who is subject to examination by the insurance commissioner of the state in which the manager’s principal business office is located.

8. “*Reinsurer*” means a person licensed in this state as a reinsurer with the authority to assume reinsurance.

9. “*To be in violation*” means that the reinsurance intermediary, insurer, or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with the provisions of this chapter.

10. “*Qualified United States financial institution*” means an institution that satisfies all of the following conditions:

a. The financial institution is organized or licensed under the laws of the United States or any state of the United States.

b. The financial institution is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

c. The financial institution has been determined by either the commissioner, or the securities valuation office of the national association of insurance commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

91 Acts, ch 26, §20 SF 518
NEW section

521C.3 Licensure.

1. A person shall not act as a reinsurance intermediary-broker in this state if the person maintains an office in this state or another state individually or as a member or employee of a firm or association, or as an officer, director, or employee of a corporation, unless the person is a licensed producer in this state or another state having a law substantially similar to this law, or the person is licensed in this state as a nonresident reinsurance intermediary.

2. A person shall not act as a reinsurance intermediary-manager in any of the following circumstances:

a. Where the reinsurer is domiciled in this state, unless the person is a licensed producer in this state.

b. Where the person maintains an office in this

state individually or as a member or employee of a firm or association, or as an officer, director, or employee of a corporation in this state, unless the person is a licensed producer in this state.

c. Where the person would be acting in another state for a nondomestic insurer, unless the person is a licensed producer in this state or in another state having a law substantially similar to this law, or is licensed in this state as a nonresident reinsurance intermediary.

3. The commissioner may require a reinsurance intermediary-manager subject to subsection 2 to do one or more of the following:

a. File a bond in an amount determined by the commissioner from an insurer acceptable to the commissioner for the protection of each reinsurer represented by the reinsurance intermediary-manager.

b. Maintain an errors and omissions policy in an amount acceptable to the commissioner.

4. a. The commissioner may issue a reinsurance intermediary license to a person who has complied with the requirements of this chapter. Any such license issued to a firm or association will authorize all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons shall be named in the application and any supplements to the application. A license issued to a corporation shall authorize all of the officers, and any designated employees and directors of the corporation to act as reinsurance intermediaries on behalf of the corporation, and all such persons shall be named in the application and any supplements to the application.

b. If the applicant for a reinsurance intermediary license is a nonresident, such applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as agent for service of process, and also shall furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of a change of the designated agent for service of process, and the change becomes effective upon acknowledgment by the commissioner.

5. The commissioner may refuse to issue a reinsurance intermediary license if, in the commissioner's judgment, any of the following conditions are present:

a. The applicant, anyone named in the application, or any member, principal, officer, or director of the applicant, is not trustworthy.

b. A controlling person of such applicant is not trustworthy to act as a reinsurance intermediary.

c. Conditions present in paragraph "a" or "b" have given cause for revocation or suspension of a license, or a person referred to in paragraph "a" or "b" has failed to comply with any prerequisite for the issuance of a license.

Upon written request, the commissioner shall fur-

nish a written summary of the basis for refusal to issue a license, which document is privileged and not subject to disclosure under chapter 22.

6. A licensed attorney in this state when acting in a professional capacity as an attorney is exempt from the requirements of this section.

91 Acts, ch 26, §21 SF 518
NEW section

521C.4 Required contract provisions — reinsurance intermediary-brokers.

Transactions between a reinsurance intermediary-broker and the insurer that the reinsurance intermediary-broker represents in such capacity shall only be entered into pursuant to a written authorization, specifying the responsibilities of each party. The authorization shall, at a minimum, contain provisions that satisfy all of the following requirements:

1. The insurer may terminate the authority of the reinsurance intermediary-broker at any time.

2. The reinsurance intermediary-broker shall render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the reinsurance intermediary-broker, and shall remit all funds due to the insurer within thirty days of receipt.

3. All funds collected for the account of the insurer shall be held by the reinsurance intermediary-broker in a fiduciary capacity in a bank, as defined in section 524.103.

4. The reinsurance intermediary-broker shall comply with section 521C.5.

5. The reinsurance intermediary-broker shall comply with the written standards established by the insurer for the cession or retrocession of all risks.

6. The reinsurance intermediary-broker shall disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

91 Acts, ch 26, §22 SF 518
NEW section

521C.5 Books and records — reinsurance intermediary-brokers.

1. For a minimum of ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-broker, the reinsurance intermediary-broker shall keep a complete record for each transaction showing all of the following:

a. The type of contract, limits, underwriting restrictions, classes or risks, and territory.

b. The period of coverage, including effective and expiration dates, cancellation provisions, and notice required of cancellation.

c. The reporting and settlement requirements of balances.

d. The rate used to compute the reinsurance premium.

e. The names and addresses of assuming reinsurers.

f. The rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-broker.

g All related correspondence and memoranda.

h Proof of placement.

i The details regarding retrocessions handled by the reinsurance intermediary-broker including the identity of retrocessionaires and percentage of each contract assumed or ceded.

j Financial records, including but not limited to premium and loss accounts.

k If the reinsurance intermediary-broker procures a reinsurance contract on behalf of a licensed ceding insurer one or both of the following shall be included in the record:

(1) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk.

(2) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the assuming reinsurer has delegated binding authority to the representative.

2. The insurer has a right of access and the right to copy and audit all accounts and records maintained by the reinsurance intermediary-broker related to its business in a form usable by the insurer.

91 Acts ch 26 §23 SF 518
NEW section

521C.6 Duties of insurers utilizing the services of a reinsurance intermediary-broker.

1. An insurer shall not engage the services of a person, firm, association, or corporation to act as a reinsurance intermediary-broker on its behalf unless the person is licensed as required by section 521C.3, subsection 1.

2. An insurer shall not employ an individual who is employed by a reinsurance intermediary-broker with which the insurer transacts business, unless such reinsurance intermediary-broker is under common control with the insurer and subject to chapter 521A relating to the regulation of insurance company holding systems.

3. The insurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-broker with which the insurer transacts business.

91 Acts ch 26 §24 SF 518
NEW section

521C.7 Required contract provisions — reinsurance intermediary-managers.

Transactions between a reinsurance intermediary-manager and the reinsurer that the reinsurance intermediary-manager represents in such capacity shall only be entered into pursuant to a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's board of directors. At least thirty days before the reinsurer assumes or cedes business through a reinsurance intermediary-manager, a true copy of the approved contract shall be filed with the commissioner for approval by the commissioner. The contract, at a minimum, shall contain the following provisions:

1. The reinsurer may terminate the contract for

cause upon written notice to the reinsurance intermediary-manager. The reinsurer may suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination.

2. The reinsurance intermediary-manager shall render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to the reinsurance intermediary-manager, and shall remit all funds due under the contract to the reinsurer on not less than a monthly basis.

3. All funds collected for the reinsurer's account shall be held by the reinsurance intermediary-manager in a fiduciary capacity in a bank which is a qualified United States financial institution, as defined in section 521C.2. The reinsurance intermediary-manager may retain no more than three months' estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager shall maintain a separate bank account for each reinsurer that the reinsurance intermediary-manager represents.

4. For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, the reinsurance intermediary-manager shall keep a complete record for each transaction showing all of the following:

a The type of contract, limits, underwriting restrictions, classes or risks, and territory.

b The period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks.

c The reporting and settlement requirements of balances.

d The rate used to compute the reinsurance premium.

e The names and addresses of reinsurers.

f The rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager.

g Any related correspondence and memoranda.

h Proof of placement.

i The details regarding retrocessions handled by the reinsurance intermediary-manager, as permitted by section 521C.9, subsection 4, including the identity of retrocessionaires and percentage of each contract assumed or ceded.

j Financial records, including but not limited to premium and loss accounts.

k If the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer one or both of the following shall be included in the record:

(1) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk.

(2) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the assuming reinsurer has delegated binding authority to the representative.

5. The reinsurer has a right of access and the right to copy all accounts and records maintained by the reinsurance intermediary-manager related to its business in a form usable by the reinsurer.

6. The contract cannot be assigned in whole or in part by the reinsurance intermediary-manager.

7. The reinsurance intermediary-manager shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.

8. The contract shall set forth the rates, terms, and purposes of commissions, charges, and other fees which the reinsurance intermediary-manager may levy against the reinsurer.

9. If the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer, all of the following apply:

a. All claims shall be reported to the reinsurer in a timely manner.

b. A copy of the claim file shall be sent to the reinsurer at its request or as soon as it becomes known that the claim meets any or all of the following conditions:

(1) The claim has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer.

(2) The claim involves a coverage dispute.

(3) The claim may exceed the claims settlement authority of the reinsurance intermediary-manager.

(4) The claim is open for more than six months.

(5) The claim is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer.

c. All claim files shall be the joint property of the reinsurer and reinsurance intermediary-manager. However, upon an order of liquidation of the reinsurer the files shall become the sole property of the reinsurer or its estate. The reinsurance intermediary-manager shall have reasonable access to and the right to copy the files on a timely basis.

d. Any settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

10. If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, interim profits shall not be paid until one year after the end of each underwriting period for property insurance business and five years after the end of each underwriting period for casualty insurance business, or a later period as determined by the commissioner for each type of insurance, but in no case until the adequacy of reserves on remaining claims has been verified pursuant to section 521C.9, subsection 3.

11. The reinsurance intermediary-manager shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant.

12. The reinsurer shall periodically, but not less

than semiannually, conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary-manager.

13. The reinsurance intermediary-manager shall disclose to the reinsurer any relationship the reinsurance intermediary-manager has with any insurer prior to ceding or assuming any business with the insurer pursuant to this contract.

14. The acts of the reinsurance intermediary-manager are deemed to be the acts of the reinsurer on whose behalf the reinsurance intermediary-manager is acting.

91 Acts, ch 26, §25 SF 518
NEW section

521C.8 Prohibited acts.

The reinsurance intermediary-manager shall not do any of the following:

1. Bind retrocessions on behalf of the reinsurer, except that the reinsurance intermediary-manager may bind facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for such retrocessions. The guidelines shall include a list of reinsurers with which the automatic agreements are in effect, and for each reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.

2. Commit the reinsurer to participate in reinsurance syndicates.

3. Appoint any producer without assuring that the producer is licensed to transact the type of reinsurance for which the producer is appointed.

4. Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, or a net amount of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one percent of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year.

5. Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer.

6. Jointly employ an individual who is employed by the reinsurer.

7. Appoint an agent of a reinsurance intermediary-manager.

91 Acts, ch 26, §26 SF 518
NEW section

521C.9 Duties of reinsurers utilizing the services of a reinsurance intermediary-manager.

1. A reinsurer shall not engage the services of a person to act as a reinsurance intermediary-manager on its behalf unless the person is licensed as required by section 521C.3, subsection 2.

2. The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-manager whom the reinsurer has engaged pursuant to subsection 1. The statements of

financial condition shall be prepared by an independent certified accountant in a form acceptable to the commissioner.

3. If a reinsurance intermediary-manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary-manager. This opinion shall be in addition to any other required loss reserve certification.

4. Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the reinsurance intermediary-manager.

5. Within thirty days of termination of a contract with a reinsurance intermediary-manager, the reinsurer shall provide written notification of the termination to the commissioner.

6. A reinsurer shall not appoint to its board of directors any officer, director, employee, controlling shareholder, or an agent of a producer of its reinsurance intermediary-manager. This subsection shall not apply to relationships governed by chapter 521A relating to the regulation of insurance company holding systems or, if applicable, governed by chapter 510A relating to the regulation of producer controlled property and casualty insurers.

91 Acts, ch 26, §27 SF 518
NEW section

521C.10 Examination authority.

1. A reinsurance intermediary is subject to examination by the commissioner. The commissioner shall have access to all books, bank accounts, and records of the reinsurance intermediary in a form usable to the commissioner.

2. A reinsurance intermediary-manager may be examined as if it were the reinsurer.

91 Acts, ch 26, §28 SF 518
NEW section

521C.11 Penalties and liabilities.

1. A reinsurance intermediary, insurer, or reinsurer found by the commissioner, after a hearing conducted in accordance with chapter 17A, to be in violation of this chapter is subject to one or more of the following:

a. For each separate violation, a civil penalty in an amount not exceeding ten thousand dollars.

b. Revocation or suspension of the license of the reinsurance intermediary.

c. If a violation was committed by the reinsurance intermediary, a civil action brought by the commissioner seeking restitution by the reinsurance intermediary to the insurer, reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to the violation.

2. A decision, determination, or order of the commissioner made or entered pursuant to subsection 1 is subject to judicial review pursuant to chapter 17A.

3. This section does not affect the right of the commissioner to impose any other penalties provided in this title.

4. This chapter shall not in any manner limit or restrict the rights of policyholders, claimants, creditors, or other third parties, or confer any rights to such persons.

91 Acts, ch 26, §29 SF 518; 91 Acts, ch 213, §31 HF 634
NEW section
Subsection 1, paragraph c amended

521C.12 Rules.

The commissioner may adopt rules, pursuant to chapter 17A, as necessary or convenient for the administration of this chapter.

91 Acts, ch 26, §30 SF 518
NEW section

CHAPTER 522

LICENSING OF INSURANCE AGENTS

522.1 License required.

A person shall not, directly or indirectly, act within this state as agent, or otherwise, in receiving or procuring applications for insurance, or in doing or transacting any kind of insurance business for a company or association unless exempt from the provisions of this chapter by section 512B.31, except that the licensing of persons so acting for county mutuals is subject only to section 518.16, until the person has procured a license from the commissioner of insurance.

This section shall not prohibit a licensed agent from placing actual or proposed insurance business of the agent's customers or potential customers with other licensed agents if the reason is lack of capacity, restrictive markets or any other legitimate business reason and if such placement of business does not adversely affect the insured customer.

91 Acts, ch 97, §57 HF 198
Unnumbered paragraph 1 amended

CHAPTER 523A

SALES OF FUNERAL SERVICES AND MERCHANDISE

523A.20 Insurance division's regulatory fund.

The insurance division may authorize the creation of a special revenue fund in the state treasury, to be known as the insurance division regulatory fund. Commencing July 1, 1990, and annually thereafter, the commissioner shall allocate from the fees paid pursuant to section 523A.2, one dollar for each agreement reported on an establishment permit holder's annual report for deposit to the regulatory fund. The remainder of the fees collected pursuant to section 523A.2 shall be deposited into the general fund of the state. However, if the balance of the regulatory fund on that July 1 exceeds two hundred thou-

sand dollars, the allocation to the regulatory fund shall not be made and the total sum of the fees paid pursuant to section 523A.2 shall be deposited in the general fund of the state. The moneys in the regulatory fund shall be retained in the fund. The moneys are appropriated and, subject to authorization by the commissioner, may be used to pay investigative expenses and the expenses of receiverships established pursuant to section 523A.19. An annual assessment shall not be imposed if the current balance of the fund exceeds two hundred thousand dollars.

91 Acts, ch 260, §1241 HF 173
Restrictions on use of moneys deposited in state general fund, see 91 Acts, ch 263, §38 SF 209
Section amended

CHAPTER 523B

BUSINESS OPPORTUNITY PROMOTIONS

523B.1 Definitions.

1. "Administrator" means the commissioner of insurance or the deputy appointed under section 502.601.

2. "Advertising" means a circular, prospectus, advertisement, or other material, or a communication by radio, television, pictures, or similar means used in connection with an offer or sale of a business opportunity.

3. a. "Business opportunity" means a contract or agreement, between a seller and purchaser, express or implied, orally or in writing, at an initial investment exceeding five hundred dollars, where the parties agree that the seller or a person recommended by the seller is to provide to the purchaser any products, equipment, supplies, materials, or services for the purpose of enabling the purchaser to start a business, and the seller represents, directly or indirectly, orally or in writing, any of the following:

(1) The seller or a person recommended by the seller will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases, or other similar devices, on premises which are not owned or leased by the purchaser or seller.

(2) The seller or a person recommended by the seller will provide or assist the purchaser in finding

outlets or accounts for the purchaser's products or services.

(3) The seller or a person specified by the seller will purchase any or all products made, produced, fabricated, grown, bred, or modified by the purchaser.

(4) The purchaser will derive income from the business which exceeds the price paid to the seller.

(5) The seller will refund all or part of the price paid to the seller, or repurchase any of the products, equipment, or supplies provided by the seller or a person recommended by the seller, if the purchaser is dissatisfied with the business.

(6) The seller will provide a marketing plan.

b. "Business opportunity" does not include any of the following:

(1) An offer or sale of an ongoing business operated by the seller which is to be sold in its entirety.

(2) An offer or sale of a business opportunity to an ongoing business where the seller will provide products, equipment, supplies, or services which are substantially similar to the products, equipment, supplies, or services sold by the purchaser in connection with the purchaser's ongoing business.

(3) An offer or sale of a business opportunity which involves a marketing plan made in conjunction with the licensing of a federally registered trade-

mark or federally registered service mark provided that the seller has a minimum net worth of one million dollars as determined on the basis of the seller's most recent audited financial statement prepared within thirteen months of the first offer in this state. Net worth may be determined on a consolidated basis if the seller is at least eighty percent owned by one person and that person expressly guarantees the obligations of the seller with regard to the offer or sale of a business opportunity claimed to be excluded under this subparagraph.

(4) An offer or sale of a business opportunity by an executor, administrator, sheriff, receiver, trustee in bankruptcy, guardian, or conservator, or a judicial offer or sale of a business opportunity.

(5) The renewal or extension of a business opportunity contract or agreement entered into under this chapter or prior to July 1, 1981.

4. "Franchise" means a contract or agreement between a seller and a purchaser, express or implied, orally or in writing, where the parties agree to both of the following:

(a) A franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed in substantial part by a franchisor.

(b) The operation of the franchisee's business pursuant to such a plan is substantially associated with the franchisor's business and trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate.

For the purposes of this subsection, "franchisee" means a person to whom a franchise is granted and "franchisor" means a person who grants a franchise.

5. "Initial investment" means the total amount a purchaser is obligated to pay under the terms of the business opportunity contract either prior to or at the time of the delivery of the merchandise or services or within six months of the purchaser commencing operation of the business opportunity. However, if payment is over a period of time, "initial investment" means the sum of the down payment and the total monthly payments specified in the contract.

6. "Marketing plan" means advice or training, provided to the purchaser by the seller or a person recommended by the seller, pertaining to the sale of any products, equipment, supplies, or services. The advice or training may include, but is not limited to, preparing or providing any of the following:

a. Promotional literature, brochures, pamphlets, or advertising materials.

b. Training regarding the promotion, operation, or management of the business opportunity.

c. Operational, managerial, technical, or financial guidelines or assistance.

7. "Offer" or "offer to sell" means an attempt to dispose of a business opportunity for value, or solicitation of an offer to purchase a business opportunity.

8. "Ongoing business" means an existing business that for at least six months prior to the offer,

has been operated from a specific location, has been open for business to the general public, and has substantially all of the equipment and supplies necessary for operating the business.

9. "Person" means an individual, corporation, trust, partnership, incorporated or unincorporated association, or any other legal entity, provided, however, person does not include a government or governmental subdivision or agency.

10. "Purchaser" means a person who enters into a contract or agreement for the acquisition of a business opportunity or a person to whom an offer to sell a business opportunity is directed.

11. "Sale" or "sell" includes every contract or agreement of sale, contract to sell, or disposition of, a business opportunity or interest in a business opportunity for value.

12. "Seller" means a person who sells or offers to sell a business opportunity or an agent or other person who directly or indirectly acts on behalf of such a person. "Seller" does not include the media in or by which an advertisement appears or is disseminated.

91 Acts, ch 205, §1 SF 519
Section stricken and rewritten

523B.2 Registration.

1. *Requirement.* It is unlawful to offer or sell a business opportunity in this state unless the business opportunity is registered under this chapter or is exempt under section 523B.3.

2. *Disclosure.*

a. To register a business opportunity, the seller shall file with the administrator one of the disclosure documents as provided in paragraph "b" with the appropriate cover sheet as required by subsection 8, paragraph "b", a consent to service of process as specified in subsection 3, and the appropriate fee as required by subsection 7.

b. The disclosure document required in paragraph "a" shall be in one of the following forms:

(1) A uniform franchise offering circular prepared in accordance with the guidelines adopted by the North American securities administrators association, inc., as amended through September 21, 1983. The administrator may by rule adopt any amendment to the uniform franchise offering circular that has been adopted by the North American securities administrators association, inc.

(2) A disclosure document prepared pursuant to the federal trade commission rule entitled "Disclosure requirements and prohibitions concerning franchising and business opportunity ventures", 16 C.F.R. § 436 (1979). The administrator may by rule adopt any amendment to the disclosure document prepared pursuant to 16 C.F.R. § 436 (1979) that has been adopted by the federal trade commission.

(3) A disclosure document prepared pursuant to subsection 8.

3. *Consent to service.* A seller shall file, on a form as the administrator may prescribe, an irrevocable consent appointing the administrator or the administrator's successor in office to be the seller's

attorney to receive service of any lawful process in a noncriminal suit, action, or proceeding against the seller or the seller's successor, executor, or administrator which arises under this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Service may be made by leaving a copy of the process in the office of the administrator, but is not effective unless the plaintiff or petitioner, who may be the administrator or the attorney general, in a suit, action, or proceeding, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant's or respondent's address on file with the administrator, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return date of the process, if any, or within such further time as the court allows.

4. *Effective date.* A registration automatically becomes effective upon the expiration of the tenth full business day after the complete filing, provided that no order has been issued or proceeding is pending under subsection 10. The administrator may by order waive or reduce the time period prior to effectiveness, provided that a complete filing has been made. The administrator may by order defer the effective date until the expiration of the tenth full business day after the filing of an amendment.

5. *Period.* The registration is effective for one year commencing on the date the registration becomes effective and may be renewed annually upon the filing of a current disclosure document accompanied by any documents or information that the administrator may by rule or order require. Failure to renew upon the close of the one-year period of effectiveness will result in expiration of the registration. The administrator may by rule or order require the filing of a sales report.

6. *Filing rule.* The administrator may by rule require the filing of all proposed literature or advertising prior to its use.

7. *Filing fee.* The seller shall pay a five hundred dollar filing fee with the initial disclosure statement filed under subsection 2 and a two hundred fifty dollar annual renewal fee. The administrator shall by rule periodically revise these fees to ensure that they defray the costs of administration of this chapter.

8. *Disclosure requirements.*

a. It is unlawful to offer or sell a business opportunity required to be registered pursuant to this chapter unless a written disclosure document as filed under subsection 2 is delivered to each purchaser at least ten business days prior to the earlier of the execution by a purchaser of a contract or agreement imposing a binding legal obligation on the purchaser or the payment by a purchaser of any consideration in connection with the offer or sale of the business opportunity.

b. The disclosure document shall have a cover sheet which is entitled, in at least ten-point bold type, "**DISCLOSURE REQUIRED BY IOWA LAW.**" Under the title shall appear the following

statement in at least ten-point type: "The registration of this business opportunity does not constitute approval, recommendation, or endorsement by the state of Iowa. The information contained in this disclosure document has not been verified by this state. If you have any questions or concerns about this investment, seek professional advice before you sign a contract or make any payment. You are to be provided ten (10) business days to review this document before signing a contract or agreement or making any payment to the seller or the seller's representative."

The seller's name and principal business address, along with the date of the disclosure document, shall also be provided on the cover sheet. No other information shall appear on the cover sheet.

c. Unless the seller uses a disclosure document as provided in subsection 2, paragraphs "a" and "b", the disclosure document shall contain the following information:

(1) The names and residential addresses of those salespersons who will engage in the offer or sale of the business opportunity in this state.

(2) The name of the seller; whether the seller is doing business as an individual, partnership, corporation, or other entity; the names under which the seller has done, is doing, or intends to do business; and the name of any parent or affiliated company that will engage in business transactions with purchasers or that will take responsibility for statements made by the seller.

(3) The names, addresses, and titles of the seller's officers, directors, trustees, general managers, principal executives, agents, and any other persons charged with responsibility for the seller's business activities relating to the sale of the business opportunity.

(4) Prior business experience of the seller relating to business opportunities including all of the following:

(a) The name, address, and a description of any business opportunity previously offered by the seller.

(b) The length of time the seller has offered each such business opportunity.

(c) The length of time the seller has conducted the business opportunity currently being offered to the purchaser.

(5) With respect to each person identified in subparagraph (3), all of the following:

(a) A description of the person's business experience for the ten-year period preceding the filing date of this disclosure document. The description of business experience shall list principal occupations and employers.

(b) A listing of the person's educational and professional background, including the names of schools attended and degrees received, and any other information that will demonstrate sufficient knowledge and experience to perform the services proposed.

(6) Whether any of the following apply to the seller or any person identified in subparagraph (3):

(a) The seller or other person has been convicted of a felony, pleaded nolo contendere to a felony

charge, or has been the subject of a criminal, civil, or administrative proceeding alleging the violation of a business opportunity law, securities law, commodities law, or franchise law, or alleging fraud or deceit, embezzlement, fraudulent conversion, restraint of trade, an unfair or deceptive practice, misappropriation of property, or making comparable allegations.

(b) The seller or other person has filed for bankruptcy, been adjudged bankrupt, or been reorganized due to insolvency, or was an owner, principal officer, or general partner of a person, or any other person that has filed for bankruptcy or was adjudged bankrupt, or been reorganized due to insolvency during the last seven years.

(7) The name of any person identified in subparagraph (6), the nature of and the parties to the action or proceeding, the court or other forum, the date of the institution of the action, the docket references to the action, the current status of the action or proceeding, the terms and conditions of any order or decree, and the penalties or damages assessed and terms of settlement.

(8) The initial payment required, or if the exact amount cannot be determined, a detailed estimate of the amount of the initial payment to be made to the seller.

(9) A detailed description of the actual services the seller agrees to perform for the purchaser.

(10) A detailed description of any training the seller agrees to provide for the purchaser.

(11) A detailed description of services the seller agrees to perform in connection with the placement of equipment, products, or supplies at a location, as well as any agreement necessary in order to locate or operate equipment, products, or supplies on premises which are not owned or leased by the purchaser or seller.

(12) A detailed description of any license or permit that will be necessary in order for the purchaser to engage in or operate the business opportunity.

(13) The business opportunity seller that is required to secure a bond pursuant to section 523B.4 shall include in the disclosure document the following statement: "As required by the state of Iowa, the seller has secured a bond issued by [insert name and address of surety company], a surety company, authorized to do business in this state. Before signing a contract or agreement to purchase this business opportunity, you should check with the surety company to determine the bond's current status."

(14) Any representations made by the seller to the purchaser concerning sales or earnings that may be made from this business opportunity, including, but not limited to the following:

(a) The bases or assumptions for any actual, average, projected, or forecasted sales, profits, income, or earnings.

(b) The total number of purchasers who, within a period of three years of the date of the disclosure document, purchased a business opportunity involving the product, equipment, supplies, or services being offered to the purchaser.

(c) The total number of purchasers who, within three years of the date of the disclosure document, purchased a business opportunity involving the product, equipment, supplies, or services being offered to the purchaser who, to the seller's knowledge, have actually received earnings in the amount or range specified.

(15) A detailed description of the elements of a guarantee made by a seller to a purchaser. The description shall include, but is not limited to, the duration, terms, scope, conditions, and limitations of the guarantee.

(16) A statement including all of the following:

(a) The total number of business opportunities that are the same or similar in nature to those being sold or organized by the seller.

(b) The names and addresses of purchasers who have requested a refund or rescission from the seller within the last twelve months and the number of those who have received the refund or rescission.

(c) The total number of business opportunities the seller intends to sell in this state within the next twelve months.

(d) The total number of purchasers known to the seller to have failed in the business opportunity.

(17) A statement describing any contractual restrictions, prohibitions, or limitations on the purchaser's conduct. Attach a copy of all business opportunities and other contracts or agreements proposed for use or in use in this state including, without limitation, all lease agreements, option agreements, and purchase agreements.

(18) The rights and obligations of the seller and the purchaser regarding termination of the business opportunity contract or agreement.

(19) A statement accurately describing the grounds upon which the purchaser may initiate legal action to terminate the business opportunity contract or agreement.

(20) A copy of the most recent audited financial statement of the seller, prepared within thirteen months of the first offer in this state, together with a statement of any material changes in the financial condition of the seller from that date. The administrator may allow the seller to submit a limited review in order to satisfy the requirements of subparagraph (13).

(21) A list of the states in which this business opportunity is registered.

(22) A list of the states in which this disclosure document is on file.

(23) A list of the states which have denied, suspended, or revoked the registration of this business opportunity.

(24) A section entitled "*Risk Factors*" containing a series of short concise statements summarizing the principal factors which make this business opportunity a high risk or one of a speculative nature. Each statement shall include a cross-reference to the page on which further information regarding that risk factor can be found in the disclosure document.

(25) Any additional information as the administrator may require by rule or order.

9 *Contract or agreement provisions*

a It is unlawful to offer or sell a business opportunity required to be registered unless the business opportunity contract or agreement is in writing and a copy of the contract or agreement is given to the purchaser at the time the purchaser signs the contract or agreement

b The contract or agreement is subject to this chapter and section 714 16

c Contracts or agreements shall set forth in at least ten point type or equivalent size, if handwritten, all of the following

(1) The terms and conditions of any and all payments due to the seller

(2) The seller's principal business address and the name and address of the seller's agent in this state authorized to receive service of process

(3) The business form of the seller, whether corporate, partnership, or otherwise

(4) The delivery date, or when the contract provides for a periodic delivery of items to the purchaser, the approximate delivery date of the product, equipment, or supplies the seller is to deliver to the purchaser to enable the purchaser to start business

(5) Whether the product, equipment, or supplies are to be delivered to the purchaser's home or business address or are to be placed or caused to be placed by the seller at locations owned or managed by persons other than the purchaser

(6) A statement that accurately states the purchaser's right to void the contract under the circumstances and in the manner set forth in section 523B 6

(7) The cancellation statement appearing in section 82 3

10 *Denial, suspension, or revocation of registration*

a The administrator may issue an order denying effectiveness to, or suspending or revoking the effectiveness of, any registration if the administrator finds that the order is in the public interest and any of the following

(1) The registration as of its effective date or as of any earlier date in the case of an order denying effectiveness, any amendment as of its effective date, or any report is incomplete in any material respect or contains any statement which is, in the light of the circumstances under which it was made, determined by the administrator to be false or misleading with respect to any material fact

(2) Any provision of this chapter or any rule, order, or condition lawfully imposed under this chapter has been willfully violated, in connection with the business opportunity, by either of the following

(a) The person filing the registration

(b) The seller, any partner, officer, or director of the seller, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the seller, but only if the person filing the registration is directly or indirectly controlled by or acting for the seller

(3) The business opportunity registered or sought to be registered is the subject of an administrative order denying, suspending, or revoking a registration or a permanent or temporary injunction of any court of competent jurisdiction However, the administrator shall not do either of the following

(a) Institute a proceeding against an effective registration under this paragraph more than one year from the date of the order or injunction relied on

(b) Enter an order under this paragraph on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for an order under this section

(4) The seller's enterprise or method of business, or that of the business opportunity, includes or would include activities which are or would be illegal where performed

(5) The business opportunity or the offering of a business opportunity has worked or tended to work a fraud upon purchasers or would operate to work such a fraud

(6) There has been a failure to file any documents or information required under subsection 2

(7) The seller has failed to pay the proper filing fee However, the administrator shall vacate any order issued pursuant to this subparagraph when the deficiency has been corrected

(8) The seller's literature or advertising is misleading, incorrect, incomplete, or deceptive

b The administrator shall not institute a proceeding under this subsection against an effective registration on the basis of a fact or transaction known to the administrator when the registration became effective unless the proceeding is instituted thirty days after the effective date of the registration

c (1) The administrator may by order summarily postpone or suspend the effectiveness of the registration pending final determination of a proceeding under this subsection

(2) Upon the entry of a summary order, the administrator shall promptly notify the seller that the order has been entered and of the reasons for entering the order and that within fifteen days after the receipt of a written request the matter will be set down for hearing

(3) If no hearing is requested the order will remain in effect until it is modified or vacated by the administrator If a hearing is requested or ordered, the administrator may modify or vacate the order or extend the order until final determination

d A summary order shall not be entered under any part of this subsection, except under subparagraph (1) of paragraph "c", without appropriate notice to the seller, an opportunity for hearing, and written findings of fact and conclusions of law in accordance with chapter 17A

e The administrator may vacate or modify an order issued under this subsection if the administrator finds that the conditions which prompted its

entry have changed or that it is otherwise in the public interest to do so.

91 Acts, ch 205, §2 SF 519
Section stricken and rewritten

523B.3 Exemptions from registration and disclosure.

1. *Types of exemptions.* The following business opportunities are exempt from the requirements of section 523B.2:

a. The offer or sale of a business opportunity if the purchaser is a bank, savings and loan association, trust company, insurance company, credit union, or investment company as defined by the federal Investment Company Act of 1940, a pension or profit-sharing trust, or other financial institution or institutional buyer, or a dealer registered pursuant to chapter 502, whether the purchaser is acting for itself or in a fiduciary capacity.

b. The offer or sale of a business opportunity which is defined as a franchise under section 523B.1, subsection 4, provided that the seller delivers to each purchaser at the earlier of the first personal meeting between the seller and the purchaser, or ten business days prior to the earlier of the execution by a purchaser of a contract or agreement imposing a binding legal obligation on the purchaser or the payment by a purchaser of any consideration in connection with the offer or sale of the business opportunity, one of the following disclosure documents:

(1) A uniform franchise-offering circular prepared in accordance with the guidelines adopted by the North American securities administrators association, inc., as amended through September 21, 1983.

(2) A disclosure document prepared pursuant to the federal trade commission rule entitled "*Disclosure requirements and prohibitions concerning franchising and business opportunity ventures*", 16 C.F.R. § 436 (1979).

For the purposes of this paragraph, a personal meeting means a face-to-face meeting between the purchaser and the seller or their representatives, which is held for the purpose of discussing the offer or sale of a business opportunity. The administrator may by rule adopt any amendment to the uniform franchise-offering circular that has been adopted by the North American securities administrators association, inc., or any amendment to the disclosure document prepared pursuant to the federal trade commission rule entitled "*Disclosure requirements and prohibitions concerning franchising and business opportunity ventures*", 16 C.F.R. § 436 (1979), that has been adopted by the federal trade commission.

c. The offer or sale of a business opportunity for which the cash payment made by a purchaser does not exceed five hundred dollars and the payment is made for the not-for-profit sale of sales demonstration equipment, material, or samples, or the payment is made for product inventory sold to the purchaser at a bona fide wholesale price.

d. The offer or sale of a business opportunity which the administrator exempts by order or a class of business opportunities which the administrator exempts by rule upon the finding that the exemption would not be contrary to public interest and that registration would not be necessary or appropriate for the protection of purchasers.

2. *Denial or revocation of exemptions.*

a. The administrator may by order deny or revoke an exemption specified in this section with respect to a particular offering of one or more business opportunities. An order shall not be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law.

b. If the public interest or the protection of purchasers so requires, the administrator may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceedings under this section. Upon entry of the order, the administrator shall promptly notify all interested parties that it has been entered and of the reasons for entering the order and that within fifteen days of the receipt of a written request the matter will be set down for hearing. If a hearing is not requested the order shall remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator shall not modify or vacate the order or extend it until final determination.

c. An order under this section shall not operate retroactively.

d. A person does not violate section 523B.2 by reason of an offer or sale effected after the entry of an order under paragraph "b" if the person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the order.

3. *Burden of proof.* In an administrative, civil, or criminal proceeding related to this chapter, the burden of proving an exemption, an exception from a definition, or an exclusion from this chapter, is upon the person claiming it.

91 Acts, ch 205, §3 SF 519
Section stricken and rewritten

523B.4 Minimum net worth or bond requirement.

1. In connection with an offer or sale of a business opportunity, a seller shall not make or use any of the representations set forth in section 523B.1, subsection 3, paragraph "a", subparagraphs (4) and (5), unless the seller has at all times a minimum net worth of twenty-five thousand dollars as determined in accordance with generally accepted accounting principles. In lieu of the minimum net worth requirement, the administrator may, by rule or order, require a business opportunity seller to obtain a surety bond issued by a surety company authorized to do business in this state. The surety bond must be in an amount not less than twenty-five thousand dollars and shall be for the benefit of any purchaser. The administrator may by rule or order increase the

amount of the bond for the protection of purchasers and may require the seller to file reports of all sales in this state to determine the appropriate amount of bond.

2. If the seller is required to obtain a surety bond, the seller shall maintain a surety bond for the duration of the guarantee or representation giving rise to the surety bond requirement. Upon expiration of the period of the guarantee, the seller may allow the surety bond to lapse if the seller gives notice to the administrator and all business opportunity purchasers in this state at least thirty days prior to the lapse of the bond.

91 Acts, ch 205, §4 SF 519
Section stricken and rewritten

523B.5 Administrative files and opinions.

1. A document is filed when the document is received by the administrator.

2. The administrator shall keep a register of all applications for registration and disclosure documents which are or have been effective under this chapter and all orders which have been entered under this chapter.

3. Unless otherwise provided by law, a registration statement, filing, application, or report filed with the administrator is open for public inspection.

4. The administrator may honor a written request from an interested person for an interpretative opinion upon the payment of a fee of one hundred dollars.

91 Acts, ch 205, §5 SF 519
Section stricken and rewritten

523B.7 Liability — remedies.

1. *a.* A person who violates section 523B.4 or section 523B.2, subsection 1, 8, or 9, is liable to the purchaser in an action for rescission of the agreement, or for recovery of all money or other valuable consideration paid for the business opportunity, and for actual damages together with interest as determined pursuant to section 668.13 from the date of sale, reasonable attorney's fees, and court costs.

b. A person who violates section 523B.12, subsection 2 or 3, is liable to the purchaser who may sue either at law or in equity for rescission, or for recovery of all money or other valuable consideration paid for the business opportunity, and for the recovery of treble damages together with interest as determined pursuant to section 668.13 from the date of sale, reasonable attorney's fees, and court costs.

c. A person who violates section 523B.2, subsection 8, or section 523B.12, subsection 2 or 3, or who breaches a business opportunity contract or agreement or an obligation arising under the contract or agreement, is liable to the purchaser who may sue the surety of the seller's bond, either at law or in equity, to recover all money or other valuable consideration paid for the business opportunity and actual damages, together with interest as determined pursuant to section 668.13 from the date of sale, reasonable attorney's fees, and court costs. The liability of the surety shall not exceed the amount of the bond.

2. Every person who directly or indirectly controls a party liable under this section, every partner in a partnership so liable, every principal executive officer or director of a corporation so liable, every person occupying a similar status in, or performing similar functions for, and every employee of, a party so liable who materially aids in the act or transaction constituting the violation is also liable jointly and severally with and to the same extent as the party, unless the person liable as a result of the person's relationship with the liable party as defined under this section proves that the person did not know, and in the exercise of reasonable care could not have known of the existence of the facts giving rise to the alleged liability. Among the persons held liable, a party paying more than the party's percentage share of damages may recover judgment for contribution upon motion to the court or in a separate action.

3. An action shall not be maintained under this section unless commenced within three years after the act or transaction constituting the violation, or within one year after the discovery of the facts constituting the violation, whichever period later expires.

4. The rights and remedies available pursuant to this chapter are in addition to any other rights or remedies that may exist at law or in equity.

91 Acts, ch 205, §6 SF 519
Section stricken and rewritten

523B.8 Powers of administrator.

1. If it appears to the administrator that a person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or a rule or order adopted or issued under this chapter, the administrator may issue an order directed at the person requiring the person to cease and desist from engaging in the act or practice. The person named in the order may, within fourteen days after receipt of the order, file a written request for a hearing. The hearing shall be held in accordance with chapter 17A.

Any consent agreement between the administrator and the seller may be filed in the miscellaneous docket of the clerk of the district court.

2. *a.* The administrator may do any of the following:

(1) Make public or private investigations within or outside of this state as the administrator deems necessary to determine whether a person has violated or is about to violate a provision of this chapter or a rule or order under this chapter, or to aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter.

(2) Require or permit a person to file a statement, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning the matter to be investigated.

(3) Publish information concerning a violation of this chapter or a violation of a rule or order under this chapter.

b. For the purpose of an investigation or pro-

ceeding under this chapter, the administrator or an officer designated by the administrator may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records which the administrator deems relevant or material to the inquiry.

c. If a person resists or refuses to obey a subpoena issued to that person, the district court upon application by the administrator may issue to the person an order requiring the person to appear before the administrator, to produce documentary evidence if so ordered, or to give evidence related to the matter under investigation. Failure to obey the order of the court is punishable as a contempt of court.

d. A person is not excused from attending and testifying or from producing a document or record before the administrator or an officer designated by the administrator, on the grounds that the testimony or evidence, documentary or otherwise, required by the administrator may tend to incriminate the person or subject the person to a penalty or forfeiture. However, an individual shall not be prosecuted or subjected to a penalty or forfeiture on account of a transaction, matter, or thing concerning which the person is compelled, after claiming the person's privilege against self-incrimination, to testify or produce, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt related to such testimony.

3. Judicial review of a decision of the administrator may be sought under chapter 17A.

4. If it appears to the administrator that a person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of this chapter, or of a rule or order adopted or issued under this chapter, the administrator may take either or both of the following actions:

a. Notify the attorney general who shall bring an action in the district court to enjoin the acts or practices constituting the violation and to enforce compliance with this chapter or any rule or order adopted or issued pursuant to this chapter. Upon a proper showing a permanent or temporary injunction shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets.

b. Sue on behalf of a purchaser to enforce the purchasers' rights.

91 Acts, ch 205, §7 SF 519
Subsection 2 stricken and rewritten

523B.11 Penalties.

1. A seller who willfully violates section 523B.4, section 523B.2, subsection 1, 8, or 9, or section 523B.12, subsection 2, who willfully violates a rule under this chapter, who willfully violates an order of which the person has notice, or who violates section 523B.12, subsection 1, knowing that the statement made was false or misleading in any material respect, upon conviction, is guilty of a class "D" felony. Each of the acts specified constitutes a separate offense

and a prosecution or conviction for any one of such offenses does not bar prosecution or conviction for any other offense.

2. A seller who willfully uses any device or scheme to defraud a person in connection with the advertisement, offer to sell or lease, sale, or lease of a business opportunity, or who willfully violates any other provision of this chapter, except as provided in subsections 1 and 3, is, upon conviction, guilty of a fraudulent practice.

3. A seller who violates a rule or order adopted or issued under this chapter is, upon conviction, guilty of an aggravated misdemeanor.

4. The administrator may refer available evidence concerning a possible violation of this chapter or of a rule or order issued under this chapter to the attorney general. The attorney general, with or without such a referral, may institute appropriate criminal proceedings or may direct the case to the appropriate county attorney to institute appropriate criminal proceedings.

91 Acts, ch 205, §§ SF 519
Subsection 1 stricken and rewritten

523B.12 Fraudulent practices.

1. *Misleading filings.* It is unlawful to make or cause to be made, in a document filed with the administrator or in a proceeding under this chapter, a statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in a material respect or, in connection with such a statement, to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading.

2. *Unlawful representations.* The fact that an application for registration has been filed or the fact that a business opportunity is effectively registered does not constitute a finding by the administrator that a document filed under this chapter is true, complete, and not misleading. The fact that an application for registration has been filed, that a business opportunity is effectively registered, or that an exemption or exception is available for a business opportunity does not mean that the administrator has passed in any way upon the merits or qualifications of, or recommended or given approval to, a person or business opportunity. It is unlawful to make, or cause to be made, to a purchaser, any representation inconsistent with this subsection.

3. *Advertising.* It is unlawful for a seller, in connection with the offer or sale of a business opportunity in this state, to publish, circulate, or use advertising which contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

91 Acts, ch 205, §9 SF 519
NEW section

523B.13 Scope — service of process.

1. The provisions of this chapter concerning sales and offers to sell apply to persons who sell or offer to sell a business opportunity when any of the following apply:

- a. An offer to sell is made in this state.
- b. An offer to purchase is made and accepted in this state.
- c. The purchaser is domiciled in this state and the business opportunity is or will be operated in this state.

2. For the purpose of this section, an offer to sell is made in this state, whether or not either party is then present in this state, when either of the following apply:

- a. The offer originates from this state.
- b. The offer is directed by the offeror to this state and received at the place to which the offer is directed or at a post office in this state in the case of a mailed offer.

3. For the purpose of this section, an offer to sell is accepted in this state when both of the following occur:

- a. The acceptance is communicated to the offeror in this state.
- b. The acceptance has not previously been communicated to the offeror, orally, or in writing, outside this state. For the purpose of this section the acceptance is communicated to the offeror in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state, and the acceptance is received at the place to which it is directed or at a post office in this state in the case of a mailed acceptance.

4. An offer to sell is not made in this state under either of the following circumstances:

- a. If the offer appears in a bona fide newspaper

or other publication of general circulation which is not published in this state, or which is published in this state but has had more than two-thirds of its circulation outside this state during the past twelve months.

b. If the offer is made on a radio or television program originating outside this state which is received in this state.

5. A person who engages in conduct prohibited or made actionable under this chapter and who has not filed a consent to service of process is deemed to have appointed the administrator to be the person's attorney for purposes of service of any lawful process in a noncriminal suit, action, or proceeding against the person or the person's successor, executor, or administrator, which is the result of that conduct and which is brought under this chapter or is pursuant to a rule or order under this chapter. Service shall be made by leaving a copy of the process in the office of the administrator. The service is effective after both of the following have occurred:

a. The plaintiff, who may be the administrator, in a suit, action, or proceeding instituted by the administrator, sends notice of the service and a copy of the process by certified or registered mail to the defendant's or respondent's last known address or takes other steps which are reasonably calculated to give actual notice.

b. The plaintiff's affidavit of compliance with this subsection is filed on or before the return day of the process, if any, or within such further time as the court allows.

6. When process is served under this section, the court, or the administrator in a proceeding before the administrator, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

91 Acts, ch 205, §10 SF 519
NEW section

CHAPTER 523D

RETIREMENT FACILITIES

523D.1 Definitions.

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

1. "Commissioner" means the commissioner of insurance or the deputy appointed under section 502.601.

2. "Continuing care" means housing together with supportive services, nursing services, medical services, or other health related services, furnished to a resident, regardless of whether or not the lodging and services are provided at the same location, with

or without other periodic charges, and pursuant to one or more contracts effective for the life of the resident or a period in excess of one year, including mutually cancellable contracts, and in consideration of an entrance fee.

3. "Continuing care retirement community" means a facility which provides continuing care to residents other than residents related by consanguinity or affinity to the person furnishing their care.

4. "Entrance fee" means an initial or deferred transfer to a provider of a sum of money or other

property made or promised to be made as full or partial consideration for acceptance of a specified individual in a facility if the amount exceeds either of the following:

- a. Five thousand dollars.
 - b. The sum of the regular periodic charges for six months of residency.
5. "*Facility*" means the place or places in which a provider undertakes to provide continuing care or senior adult congregate living services to an individual.
6. "*Living unit*" means a room, apartment, cottage, or other area within a facility set aside for the exclusive use or control of one or more identified residents.
7. "*New construction*" means construction of a new facility or the expansion of an existing facility if the expansion involves an increase in the number of living units in excess of twenty-five percent.
8. "*Provider*" means a person undertaking through a lease or other type of agreement to provide care in a continuing care retirement community or senior adult congregate living facility, even if that person does not own the facility.
9. "*Resident*" means an individual, sixty years of age or older, entitled to receive care in a continuing care retirement community or a senior adult congregate living facility.
10. "*Senior adult congregate living facility*" means a facility which provides senior adult congregate living services to residents other than residents related by consanguinity or affinity to the person furnishing their care.
11. "*Senior adult congregate living services*" means housing and one or more supportive services furnished to a resident, with or without other periodic charges, in consideration of an entrance fee.
12. "*Supportive services*" includes but is not limited to one or any combination of the following services: laundry, maintenance, housekeeping, emergency nursing care, activity services, security, dining options, transportation, beauty and barber services, health care, and personal care, including personal hygiene, eating, bathing, dressing, and supervised medication administration.

91 Acts, ch 205, §11 SF 519
Section stricken and rewritten

523D.3 Disclosure statement.

1. At the time of, or prior to, the execution of a contract to provide continuing care or senior adult congregate living services, or at the time of, or prior to the provider's acceptance of part or all of the entrance fee by or on behalf of a prospective resident, whichever occurs first, the provider shall deliver a disclosure statement to the person, and to the person's personal representative if one is appointed, with whom the contract is to be entered into. Unless incorporated by reference, in whole or in part, the disclosure statement shall not constitute part of the contract between the resident and provider. The disclosure statement shall contain all of the following

information unless the information is in the contract, a copy of which must be attached to the statement:

- a. The name and business address of the provider and a statement of whether the provider is a partnership, corporation, or other legal entity.
- b. The names and business addresses of the officers, directors, trustees, managing or general partners, and any person having a ten percent or greater equity or beneficial interest in the provider and a description of such person's interest in or occupation with the provider.
- c. With respect to each person covered by paragraph "b", and if the facility will be managed on a day-to-day basis by a person identified pursuant to paragraph "b", or with respect to the proposed manager, the following information:
 - (1) A description of the business experience of the person, if any, in the operation or management of similar facilities.
 - (2) The name and address of any professional service, or other entity in which the person has, or which has in the person, a ten percent or greater interest and which has provided goods, leases, or services to the facility of a value of five hundred dollars or more within the prior twelve months or which has contracted to provide goods, leases, or services to the facility of a value of five hundred dollars or more within a year, including a description of the goods, leases, or services and their actual or anticipated cost to the facility or provider.
 - (3) A description of any matter resulting in the person's conviction of a felony or a plea of nolo contendere to a felony charge, or a description of any matter where the person was found to be liable or enjoined in a civil action by final judgment if the felony or civil action involved fraud, embezzlement, fraudulent conversion, misappropriation of property, or a similar felony involving theft or dishonesty.
 - (4) A description of any matter in which the person is subject to a currently effective injunctive or restrictive order of a court, or a description of any matter within the past five years where the person has had a state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency of this or any state or the division of insurance, arising out of or relating to business activity or health care, including, without limitation, actions affecting a license to operate a foster care facility, health care facility, retirement home, home for the aged, or facility licensed under this chapter or a similar law of another state.
- d. A statement, if applicable, containing the following:
 - (1) Whether the provider is or ever has been affiliated with a for-profit organization or with a religious, charitable, or other nonprofit organization.
 - (2) The nature of the affiliation.
 - (3) The extent to which the affiliate organization is responsible for the financial and contractual obligations of the provider.
 - (4) The provision of the federal Internal Reve-

nue Code, if any, under which the provider or affiliate is exempt from the payment of federal income tax

e The location and description of the physical property or properties of the facility, existing or proposed, and, to the extent proposed, the estimated completion date or dates, whether or not construction has begun, and the contingencies subject to which construction may be deferred

f The services provided or proposed to be provided under contracts for continuing care or senior adult congregate living services at the facility, including the extent to which medical care is furnished. The disclosure statement shall clearly state which services are included in basic contracts and which services are made available at or by the facility at extra charge

g A description of all fees required of residents, including the entrance fee and periodic charges, if any. The description shall include the manner by which the provider may adjust periodic charges or other recurring fees and the limitations on such adjustments, if any

h The provisions which have been made or will be made, if any, to provide reserve funding or security to enable the provider to fully perform its obligations under contracts to provide continuing care or senior adult congregate living services at the facility, including the establishment of escrow accounts, trusts, or reserve funds, together with the manner in which the funds will be invested and the names and experience of persons who will make the investment decisions

i Certified financial statements of the provider, for all parts of an operation covered by the contract, including the health center or nursing home portion of the continuing care retirement community, if those services are included in the contract, but the disclosure statement may exclude services or operations not provided to residents as senior adult congregate living services under the contract, which shall include the following

(1) A balance sheet as of the end of the two most recent fiscal years

(2) Income statements of the provider for the two most recent fiscal years or the shorter period of time the provider has been in existence

j If operation of the facility has not yet commenced, a statement of the anticipated source and application of the funds used or to be used in the purchase or construction of the facility, including the following

(1) An estimate of the cost of purchasing or constructing and equipping the facility, including related costs such as financing expense, legal expense, land costs, occupancy development costs, and all other similar costs the provider expects to incur or become obligated for prior to the commencement of operations

(2) A description of any mortgage loan or other long-term financing intended to be used for the financing of the facility, including the anticipated terms and costs of the financing

(3) An estimate of the total entrance fees to be received from or on behalf of residents at or prior to commencement of operation of the facility

(4) An estimate of the funds, if any, anticipated to be necessary to fund start-up losses and provide reserve funds to assure full performance of the obligations of the provider under contracts for the provision of continuing care or senior adult congregate living services

(5) A projection of estimated income from fees and charges other than entrance fees, showing individual rates presently anticipated to be charged and including a description of the assumptions used for calculating the estimated occupancy rate of the facility and the effect on the income of the facility of government subsidies for health care services, if any, to be provided pursuant to contracts for continuing care or senior adult congregate living services

(6) A projection of estimated operating expenses of the facility, including a description of the assumptions used in calculating the expenses and separate allowances, if any, for the replacement of equipment and furnishings and anticipated major structural repairs or additions

(7) Identification of any assets pledged as collateral for any purpose

(8) An estimate of annual payments of principal and interest required by a mortgage loan or other long-term financing

k Other material information concerning the facility or the provider required by the division of insurance or which the provider wishes to include

l The cover page of the disclosure statement shall state, in a prominent location and type face, the date of the disclosure statement

m A copy of the standard form or forms of contract for continuing care or senior adult congregate living services used by the provider, attached as an exhibit to each disclosure statement

2 The provider shall file with the division of insurance, annually within five months following the end of the provider's fiscal year, an annual disclosure statement which shall contain the information required by this chapter for the initial disclosure statement. The annual disclosure statement shall also be accompanied by a narrative describing

a Any material differences between the pro forma income statement filed pursuant to this chapter as part of the most recent annual disclosure statement and the actual results of operations during the fiscal year, if the material differences substantially affect the financial safety or soundness of the community

b Any material differences between the pro forma balance sheet and the actual results of operations during the fiscal year

The annual disclosure statement shall also contain a revised pro forma income statement for the next fiscal year

3 In the event an amendment is filed with the division of insurance pursuant to subsection 4, the provider shall deliver a copy of the amendment or

the amended disclosure statement to a prospective resident and to a prospective resident's personal representative if one is appointed prior to the provider's acceptance of part or all of the entrance fee or the execution of the continuing care or senior congregate living services contract by the prospective resident.

4. In addition to filing the annual disclosure statement, the provider may amend its currently filed disclosure statement at any other time if, in the opinion of the provider, an amendment is necessary to prevent the disclosure statement and annual disclosure statement from containing any material misstatement of fact or omission to state a material fact required to be included in the statement. The amendment or amended disclosure statement shall be filed with the division of insurance before the statement is delivered to a resident or prospective resident and a personal representative of a resident or prospective resident and is subject to all the requirements, including those as to content and delivery, of this chapter.

91 Acts, ch 205, §12, 13 SF 519
Subsections 1 and 3 stricken and rewritten

523D.5 New construction.

1. *Filing with insurance division.* A provider shall not enter into a contract to provide continuing care or senior adult congregate living services that applies to a living unit that is part of a new facility or proposed expansion that is or will be located in this state unless the person has submitted an application on a form as required by the division of insurance accompanied by a fee of two hundred fifty dollars. The application at a minimum must include the following information:

a. A description of the new facility or the proposed expansion, including a description of the goods and services that will be offered to prospective residents.

b. A statement of the financial resources of the provider available for this project.

c. A statement of the capital expenditures necessary to accomplish this project.

d. A statement of financial feasibility for the new facility or proposed expansion in a form satisfactory to the commissioner, which includes a statement of future funding sources and shall identify the qualifications of the person or persons preparing the study.

e. A statement of the market feasibility for the new facility or proposed expansion in a form satisfactory to the commissioner, which identifies the qualifications of the person or persons preparing the study.

f. If the new facility or proposed expansion offers a promise to provide nursing or health care services to residents in the future, an actuarial forecast in a form satisfactory to the commissioner, which identifies the qualifications of the actuary or actuaries preparing the forecast.

g. Copies of the escrow agreements executed pursuant to this chapter or proof that an escrow is not required.

2. *Determination of feasibility.*

a. *Existing facilities.* If a filing is made under this section for an expansion of an existing facility, the determination of feasibility shall be based on consolidated information for the existing facility and the proposed expansion.

b. *New facilities.* If a filing is made under this section for a new facility, not part of an existing facility that will be constructed in more than one stage or phase, the initial stage or phase must evidence feasibility independent of any subsequent stage or phase and contain all of the facilities or components necessary to provide residents with all of the services and amenities promised by the provider.

3. *Construction.* New construction shall not begin until the filing required by this section has been made and at least fifty percent of the proposed number of independent living units in the initial stage or phase have been reserved pursuant to executed contracts and at least ten percent of the entrance fees required by those contracts are held in escrow pursuant to this chapter.

4. *Escrow requirements.* Unless proof has been submitted to the commissioner that conditions for the release of escrowed funds set forth in this section have already been met, the provider shall establish an interest-bearing escrow account at a state or federally regulated financial institution located within this state to receive any deposits or entrance fees or portions of deposits or fees for a living unit which has not been previously occupied by a resident for which an entry fee arrangement is used. The escrow account agreement shall be entered into between the financial institution and the provider with the financial institution as the escrow agent and as a fiduciary for the resident or prospective resident. The agreement shall state that the purpose of the escrow account is to protect the resident or prospective resident and that the funds deposited shall be kept and maintained in an account separate and apart from the provider's business accounts.

5. *Release of escrowed funds.* Funds held in escrow shall be released only as follows:

a. If the provider fails to meet the requirements for release of funds held in escrow pursuant to this section within a time period specified in the escrow agreement, which shall not exceed thirty-six months, these funds shall be returned by the escrow agent to the persons who have made payment to the provider.

b. Upon notice from the provider that a resident is entitled to a refund, the escrow agent shall refund the amount directly to the resident. The amount of the refund shall be included in the provider's notice to the escrow agent and shall be determined in compliance with this chapter and any applicable terms of the resident's contract.

c. Except as provided by paragraphs "a" and "b", amounts held in escrow shall be released only upon approval of the commissioner. The commissioner shall approve the release of funds only upon a determination that at least one of the following conditions has been satisfied:

(1) The facility has a minimum of fifty percent of the units reserved for which the provider is charging an entrance fee and the aggregate amount of the entrance fees received by or pledged to the provider, plus anticipated proceeds from any long-term financing commitment, plus funds from all other sources in the actual possession of the provider, equal not less than ninety percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility.

(2) The resident has moved into the living unit, the cancellation period required by section 523D.6, subsection 2, has expired, construction of the facility or the portion of the facility under construction is complete, the facility has been adequately equipped and furnished, a certificate of occupancy or the equivalent has been issued by the appropriate local jurisdiction, and the provider has been issued all the appropriate licenses or permits needed to operate the facility and provide all of the promised services.

d. Upon receipt by the escrow agent of a request by the provider for the release of these escrowed funds, the escrow agent shall approve release of the funds within five working days unless the escrow agent finds that the requirements of this section have not been met and notifies the provider of the basis for this finding. The request for release of the escrowed funds shall be accompanied by any documentation the escrow agent requires.

91 Acts, ch 205, §14 SF 519
Section stricken and rewritten

523D.6 Contracts.

1. *Disclosure.* In addition to any other provisions prescribed by rules adopted under this chapter, each contract providing for continuing care or senior adult congregate living services by a provider shall be written in nontechnical language easily understood by a lay person and shall include all of the following:

a. The name and business address of the provider.

b. The name and address of the facility or facilities.

c. The identification of the living unit which the prospective resident will occupy.

d. A description of the total consideration paid by the resident, including the value of all property transferred.

e. A list of all of the continuing care or senior adult congregate living services which are to be provided by the provider to each resident. The list shall clearly identify the manner in which continuing care or senior adult congregate living services will be provided, including a statement whether the items will be provided for a designated time period or for life, and shall indicate which continuing care and senior adult congregate living services, if any, will be provided through an affiliate or third party. The description of any service charges or fees shall, in the event of multiple residents, be provided on an individual basis and shall include a description of any additional charges that will be assessed for occupancy by more than one resident.

f. A statement of the policy of the facility with regard to any health or financial conditions upon which the provider may require the resident to relinquish the resident's space in the designated facility.

g. A statement of the policy of the facility with regard to the health and financial conditions required for a person to continue as a resident.

h. A statement of the policy of the facility with regard to the conditions under which the resident is permitted to remain in the facility in the event of financial difficulties affecting the resident.

i. A statement of the terms concerning the entry of a person to the living unit and the consequences if a person does not meet the requirements for entry.

j. A statement of the policy of the facility with regard to changes in accommodations and a description of the procedures to be followed by the provider when the provider temporarily or permanently changes the resident's accommodations within the facility, transfers the resident from one level of care to another, or transfers the resident to another health facility.

k. A description in clear and understandable language, in at least ten-point type, of the terms governing the refund of any portion of the entrance fee in the event of discharge by the provider, or cancellation by the resident, and a statement that the provider shall not dismiss or discharge a resident from a facility prior to the expiration of a resident contract without just cause and sixty days written notice of intent to cancel. The notice of dismissal or discharge shall only be given upon a good faith determination that just cause exists, and the notice shall be given in writing, signed by the medical director, if any, and the administrator of the facility. In an emergency situation only such notice as is reasonable under the circumstances is required.

l. A description in clear and understandable language, in at least ten-point type, whether monthly fees, if charged, are subject to periodic increases.

m. A description of the facility's policies and procedures for handling grievances between the provider and residents.

n. A statement that residents living in the facility have the right of self-organization.

o. A statement that a prospective resident or resident shall be given the opportunity to appoint a personal representative in the prospective resident's or resident's contract. The personal representative shall receive copies of the contract and all notices, disclosures, or forms required by this chapter to be delivered to a prospective resident or resident. A personal representative appointed under this section has no legal authority to make any decision for the prospective resident appointing the person to be a personal representative. The personal representative may advise the prospective resident or resident as to the materials provided. A personal representative shall not be affiliated or associated with a provider or any person identified in section 523D.3, subsection 1, paragraph "b" or "c", and shall not be a prospective resident or resident.

p. A statement that if a resident dies or through illness, injury, or incapacity is precluded from becoming a resident under the terms of the contract before occupying the living unit, the contract is automatically rescinded and the resident or the resident's legal representative shall receive a full refund of all payments of money or transferred property to the facility, except those costs specifically incurred by the facility at the request of the resident and set forth in writing in a separate addendum, signed by both parties to the contract.

q. A statement that a resident has the right to rescind a contract for continuing care or senior adult congregate living services, without penalty or forfeiture, within three business days of the date the contract was executed or within thirty days after the date the resident received the disclosure statement required by section 523D.3, whichever is later.

2. **Cancellation.** The contract required by this section shall state the terms under which the contract can be canceled by the provider or the resident, including a statement of the refund rights of a resident, and shall include a completed, easily detachable form in duplicate, captioned "Notice of Cancellation", as an attachment, in ten-point boldface type, containing the following information and statements in substantially the following form and language:

NOTICE OF CANCELLATION

.....
Date contract was executed.

.....
Date disclosure statement was provided to resident.

You may rescind and cancel your contract, without any penalty or obligation, within three business days of the date the contract was executed or within thirty days after the date you received the disclosure statement required by Iowa Code section 523D.3, whichever is later. You are not required to move into the facility before the expiration of this cancellation period. However, if you do, the provider may retain the reasonable value of care and services actually provided to you, the resident, prior to your vacating the provider's facility. If you cancel this contract and you have already moved into the provider's facility, you must vacate your living unit within ten days after receipt by the provider of your cancellation notice.

If you cancel this contract, any payments of money or transfers of property you made to the provider must be returned as soon as reasonably possible by the provider following receipt by the provider of your cancellation notice, and any security interest arising out of the transaction is canceled, except that, as stated above, the provider may retain the reasonable value of care and services actually provided to you prior to your vacating the provider's facility.

To cancel this contract, mail by certified mail or hand deliver a signed and dated copy of this cancella-

tion notice or any other written notice clearly indicating your intent to cancel the contract, or send a telegram, to (name of provider) at (address of provider's place of business). Your cancellation is effective upon mailing by certified mail, when transmitted by telegraph, or when actual notice is given to the provider, whichever is earlier.

I hereby cancel this contract.

.....
(Date)

.....
(Resident's signature)

91 Acts, ch 205, §15 SF 519
Section stricken and rewritten

523D.11 Reserved.

523D.12 Filings and investigations.

1. The annual filing, and any amendments to the annual filing, shall be signed by the chief executive officer, stating that to the best of the officer's knowledge and belief, the items are correct.

2. The commissioner or the attorney general may, for the purpose of discovering or investigating violations of this chapter or rules adopted pursuant to this chapter do any or all of the following:

a. Investigate the business and examine the books, accounts, records, and files used by a provider. With the exception of an examination involving new construction, an examination involving a complaint by a resident or a prospective resident or where good cause exists for the lack of prior notice, as determined by the commissioner, the division of insurance shall provide at least seven days' prior notice to the facility before conducting an on-site examination.

b. Administer oaths and affirmations, subpoena witnesses, receive evidence, and require the production of documents and records in connection with an investigation or proceeding being conducted pursuant to this chapter.

c. Apply to the district court for issuance of an order requiring a person's appearance before the commissioner or attorney general. The person may also be required to produce documentary evidence germane to the subject of the investigation. Failure to obey a court order under this subsection constitutes contempt of court.

91 Acts, ch 205, §16 SF 519
NEW section

523D.13 Compliance orders.

Upon the commissioner's determination that a provider has violated a provision of this chapter or a rule adopted pursuant to this chapter, the commissioner may issue an order requiring a provider to cease and desist from an unlawful practice or to take other affirmative action as in the judgment of the commissioner is necessary to comply with the requirements of this chapter. The person named in the order may, within fourteen days after receipt of the

order, file a written request for a hearing. The hearing shall be held in accordance with chapter 17A. If a hearing is not requested, the order shall become permanent.

91 Acts, ch 205, §17 SF 519
NEW section

523D.14 Injunctions.

The attorney general may petition the district court in any county of the state for an injunction to restrain a person subject to this chapter and any agents, employees, or associates of the person from

engaging in conduct or practices in violation of this chapter or rules adopted pursuant to this chapter. In a proceeding for an injunction, the attorney general may apply to the court for the issuance of a subpoena to require the appearance of a defendant and the defendant's agents and any documents, books, or records germane to the hearing upon the petition for an injunction. Upon proof of any of the violations described in the petition for injunction, the court may grant the injunction.

91 Acts, ch 205, §18 SF 519
NEW section

CHAPTER 523E

SALES OF CEMETERY MERCHANDISE

523E.20 Insurance division's regulatory fund.

The insurance division may authorize the creation of a special revenue fund in the state treasury, to be known as the insurance division regulatory fund. Commencing July 1, 1990, and annually thereafter, the commissioner shall allocate from the fees paid pursuant to section 523E.2, one dollar for each agreement reported on an establishment permit holder's annual report for deposit to the regulatory fund. The remainder of the fees collected pursuant to section 523E.2 shall be deposited into the general fund of the state. However, if the balance of the regulatory fund on that July 1 exceeds two hundred thou-

sand dollars, the allocation to the regulatory fund shall not be made and the total sum of the fees paid pursuant to section 523E.2 shall be deposited in the general fund of the state. The moneys in the regulatory fund shall be retained in the fund. The moneys are appropriated and, subject to authorization by the commissioner, may be used to pay investigative expenses and the expenses of receiverships established pursuant to section 523E.19. An annual assessment shall not be imposed if the current balance of the fund exceeds two hundred thousand dollars.

91 Acts, ch 260, §1242 HF 173
Restrictions on use of moneys deposited in state general fund, see 1991 Acts, ch 263, §38 SF 209
Section amended

CHAPTER 524

IOWA BANKING LAW

Limited suspension of banking laws until July 1, 1992,
90 Acts, ch 1274, 91 Acts, ch 220, § 7 SF 507

524.207 Expenses of the banking division — fees.

All expenses required in the discharge of the duties and responsibilities imposed upon the banking division of the department of commerce, the superintendent, and the state banking board by the laws of this state shall be paid from fees provided by the laws of this state and appropriated by the general assembly from the fund established in this section. All of these fees are payable to the superintendent. The superin-

tendent shall pay all the fees and other money received by the superintendent to the treasurer of state within the time required by section 12.10. The treasurer of state shall hold these funds in a banking revolving fund that shall be established in the name of the superintendent for the payment of the expenses of the division. This fund is subject at all times to the warrant of the department of revenue and finance, drawn upon written requisition of the superintendent or the superintendent's designated representa-

tive, for the payment of all salaries and other expenses necessary to carry out the duties of the banking division of the department of commerce. The superintendent may keep on hand with the treasurer of state funds in excess of the current needs of the division to the extent approved by the state banking board. Transfers shall not be made from the general fund of the state or any other fund for the payment of the expenses of the division. No part of the funds held by the treasurer of state for the account of the superintendent shall be transferred to the general fund of the state or any other fund, except as follows: Sixty thousand dollars each fiscal year shall be transferred to the general fund of the state. That amount shall be considered as one of the costs of the division. The funds held by the treasurer of state for the account of the superintendent shall be invested by the treasurer of state and the income derived from these investments shall be credited to the general fund of the state.

The authority to modify allotments provided in section 8.31 shall not apply to funds appropriated from the fund created in this section and held for the superintendent.

The superintendent shall account for receipts and disbursements according to the separate duties imposed upon the superintendent by the laws of this state and each separate duty shall be fiscally self-sustaining.

The banking division shall transfer at the beginning of each fiscal quarter from appropriated trust funds to the administrative services trust fund an amount which represents the division's share of the estimated cost of consolidated administrative services within the department of commerce, such share to be in the same proportion as established by agreement in the fiscal year beginning July 1, 1986, and ending June 30, 1987, with the first quarterly transfer to occur between July 1 and July 31 annually. At the close of the fiscal year, actual versus estimated expenditures shall be reconciled and any overpayment shall be returned to the division or any underpayment shall be paid by the division.

The banking division may expend additional funds, including funds for additional personnel, if those additional expenditures are actual expenses which exceed the funds budgeted for bank examinations and directly result from examinations of banks. Before the division expends or encumbers an amount in excess of the funds budgeted for examinations, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the director of the department of management shall determine that the examination expenses exceed the funds budgeted by the general assembly to the division and that the division does not have other funds from which examination expenses can be paid. Upon approval of the director of the department of management, the division may expend and encumber funds for excess examination expenses. The amounts necessary to fund the excess examination expenses shall be collected from those

banks being regulated which caused the excess expenditures, and the collections shall be treated as repayment receipts as defined in section 8.2, subsection 5.

Notwithstanding the provisions of this section directing that fees and other moneys received be deposited into the banking revolving fund and not be transferred to the general fund of the state, and directing that expenses be paid from the banking revolving fund, for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, all fees and moneys collected shall be deposited into the general fund of the state and expenses required to be paid under this section shall be paid from funds appropriated for those purposes.

91 Acts, ch 260, §1243 HF 173
Restrictions on use of moneys deposited in state general fund, see 91 Acts, ch 263, §38 SF 209
Availability of general fund for payment of expenses, see 91 Acts, ch 264, §905 SF 532
See also §546 11
NEW unnumbered paragraph 6

524.221 Preservation of bank records — statute of limitations.

1. A state bank is not required to preserve its records for a period longer than eleven years after the first day of January of the year following the time of the making or filing of such records, provided, however, that account records showing unpaid balances due to depositors shall not be destroyed. A copy of an original may be kept in lieu of any such original record. For purposes of this subsection, a copy includes any duplicate, rerecording or reproduction of an original record from any photograph, photostat, microfilm, microcard, miniature or microphotograph, computer printout, electronically stored data or image, or other process which accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or reproduction of the original record.

2. All causes of action, other than actions for relief on the grounds of fraud or mistake, against a state bank based upon a claim or claims inconsistent with an entry or entries in a state bank record, made in the regular course of business, shall be deemed to have accrued, and shall accrue for the purpose of the statute of limitations one year after the date of such entry or entries. No action founded upon such a cause may be brought after the expiration of ten years from the date of such accrual.

3. The provisions of this section, insofar as applicable, shall apply to the records of a national bank.

91 Acts, ch 95, §1 HF 619
Subsection 1 amended

524.227 Enforcement of Iowa consumer credit code.

1. The superintendent shall enforce the Iowa consumer credit code with respect to banks, as provided in sections 537.2303, 537.2305 and 537.6105.

2. The superintendent shall co-operate with the administrator, and shall assist the administrator

whenever necessary to provide for the discharge of the duties of the administrator.

3. Notwithstanding other provisions of this chapter to the contrary, the superintendent shall authorize to be furnished to the administrator, access to or copies of records in the possession of the superintendent or other persons which relate to a bank when necessary to enable the administrator to enforce chapter 537.

4. The superintendent shall make an annual report in writing to the administrator. A copy of the report shall be furnished at cost by the superintendent to each bank or other person upon request. The annual report shall contain:

a. A summary of applications to engage in the business of banking approved or denied by the superintendent since the last report.

b. An estimate of the disbursements of agency funds for consumer credit protection during the calendar year ending the preceding December 31.

c. Information which the superintendent may deem appropriate and advisable to disclose.

d. Information which the administrator may require to be included.

91 Acts, ch 118, §1 HF 601

Subsection 4, paragraph b stricken and former paragraphs c-e relettered as b-d

524.228 Interim cease and desist order — final order — suspension.

1. If it appears to the superintendent that a state bank, or any director, officer, employee, or substantial shareholder of the state bank is engaging in or is about to engage in an unsafe or unsound practice or dishonest act in conducting the business of the state bank that is likely to cause insolvency or substantial dissipation of assets or earnings of the state bank, or is likely to seriously weaken the condition of the state bank or otherwise seriously prejudice the interests of its depositors prior to the completion of the proceedings conducted pursuant to section 524.223, 524.606, subsection 2, or 524.707, subsection 2, the superintendent may issue an interim order requiring the bank, director, officer, employee, or substantial shareholder to cease and desist from any such practice or act, and to take affirmative action, including suspension of the director, officer, or employee to prevent such insolvency, dissipation, condition, or prejudice pending completion of the proceedings. The interim order becomes effective upon service upon the state bank, or upon the director, officer, employee, or substantial shareholder of the state bank and, unless set aside, limited, or suspended by a court as provided in this chapter, remains effective and enforceable pending the completion of the administrative proceedings pursuant to the interim order and until such time as the superintendent dismisses the charges specified in the interim order, or, if a final cease and desist order is issued against the state bank or the director, officer, employee, or substantial shareholder until the effective date of the final order.

2. Within ten days after the state bank concerned or any director, officer, employee, or substantial shareholder is served with an interim order, the bank or such director, officer, employee, or substantial shareholder may apply to the district court in the county in which the bank has its principal place of business, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such interim order pending the completion of the administrative proceedings. If serious prejudice to the interests of the superintendent, the state bank, the officer, director, employee, or substantial shareholder would result from such hearing, the court may order the judicial proceeding to be conducted in camera.

3. The interim order shall contain a concise statement of the facts constituting the alleged unsafe or unsound practice or alleged dishonest act, and shall fix a time and place at which a hearing will be held to determine whether a final order to cease and desist should issue against the state bank or any director, officer, employee, or substantial shareholder. The hearing shall be fixed for a date not later than thirty days after service of the interim order unless a later date is set at the request of the party so served. If the state bank, or the director, officer, employee, or substantial shareholder fails to appear at the hearing, the state bank, or the director, officer, employee, or substantial shareholder is deemed to have consented to the issuance of a cease and desist order. In the event of such consent, or if upon the record made at the hearing the superintendent finds that any unsafe or unsound practice or dishonest act specified in the interim order has been established, the superintendent may issue and serve upon the bank, or the director, officer, employee, or substantial shareholder a final order to cease and desist from any such practice or act. The order may require the state bank, or the director, officer, employee, or substantial shareholder to cease and desist from any such practice or act and, further, to take affirmative action, including suspension of the director, officer, or employee.

4. A hearing provided for in this section shall be presided over by an administrative law judge appointed in accordance with section 17A.11. The hearing shall be private, unless the superintendent determines after full consideration of the views of the party afforded the hearing, that a public hearing is necessary to protect the public interest. After the hearing, and within thirty days after the case has been submitted for decision, the superintendent shall review the proposed order of the administrative law judge and render a final decision, including findings of fact upon which the decision is predicated, and issue and serve upon each party to the proceeding an order consistent with this section.

5. Any final order issued by the superintendent pursuant to subsection 3 becomes effective upon service of the final order on the state bank, director, officer, employee, or substantial shareholder and shall remain effective except to the extent that it is stayed,

modified, terminated, or set aside by action of the superintendent or of the district court of the county in which the state bank has its principal place of business in accordance with the terms of chapter 17A.

6. In the case of violation or threatened violation of, or failure to obey, an interim order issued pursuant to subsection 1 or a final order issued pursuant to subsection 3, the superintendent may apply to the district court of the county in which the state bank has its principal place of business for the enforcement of the order and such court shall have jurisdiction and power to order and require compliance with the interim order or final order.

7. For purposes of this section, “*substantial shareholder*” means a shareholder exercising a controlling influence over the management or policies of a state bank as determined by the superintendent.

91 Acts, ch 220, §2 SF 507
NEW section

524.306 Issuance of certificate of incorporation.

The receipt of the approved articles of incorporation of a state bank by the secretary of state constitutes filing with that office. The secretary of state shall record the articles of incorporation and forward a copy of them to the county recorder of the county in which the state bank is to have its principal place of business. The secretary of state upon the filing of the articles of incorporation shall issue a certificate of incorporation and send the certificate to the incorporators.

91 Acts, ch 211, §11 HF 556
Section amended

524.310 Name of state bank.

1. The name of a state bank originally incorporated after the effective date of this chapter shall include the word “*bank*” and may include the word “*state*” or “*trust*” in its name. If a state bank uses the word “*trust*” in its name, it must be authorized under this chapter to act in a fiduciary capacity.

2. The provisions of this section shall not require any state bank, existing and operating on January 1, 1970, to add to, modify or otherwise change its corporate name, either on January 1, 1970, or upon renewal of its corporate existence pursuant to section 524.106.

3. If a state bank existing and operating on January 1, 1970, causes its corporate name to be changed, the name as changed shall comply with subsection 1 of this section.

4. *a.* A person may reserve the exclusive use of a corporate name for a state bank by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant’s exclusive use for a nonrenewable one hundred twenty day period.

b. The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

91 Acts, ch 11, §1 HF 260, 91 Acts, ch 258, §61 HF 709
NEW subsection 4

524.606 Removal of directors.

1. At a meeting of shareholders expressly called for that purpose, individual directors or the entire board of directors may be removed, with or without cause, by the affirmative vote of the holders of at least two-thirds of the shares entitled to vote at an election of directors. The vacancies created may be filled at the same meeting at which the removal proceedings take place.

2. When, in the opinion of the superintendent any director of a state bank has violated any law relating to such state bank or has engaged in unsafe or unsound practices in conducting the business of such state bank, the superintendent may cause notice to be served upon such director, to appear before the superintendent to show cause why the director should not be removed from office. A copy of such notice shall be sent to each director of the state bank affected, by registered or certified mail. If, after granting the accused director a reasonable opportunity to be heard, the superintendent finds that the director violated any law relating to such state bank or engaged in unsafe or unsound practices in conducting the business of such state bank, the superintendent, in the superintendent’s discretion, may order that such director be removed from office. A copy of the order shall be served upon such director and upon the state bank of which the person is a director at which time the person shall cease to be a director of the state bank.

The decision of the superintendent shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act. No action taken by a director prior to the director’s removal shall be subject to attack on the ground of the director’s disqualification.

91 Acts, ch 220, §3 SF 507
Subsection 2, unnumbered paragraph 1 amended

524.612 Director dealing with state bank.

1. The total obligations, as defined in subsection 1 of section 524.904, of a director to a state bank of which the person is a director shall not exceed twenty percent of the capital and surplus of the state bank except that the total obligations of a director to a state bank of which the person is a director shall not exceed forty percent of the capital and surplus of the state bank if the amount by which such obligations exceed twenty percent of the capital and surplus of the state bank shall consist of obligations described in paragraph “*a*” of subsection 2 of section 524.904. A majority of the board of directors, voting in the absence of the applying director, shall give its prior approval to any obligation, as defined in subsection 1

of section 524.904, of a director to the state bank of which the person is a director. The form of such approval shall be specified by the superintendent, and a copy recorded in the minutes of the board of directors.

2. A director shall not be permitted to receive any loan or extension of credit or use any property of a state bank of which the person is a director at a lower rate of interest or charge than the rate charged to other customers under similar circumstances.

3. A director shall not be paid a higher rate of interest on deposits by a state bank of which the person is a director than the rate paid to any other customer under similar circumstances.

4. A director shall not purchase or lease any assets from or sell or lease any assets to a state bank of which the person is a director except upon terms not less favorable to the state bank than those offered to or by other persons. All purchases or leases from and sales or leases to a director shall receive the prior approval of a majority of the board of directors voting in the absence of the interested director.

5. For the purpose of this section and section 524.706, any obligation, as defined in section 524.904, subsection 1, of the spouse, other than a spouse who is separated from the director or officer under a decree of divorce or separate maintenance, or minor children of a director or officer to the state bank in which the person is a director or officer is considered an obligation of such director or officer. However, an obligation of a spouse is not considered an obligation of the director or officer if the officer or director and the spouse of the director or officer maintain separate deposit accounts, for either personal or business purposes, and the funds obtained pursuant to the obligation of the spouse are not commingled with funds of, or used to directly benefit, the officer or director, and the obligation is not guaranteed by the director or officer.

91 Acts, ch 14, §1 HF 294
Subsection 5 amended

524.701 Officers and employees.

A state bank shall have, as officers, a president, one vice president, and a cashier. As additional officers the state bank may have a chairperson, additional presidents, additional vice presidents, assistant vice presidents, assistant cashiers, and other officers as may be prescribed by the articles of incorporation or the bylaws. Upon notice by the superintendent, an individual who performs active executive or official duties for a state bank may be treated as an officer for the purpose of this chapter. A state bank may have a chairperson of the board of directors and one vice president who, if they do not perform executive or official duties or receive a salary, need not be treated as officers for the purpose of this chapter. All officers shall be elected by the board of directors. No more than two offices may be held by the same individual. All other individuals employed by a state bank, except directors who are not officers,

are employees for the purpose of this chapter. The president of a state bank is a member of the board of directors.

91 Acts, ch 7, §1 HF 231
Section amended

524.706 Officer dealing with state bank.

1. *a.* An executive officer of a state bank may receive loans or extensions of credit from a state bank of which the person is an executive officer, resulting in obligations as defined in section 524.904, subsection 1, not exceeding, in the aggregate:

(1) An amount secured by a lien on a dwelling which is expected, after the obligation is incurred, to be owned by the executive officer and used as the officer's residence, provided that after the loan is made there is no other loan by the bank to the executive officer, under authority of this subparagraph, outstanding.

(2) An amount to finance the education of a child or children of the executive officer.

(3) Any other loans or extensions of credit which in the aggregate do not at any one time exceed the higher of twenty-five thousand or two point five percent of the bank's capital and surplus, but in no event more than one hundred thousand dollars.

(4) Other amounts which do not, in the aggregate, exceed the principal amounts of time certificates of deposit in the bank which are held in the name of the executive officer, if repayment of the loan or credit amounts is at all times secured by pledge of the certificates. An interest in or portion of a time certificate of deposit does not satisfy the requirements of this subparagraph if that interest or portion is also pledged to secure the payment of a debt or obligation of any person other than the executive officer.

b. A state bank shall not loan money or extend credit to an executive officer of such state bank, nor shall an executive officer of a state bank receive a loan or extension of credit from such state bank, exceeding the limitations imposed by this section or for a purpose other than that authorized by this section. Such loans or extensions of credit shall not exceed an amount totaling more than twenty percent of the capital and surplus of the state bank and any such loan on real property shall comply with section 524.905. A majority of the board of directors, voting in the absence of the applying officer, whether or not the officer is also a director, shall give its prior approval to any obligation of an executive officer to the state bank of which the person is an executive officer. The form of approval shall be specified by the superintendent, and a copy recorded in the minutes of the board of directors.

c. For the purposes of this subsection "*executive officer*" means an officer of a state bank who participates or has authority to participate, otherwise than in the capacity of a director, in major policymaking functions of the bank, regardless of whether the officer has an official title or whether the officer's title contains a designation of assistant and regardless of

whether the officer is serving without salary or other compensation. The chairperson of the board, every president, every vice president, the cashier, secretary, and treasurer of a state bank are assumed to be executive officers, unless, by resolution of the board of directors or by the bank's bylaws, but subject to contrary notice by the superintendent as provided for in section 524.701, any such officer is excluded from participation in major policymaking functions, otherwise than in the capacity of a director of the bank, and the officer does not actually participate.

2. The provisions of section 524.612, subsections 2, 3 and 4, shall apply to officers.

3. If an individual is a director and an officer, the individual shall be subject to the limitations of subsection 1 of this section.

4. Whenever an officer of a state bank borrows from or otherwise becomes obligated to any person or persons other than the state bank of which the person is an officer, in a total amount equal to or exceeding twenty-five thousand dollars excluding such amounts as may be owing by the officer secured by a first lien on a dwelling which is used by the officer as the officer's residence, the officer shall report in writing to the superintendent that the officer is so obligated. Upon the request of the superintendent, an officer of a state bank shall submit to the superintendent, a personal financial statement which shall show the names of all persons to whom the officer is obligated, the dates, terms, and amounts of each loan or other obligation, the security therefor, and the purpose for which the proceeds of such loans or other obligations have been or are to be used.

91 Acts, ch 7, §2 HF 231
Subsection 1, paragraph c amended

524.707 Removal of officers.

1. Any officer may be removed by the board of directors whenever in its judgment the best interests of the state bank shall be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the officer so removed. Election of an officer shall not of itself create contract rights.

2. Subsection 2 of section 524.606 providing for the removal of directors by the superintendent, shall have equal application to officers and employees.

91 Acts, ch 220, §4 SF 507
Subsection 2 amended

524.816 Account insurance.

1. A bank organized under this chapter, as a condition of maintaining its privilege of organization after July 1, 1984 shall become an insured bank and shall acquire and maintain insurance to protect each depositor against loss of funds held on account by the bank. The insurance shall be obtained from the federal deposit insurance corporation or another insurance plan approved by the superintendent, provided that each bank shall acquire deposit insurance from the appropriate agency of the federal government.

2. The superintendent may furnish to an official

of an insurance plan by which the accounts of the bank are insured, any information relating to examinations and reports of the status of that bank for the purpose of determining availability of insurance to that bank.

91 Acts, ch 16, §1 SF 87
1991 amendment to subsection 1 effective July 1, 1992, 91 Acts, ch 16, §4 SF 87
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 farm 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 agricultural 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 agricultural development authority pursuant to chapter 175 which have been issued on behalf of any one beginning farmer, as defined in section 175 2, subsection 6, 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 agricultural 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 farm 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", "e", and "f" and section 524 825

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.

i. Shares or units of investment companies or investment trusts registered under the federal Investment Company Act of 1940, 15 U.S.C. § 80a, the portfolio of which is limited to the United States obligations or Iowa general obligations described in subsection 1 or repurchase agreements fully collateralized by obligations described in subsection 1 if delivery of the collateral is taken either directly or through an authorized custodian, up to a maximum of twenty percent of capital and surplus of the state bank in any one company or trust.

j. Shares of investment companies whose portfolios contain investments which are subject to limitations pursuant to this section, provided that a state bank's investment in such shares does not exceed the limitation set forth in this section for the underlying instrument.

k. Shares in the federal agricultural mortgage corporation.

l. When approved by the superintendent, shares of a corporation certified by the federal agricultural mortgage corporation which is engaged solely in pooling agricultural loans for federal agricultural mortgage corporation guarantees, not to exceed twenty percent of the capital and surplus of the state bank.

m. Shares in a federal home loan bank.

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.

6. A state bank may, in the exercise of the powers granted in this chapter, purchase cash value life insurance contracts which may include provisions for the lump sum payment of premiums and which may include insurance against the loss of the lump sum payment. The cash value life insurance contracts purchased from any one company shall not exceed twenty percent of capital and surplus of the state bank and in the aggregate from all companies, shall not exceed twenty-five percent of total equity capital of the state bank unless the state bank has obtained

the approval of the superintendent prior to the purchase of any cash value life insurance contract in excess of this limitation.

7. *a.* A state bank may invest in real estate as set forth in paragraph "b", subject to the following limitations:

(1) The investment shall be approved by the superintendent.

(2) The investment shall be for economic or community development purposes only.

(3) The total aggregate amount invested shall not exceed twenty percent of the capital and surplus of the state bank.

(4) The real estate purchased shall not be agricultural-zoned land.

b. The state bank may acquire real estate as follows:

(1) At a sheriff's sale or any other sale of real estate against which the state bank has a legal or equitable lien or claim.

(2) In satisfaction of any obligation to the state bank.

(3) Upon contracts for sale or improvement and sale, at the cost of the land and improvements, if the contracts are executed concurrently or prior to the purchase. However, the transaction is subject to the limitations on real estate loans.

(4) In exchange for real estate owned by the state bank.

(5) In connection with salvaging the value of property owned by the state bank.

(6) For the purpose of producing income through the improvement or erection of a building and the sale or rental of the property.

8. If approved by the superintendent, a state bank may invest in a community development corporation. A state bank shall have the same authority to invest in a community development corporation as does a federal bank pursuant to Title XII of the United States Code.

9. A state bank may invest without limitation for its own account in futures, forward, and standby contracts to purchase and sell any of the instruments eligible for state banks' purchase and sale, subject to the prior approval of the superintendent and pursuant to applicable federal laws and regulations governing such contracts. Purchase and sale of such contracts shall be conducted in accordance with safe and sound banking practices and with levels of the activity being reasonably related to the state bank's business needs and capacity to fulfill its obligations under the contracts.

91 Acts, ch 220, §5, 6 SF 507
Subsection 3, NEW paragraph m
Subsection 6 amended

524.1102 Loans and other transactions with affiliates.

No state bank shall make any loan or any extension of credit to, or purchase securities under repurchase agreement from, any of its affiliates, or invest any of its funds in the shares, bonds, capital securi-

ties, or other obligations of any such affiliate, or accept the shares, bonds, capital securities, or other obligations of any such affiliate as collateral security for advances made to any customer, if the aggregate amount of such loans, extensions of credit, repurchase agreements, investments and advances against such collateral security will exceed:

1. In the case of any one such affiliate, ten percent of the capital and surplus of the state bank. However, a state bank may invest its funds in shares of a bank service corporation pursuant to section 524.803, subsection 1, paragraph f, in an amount up to twenty percent of the capital and surplus of the state bank.

2. In the case of all such affiliates, twenty percent of the capital and surplus of such state bank.

Within the foregoing limitations, each loan or extension of credit of any kind or character to an affiliate shall be secured by collateral in the form of shares of stock, bonds, capital securities or other such obligations having a market value at the time of making the loan or extension of credit of at least twenty percent more than the amount of the loan or extension of credit, or of at least ten percent more than the amount of the loan or extension of credit if it is secured by obligations of any state, or of any political subdivision or agency of the state, or of at least one hundred percent of the amount of the loan or extension of credit if it is secured by a segregated, earmarked deposit account with the state bank.

A loan or extension of credit to a director, officer, clerk or other employee or any representative of any such affiliate shall be deemed a loan to the affiliate to the extent that the proceeds of such loan are used for the benefit of, or transferred to, the affiliate.

The provisions of this section shall not apply to loans or extensions of credit fully secured by obligations of the United States, or the farm credit banks, or the federal home loan banks, or obligations fully guaranteed by the United States as to principal and interest. The provisions of this section shall likewise not apply to indebtedness of any affiliate for unpaid balances due a state bank on assets purchased from such bank.

For the purposes of this section, the terms "*extension of credit*" and "*extensions of credit*" shall be

deemed to include any purchase of securities, other assets or obligations under repurchase agreement, and the discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse.

91 Acts, ch 20, §1 HF 110
Unnumbered paragraph 2 amended

524.1201 General provisions.

A bank shall not open or maintain a branch bank. A state bank may establish and operate bank offices subject to approval and regulation of the superintendent and to the restrictions upon location and number imposed by section 524.1202. A bank office may furnish all banking services ordinarily furnished to customers and depositors at the principal place of business of the state bank which operates the office, and a bank office manager or an officer of the bank shall be physically present at each bank office during a majority of its business hours. The central executive and official business and principal recordkeeping functions of a state bank shall be exercised only at its principal place of business, except that data processing services referred to in section 524.804 may be performed for the state bank at some other point. All transactions of a bank office shall be immediately transmitted to the principal place of business of the state bank which operates the office, and no current recordkeeping functions shall be maintained at a bank office except to the extent the state bank which operates the office deems it desirable to keep there duplicates of the records kept at the principal place of business of the state bank. Notwithstanding any of the other provisions of this section, original trust recordkeeping functions may be centrally located at an authorized bank office, and original loan documentation recordkeeping functions may be located at an authorized bank office or at the office of the holding company of a state bank, subject to the approval of the superintendent.

91 Acts, ch 72, §1 HF 617
Section amended

524.1913 Prohibited acquisitions. Repealed by 90 Acts, ch 1266, § 61(3).

Repeal effective January 1, 1992, 90 Acts, ch 1266, §61(3) SF 2280

CHAPTER 527

ELECTRONIC TRANSFER OF FUNDS

527.2 Definitions.

As used in this chapter, the following definitions shall apply unless the context otherwise requires

1 “*Access device*” means a card, code, or other mechanism, or any combination thereof, that may be used by a customer for the purpose of initiating a transaction by means of a satellite terminal which will affect a customer asset account

2 “*Administrator*” means and includes the superintendent of banking, the superintendent of savings and loan associations, and the superintendent of credit unions within the department of commerce and the supervisor of industrial loan companies within the office of the superintendent of banking. However, the powers of administration and enforcement of this chapter shall be exercised only as provided in sections 527 3, 527 5, subsection 7, 527 11, 527 12, and any other pertinent provision of this chapter

3 “*Batch basis*” means the delivery of an accumulation of messages representing multiple transactions after completion of the transactions

4 “*Central routing unit*” means any facility where electronic impulses or other indicia of a transaction originating at a satellite terminal are received and are routed and transmitted to a financial institution, or to a data processing center, or to another central routing unit, wherever located

5 “*Completion of the transaction*” means when the presence of the customer at a satellite terminal is no longer needed to consummate the sale of goods or services, to grant to the seller the right to receive payment for the goods or services, and to issue a receipt to the customer

6 “*Customer asset account*” or “*account*” means a demand deposit, share, checking, savings, or other customer account, other than an occasional or incidental credit balance in a credit plan, which represents a liability of the financial institution which maintains such account at a business location or office located in this state, either directly or indirectly for the benefit of a customer

7 “*Data processing center*” means a facility, wherever located, at which electronic impulses or other indicia of a transaction originating at a satellite terminal are received and are processed in order to enable the satellite terminal to perform any function for which it is designed. However, “*data processing center*” does not include a facility which is directly connected to a satellite terminal and which performs only the functions of direct transmission of all requested transactions from that terminal to a data processing facility without performing any re-

view of the requested transactions for the purpose of categorizing, separating, or routing “*Categorizing*” means the process of reviewing and grouping of requested electronic funds transfer transactions according to the source or nature of the requested transaction “*Separating*” means the process of interpreting and segregating requested electronic funds transfer transactions, or portions of such transactions, to provide for processing of information relating to such requested transactions or portions of such transactions “*Routing*” means the process of interpreting and transmitting requested electronic funds transfer transactions to a destination selected at the time of interpretation and transmission from two or more alternative destinations

8 “*Electronic personal identifier*” means a personal and confidential code or other security mechanism which has been designated by a financial institution issuing an access device to a customer to serve as a supplemental means of access to a customer’s account that may be used by the customer in conjunction with an access device for the purpose of initiating a transaction by means of a satellite terminal

9 “*Financial institution*” means and includes any bank incorporated under the provisions of any state or federal law, any savings and loan association incorporated under the provisions of any state or federal law, any credit union organized under the provisions of any state or federal law, any corporation licensed as an industrial loan company under chapter 536A, and any affiliate of a bank, savings and loan association, credit union, or industrial loan company

10 “*Limited function terminal*” means an on line point-of-sale terminal or an off-line point of-sale terminal which satisfies the requirements of section 527 4, subsection 3, paragraph “d”, or a multiple use terminal, which is not operated in a manner to accept an electronic personal identifier, and which is not operated to distinguish between transactions which affect a customer asset account and transactions which do not affect a customer asset account. Except as otherwise provided, a limited function terminal shall not be subject to the requirements imposed upon other satellite terminals pursuant to sections 527 4 and 527 5, subsections 1, 2, 3, 7, and 9

11 “*Multiple use terminal*” means any machine or device to which all of the following are applicable

a The machine or device is established and owned or operated by a person who primarily engages in a service, business or enterprise, including but not limited to the retail sale of goods or services, but who is not organized under the laws of this state

or under federal law as a bank, savings and loan association, or credit union;

b. The machine or device is used by the person by whom it is owned or operated in some capacity other than as a satellite terminal; and

c. A financial institution proposes to contract or has contracted to utilize that machine or device as a satellite terminal.

12. "*Municipal corporation*" means an incorporated city.

13. "*Office*" means and includes any business location in this state of a financial institution at which is offered the services of accepting deposits, originating loans, and dispensing cash, by financial institution personnel in the office.

14. "*Off-line point-of-sale terminal*" means a satellite terminal that satisfies the requirements of section 527.4, subsection 3, paragraph "d" and is other than an on-line point-of-sale terminal.

15. "*On-line point-of-sale terminal*" means a satellite terminal that satisfies the requirements of section 527.4, subsection 3, paragraph "d" and is operated on an on-line real time basis.

16. "*On-line real time basis*" means the delivery or return of a message initiated at a satellite terminal through transmission of electronic impulses to or from a location remote from the location of the satellite terminal prior to completion of the transaction.

17. "*Personal terminal*" means and includes a satellite terminal located in a personal residence and a telephone, wherever located, operated by a customer of a financial institution for the purpose of initiating a transaction affecting a noncommercial account of the customer.

18. "*Premises*" means and includes only those locations where, by applicable law, financial institutions are authorized to maintain a principal place of business and other offices for the conduct of their respective businesses; provided that with respect to an industrial loan company, "*premises*" means only a location where business may be conducted under a single license issued to the industrial loan company.

19. "*Reciprocal basis*" means that a financial institution whose licensed or principal place of business is located in this state has the express authority under the laws of a state other than Iowa to conduct business under qualifications and conditions which are no more restrictive than those imposed by the laws of the other state on financial institutions whose licensed or principal place of business is located in the other state, as determined by the administrator, and the laws of Iowa are no more restrictive of financial institutions whose licensed or principal place of business is located in such other state than they are of financial institutions whose licensed or principal place of business is located in this state.

20. "*Satellite terminal*" means and includes any machine or device located off the premises of a financial institution, and any machine or device located on the premises of a financial institution only if the machine or device is available for use by customers of other financial institutions, whether attended or

unattended, by means of which the financial institution and its customers utilizing an access device may engage through either the immediate transmission of electronic impulses to or from the financial institution or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the financial institution, in transactions which affect a customer asset account and which otherwise are specifically permitted by applicable law. However, the term "*satellite terminal*" does not include any such machine or device, wherever located, if that machine or device is not generally accessible to persons other than employees of a financial institution or an affiliate of a financial institution.

91 Acts, ch 216, §1-3 SF 311
Subsections renumbered to alphabetize
Subsections 1, 9, and 20 amended
NEW subsections 6, 8, and 10
Subsection 11, paragraph a amended

527.3 Enforcement.

1. For purposes of this chapter the superintendent of banking only has the power to issue rules applicable to, to accept and approve or disapprove applications or informational statements from, to conduct hearings and revoke any approvals relating to, and to exercise all other supervisory authority created by this chapter with respect to banks; the superintendent of savings and loan associations only shall have and exercise such powers and authority with respect to savings and loan associations; the superintendent of credit unions only has such powers and authority with respect to credit unions; and the superintendent of banking or the superintendent's designee only has such powers and authority with respect to industrial loan companies.

2. The administrator shall have the authority to examine any person who operates a multiple use terminal, limited-function terminal, or other satellite terminal, and any other device or facility with which such terminal is interconnected, as to any transaction by, with, or involving a financial institution which affects a customer asset account. Information obtained in the course of such an examination shall not be disclosed, except as provided by law.

3. Nothing contained in this chapter shall authorize the administrator to regulate the conduct of business functions or to obtain access to any business records, data, or information of a person who operates a multiple use terminal, except those pertaining to a financial transaction engaged in through a satellite terminal, or as may otherwise be provided by law.

4. Nothing contained in this chapter shall be construed to prohibit or to authorize the administrator to prohibit an operator of a multiple use terminal, other than a financial institution, or an operator of any other device or facility with which such terminal is interconnected, other than a central routing unit or data processing center (as defined in section 527.2) from using those facilities to perform internal proprietary functions, including the extension of credit pursuant to an open end credit arrangement.

5. An administrator may conduct hearings and exercise any other appropriate authority conferred by this chapter regarding the operation or control of a satellite terminal upon the written request of a person, including but not limited to, a retailer, financial institution, or consumer.

6. The authority of an administrator pursuant to section 527.5, subsection 2, paragraph "a", to approve access cards issued by a financial institution for use as an access device includes the requirement that a registration statement shall be filed with the administrator and be maintained on a current basis by each financial institution issuing access cards within the state. The registration statement shall be in writing on a form prescribed by the administrator, and contain the name and address of the registrant, a depiction of both sides of the access card, and any other information the administrator deems relevant relating to the access card and transactions utilizing the access card which affect a customer asset account.

7. A financial institution shall not be required to join, be a member or shareholder of, or otherwise participate in, any corporation, association, partnership, cooperative, or other enterprise as a condition of the financial institution's utilization of any satellite terminal located within this state.

91 Acts, ch 92, §1 SF 494; 91 Acts, ch 216, §4, 5 SF 311
 Subsection 1 amended
 Subsection 2 amended
 NEW subsections 6 and 7

527.4 Establishment of satellite terminals — restrictions.

1. A satellite terminal shall not be established within this state except by a financial institution whose principal place of business is located in this state, one which has a business location licensed in this state under chapter 536A, or one which has an office located in this state and which meets the requirements of subsection 4.

2. A financial institution whose licensed or principal place of business is located in this state shall not establish a satellite terminal at any location outside of this state unless the other state provides for the establishment of satellite terminals by Iowa financial institutions on a reciprocal basis.

3. A financial institution whose licensed or principal place of business is located within this state may establish any number of satellite terminals in any of the following locations:

a. Within the boundaries of a municipal corporation if the principal place of business or an office of the financial institution is also located within the boundaries of the municipal corporation.

b. Within the boundaries of an urban complex composed of two or more Iowa municipal corporations each of which is contiguous to or corners upon at least one of the other municipal corporations within the urban complex if the principal place of business or an office of the financial institution is also located in the urban complex.

c. Within the Iowa county in which the financial institution has its principal place of business or an office.

d. At any location in this state off the premises of the financial institution if all of the following apply:

(1) The satellite terminal is not operated to accept deposits or to dispense scrip or other negotiable instruments.

(2) The satellite terminal is not operated to dispense cash except when operated by a person other than the customer initiating the transaction.

(3) The satellite terminal is utilized for the purpose of making payment to the provider of goods or services purchased or provided at the location of the satellite terminal.

A financial institution shall not establish a satellite terminal at any other location except pursuant to an agreement with a financial institution which is authorized by this subsection to establish a satellite terminal at that location and which will utilize the satellite terminal at that location. This subsection does not amend, modify, or supersede any provision of chapter 524 regulating the number or locations of bank offices of a state or national bank, or authorize the establishment by a financial institution of any offices or other facilities except satellite terminals at locations permitted by this subsection.

4. A financial institution whose licensed or principal place of business is not located in this state may establish, control, maintain, or operate any number of satellite terminals at the locations identified in subsection 3, paragraphs "a", "b", "c", and "d" if both of the following apply:

a. The other state provides for the establishment, control, maintenance, or operation of satellite terminals by a financial institution, whose licensed or principal place of business is located in this state, on a reciprocal basis.

b. All satellite terminals, wherever located, that are owned, controlled, maintained, or operated by the financial institution are available for use on a nondiscriminatory basis by any other financial institution which engages in electronic transactions in this state and by all customers who have minimum contact with this state and who have been designated by a financial institution using the satellite terminal and who have been provided with an access device, approved by the administrator, by which to engage in electronic transactions by means of the satellite terminal.

91 Acts, ch 216, §6 SF 311
 Subsection 3, paragraph d amended

527.5 Satellite terminal requirements.

A satellite terminal may be utilized by a financial institution to the extent permitted in this chapter only if the satellite terminal is utilized and maintained in compliance with the provisions of this chapter and only if all of the following are complied with:

1. A satellite terminal in this state may be estab-

lished by one or more financial institutions. The establishing financial institutions shall designate a single controlling financial institution which shall maintain the location, use, and operation of the satellite terminal, wherever located, in compliance with this chapter. The use and operation of a satellite terminal shall be governed by a written agreement between the controlling financial institution and the person controlling the physical location at which the satellite terminal is placed. The written agreement shall specify all of the terms and conditions, including any fees and charges, under which the satellite terminal is placed at that location. If the satellite terminal is a multiple use terminal, the written agreement shall specify, and may limit, the specific types of transactions incidental to the conduct of the business of a financial institution which may be engaged in through that terminal.

2. a. A satellite terminal shall be available for use on a nondiscriminatory basis by any other financial institution which has its principal place of business within this state, and by all customers who have been designated by a financial institution using the satellite terminal and who have been provided with an access device, approved by the administrator, by which to engage in electronic transactions by means of the satellite terminal.

b. For the purposes of complying with paragraph "a", an on-line point-of-sale terminal is not required to be available for use by customers of a financial institution by means of an access device by which an off-line point-of-sale terminal can be used to engage in electronic transactions.

c. All off-line point-of-sale terminals located at the retail location or retail locations within this state of a single retailer are exempt from paragraph "a" if electronic transactions can be initiated at each of such terminals only by an access device unique to the retailer.

d. Paragraph "a" applies to a financial institution whose licensed or principal place of business is located in a state other than Iowa if all satellite terminals owned, controlled, operated, or maintained by the financial institution, wherever located, are available on a reciprocal basis to any financial institution whose licensed or principal place of business is located in this state, and to all customers who have been designated by a financial institution using the satellite terminal and who have been provided with an access device.

3. An informational statement shall be filed and shall be maintained on a current basis with the administrator by the financial institution controlling a satellite terminal in this state, which sets forth all of the following:

a. The name and business address of the controlling financial institution.

b. The location of the satellite terminal.

c. A schedule of the charges which will be required to be paid by a financial institution utilizing the satellite terminal.

d. An agreement with the administrator that the

financial institution controlling the satellite terminal will maintain that satellite terminal in compliance with this chapter.

The informational statement shall be accompanied by a copy of the written agreement required by subsection 1. The informational statement also shall be accompanied by a statement or copy of any agreement, whether oral or in writing, between the controlling financial institution and a data processing center or a central routing unit, unless operated by or solely on behalf of the controlling financial institution, by which transactions originating at that terminal will be received.

4. A satellite terminal in this state shall not be attended or operated at any time by an employee of a financial institution or an affiliate of a financial institution, except for the purpose of instructing customers, on a temporary basis, in the use of the satellite terminal, for the purpose of testing the terminal, or for the purpose of transacting business on the employee's own behalf.

5. A satellite terminal in this state shall bear a sign or label identifying each type of financial institution utilizing the terminal. A satellite terminal location in this state shall not be used to advertise individual financial institutions or a group of financial institutions. However, a satellite terminal shall bear a sign or label no larger than three inches by two inches identifying the name, address, and telephone number of the owner of the satellite terminal. The administrator may authorize methods of identification the administrator deems necessary to enable the general public to determine the accessibility of a satellite terminal.

6. The charges required to be paid by any financial institution which utilizes the satellite terminal for transactions involving an access device shall not exceed a pro rata portion of the costs, determined in accordance with generally accepted accounting principles, of establishing, operating and maintaining the satellite terminal, plus a reasonable return on these costs to the owner of the satellite terminal.

7. If the administrator finds grounds, under any applicable law or rule, for denying establishment of a satellite terminal the administrator shall notify the person filing the informational statement or an amendment thereto, within thirty days of the filing thereof, of the existence of such grounds. If such notification is not given by the administrator, the administrator shall be considered to have expressly approved the establishment and operation of the satellite terminal as described in the informational statement or amendment and according to the agreements attached thereto, and operation of the satellite terminal in accordance therewith may commence on or after the thirtieth day following such filing. However, this subsection shall not be construed to prohibit the administrator from enforcing the provisions of this chapter, nor shall it be construed to constitute a waiver of any prohibition, limitation or obligation imposed by this chapter.

8. a. A satellite terminal in this state shall not be

operated in a manner to permit a person to deposit funds into a demand deposit account, savings account, share account, or any other account representing a liability of a financial institution, if the business location of the financial institution where the original records pertaining to the person's account are maintained is located outside of this state.

b. Paragraph "a" of this subsection does not apply to a corporation licensed under chapter 536A. A satellite terminal shall not be operated in any manner to permit a person to deposit funds into an account representing a liability of a corporation licensed under chapter 536A, if the business location of the corporation where the original records pertaining to the person's account are maintained is located outside of this state.

9. a. Satellite terminals located in this state shall be directly connected to either of the following:

(1) A central routing unit approved pursuant to this chapter.

(2) A data processing center which is directly connected to a central routing unit approved pursuant to this chapter.

b. If a data processing center which is directly connected to a satellite terminal located in this state does not authorize or reject a transaction originated at that terminal, the transaction shall be immediately transmitted by the data processing center to a central routing unit approved pursuant to this chapter, unless one of the following applies:

(1) The transaction is not authorized because of a mechanical failure of the data processing center or satellite terminal.

(2) The transaction does not affect a customer asset account held by a financial institution.

c. This subsection does not limit the authority of a data processing center to authorize or reject transactions requested by customers of a financial institution pursuant to an agreement whereby the data processing center authorizes or rejects requested transactions on behalf of the financial institution and provides to the financial institution, on a batch basis and not on an on-line real time basis, information concerning authorized or rejected transactions of customers of the financial institution.

10. A personal terminal may be utilized by a financial institution to the extent permitted by this chapter if the use and operation of the personal terminal is governed by a written agreement between the controlling financial institution and its customer and if the personal terminal is utilized and maintained in compliance with subsection 9 and all other applicable sections of this chapter. A telephone located at other than a personal residence and used primarily as a personal terminal must be utilized and maintained in compliance with this section.

11. Any person, as defined in section 4.1, subsection 13, establishing a limited-function terminal within this state, except for a multiple use terminal, which is utilized to initiate transactions affecting a customer asset account shall file with the administrator and shall maintain on a current basis a registra-

tion statement on a form prescribed by the administrator containing the name and address of the registrant, the location of the limited-function terminal, and any other information the administrator deems relevant. All limited-function terminals established in this state prior to July 1, 1991, shall be registered in a similar manner by the establishing person no later than July 1, 1992.

12. If at any time, a limited-function terminal is upgraded, altered, or modified to be operated in a manner to accept the use of an electronic personal identifier or to distinguish between transactions which affect customer asset accounts and transactions which do not affect customer asset accounts, all requirements of a satellite terminal in this chapter apply. A financial institution not eligible to establish satellite terminals within this state, which has established a limited-function terminal which is subsequently upgraded, altered, or modified as contemplated in this subsection, shall enter into an agreement with a financial institution which is authorized to establish a satellite terminal within this state to comply with the requirements of section 527.4 and this subsection.

13. Effective July 1, 1993, any transaction engaged in with a retailer through a satellite terminal located in this state by means of an access device which results in a debit to a customer asset account shall be cleared and paid at par to the retailer during the settlement of such transaction to the retailer. Processing fees and charges for such transactions to the retailer shall not be based on a percentage of the amount of the transaction. All accounting documents reflecting such fees and charges shall separately identify transactions which have resulted in a debit to a customer asset account and the charges imposed. The provisions of this subsection shall apply to all satellite terminals, including limited-function terminals and multiple use terminals.

91 Acts, ch 216 §7 11 SF 311
 Subsection 2, paragraph b stricken and former paragraphs c, d, and e relettered as b, c, and d
 Subsections 6 and 8 amended
 Subsection 9, paragraph b, subparagraph (2) amended
 NEW subsections 11, 12 and 13

527.7 Records maintained.

All transactions engaged in through a satellite terminal shall be recorded in a form from which it will be possible to produce a humanly readable record of any transaction, and these recordings shall be retained by the utilizing financial institutions for the periods required by law.

The machine receipt provided to a satellite account transaction card user by a satellite terminal shall be admissible as evidence in any legal action or proceeding and shall constitute prima-facie proof of the transaction evidence by that receipt.

A financial institution shall provide each of its satellite account holders with a periodic account statement that shall contain a brief description of all satellite terminal transactions sufficient to enable the account holder to identify any transaction and to re-

late it to machine receipts provided by satellite terminals.

When a periodic account statement includes both satellite terminal transactions and other nonsatellite terminal transactions, all satellite terminal transactions shall be indicated as such, and shall be accompanied by the description required by this subsection.

The administrator may provide by rule for the recording and maintenance, by any financial institution utilizing a satellite terminal, of amounts involved in a transaction engaged in through the satellite terminal which are of a known tax consequence to the customer initiating the transaction. For the purpose of this paragraph "*known tax consequences*" means and includes but shall not be limited to the following:

1. An amount directly or indirectly received from a customer and applied to a loan account of the customer which represents interest paid by the customer to the financial institution.
2. In any transaction where the total amount involved is deducted from funds in a customer's account and is simultaneously paid either directly or indirectly by the financial institution to the account of a third party, any portion of the transaction amount which represents a sales or other tax imposed upon or included within the transaction and collected by that third party from the customer, or any portion of the transaction amount which represents interest paid to the third party by the customer.
3. Any other transaction which the administrator determines to have direct tax consequences to the customer. The administrator also may provide for the periodic distribution to customers of summaries of transactions having known tax consequences.

91 Acts, ch 216, §12 SF 311
Subsection 2 amended

527.8A Exemptions.

Transactions initiated at a satellite terminal which do not involve the use of an access device to directly or indirectly affect a customer asset account are not governed by this chapter.

91 Acts, ch 216, §13 SF 311
NEW section

527.9 Central routing units.

1. A central routing unit shall not be operated in this state unless written approval for that operation has been obtained from the administrator.

2. A person desiring to operate a central routing unit shall submit to the administrator an application which shall contain all of the following information:

- a. The name and business address of the owner of the proposed unit.
- b. The name and business address of each data processing center and other central routing unit with which the proposed central routing unit will have direct electronic communication.
- c. The location of the proposed central routing unit.

d. A schedule of the charges which will be required to be paid to that applicant by each financial institution which utilizes the proposed central routing unit.

The application shall be accompanied by all agreements between the proposed central routing unit and all data processing centers and other central routing units respecting the transmission of transaction data; and a copy of any agreement between the proposed central routing unit and any financial institution establishing a satellite terminal unless that agreement theretofore has been filed with the administrator pursuant to section 527.5.

e. An agreement by the applicant that the proposed central routing unit will be capable of accepting and routing, and will be operated to accept and route, transmissions of data originating at any satellite terminal located in this state, except limited-function terminals, whether receiving from that terminal or from a data processing center or other central routing unit.

f. A representation and undertaking that the proposed central routing unit is directly connected to every data processing center that is directly connected to a satellite terminal located in this state, and that the proposed central routing unit will provide for direct connection in the future with any data processing center that becomes directly connected to a satellite terminal located in this state. This representation and undertaking is not required of a central routing unit with respect to limited-function terminals.

3. The administrator shall approve or disapprove an application for operation of a central routing unit within sixty days after receipt.

4. A central routing unit operating under the approval of the administrator shall be subject to examination by the administrator for the purpose of determining compliance with this chapter.

5. a. Effective July 1, 1987, a person owning or operating a central routing unit authorized under this section shall include public representation on any board setting policy for the central routing unit. Four or five public members shall be appointed to the board in the following manner:

(1) Two members shall be appointed by the superintendent of banking.

(2) One member shall be appointed by the superintendent of credit unions.

(3) One member shall be appointed by the superintendent of savings and loan associations.

(4) If an industrial loan company is connected to the central routing unit, one member shall be appointed by the superintendent of banking.

b. The superintendent of banking, superintendent of credit unions, and superintendent of savings and loan associations shall form a committee to set, in conjunction with the entity owning or operating the central routing unit, the term of office, the rate of compensation, and the rate of reimbursement for each public member. However, the public members shall be entitled to reasonable compensation and reimbursement from the board.

c. Each public member is entitled to all the rights of participation and voting as any other member of the board. The public members are to represent the interest of consumers and the business and agricultural communities in establishing policies for the central routing unit.

d. It is the intention of the general assembly that the ratio of public members to the overall membership of the board shall not be less than one public member for each seven members of the board. If the number of members on the board is increased, then the number of members appointed pursuant to para-

graph "a" shall be increased to maintain the minimum ratio. In this event, a committee composed of the superintendent of banking, the superintendent of credit unions, and the superintendent of savings and loan associations shall appoint additional public members in order to maintain the minimum ratio.

e. An individual shall not be appointed as a public member pursuant to this subsection if the individual is a director of a financial institution or is directly employed by a financial institution doing business in this state.

91 Acts, ch 216, §14 SF 311
Subsection 2, paragraphs e and f amended

CHAPTER 533

CREDIT UNIONS

533.26 Preservation of records.

The superintendent shall prescribe by rule the period of preservation of records or files for credit unions. A copy of an original may be kept in lieu of any original records. For purposes of this section, a copy includes any duplicate, rerecording or reproduction of an original record from any photograph, photostat, microfilm, microcard, miniature or microphotograph, computer printout, electronically stored data or image, or other process which accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or reproduction of the original record.

91 Acts, ch 95, §2 HF 619
Section amended

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 superintendent, provided that each credit union shall acquire deposit insurance from the appropriate agency of the federal government.

The superintendent 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.

91 Acts, ch 16, §2 SF 87
1991 amendment to unnumbered paragraph 1 effective July 1, 1992, 91 Acts, ch 16, §4 SF 87
Unnumbered paragraph 1 amended

533.67 Expenses of the credit union division — fees.

All expenses required in the discharge of the duties and responsibilities imposed upon the credit union division, the superintendent, and the credit union review board by the laws of this state shall be paid from fees provided by the laws of this state and appropriated by the general assembly from the fund established in this section. All of these fees are payable to the superintendent. The superintendent shall pay all the fees and other money received by the superintendent to the treasurer of state within the time required by section 12.10. The treasurer of state shall hold these funds in a credit union revolving fund that shall be established in the name of the superintendent for the payment of the expenses of the division. This fund is subject at all times to the warrant of the department of revenue and finance, drawn upon written requisition of the superintendent or the superintendent's designated representative, for the payment of all salaries and other expenses necessary to carry out the duties of the division. The superintendent may keep on hand with the treasurer of state funds in excess of the current needs of the division to the extent approved by the credit union review board. No transfers shall be made from the general fund of the state or any other fund for the payment of the expenses of the division. No part of the funds held by the treasurer of state for the account of the superintendent shall be transferred to the general fund of the state or any other fund, except as follows: Thirty thousand dollars each fiscal year shall be transferred to the general fund of the state. The amount shall be considered as one of the costs of the division. The funds held by the treasurer of state for the account of the superintendent shall be invested by the treasurer of state and the income derived from

these investments shall be credited to the general fund of the state.

The authority to modify allotments provided in section 8.31 shall not apply to funds appropriated from the fund created in this section and held for the superintendent.

The superintendent shall account for receipts and disbursements according to the separate duties imposed upon the superintendent by the laws of this state and each separate duty shall be fiscally self-sustaining.

The credit union division shall transfer at the beginning of each fiscal quarter from appropriated trust funds to the administrative services trust fund an amount which represents the division's share of the estimated cost of consolidated administrative services within the department of commerce, such share to be in the same proportion as established by agreement in the fiscal year beginning July 1, 1986, and ending June 30, 1987, with the first quarterly transfer to occur between July 1 and July 31 annually. At the close of the fiscal year, actual versus estimated expenditures shall be reconciled and any overpayment shall be returned to the division or any underpayment shall be paid by the division.

The credit union division may expend additional funds, including funds for additional personnel, if those additional expenditures are actual expenses which exceed the funds budgeted for credit union examinations and directly result from examinations of credit unions. Before the division expends or encumbers an amount in excess of the funds budgeted for examinations, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the director of

the department of management shall determine that the examination expenses exceed the funds budgeted by the general assembly to the division and that the division does not have other funds from which examination expenses can be paid. Upon approval of the director of the department of management, the division may expend and encumber funds for excess examination expenses. The amounts necessary to fund the excess examination expenses shall be collected from those credit unions being regulated which caused the excess expenditures, and the collections shall be treated as repayment receipts as defined in section 8.2, subsection 5.

Notwithstanding the provisions of this section directing that fees and other moneys received be deposited into the credit union revolving fund and not be transferred to the general fund of the state, and directing that expenses be paid from the credit union revolving fund, for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, all fees and other moneys collected shall be deposited into the general fund of the state and expenses required to be paid under this section shall be paid from funds appropriated for those purposes.

The division may accept reimbursement of expenses related to the examination of a credit union from the national credit union administration or any other share guarantor or insurance plan authorized by this chapter.

91 Acts, ch 260, §1244 HF 173

Restrictions on use of moneys deposited in state general fund, 91 Acts, ch 263, §38 SF 209

Availability of general fund for payment of expenses, see 91 Acts, ch 264, §905 SF 532

See also §546 11

NEW unnumbered paragraphs 6 and 7

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 savings association insurance fund of the federal deposit insurance corporation or another insurance plan approved by the superintendent.

13 "*Insured mortgage*" is a mortgage covered in part by insurance, which insurance has been formally submitted to and approved by the superintendent 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 "*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.

24 "*Savings liability*" shall mean the aggregate amount of share accounts of members, including dividends credited to such accounts, less redemptions and withdrawals.

25 "*Service corporation*" means a corporation which is organized under chapter 490 and which is owned in any part by one or more state associations or federal associations or a combination of these.

26 "*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.

27 "*Stock association*" means a corporation owned by shareholders.

28 "*Superintendent*" means the superintendent of savings and loan associations who is the director of the department of commerce.

29 "*Supervised financial organization*" as de-

financed and used in the Iowa consumer credit code includes a person organized pursuant to this chapter.

30. “*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.

31. “*Withdrawal value*” shall mean the amount deducted to a share account of a member, less lawful deductions therefrom, as shown by the records of the association.

91 Acts, ch 92, §2, 3 SF 494
Subsections 12 and 28 amended

534.103 General powers.

Every such association shall have the following general powers:

1. *General corporate power.* To sue and be sued, complain and defend in any court of law or equity; to purchase, acquire, hold, and convey real and personal estate consistent with its objects and powers; to mortgage, pledge, or lease any real or personal estate owned by the association and to authorize a pledgee to repledge the property; to take property by gift, devise, or bequest; to have a corporate seal, which may be affixed by imprint, facsimile, or otherwise; to appoint officers, agents, and employees as its business requires and allow them suitable compensation; to provide for life, health, and casualty insurance for its officers and employees and to adopt and operate reasonable bonus plans and retirement benefits for the officers and employees to enter into payroll savings plans; to adopt and amend bylaws; to insure its accounts with the savings association insurance fund of the federal deposit insurance corporation and qualify as a member of a federal home loan bank; to become a member of, deal with, or make contributions to any organization to the extent that the organization assists in furthering or facilitating the association’s purposes or powers and to comply with conditions of membership; to accept savings as provided in this chapter together with other powers otherwise expressly provided for in this chapter, together with implied powers as reasonably necessary for the purpose of carrying out the express powers granted in this chapter.

2. *Fiscal agent.* Any such association which is a member of a federal home loan bank shall have power to act as fiscal agent of the United States and, when designated for the purpose by the secretary of the treasury, it shall perform under such regulations as the secretary may prescribe all such reasonable duties as fiscal agent of the United States as the secretary may require, and shall have power to act as agent for any United States government instrumentality. An association may also handle travelers checks and money orders.

3. *Lock boxes.* Any association may own, rent to its members, lock boxes for storage or safekeeping of securities and valuables.

4. *Power to borrow.* Except as provided by its articles of incorporation, an association may borrow

not more than an aggregate amount equal to its savings liability on the date of borrowing. A subsequent reduction of savings liability shall not affect in any way outstanding obligations for borrowed money. All loans and advances may be secured by property of the association. In addition to the above unsecured or secured borrowing, an association may issue notes, bonds, debentures and other obligations or securities approved by the superintendent, and if authorized by the regulations of the federal home loan bank. However, the obligations and securities are subject to the priority of the rights of the owners of the savings and deposits of the association.

5. *Service corporations.* Any association may organize and own, alone or with any other similar corporation, a service corporation for the mutual good of the associations. The superintendent shall have the right to examine service corporations.

6. *Limited trust powers.* An association incorporated under this chapter may act as trustee for trusts which are created or organized in the United States, and which form part of a stock bonus, pension, or profit sharing plan which qualifies for special tax treatment under section 401(d) or subsection (a) of section 408 of the Internal Revenue Code, as amended, or as trustee with no active fiduciary duties, if the funds of the trust are invested only in savings accounts or deposits in the association or in obligations or securities issued by the association. All funds held in such a fiduciary capacity by an association may be commingled for appropriate purposes of investment, but individual records shall be kept by the fiduciary for each participant and shall show in proper detail all transactions engaged in under the authority of this subsection.

The superintendent is authorized to grant by special permit to an association the right to act as trustee, executor, administrator, guardian, or in any other fiduciary capacity. However, this authority is available only for periods of time when federally chartered savings and loan associations operating in this state are granted similar authority, and the state authorization is subject to the rights and limitations established in rules adopted by the superintendent, which shall be consistent with the rights and limitations for federally chartered associations engaged in this type of activity.

7. *Tax and loan accounts.* To act as depository for receipt of payments of federal or state taxes and loan funds from persons other than the state or subdivisions, agencies or instrumentalities of the state, and satisfy any federal or state statutory or regulatory requirements in connection therewith, including pledging of assets as collateral, payment of earnings at prescribed rates and, notwithstanding any other provision of this chapter, issuing such accounts subject to the right of immediate withdrawal.

8. *Leasing of personal property.* To acquire, upon the specific request of and for the use of a customer, and lease, personal property pursuant to a binding arrangement for the leasing of the property to the customer upon terms requiring payment to

the association, during the minimum period of the lease, of rentals which in the aggregate, when added to the estimated tax benefits to the association resulting from the ownership of the leased property plus the estimated residual market value of the leased property at the expiration of the initial term of the lease, will be at least equal to the total expenditures by the association for, and in connection with, the acquisition, ownership, maintenance, and protection of the property. A lease made under authority of this section shall have the prior approval of the superintendent or be made pursuant to personal property lease guidelines approved by the superintendent for use by the lessor association or pursuant to a personal property lease guideline rule of general applicability for use by all associations.

9. *Electronic transactions.* 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 association or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the association. Subject to the provisions of chapter 527, an association may utilize, establish or operate, alone or with one or more other associations, banks incorporated under the provisions of chapter 524 or federal law, credit unions incorporated under the provisions of chapter 533 or federal law, corporations licensed under chapter 536A, or third parties, the satellite terminals permitted under chapter 527, by means of which the association 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 association or other 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 association.

10. *Automatic authorization.* Any association may have the right to participate in any new or additional powers or activities hereafter granted to such association under this chapter immediately upon the effective date of such additional authority, if authorized by the articles of incorporation of such association.

91 Acts, ch 92, §4 SF 494
Subsection 1 amended

534.106 Records.

1. Complete and adequate records of all accounts and of all minutes of proceedings of the members, directors and executive committee shall be maintained at all times at the office of the association.

2. Every association shall maintain membership records, which shall show the name and address of the member, whether the member is a share account holder, or a borrower, or a share account holder and

borrower, and the date of membership thereof. In the case of account holding members, the association shall obtain a card containing the signature of the owner of such account or the owner's duly authorized representative and shall preserve such signature card in the records of the association.

3. Associations shall not be required to preserve or keep their records or files for a longer period than eleven years next after the first day of January of the year following the time of the making or filing of such records or files; provided, however, that ledger sheets showing unpaid accounts in favor of members of such savings and loan association shall not be destroyed.

4. No liability shall accrue against any association, destroying any such records after the expiration of the time provided in subsection 3, and in any cause or proceedings in which any such records or files may be called in question or be demanded of the association or any officer or employee thereof, a showing that such records and files have been destroyed in accordance with the terms of this chapter shall be a sufficient excuse for the failure to produce them.

5. All causes of action against an association based upon a claim or claims inconsistent with an entry or entries in any savings and loan association record or ledger, made in the regular course of business, shall be deemed to have accrued, and shall accrue, one year after the date of such entry or entries; and no action founded upon such a cause may be brought after the expiration of ten years from the date of such accrual.

6. The provisions of this chapter, so far as applicable, shall apply to the records of federal savings and loan associations.

7. A copy of an original may be kept by an association in lieu of any original records. For purposes of this section, a copy includes any duplicate, rerecording or reproduction of an original record from any photograph, photostat, microfilm, microcard, miniature or microphotograph, computer printout, electronically stored data or image, or other process which accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or reproduction of the original record. Any such copy or reproduction is deemed to be an original record for all purposes and shall be treated as an original record in all courts or administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification or certified copy of any such copy or reproduction reproduced from a film record shall, for all purposes, be deemed a facsimile, exemplification or certified copy of the original.

91 Acts, ch 95, §3 HF 619
Subsection 7 amended

534.111 Rights of federal associations — reciprocity.

Every federal savings and loan association incorporated under the Home Owners' Loan Act of 1933,

12 U S C § 1461-1468, as amended, and the holders of share accounts issued by any such association have all the rights, powers, and privileges and are entitled to the same exemptions and immunities, as savings and loan associations organized under the laws of this state and members thereof are entitled

Every association organized under this chapter has all the rights, powers, and privileges not in conflict with the laws of this state, which are conferred upon federal savings and loan associations by the Home Owners' Loan Act of 1933, 12 U S C § 1464, and conferred by regulations adopted by the federal home loan bank board and the federal office of thrift supervision

91 Acts ch 92 §5 SF 494
Section amended

534.112 Regulatory capital.

An association shall maintain regulatory capital in the amount required by regulations of the federal office of thrift supervision. For the purpose of this section, "regulatory capital" means the sum of all reserve accounts (except specific reserves established to offset actual or anticipated losses), undivided profits, surplus, capital stock, and any other non-withdrawable accounts

91 Acts ch 92 §6 SF 494
Section amended

534.205 Required real estate loan practices.

Real estate loans must meet the following requirements

1 *Appraisal* A qualified person shall conduct an inspection of the property securing the loan and submit a signed appraisal of the market value of that property. However, an appraisal is only required if the loan is secured by a first lien. An appraisal must conform to the standards promulgated by the federal office of thrift supervision as mandated by Title XI of the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989

2 *Note* A note shall be signed by the borrower and delivered to the association

3 *Lien* The loan shall be secured by a mortgage, deed of trust or similar instrument constituting a lien or claim upon real estate. Such instrument shall provide for the full protection of the association in the event of default

4 *Payment terms* The loan shall provide for repayment upon those terms set forth in the note signed by the borrower

5 *Loan settlement statement* The borrower shall receive a statement setting forth in detail the charges and fees the borrower has paid or is obligated to pay in connection with the loan

6 *Balloon payments* An association shall mail to the borrower an offer to refinance a balloon payment under a loan at least twenty days before the balloon payment date if at that time no payments under the loan are delinquent. The offer shall be at an interest rate no greater than one percent per annum above the index rate and with monthly pay-

ments no greater than those necessary to fully amortize the amount of the balloon payment plus interest over a term which, when added together with the term representing the number of monthly payments made before the most recent notice to refinance, is not less than the original loan term. The association must offer to the borrower a term of at least one year before the next balloon payment. If the balloon payment is due one month after the preceding monthly payment date, the association may require the borrower to make a payment equal to the preceding monthly payment on the balloon payment date if the first payment under the note to refinance the balloon note is one month after the balloon payment date. The association may offer repayment plans to refinance a balloon payment in addition to the plan required by this subsection. For purposes of this subsection, "loan" means the same as defined in section 535 8, subsection 1, "balloon payment" means a payment which is more than three times as big as the mean average of the payments which precede it, and "index rate" means the national average mortgage contract rate for major lenders on the purchase of previously occupied homes which is most recently published in final form by the federal home loan bank board not more than four months before the date on which the balloon payment is due, or, alternatively, a rate based upon any other independently verifiable index approved by the superintendent

91 Acts ch 92 §7 SF 494
Subsection 1 amended

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, obligations, or other instruments of the federal national mortgage association, the government national mortgage association, the federal home loan mortgage corporation, or any successor

d 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

e 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

f Savings accounts of any savings and loan association the deposits of which are insured by the federal deposit insurance corporation

g 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

h Bonds or bond instruments secured by an interest in real estate

i Capital stock, obligations, or other securities of service corporations, however, the aggregate investment in service corporations shall not exceed ten percent of the assets of the association

j 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, however, the association's total investment in the shares of any one such company shall not exceed five percent of the association's assets without prior notification of the superintendent, who may prohibit exceeding the five percent limit by order

k 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 "l" 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

l 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 admin-

istration 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

m 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 "i"

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 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 "i"

o Commercial paper and corporate debt securities with investment characteristics as defined by rules adopted by the superintendent

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 sav-

ings liability, unless the superintendent shall have issued written approval

3 *Investment in EFT organizations* Subject to the prior approval of the superintendent, 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 superintendent in unencumbered real estate for use wholly or partly as its business office

91 Acts ch 92 §8 9 SF 494

Subsection 1 paragraph c stricken and paragraphs d through p relettered as c through o

Subsection 1 paragraph f amended

534.214 Investment in and by banks.

1 *Investment in banks* A holding company, association, or service corporation may invest in the capital stock, obligations, or other securities of a bank with the prior approval of the superintendent of savings and loan associations

2 *Investment by banks* Notwithstanding sections 524 802 and 524 901, subsection 3, a bank holding company, bank, or bank service corporation may, with the prior approval of the superintendent of banking, invest in the capital stock, obligations or other securities of a state association

The superintendent of banking shall not approve an investment under this subsection if upon making the investment the entity making the investment directly or indirectly would own or control more than twenty-five percent of the voting shares of a savings and loan association or would have the power to control in any manner the election of a majority of the directors of a savings and loan association, unless the superintendent of banking first determines either that the association in which the investment is to be made has only those office locations which a bank would be authorized under section 524 1202 to apply for and have approved on the effective date of the proposed investment, or that all nonconforming office locations were in existence and operating on July 1, 1982 If such an investment is approved by the superintendent of banking, the association so owned or controlled shall not subsequently establish

any additional office locations except one which a bank would be authorized under section 524 1202 to apply for and have approved on the date which the proposed office location would commence operations

3 *Contingencies* An association or service corporation may make an investment under subsection 1 only if at the time of the investment either an insured bank or a bank service corporation owned by one or more insured banks would be permitted to make an investment under substantially the same circumstances in an insured state association under all applicable laws and regulations of the United States A bank or bank service corporation may make an investment under subsection 2 only if at the time of the investment either an insured state association or a service corporation owned by one or more insured associations would be permitted to make an investment under substantially the same circumstances in an insured bank under all applicable laws and regulations of the United States The ability of an organization to merge with another organization is not relevant in determining whether an organization is permitted to invest in another organization

4 *Bank as holding company* No bank shall directly or indirectly acquire ownership or control of more than twenty-five percent of the voting shares of any savings and loan association, or the power to control in any manner the election of a majority of the directors of any savings and loan association, if upon such acquisition the associations so owned or controlled by the bank would have, in the aggregate, more than eight percent of the total deposits, both time and demand, of all associations in this state, as determined by the superintendent of banking on the basis of the most recent reports of the associations in the state to their supervisory authorities which are available at the time of the acquisition

5 *Definitions* For purposes of this section an "insured bank" is a bank whose deposits are insured in part by the bank insurance fund of the federal deposit insurance corporation, a "bank service corporation" is as defined by, and in accordance with, the laws of the United States, and the "superintendent of banking" is the person appointed pursuant to section 524 201

6 *Findings required* The superintendent of savings and loan associations shall not grant an approval under subsection 1, and the superintendent of banking shall not grant an approval under subsection 2 except after making one of the two following findings

a Based upon a preponderance of the evidence presented, the proposed investment will not have the immediate effect of significantly reducing competition between depository financial institutions located in the same community as the institution whose shares would be acquired

b Based upon a preponderance of the evidence presented, the proposed investment would have the anticompetitive effect specified in paragraph "a" of this subsection, but that other factors, to be specifi-

cally cited, outweigh the anticompetitive effect so that there would be a net public benefit as a result of the investment.

7. *Competition preserved.* The subsequent liquidation of a bank or state association whose shares are acquired under this section shall not prevent the subsequent incorporation of another bank in the same community, and the superintendent of banking shall not find the liquidation to be grounds for disapproving the incorporation of another bank in the same community under section 524.305, and shall not prevent the subsequent incorporation of another association in the same community, and the superintendent of savings and loan associations shall not find the liquidation to be grounds for disapproving the incorporation of another association in the same community under this chapter.

91 Acts, ch 92, §10 SF 494
Subsection 5 amended

534.301 Savings account authority.

1. *Deposit accounts.* A stock association or mutual association may receive money for deposit.

2. *Share accounts.* A mutual association may receive money to be held in withdrawable share accounts and time share accounts.

3. *NOW accounts.* An association may offer savings accounts under which the owner of the account may order or authorize the withdrawal of part or all of the savings account by means of a negotiable or nonnegotiable draft or similar instrument payable to the owner or to third parties or their order.

4. *Terms and conditions.* An association shall establish the interest rate, method of computing interest, service charges, and other terms and conditions of each type of savings account it will accept. These terms and conditions shall be consistent with this chapter, and shall be applied equally to all similar accounts. An association shall furnish a copy of the terms and conditions of a savings account upon request. An association shall give reasonable notice of any change in the terms and conditions to the owners of each type of savings account which is changed, provided that notice of changes in interest rates or methods of computing interest may be provided by posting a conspicuous notice of the change in each of the association's offices. The terms and conditions of an account established for a specified time period cannot be changed during that time period except with mutual consent or according to the original terms.

5. *Inducements.* An association may give inducements for the opening of a savings account or the making of additions to a savings account.

6. *Operating under federal rules as to deposits and interest.* A savings and loan association operating under this chapter may operate in a manner similar to federally chartered savings and loan associations regarding the use of the terms "deposit" and "interest" and with such other powers as have been authorized to federally chartered associations under the Homeowners' Loan Act of 1933, 12 U.S.C.

§ 1464, and as permitted under the rules and regulations of the federal home loan bank system and the federal office of thrift supervision, to the extent that similar rules and regulations have been adopted by the superintendent and have been filed with the secretary of state. This subsection does not diminish or restrict the powers otherwise granted to such association by the laws of Iowa.

The adoption and filing of such rules or regulations by the superintendent shall not diminish or restrict the rights of associations which do not make the above determination.

7. *Limitation on members' savings.* Associations having assets of five hundred thousand dollars or less shall not accept from any one member savings liability of more than ten thousand dollars. Associations having assets in excess of five hundred thousand dollars shall not accept from any one member savings liability in excess of ten percent of its assets. These limitations shall not apply to share accounts issued to the United States government, or to any other federal government agency or instrumentality.

91 Acts, ch 92, §11 SF 494
Subsection 6 amended

534.309 Adverse claims to deposits.

1. An association is not required, in the absence of a court order or indemnity required by this section, to recognize any claim to, or any claim of authority to exercise control over, a deposit account made by a person or persons other than:

a. The customer in whose name the account is held by the association.

b. An individual or group of individuals who are authorized to draw on or control the account pursuant to certified corporate resolution or other written arrangement with the customer, currently on file with the association, which has not been revoked by valid corporate action in the case of a corporation, or by a valid agreement or other valid action appropriate for the form of legal organization of any other customer, of which the association has received notice and which is not the subject of a dispute known to the association as to its original validity. The deposit account records of an association are presumptive evidence as to the identity of the customer on whose behalf the money is held.

2. To require an association to recognize an adverse claim to, or adverse claim of authority to control, a deposit account, whoever makes the claim must do either of the following:

a. Obtain and serve on the association an appropriate court order or judicial process directed to the association, restraining any action with respect to the account until further order of such court or instructing the association to pay the balance of the account, in whole or in part, as provided in the order or process.

b. Deliver to the association a bond, in form and amount and with sureties satisfactory to the association, indemnifying the association against any liability, loss, or expense which the association might

incur because of its recognition of the adverse claim or because of its refusal by reason of such claim to honor any check or other order of anyone described in subsection 1, paragraphs "a" and "b".

91 Acts, ch 85, §1 HF 626
NEW section

534.401 Division of savings and loan associations.

1. *Division of savings and loan associations created — superintendent.* A savings and loan association division is created within the department of commerce. The superintendent of savings and loan associations is the chief administrative officer of the division.

2. *General supervisory power.* The superintendent has general supervision over all supervised organizations.

The superintendent may appoint examiners and assistants necessary to properly execute the duties of the office.

Before entering upon their duties, the superintendent and each examiner appointed by the superintendent shall take an oath of office and shall each give bond to the state, signed by a responsible surety company, in the penal sum of two thousand dollars, conditioned upon faithful and impartial discharge of the person's duty and on proper accounting for all funds and other valuables which may come into the person's hands. The bonds shall be approved by and filed with the auditor of state, together with oaths of office of the officers.

The superintendent may adopt further rules deemed necessary to enable savings and loan associations to properly carry on the activities authorized under this chapter.

3. *Duties.* The superintendent shall, at least once each year, cause examination and audit to be made of the affairs of every association subject to this chapter. If an association is insured under Title IV of the National Housing Act, 12 U.S.C. ch. 13, the superintendent may, in lieu of examination and audit, accept an examination or audit made by the federal office of thrift supervision. An association may, in lieu of examination and audit by the superintendent, at the option of the superintendent be audited by a certified public accountant, or by a public accountant qualified and licensed to practice accountancy under the Code of Iowa. At least two copies of each examination or audit report, signed and verified by the accountant making it, shall promptly be filed with the superintendent. When, in the judgment of the superintendent, the condition of an association renders it necessary or expedient to make an extra examination or audit or to devote extraordinary attention to its affairs, the superintendent shall cause such work to be done. A copy of every examination or audit report shall be furnished to the association examined, exclusive of confidential comments made by the examiner, and a copy of every report and comments and any other information pertaining to an association may be furnished to the

federal home loan bank board, federal home loan bank, and federal office of thrift supervision. A copy of an examination or audit report shall be presented to the board of directors at its next regular or special meeting, their action on it shall be recorded in the minutes, and two certified copies of the minutes shall be transmitted to the superintendent.

4. *Superintendent's annual report.* The superintendent, as of December 31 of each year, shall prepare and publish a report showing in general terms the condition of all savings and loan associations doing business in this state, and containing other general information as in the superintendent's judgment seems desirable. The reports shall also list the names of all examiners and other assistants appointed by the superintendent, together with their respective salaries and expenses, shall list all receipts from savings and loan associations, and shall show all expenditures made on account of the supervision and examination of the associations.

91 Acts, ch 92, §12 SF 494
Section amended

534.403 Examinations.

1. *Superintendent's authority — examinations.* The superintendent and examiners shall have full access to all books and papers of an association which relate to its business, and to books, records, and papers kept by an officer, director, agent, or employee relating to, or upon which any record of its business is kept, and may summon witnesses and administer oaths or affirmations in the examination of the directors, officers, agents, or employees of an association, or any other person, in relation to its affairs, transactions, and condition, and may require and compel the production of records, books, papers, contracts, or other documents by court order, if not voluntarily produced.

2. *Expenses, per diem, vacation, and sick leave.* If the examination is made under section 534.401, subsection 3, each examiner shall file with the superintendent an itemized, certified, and sworn voucher of the examiner's expense for the time the examiner is actually engaged in an examination. On the fifteenth and last days of each month each examiner shall file in triplicate with the superintendent a certified statement of the actual days engaged in examinations. The salaries shall be included in a two-week payroll period. Upon approval of the superintendent, the director of revenue and finance is authorized to issue warrants for payment of the vouchers and salaries, including a prorated amount for vacation and sick leave. Repayment to the state shall be made as provided by section 534.408, subsection 4. Savings and loan examiners shall be paid salaries at rates commensurate with, and shall be reimbursed for meals and lodging at the same rate and in the same manner as, that which is received by federal examiners operating under the federal home loan bank board.

3. *Record required.* A record of all examinations, reports, and related information shall be kept

in the superintendent's office, showing in detail as to each association all matters connected with the conduct of its business, its financial standing, and everything touching its solvency, plan of business, and integrity.

The examinations, reports, and information shall be kept confidential in the office of the superintendent, and are not subject to publication or disclosure to others except as provided in this chapter. However, the superintendent may furnish any examination, report, or information to the federal office of thrift supervision, federal deposit insurance corporation, or a successor deposit insurance instrumentality, federal home loan bank board, or financial institution regulatory authorities of any state. Any evidence of felonious acts on the part of the officers, directors, or employees of an association may be referred by the superintendent to proper authorities. Members of associations, other than their officers and directors, are not entitled to inspection of any such records or information, and are not entitled to any information relative to the names of the members of an association, or the amounts invested by them, as disclosed in the superintendent's office, or in the records of an association.

4. *Revocation of authority.* If an association refuses to submit to examination, the superintendent shall revoke its certificate of authority.

91 Acts, ch 92, §13 SF 494
See §534.408, subsection 1 and footnote
Subsections 2 and 3 amended

534.405 Conservatorship — operation — termination.

If the superintendent, as a result of any examination or from a report made to the superintendent finds that a savings and loan association is violating a provision of its certificate of incorporation, or by-laws, or the laws of this state, or of the United States, or a lawful order of the superintendent, or is conducting its business in an unsafe manner, the superintendent may by an order direct discontinuance of the violation or unsafe practice, and conformance with all requirements of law. A conservator shall not be appointed for a solvent association if a violation or unsafe practice can be corrected otherwise. If an association refuses or neglects to comply with the order within the time specified in it, or if it appears to the superintendent that an association is in an unsafe condition or is conducting its business in an unsafe manner, or if the superintendent finds that an impairment of capital exists to such extent that it threatens loss to the members, or if an association refuses to submit its books, papers, and accounts to the inspection of the superintendent or the superintendent's representative, the superintendent, by written order signed by the superintendent, may appoint a conservator to take charge of the association and manage its business until the superintendent permits the board of directors to resume management of the business or reorganizes the association, or until a receiver is appointed to liquidate its affairs.

A conservator so appointed has, subject to approval of the superintendent, all the rights, powers, and privileges possessed by the officers, board of directors, and members of the association. The conservator shall not retain special counsel or other experts, or incur any expenses other than normal operating expenses, or liquidate assets, except in the ordinary course of operations. The directors and officers shall remain in office and the employees shall remain in their respective positions, but the superintendent may remove any director, officer, or employee. While the association is in the charge of a conservator, members of the association shall continue to make payments to the association in accordance with the terms of their contracts and the conservator, in the conservator's discretion, may permit members to withdraw in the ordinary course of business, or under and subject to rules the superintendent may prescribe.

The conservator may accept savings but savings received by the conservator may be segregated if the superintendent so orders in writing and if so ordered such savings are not subject to offset and shall not be used to liquidate an indebtedness of the association existing at the time the conservator was appointed for it, or any subsequent indebtedness incurred for the purpose of liquidating the indebtedness of the association existing at the time a conservator was appointed. All expenses of the association during conservatorship shall be paid by the association.

The appointment of a conservator shall be evidenced by the superintendent issuing a certificate, signed by the superintendent, delivered to the president, or the vice president, or to at least three members of the board of directors of the association, certifying that a conservator has been appointed pursuant to this section. Within six months from the date upon which the conservator takes charge of an association, the superintendent shall determine whether to restore the management of the association to the board of directors. The determination shall be evidenced by the superintendent's certificate under the seal of the office, delivered to the president, or vice president, or to the board of directors of the association, that the conservator is redelivering the management of the association to the board of directors of the association then in office.

After the management of the association has been redelivered to the board of directors of an association, the association shall be managed and operated as though no conservator had been appointed. At any time prior to the redelivery of the management to the board of directors, the superintendent shall determine whether the association shall be required to reorganize. That determination shall be evidenced by a certificate, signed by the superintendent, under the seal of the office, delivered to an executive officer of the association, stating that unless the association reorganizes under the laws of this state within a period of sixty days from the date of the certificate, or within such further time as the superintendent ap-

proves, the superintendent shall liquidate the association.

If the association has the insurance protection provided by Title IV of the National Housing Act, 12 U.S.C. ch. 13, a signed and sealed copy of each order and certificate mentioned in this section shall be promptly sent by the superintendent by registered mail to the federal office of thrift supervision, Washington, D.C. If the association is insured by the savings association insurance fund of the federal deposit insurance corporation, the resolution trust corporation shall be named receiver if the superintendent has determined the need for a receivership.

Actions taken by the superintendent under this section are not subject to section 17A.18, subsection 3.

91 Acts, ch 92, §14 SF 494
Unnumbered paragraph 6 amended

534.408 Supervisory fees.

1. *Payable to division.* Associations shall pay fees by delivering to the superintendent a check payable to the savings and loan division of the department of commerce. All fees collected under this chapter shall be deposited with the treasurer of state in the general fund of the state.

Notwithstanding the provisions of this subsection and section 534.403 directing that fees and other moneys received be deposited into the savings and loan revolving fund and not be transferred to the general fund of the state, and directing that expenses be paid from the savings and loan revolving fund, for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, all fees and other moneys collected shall be deposited into the general fund of the state and expenses required to be paid under this subsection and section 534.403 shall be paid from funds appropriated for those purposes.*

2. *Incorporation fee.* Simultaneously with the filing with the superintendent of a certificate of incorporation, the corporation shall pay an incorporation fee of one hundred dollars.

3. *Change of location or change of name.* A fee of fifty dollars shall accompany each application to the superintendent for permission to change the location of the home office or to change the name of the association.

4. *Supervision and examination fee.* At the time of filing its annual report each association shall pay to the superintendent an annual filing fee of fifty dollars. The superintendent shall assess against an association the actual and necessary expenses incidental to examinations, or to supervision, or to a special audit made pursuant to an order of the superintendent acting under authority of this chapter. The annual assessment to each association shall also include a fair proportion of the cost of administration of the savings and loan division.

5. *Merger fee.* At the time of filing with the superintendent a merger agreement, the association proposing to merge shall submit a fee of one hundred fifty dollars, which fee shall be paid in equal parts by

the associations which are parties to the proposed merger.

6. *For reorganization, transfer of assets, and dissolution.* A fee of fifty dollars shall accompany a proposed plan of reorganization, a proposal for the transfer of assets in bulk, and a certificate of dissolution, filed with the superintendent for approval.

7. *For approval of superintendent.* The superintendent, in the superintendent's discretion, may charge a fee of not exceeding ten dollars upon each application for the superintendent's approval, as provided by this chapter.

91 Acts, ch 92, §15 SF 494, 91 Acts, ch 260, §1245 HF 173
*Former provisions of §534.403 and this section relating to the savings and loan revolving fund were stricken by 91 Acts, ch 92, §13, 15 SF 494
Subsection 1 amended and subsections 8 and 9 stricken
Subsection 1, NEW unnumbered paragraph 2

534.506 Account insurance required.

1. An association organized under this chapter as a condition of maintaining its privilege of organization after July 1, 1984 shall acquire and maintain insurance to protect each depositor against loss of funds held on account by the association. The insurance shall be obtained from the federal deposit insurance corporation or another insurance plan approved by the superintendent, provided that each association organized under this chapter shall acquire deposit insurance from the appropriate agency of the federal government.

2. The superintendent may furnish to an official of an insurance plan by which the accounts of the association are insured, any information relating to examinations and reports of the status of that association for the purpose of determining availability of insurance to that association.

91 Acts, ch 16, §3 SF 87, 91 Acts, ch 92, §16 SF 494
1991 amendment to subsection 1 by 91 Acts, ch 16 §3 effective July 1, 1992,
91 Acts, ch 16, §4 SF 87
1991 amendment to subsection 1 by 91 Acts, ch 92, §16 SF 494 effective July 1, 1991
See Code editor's note to §15.287
Subsection 1 amended

534.519 Mutual holding companies.

1. An association may reorganize as a mutual holding company in the manner and with the effect provided in the federal National Housing Act of 1934, 12 U.S.C. § 1730a(s). The mutual holding company may engage in activities permitted by the federal National Housing Act of 1934, 12 U.S.C. § 1730a(s). For purposes of 12 U.S.C. § 1730a(s)(5)(D), investments in service corporations shall be deemed available for purchase without regard to the limitation contained in section 534.213, subsection 1, paragraph "i", on the amount of such investments.

2. A mutual holding company shall be deemed a mutual association for purposes of sections 534.401, 534.403, 534.501, 534.502, 534.503, 534.505, 534.509, 534.510, 534.511, 534.512, 534.513, 534.514, 534.601, 534.602, 534.603, 534.604, 534.605, 534.606, 534.701, 534.702, 534.703, 534.704, and 534.705.

3. Except as otherwise provided in this chapter, a mutual holding company has all powers set forth in section 490.302.

4. The superintendent may adopt rules pursuant to chapter 17A pertaining to mutual holding companies.
5. Proxies of the association shall continue in

force as proxies of the mutual holding company.

91 Acts, ch 258, §62 HF 709
Subsection 3 amended

CHAPTER 535

MONEY AND INTEREST

535.15 Open-end credit and credit card disclosure.

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

a. "Financial institution" means as defined in section 535A.1.

b. "Credit card", "finance charge", and "open-end credit" mean as defined in section 537.1301.

2. A financial institution which accepts an application for open-end credit from a person who resides in this state shall annually disclose pursuant to this section the following information for each type of open-end account granted:

a. The annual percentage rate charged on the open-end credit account.

b. The amount of fee charged or assessed, if any, by the person as a condition for granting or opening the open-end credit account and the frequency the fee is assessed.

c. A description of when the finance charge begins to accrue against charges made on the open-end credit account.

3. A person who accepts an application for a credit card from a person who resides in this state shall annually disclose the following information for each type of credit card granted, unless the information is disclosed under subsection 1:

a. The annual percentage rate charged on the credit card.

b. The amount of fee charged or assessed, if any, by the person as a condition for issuing the credit card and the frequency the fee is assessed.

c. A description of when the finance charge begins to accrue against charges made on the credit card.

4. A person who is obligated to disclose information under this section shall file a written report disclosing the information with the treasurer of state by July 1 of each year. If a person filing under this section makes any changes subsequent to July 1 but prior to January 1 to any of the information for which disclosure is required relating to credit cards, the person shall file an amended written report with the treasurer of state by January 1 following the change.

5. The treasurer of state shall adopt rules pursuant to chapter 17A to implement this section including, but not limited to, both of the following:

a. Procedures for receiving the reports.

b. Procedures for publicizing and making the information filed readily available to the public.

91 Acts, ch 152, §2 4 HF 502

Subsection 1, paragraph b stricken and former paragraph c relettered as b

Subsection 4 stricken and former subsections 5 and 6 renumbered as 4 and

5

Subsection 4 amended

CHAPTER 535B

MORTGAGE BANKERS AND BROKERS

535B.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. "Mortgage banker" means a person who does one or more of the following:

a. Makes at least four first mortgage loans on

residential real property located in this state in a calendar year.

b. Originates at least four first mortgage loans on residential real property located in this state in a calendar year and sells four or more such loans in the secondary market.

c Services at least four first mortgage loans on residential real property located in this state. However, a natural person, who services less than fifteen first mortgage loans on residential real estate within the state and who does not sell or transfer first mortgage loans, is exempt from this paragraph if that person is otherwise exempt from the provisions of this chapter.

2 “Mortgage broker” means a person who arranges or negotiates, or attempts to arrange or negotiate, at least four first mortgage loans or commitments for four or more such loans on residential real property located in this state in a calendar year.

3 “Residential real property” means real property, which is an owner-occupied single-family or two-family dwelling, located in this state, occupied or used or intended to be occupied or used for residential purposes, including an interest in any real property covered under chapter 499B.

4 “Person” means an individual, an association, joint venture or joint stock company, partnership, limited partnership, business corporation, nonprofit corporation, or any other group of individuals however organized.

“Natural person” means an individual who is not an association, joint venture, or joint stock company, partnership, limited partnership, business corporation, nonprofit corporation, other business entity, or any other group of individuals or business entities, however organized.

5 “Licensee” means a person licensed under this chapter, however, any individual who is acting solely as an employee or agent of a mortgage banker or broker licensed under this Act need not be separately licensed.

6 “Administrator” means the superintendent of the division of banking of the department of commerce.

7 “First mortgage loan” means a loan of money secured by a first lien on residential real property and includes a refinancing of a contract of sale, an assumption of a prior loan, and a refinancing of a prior loan.

8 “Registrant” means a person registered under section 535B.3.

91 Acts ch 65 §1 SF 435
Subsection 6 amended

535B.13 Enforcement.

1 The administrator has cease and desist powers as follows:

a For the purposes of this subsection, “administrator” means either the superintendent of banking or the official or agency charged with enforcing this chapter, or parts thereof, against the person under investigation.

b If the administrator has reason to believe that a person has been or is in violation of this chapter or rules adopted under this chapter, after notice and hearing, the administrator may order a person to cease and desist from violating any provision of this chapter or rules adopted under this chapter.

c The administrator, upon such hearing, may administer oaths, examine and cross-examine witnesses, receive evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of all records or other documents which the administrator deems relevant to the inquiry. In case of a refusal of a person to comply with a subpoena issued under this section or to testify with respect to any matter relevant to the proceeding, on application of the administrator, the district court of Polk county may issue an order requiring the person to comply with the subpoena and to testify. A failure to obey an order of the court to comply with the subpoena may be punished by the court as a civil contempt. A cease and desist hearing need not observe any formal rules of pleading or evidence.

d If after the hearing, the administrator finds that the person charged has violated this chapter or rules adopted under this chapter, the administrator shall issue written findings, a copy of which shall be served upon the person charged with the violations, along with an order requiring the person to cease and desist from engaging in the violations.

e A person aggrieved by a cease and desist order of the administrator may obtain judicial review of the order and the administrator may obtain an order of the Polk county district court for the enforcement of the cease and desist order.

f A proceeding for review must be initiated within thirty days after the aggrieved person receives the cease and desist order. If no proceeding is initiated, the administrator may obtain a decree of the Polk county district court for enforcement of the cease and desist order.

g A person who violates a cease and desist order of the administrator may, after notice and hearing, and upon further order of the administrator, be subject to a penalty of not more than five thousand dollars for each act or violation of the cease and desist order.

2 The administrator may request the attorney general to enforce the provisions of this chapter. A civil enforcement action by the attorney general may be filed in equity in either the county in which the violation occurred or Polk county. A civil enforcement action by the attorney general may seek any or all of the following:

a Temporary and permanent injunctive relief.
b Restitution for a mortgagor aggrieved by a violation of this chapter.
c Costs for the investigation and prosecution of the enforcement action including attorneys fees.

3 This chapter does not limit the power of the attorney general to determine that any other practice is unlawful under the Iowa consumer fraud Act, section 714.16, and to file an action under that section.

91 Acts ch 65 §2 SF 435
Subsection 1 paragraph a amended

CHAPTER 535C

IOWA LOAN BROKERS ACT

535C.2 Definitions.

1 “*Administrator*” means the commissioner of insurance or the deputy administrator appointed pursuant to section 502.601

2 “*Advance fee*” means consideration including a payment, fee, or deposit, which is assessed or collected prior to the closing of a loan. An advance fee includes, but is not limited to, money assessed or collected for processing, for an appraisal, for a credit check, for a consultation, or for expenses

3 “*Bona fide third party fee*” means a fee charged for one or more of the following

a A credit report or appraisal

b Providing security of title services for a loan secured by real property, including but not limited to a title examination, an abstract of title, title insurance, or a property survey

4 “*Borrower*” means a person who seeks the services of a loan broker

5 “*Financial statement*” means a document evidencing the financial position of the loan broker as required by section 535C.3A

6 “*Loan*” means an agreement to advance property, including but not limited to money, in return for the promise that payment will be made for the use of the property

7 “*Loan broker*” or “*broker*” means a person who in return for an advance fee, promises to obtain a loan or assist in obtaining a loan for another from a third person, or who promises to consider making a loan to a person. A loan broker does not include any of the following

a An attorney licensed to practice in this state while engaged in the practice of law

b A certified public accountant licensed to practice in this state while engaged in practice as a certified public accountant

c An accounting practitioner, while engaged as an accounting practitioner, who procures loans as an incidental part of the accountant’s practice

d A person whose fee is entirely contingent on the successful procurement of a loan from a third person, if the borrower has not paid a fee prior to the closing of a loan other than a bona fide third party fee

e A financial institution, to the extent the institution’s activities or arrangements are expressly approved or regulated by a regulatory body or officer acting under authority of the United States

f An insurance company organized under the laws of this state and subject to regulation by the commissioner of insurance

g A bank incorporated under chapter 524

h A credit union incorporated under chapter 533

i A savings and loan association or savings bank incorporated under chapter 534

j A mortgage broker or mortgage banker licensed under chapter 535B

k A regulated loan company licensed under chapter 536

l An industrial loan company licensed under chapter 536A

8 “*Loan brokerage agreement*” or “*agreement*” means an agreement between a loan broker and a borrower in which the loan broker promises to do any of the following

a Obtain a loan for a borrower

b Assist the borrower in obtaining a loan

c Consider making a loan to the borrower

9 “*Records*” means books, papers, documents, accounts, agreements, memoranda, electronic records of accounts, or correspondence relating to a matter regulated under this chapter

10 “*Successful procurement of a loan*” means the receipt by a borrower of the loan proceeds

91 Acts ch 205 §19 SF 519
Section stricken and rewritten

535C.3A Financial statement.

A loan broker shall file a financial statement with the administrator. The statement shall be prepared according to generally accepted accounting principles. The statement shall contain all of the following

1 A copy of the loan broker’s balance sheet prepared within one hundred twenty days prior to the most recent filing of a disclosure statement as provided in section 535C.5

2 A profit and loss statement, and a statement of changes in the broker’s financial position for each fiscal year that the broker and the broker’s predecessor were in business. However, the statement of changes need not cover more than the three fiscal years preceding the date that the broker’s balance sheet was prepared

3 If prepared, a copy of the broker’s most recent audited financial statement

91 Acts ch 205 §20 SF 519
NEW section

535C.5 Filing with the administrator — penalty.

1 Before advertising or making other oral or written representations, or acting as a loan broker in this state, a loan broker shall file with the administrator all of the following

a The disclosure statement required under section 535C.3

b. The most recent financial statement of the broker required under section 535C.3A.

c. Either a bond required under section 535C.4 or a formal notification from the financial institution that the trust account required under section 535C.4 is established.

d. An irrevocable consent, in a form prescribed by the commissioner of insurance, appointing the administrator to be the loan broker's agent to receive service of process in any suit or action against the broker arising from a violation of a provision of this chapter or a rule adopted pursuant to this chapter.

2. The broker shall amend these filings within forty-five days of any material change in the following:

- a. The status of the bond or account.
- b. The financial statement of the broker.
- c. Information required by the disclosure statement.

A broker who does not file the copies required is guilty of a serious misdemeanor.

3. In addition to other required filings, an annual filing shall be made not later than July 1. The broker shall pay a one hundred fifty dollar filing fee with the initial disclosure statement filed under subsection 1. The annual filing shall be accompanied by a filing fee of one hundred dollars. A twenty-five dollar fee shall be charged for each amendment under subsection 2.

4. The administrator shall review the disclosure statement for compliance with requirements imposed under this chapter.

5. The administrator may by order prohibit a broker from advertising, making oral or written representations, or acting as a loan broker if the order is found to be in the public interest and either of the following apply:

a. The disclosure statement or financial statement on file is incomplete in any material respect or contains any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

b. The loan broker has willfully violated or willfully failed to comply with any provision of this chapter.

6. The information contained or filed under this section may be made available to the public under such rules as the administrator prescribes.

91 Acts, ch 205, §21 SF 519
Subsections 1, 2 and 3 amended

535C.7 Written agreements required.

A loan brokerage agreement shall be in writing, contain a description of the services that the broker agrees to perform for the borrower, and the conditions under which the borrower is obligated to pay the broker. The agreement shall be signed by the broker and the borrower. The broker shall give the borrower a copy of the agreement when the borrower signs the agreement.

91 Acts, ch 205, §22 SF 519
Section amended

535C.11 Applicability.

This chapter does not apply to activities or arrangements expressly approved or regulated by the administrator under other law, or the banking division or savings and loan division in the department of commerce.

91 Acts, ch 205, §23 SF 519
Section amended

535C.12 Records.

1. A loan broker shall maintain accurate records, as required by the administrator, relating to transactions regulated under this chapter. The records shall include all of the following:

- a. The accounts of the broker.
- b. A copy of each contract in which the broker is a party, including loan brokerage agreements.
- c. The amount of receipts received by the broker and the date the receipts were received.

2. The broker shall retain each loan brokerage agreement entered into by the broker and records pertaining to each agreement for at least two years after the agreement expires. The agreements and records shall be maintained and made available for examination by the administrator.

91 Acts, ch 205, §24 SF 519
NEW section

535C.13 Administrative actions.

1. The administrator shall implement this chapter, and may take actions which the administrator deems appropriate for the protection of borrowers, including but not limited to conducting an investigation or examination to determine if a violation of this chapter or a rule adopted pursuant to this chapter has been or may be committed.

2. In conducting an investigation or proceeding under this chapter, the administrator or an officer designated by the administrator may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of materials including records which the administrator deems relevant to the inquiry.

3. Notwithstanding chapter 22, information obtained in the course of an investigation or examination shall be kept confidential by the administrator unless any of the following are applicable:

a. An order of prohibition has been issued pursuant to section 535C.5.

b. The administrator is called as a witness to testify in a criminal or civil proceeding.

Upon determining that it is necessary or appropriate to the public interest or for the protection of borrowers, the administrator may disseminate information concerning a violation of this chapter or a rule adopted pursuant to this chapter, by publishing the information or sharing the information with the appropriate agency or regulatory authority.

91 Acts, ch 205, §25 SF 519
NEW section

535C.14 Misrepresentation of governmental approval.

It is unlawful for a loan broker to represent or imply that the broker has been sponsored, recommended, or approved by, or that the broker's abilities or qualifications have been passed upon by the commissioner, the insurance division, the securities bureau, or the state of Iowa.

91 Acts, ch 205, §26 SF 519
NEW section

535C.15 Reserved.**535C.16 Scope of chapter.**

1. The provisions of this chapter apply to agreements and offers by any person to act as a loan broker when any of the following apply:

a. The offer to act as a loan broker is made or accepted in this state.

b. The agreement is solicited or entered into in this state.

2. For the purpose of this section, an offer is made in this state, whether or not either party is then present in this state, when either of the following apply:

a. The offer originates from this state.

b. The offer is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer.

3. For the purpose of this section, an offer is accepted in this state when either of the following occur:

a. The acceptance is communicated to the offeror in this state.

b. The acceptance has not previously been communicated to the offeror, orally, or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed or at any post office in this state in the case of a mailed acceptance.

4. An offer is not made in this state in either of the following circumstances:

a. The offer is in a newspaper which the publisher circulates or is circulated on the publisher's behalf in this state, which is in any other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds of its circulation outside this state during the past twelve months.

b. The offer is on a radio or television program originating outside this state and received in this state.

91 Acts, ch 205, §27 SF 519
NEW section

CHAPTER 536A**IOWA INDUSTRIAL LOAN LAW****536A.16 Cease and desist orders.**

If the superintendent has reasonable cause to believe that a licensee is violating this chapter or rules adopted pursuant to this chapter, the superintendent may, after ten days' advance written notice, in addition to all actions provided for in this chapter, and without prejudice, enter an order requiring the licensee to cease, desist, and refrain from the violation. After receipt of the advance written notice, the licensee, within five days from the receipt of the notice, may file with the superintendent a written demand for a hearing. Hearings shall promptly be held in the office of the superintendent and a cease and desist order shall not be issued until after the hearing. The licensee shall be entitled to present evidence and the testimony of witnesses at the hearing.

91 Acts, ch 63, §1 SF 310
Section amended

536A.17 Injunctions.

The superintendent by counsel of the attorney general may commence an action in the district court, in the name of the state of Iowa as plaintiff on the relation of the superintendent to restrain and enjoin any licensee from violating this chapter or rules adopted pursuant to this chapter, or to restrain and enjoin any person, copartnership, firm, or corporation from engaging in the business of operating an industrial loan company without obtaining a license as required by this chapter.

91 Acts, ch 63, §2 SF 310
Section amended

536A.22 Thrift certificates.

Licensed industrial loan companies may sell senior debt to the general public in the form of thrift certificates, installment thrift certificates, certifi-

cates of indebtedness, promissory notes or similar evidences of indebtedness. The total amount of such thrift certificates, installment thrift certificates, certificates of indebtedness, promissory notes or similar evidences of indebtedness outstanding and in the hands of the general public shall not at any time exceed ten times the total amount of capital, surplus, undivided profits and subordinated debt that gives priority to such securities of the issuing industrial loan company. The sale of such securities shall be subject to the provisions of chapter 502, and shall not be construed to be exempt by reason of the provisions of section 502.202, subsection 10, except that the sale of thrift certificates or installment thrift certificates which are redeemable by the holder either upon demand or within a period not in excess of one hundred eighty days are exempt from sections 502.201 and 502.602.

91 Acts, ch 63, §3 SF 310
Section amended

536A.25 Restrictions.

1. An industrial loan company licensed under this chapter shall not make a loan of money or property to or guarantee the obligations of its directors or officers; or loan to any borrower, other than a subsidiary or affiliated corporation, more than twenty

percent of its total capital, surplus, and undivided profits. A licensee shall not make a loan under any other name or at any other place of business than that named in the license.

2. An industrial loan company licensed under this chapter that sells debt instruments to the general public in the form of thrift certificates, installment thrift certificates, certificates of indebtedness, promissory notes, or similar evidences of indebtedness, shall not loan to a borrower, including a subsidiary or an affiliated corporation, more than twenty percent of the industrial loan company's total of capital, surplus, and undivided profits. The aggregate of all loans to subsidiaries and affiliated corporations of the industrial loan company shall not exceed ten percent of the industrial loan company's total assets.

A debt instrument sold by an industrial loan company which is not insured by the federal deposit insurance corporation, shall contain on its face a notice in bold print that the debt instrument is not insured or guaranteed by the federal deposit insurance corporation.

3. Investments by an industrial loan company licensed under this chapter are subject to the provisions of section 524.901 as applied to state banks.

91 Acts, ch 63, §4 SF 310
Section amended

CHAPTER 536B

IOWA INDUSTRIAL LOAN CORPORATION THRIFT GUARANTY LAW

Repealed by 91 Acts, ch 63, § 6 SF 310

CHAPTER 536C

LENDER CREDIT CARDS

536C.1 Title.

This chapter shall be known and may be cited as the "*Lender Credit Card Act*".

91 Acts, ch 216, §15 SF 311
NEW section

536C.2 Definitions.

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

1. "*Administrator*" means the superintendent of banking, the superintendent of savings and loan associations or the superintendent's successor, or the superintendent of credit unions. However, the pow-

ers of administration and enforcement of this chapter are to be exercised pursuant to section 536C.14.

2. "*Agreement*" means agreement as defined in section 537.1301, subsection 3.

3. "*Cardholder*" means cardholder as defined in section 537.1301, subsection 7.

4. "*Consumer credit transaction*" means consumer credit transaction as defined in section 537.1301, subsection 11.

5. "*Credit card*" means a card or device issued by a financial institution under an arrangement pursuant to which a card issuer gives a cardholder the

privilege of purchasing or leasing property, or purchasing services, obtaining loans, or otherwise obtaining credit from at least one hundred persons not related to the card issuer.

6. “*Financial institution*” means a bank incorporated under the provisions of any state or federal law, a savings and loan association incorporated under the provisions of any state or federal law, a credit union organized under the provisions of any state or federal law, and any affiliate of such bank, savings and loan association, or credit union.

7. “*Person*” means any individual, firm, corporation, partnership, joint venture, or association, and any other organization or group, however organized.

91 Acts, ch 216, §16 SF 311
NEW section

536C.3 Exemptions.

This chapter does not apply to a bank chartered under chapter 524 or a bank chartered under federal law which has its principal place of business located in this state, a savings and loan association chartered under chapter 534 or a savings and loan association chartered under federal law which has its principal place of business located in this state, a credit union chartered under chapter 533 or a credit union chartered under federal law which has its principal place of business located in this state, regulated loan companies licensed under chapter 536, or industrial loan companies licensed under chapter 536A.

91 Acts, ch 216, §17 SF 311
NEW section

536C.4 Notification.

1. A person shall file a registration statement annually with the administrator before conducting the business of issuing credit cards in this state, and annually thereafter on or before January 31 of each year. The registration statement shall be in writing on a form prescribed by the administrator, and contain the name and address of the registrant, the name and address of a designated agent upon whom service of process may be made in this state, and any other information the administrator deems relevant.

2. At the time of filing a registration statement the person shall provide the administrator with a copy of the credit agreement and billing statement being used by the card issuer.

3. If information in a filing statement becomes inaccurate after filing, the person shall notify the administrator in writing of the changes within sixty days of such change.

91 Acts, ch 216, §18 SF 311
NEW section

536C.5 Fees.

A person required to file a registration statement pursuant to this chapter shall pay to the administrator an annual fee of fifty dollars. The fee shall be paid at the time the person files the registration statement.

91 Acts, ch 216, §19 SF 311
NEW section

536C.6 Applicability of Iowa consumer credit code.

1. The terms and conditions of a credit card agreement shall conform to the provisions of chapter 537, the Iowa consumer credit code.

2. A provision of the Iowa consumer credit code applicable to credit cards regulated by this chapter supersedes a conflicting provision of this chapter.

3. A person who is in full compliance with the provisions of this chapter is considered a supervised financial organization under the Iowa consumer credit code for purposes of contracting for finance charges authorized for credit card issuers under section 537.2402.

91 Acts, ch 216, §20 SF 311
NEW section

536C.7 Books and records.

A person who issues credit cards shall keep such books, accounts, and records as will enable the administrator to determine whether or not the person is complying with the provisions of this chapter and chapter 537. The person shall not be required to preserve or keep their records or files for a longer period than three years following the date of the final payment.

91 Acts, ch 216, §21 SF 311
NEW section

536C.8 Investigations.

1. The administrator may investigate at any time the business of a credit card issuer subject to the provisions of this chapter. The administrator may examine the books, records, accounts, and files pertaining to the business of issuing credit cards subject to the provisions of this chapter.

2. The administrator may accept a copy of an examination conducted by a state or federal regulator in lieu of an investigation or examination by the administrator.

3. If an investigation or examination is performed by the administrator under this section, the credit card issuer shall pay to the administrator a fee based on the actual cost of such investigation or examination as determined by the administrator.

4. Upon completion of an investigation or examination by the administrator, the examiner shall render a billing in triplicate, with one copy to be delivered to the credit card issuer and two copies to be delivered to the administrator. Failure to pay the fee to the administrator within thirty days after the billing for the investigation or examination is delivered shall subject the credit card issuer to an additional fee of five percent of the amount of the original fee for each day the payment is delinquent.

91 Acts, ch 216, §22 SF 311
NEW section

536C.9 Cease and desist orders.

1. If the administrator has reasonable cause to believe a person who issues credit cards is violating any provision of this chapter, or rules adopted pursuant to this chapter, the administrator may enter

a written order requiring the person to cease, desist, and refrain from an act constituting a violation. A copy of the order shall be sent to the person by certified mail. The person may file with the administrator a written notice of appeal within fifteen days of receipt of the order. The person may also request that the order be stayed pending resolution of the appeal. The appellant shall be entitled to prompt consideration of the request to stay the order.

2. Within thirty days after receipt of a notice of appeal the administrator shall hold a hearing to consider the appeal. The appellant shall be informed regarding the time and place of the hearing not later than ten days prior to the hearing. The administrator's decision shall be provided, in writing, to the appellant within thirty days of the completion of the hearing.

91 Acts, ch 216, §23 SF 311
NEW section

536C.10 Injunctions.

The administrator may commence an action in the district court to restrain and enjoin any person from violating this chapter, or to restrain and enjoin any person from engaging in the business of issuing credit cards without filing a registration statement as required by this chapter.

91 Acts, ch 216, §24 SF 311
NEW section

536C.11 Waiver unenforceable.

A waiver of the provisions of this chapter or chapter 537 is not valid.

91 Acts, ch 216, §25 SF 311
NEW section

536C.12 Penalty.

If an officer, director, or agent of a corporation en-

gaged in the business of issuing credit cards violates any of the provisions of this chapter which are not also violations of the Iowa consumer credit code; or if a person individually or as a partner, or officer, director, or agent of a corporation engages in the business of issuing credit cards without filing the registration statement required by section 536C.4, the person is guilty of a serious misdemeanor. Violations of this chapter which are also violations of the Iowa consumer credit code shall be subject to the penalties provided in the Iowa consumer credit code.

91 Acts, ch 216, §26 SF 311
NEW section

536C.13 Rules.

The administrator may adopt such rules pursuant to chapter 17A as may be necessary for the enforcement and administration of this chapter.

91 Acts, ch 216, §27 SF 311
NEW section

536C.14 Enforcement.

1. The superintendent of banking shall enforce the provisions of this chapter with respect to banks not exempt from the provisions of this chapter under section 536C.3.

2. The superintendent of credit unions shall enforce the provisions of this chapter with respect to credit unions not exempt from the provisions of this chapter under section 536C.3.

3. The superintendent of savings and loan associations or the superintendent's successor shall enforce the provisions of this chapter with respect to savings and loan associations not exempt from the provisions of this chapter under section 536C.3.

91 Acts, ch 216, §28 SF 311
NEW section

CHAPTER 537

CONSUMER CREDIT CODE

537.3205 Change in terms of open end credit accounts.

1. Whether or not a change is authorized by prior agreement, a creditor may make a change in the terms of an open end credit account applying to any balance incurred after the effective date of the change only if the creditor delivers or mails to the consumer a written disclosure of the change at least sixty days before the effective date of the change.

2. Unless authorized by this chapter or unless

agreed to by the consumer, a creditor shall not change the terms of an open end credit account, with respect to a balance incurred before the effective date of the change, which results in an increase of the rate of the finance charge or other charge or an increase in the amount of a periodic payment due, or which otherwise adversely affects the interests of the consumer with respect to the balance. The use by the consumer of an open-end account after the effective date of the change constitutes the agreement of the

consumer if the consumer is notified as provided in subsection 1 that the use will constitute the agreement of the consumer.

3. Notwithstanding subsection 2, a creditor may make a change in the terms of an open end credit account with respect to a balance incurred before the effective date of the change if the creditor gives a written disclosure as provided in subsection 1 and if the credit card account is part of a portfolio of credit card accounts acquired in a bulk acquisition of the portfolio.

4. A disclosure provided for in subsection 1 is mailed to the consumer when mailed to the consumer at the consumer's address used by the creditor for mailing the consumer periodic billing statements.

5. If a creditor attempts to make a change in the terms of an open end credit account without complying with this section, any additional cost or charge to the consumer resulting from the change is an excess charge and is subject to the remedies available to the consumer under section 537.5201 and to the administrator under section 537.6113.

91 Acts, ch 118, §2, 3 HF 601
Subsection 1 amended
NEW subsection 3 and former subsections 3 and 4 renumbered as 4 and 5

537.6104 Powers of administrator — reliance on rules — duty to report.

1. The administrator, within the limitations provided by law, may:

- a. Receive and act on complaints.
 - b. Take action designed to obtain voluntary compliance with this chapter.
 - c. Commence proceedings on the administrator's own initiative.
 - d. Counsel persons and groups on their rights and duties under this chapter.
 - e. Establish programs for the education of consumers with respect to credit practices and problems.
 - f. Make studies appropriate to effectuate the purposes and policies of this chapter and make the results available to the public.
 - g. Maintain offices within this state.
2. The administrator may enforce the Truth in Lending Act to the fullest extent provided by law.

3. To keep the administrator's rules in harmony with the rules of administrators in other jurisdictions which enact the uniform consumer credit code, the administrator, so far as is consistent with the purposes, policies and provisions of this chapter, shall do both of the following:

a. Before adopting, amending and repealing rules, advise and consult with administrators in other jurisdictions which enact the uniform consumer credit code.

b. In adopting, amending, and repealing rules, take into consideration the rules of administrators in other jurisdictions which enact the uniform consumer credit code.

4. Except for refund of an excess charge, no liability is imposed under this chapter for an act done or omitted in conformity with a rule of the administrator notwithstanding that after the act or omission the rule is amended or repealed or determined by judicial or other authority to be invalid for any reason.

5. The administrator shall report annually on or before January 1 to the general assembly on the operation of the consumer credit protection bureau and the other agencies of this state charged with administering this chapter, and on the problems of persons of small means obtaining credit from persons regularly engaged in extending sales or loan credit. For the purpose of making the report, the administrator may conduct research and make appropriate studies. The report shall include, for the consumer credit protection bureau and for other state agencies enforcing this chapter, a description of the examination and investigation procedures and policies, a statement of policies followed in deciding whether to investigate or examine the offices of credit suppliers subject to this chapter, a statement of the number and percentages of offices which are periodically investigated or examined, a statement of the types of consumer credit problems of both creditors and consumers which have come to the administrator's attention through the administrator's examinations and investigations and the disposition of them under existing law, and recommendations, if any, for legislation to deal with those problems within the administrator's general jurisdiction, a statement of the extent to which the rules of the administrator pursuant to this chapter are not in harmony with the rules of administrators in other jurisdictions which enact the uniform consumer credit code and the reasons for the variations, and a general statement of the activities of the administrator's office and of others to promote the purposes of this chapter. The report shall not identify the creditors against whom action is taken.

91 Acts, ch 118, §4 HF 601
Subsection 5 amended

CHAPTER 546

DEPARTMENT OF COMMERCE

546.3 Banking division.

The banking division shall regulate and supervise banks under chapter 524, regulated loan companies under chapter 536, and industrial loan companies under chapter 536A, and shall perform other duties assigned to the division by law. The division is headed by the superintendent of banking who is appointed pursuant to section 524.201. The state banking board shall perform duties within the division as prescribed by law.

91 Acts, ch 63, §5 SF 310
Section amended

546.7 Utilities division.

The utilities division shall regulate and supervise public utilities operating in the state. The division shall enforce and implement chapters 476, 476A, 478, 479, and 479A and shall perform other duties assigned to it by law. The division is headed by the administrator of public utilities who shall be appointed by the governor pursuant to section 474.1.

91 Acts, ch 97, §58 HF 198
Section amended

546.10 Professional licensing and regulation division — administrative services cost — revolving fund.

1. The professional licensing and regulation division shall administer and coordinate the licensing and regulation of several professions by bringing together the following licensing boards:

- a. The engineering and land surveying examining board created pursuant to chapter 114.
- b. The accountancy examining board created pursuant to chapter 116.
- c. The real estate commission created pursuant to chapter 117.
- d. The architectural examining board created pursuant to chapter 118.
- e. The landscape architectural examining board created pursuant to chapter 118A.

2. The division is headed by the administrator of professional licensing and regulation who shall be appointed by the governor subject to confirmation by the senate and shall serve a four-year term that begins and ends as provided in section 69.19. A vacancy shall be filled for the unexpired portion of the term in the same manner as a full-term appointment is made. The administrator shall appoint and supervise staff and shall coordinate activities for the licensing boards within the division. The administrator shall act as a staff person to one or more of the licensing boards.

3. The licensing and regulation examining

boards included in the division pursuant to subsection 1 retain the powers granted them pursuant to the chapters in which they are created, except for budgetary and personnel matters which shall be handled by the administrator. Each licensing board shall adopt rules pursuant to chapter 17A. Decisions by a licensing board are final agency actions for purposes of chapter 17A.

4. The professional licensing and regulation division of the department of commerce may expend additional funds, including funds for additional personnel, if those additional expenditures are directly the cause of actual examination expenses exceeding funds budgeted for examinations. Before the division expends or encumbers an amount in excess of the funds budgeted for examinations, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the director of the department of management shall determine that the examination expenses exceed the funds budgeted by the general assembly to the division and the division does not have other funds from which the expenses can be paid. Upon approval of the director of the department of management, the division may expend and encumber funds for excess examination expenses. The amounts necessary to fund the examination expenses shall be collected as fees from additional examination applicants and shall be treated as repayment receipts as defined in section 8.2, subsection 8.

5. The professional licensing and regulation division shall transfer at the beginning of each fiscal quarter from appropriated trust funds to the administrative services trust fund an amount which represents the division's share of the estimated cost of consolidated administrative services within the department, such share to be in the same proportion as established by agreement in the fiscal year beginning July 1, 1986, and ending June 30, 1987, with the first quarterly transfer to occur between July 1 and July 31 annually. At the close of the fiscal year, actual versus estimated expenditures shall be reconciled and any overpayment shall be returned to the division or any underpayment shall be paid by the division.

6. There is created in the office of the treasurer of state a professional licensing revolving fund. Fees collected under chapters 114, 116, 117, 117B, 118, and 118A shall be paid to the treasurer of state and credited to the professional licensing revolving fund. All expenses required in the discharge of the duties and responsibilities imposed upon the professional licensing division of the department of commerce,

the administrator, and the licensing boards by the laws of this state shall be paid from the revolving fund and appropriated by the general assembly from the fund. Transfers shall not be made from the general fund of the state or any other fund for the payment of expenses of the division. Fees collected by the division shall not be transferred to the general fund. The funds held by the treasurer of state for the professional licensing division of the department of commerce shall be invested by the treasurer of state and the income derived from the investments shall be credited to the general fund of the state.

Notwithstanding the provisions of this subsection and sections 114.12, 116.3, 117.14, 117B.6, 118.11, and 118A.14 directing that fees and other moneys be deposited into the professional licensing revolving fund and not to be transferred to the general fund of the state, and directing that expenses be paid from the professional licensing revolving fund, for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, all fees collected under those sections shall be deposited into the general fund of the state and expenses required to be paid under this subsection shall be paid from funds appropriated for those purposes.

91 Acts, ch 260, §1246 HF 173

Restrictions on use of moneys deposited in state general fund, see 91 Acts, ch 263, §38 SF 209

Availability of general fund for payment of expenses, see 91 Acts, ch 264, §905 SF 532

See also §546 11

Subsection 6, NEW unnumbered paragraph 2

546.11 Administrative services trust fund created.

There is created in the office of the treasurer of state for the department of commerce an administrative services trust fund. Moneys paid to the department by the divisions for administrative services shall be credited to the fund. All costs for administrative services provided by the department to the respective divisions shall be paid from this fund, subject to appropriation by the general assembly.

Notwithstanding this section and sections 476.10, 524.207, 533.67, 534.408, 546.9, and 546.10 directing the utilities division, banking division, credit union division, savings and loan division, alcoholic beverages division, and the professional licensing division to transfer from appropriated trust funds to the administrative services trust fund the division's share of administrative services and directing that costs for administrative services provided by the department to the divisions be paid from the administrative services trust fund, for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, all expenses for administrative services shall be paid from appropriations made from the general fund of the state for these expenses.

91 Acts, ch 260, §1247 HF 173

Restrictions on use of moneys deposited in state general fund, see 91 Acts, ch 263, §38 SF 209

NEW unnumbered paragraph 2

See Code editor's note

CHAPTER 547

CONDUCTING BUSINESS UNDER TRADE NAME

547.6 County recorder to submit monthly list of filings. Repealed by 91 Acts, ch 4, § 1. SF 89

CHAPTER 548

REGISTRATION AND PROTECTION OF MARKS

548.13 Application.

This chapter does not affect:

1. Rights, or the enforcement of rights, in marks or trade names acquired in good faith at any time at common law.
2. Rights, or the enforcement of rights in marks acquired under federal law.
3. Publishers, broadcasters, printers, or other persons engaged in the dissemination of information or reproduction of printed or pictorial matter who

publish, broadcast, or reproduce material without knowledge of its infringing character.

4. Use of the Iowa certification mark as provided in section 15.108, subsection 2, paragraph "b".

5. Marks for dairy products, as provided for in chapter 192.

91 Acts, ch 74, §23 SF 525
 1991 amendment to subsection 5 effective January 1, 1992, 91 Acts, ch 74, §26 SF 525
 Subsection 5 amended

CHAPTER 550

TRADE SECRETS

550.2 Definitions.

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

1. "*Improper means*" means theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage, including but not limited to espionage through an electronic device.
2. "*Knows*" or "*knowledge*" means that a person has actual knowledge of information or a circumstance or that the person has reason to know of the information or circumstance.
3. "*Misappropriation*" means doing any of the following:
 - a. Acquisition of a trade secret by a person who knows that the trade secret is acquired by improper means.
 - b. Disclosure or use of a trade secret by a person who uses improper means to acquire the trade secret.
 - c. Disclosure or use of a trade secret by a person who at the time of disclosure or use, knows that the trade secret is derived from or through a person who had utilized improper means to acquire the trade secret.
 - d. Disclosure or use of a trade secret by a person

who at the time of disclosure or use knows that the trade secret is acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use.

e. Disclosure or use of a trade secret by a person who at the time of disclosure or use knows that the trade secret is derived from or through a person who owes a duty to maintain the trade secret's secrecy or limit its use.

f. Disclosure or use of a trade secret by a person who, before a material change in the person's position, knows that the information is a trade secret and that the trade secret has been acquired by accident or mistake.

4. "*Trade secret*" means information, including but not limited to a formula, pattern, compilation, program, device, method, technique, or process that is both of the following:

a. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by a person able to obtain economic value from its disclosure or use.

b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

91 Acts, ch 35, §1 SF 179
 Subsection 4, unnumbered paragraph 1 amended

CHAPTER 554

UNIFORM COMMERCIAL CODE

554.4104 Definitions and index of definitions.

1 In this Article unless the context otherwise requires

a "Account" means any account with a bank and includes a checking, time, interest or savings account,

b "Afternoon" means the period of a day between noon and midnight,

c "Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions but for the purposes of determining a bank's midnight deadline, shall not include Saturday, Sunday, or any holiday when the federal reserve banks are not performing check clearing functions,

d "Clearing house" means any association of banks or other payors regularly clearing items,

e "Customer" means any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank,

f "Documentary draft" means any negotiable or nonnegotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft,

g "Item" means any instrument for the payment of money even though it is not negotiable but does not include money,

h "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later,

i "Properly payable" includes the availability of funds for payment at the time of decision to pay or dishonor,

j "Settle" means to pay in cash, by clearing house settlement, in a charge or credit or by remittance, or otherwise as instructed. A settlement may be either provisional or final,

k "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business

2 Other definitions applying to this Article and the sections in which they appear are

"Collecting bank"	Section 554 4105
"Depositary bank"	Section 554 4105
"Intermediary bank"	Section 554 4105
"Payor bank"	Section 554 4105

"Presenting bank" Section 554 4105

"Remitting bank" Section 554 4105

3 The following definitions in other Articles apply to this Article

"Acceptance" Section 554 3410

"Certificate of deposit" Section 554 3104

"Certification" Section 554 3411

"Check" Section 554 3104

"Draft" Section 554 3104

"Holder in due course" Section 554 3302

"Notice of dishonor" Section 554 3508

"Presentment" Section 554 3504

"Protest" Section 554 3509

"Secondary party" Section 554 3102

4 In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article

91 Acts ch 222 §1 HF 20
Subsection 1 paragraph c amended

554.9401 Place of filing — erroneous filing — removal of collateral.

1 The proper place to file in order to perfect a security interest is as follows

a when the collateral is timber to be cut or is 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, then in the office where a mortgage on the real estate would be filed or recorded,

b when the collateral is consumer goods and when the debtor resides in this state, then in the office of the recorder in the county of the debtor's residence,

c in all other cases, in the office of the secretary of state

2 A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this Article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement

3 A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed

4. The rules stated in section 554.9103 determine whether filing is necessary in this state.

5. Notwithstanding the preceding subsections, and subject to section 554.9302, subsection 3, the proper place to file in order to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the secretary of state. This filing constitutes a fixture filing (section 554.9313) as to the collateral described therein which is or is to become fixtures.

6. Of each fee collected by the county recorder under sections 570A.4, 554.9403, 554.9405, and 554.9406, the county recorder shall remit five dollars, if filed on a standard form or six dollars otherwise, to the office of the treasurer of state for deposit in the general fund of the state.

91 Acts, ch 267, §618 HF 479
NEW subsection 6

554.9403 What constitutes filing — duration of filing — effect of lapsed filing — duties of filing officer.

1. Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this Article.

2. Except as provided in subsection 6, a filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty days or until expiration of the five-year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

3. A continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in subsection 2. Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. A continuation 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 and complying with section 554.9405, subsection 2, including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection 2 unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to

continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a statement from the files and destroy it immediately if the filing officer has retained a microfilm or other photographic record, or in other cases after one year after the lapse.

4. Except as provided in subsection 7, a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

5. The uniform fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing shall be as follows:

a. Ten dollars for an original financing statement if the statement is in the standard form prescribed by the secretary of state, and otherwise twelve dollars.

b. Ten dollars for a continuation statement if the statement is in the standard form prescribed by the secretary of state, and otherwise twelve dollars.

6. If the debtor is a transmitting utility (section 554.9401, subsection 5), and a filed financing statement so states, or if a filed financing statement relates to a lien, pledge, or security interest incident to bonds issued under chapter 419 and the filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage which is effective as a fixture filing under section 554.9402, subsection 6, remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

7. When a 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 is filed as a fixture filing, it shall be filed for record and the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described.

91 Acts, ch 267, §619 HF 479
Subsection 5, paragraphs a and b 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 se-

cured 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 obligation 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 if 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 a termination statement as required by this subsection, or to send such a termination statement within ten days after proper demand for it, the affected secured party is liable to the debtor for one hundred dollars, and in addition for any loss caused to the debtor by the 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 a ten-dollar fee for filing a termination statement.

91 Acts ch 267 §620 HF 479
Subsection 3 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 fi-

ancing statement so indicating an assignment on a form conforming to standards prescribed by the secretary of state shall be ten dollars, or if such statement otherwise conforms to the requirements of this section, twelve 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 ten dollars, or if such statement otherwise conforms to the requirements of this section, twelve 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.

91 Acts ch 267 §621 HF 479
Subsections 1 and 2 amended

554.9406 Release of collateral — duties of filing officer — fees.

A secured party of record may by a signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing state-

ment. A statement of release 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 and complying with section 554.9405, subsection 2, including payment of the required fee. Upon presentation of such a statement of release the filing officer shall mark the statement with the hour and date of filing and shall note the same upon the margin of the

index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release on a form conforming to standards prescribed by the secretary of state shall be ten dollars, or if such statement otherwise conforms to the requirements of this section, twelve dollars.

91 Acts ch 267 §622 HF 479
Section amended

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 three 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 three 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 three 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 three 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 three 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 three 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 three years. Under Iowa law, if there is a period of three 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 pre-

vent 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 three-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.

91 Acts, ch 267, §623 625 HF 479
Subsection 1, unnumbered paragraph 1 amended
Subsection 2, unnumbered paragraph 1 amended
Subsections 4, 5 and 6 amended

556.3 Unclaimed funds held by life insurance corporations.

1. "Unclaimed funds," as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

2. "Unclaimed funds," as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than three years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if the policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based and shall be presumed abandoned and to be unclaimed funds as defined in this section if unclaimed and unpaid for more than two years thereafter, unless the person appearing entitled thereto has within the two-year period assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan or corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

91 Acts, ch 267, §626 HF 479
Subsection 2 amended

556.4 Deposits and refunds held by utilities.

The following funds held or owing by any utility are presumed abandoned:

1. Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled to the deposit for more than one year after the termination of the services for which the deposit or advance payment was made.

2. Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest on the refund, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled to the refund for more than one year after the date it became payable in accordance with the final determination or order providing for the refund.

91 Acts, ch 267, §627 HF 479
Section amended

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 subsequent-

ly 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 of 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 three years after the date prescribed for payment or delivery, is presumed abandoned.

91 Acts, ch 267, §628 HF 479
Subsection 6 amended

556.7 Property held by fiduciaries.

All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within three years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary which shall have been dated and may have been prepared by the fiduciary or by the owner:

1. If the property is held by a banking organization or a financial organization, or by a business association organized under the laws of or created in this state; or

2. If it is held by a business association, doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state; or

3. If it is held in this state by any other person.

91 Acts, ch 267, §629 HF 479
Unnumbered paragraph 1 amended

556.18 Deposit of funds.

1. Except as provided in subsection 3, all funds received under this chapter, including the proceeds from the sale of abandoned property under section

556.17, shall be deposited monthly by the treasurer of state in the general fund of the state. However, the treasurer of state shall retain in a separate trust fund an amount not exceeding two hundred thousand dollars from which the treasurer of state shall make prompt payment of claims duly allowed under section 556.20. Before making the deposit, the treasurer of state shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

2. Before making any deposit to the credit of the general funds, the state treasurer may deduct:

a. Any costs in connection with sale of abandoned property.

b. Any costs of mailing and publication in connection with any abandoned property.

c. Reasonable service charges.

3. After July 1, 1988, the treasurer of state shall annually credit all moneys received under section 556.4 to the energy research and development fund established in the energy conservation trust under section 93.11.

Notwithstanding the provisions of this subsection directing that moneys received under section 556.4 be deposited into the energy research and development fund, for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, all funds received shall be deposited into the general fund of the state.

91 Acts, ch 253, §24 SF 508, 91 Acts, ch 260, §1248 HF 173
Restrictions on use of moneys deposited in state general fund, see 91 Acts, ch 263, §38 SF 209
Subsection 3 amended
Subsection 3, NEW unnumbered paragraph 2

CHAPTER 557C

MINERAL INTERESTS IN COAL

557C.1 Lapse of mineral interests in coal — prevention.

A mineral interest in coal shall be extinguished twenty years after its creation, transfer, or preservation, unless a statement of claim is filed in accordance with section 557C.3, and the ownership shall revert to the person who was then the owner of the interest from which the mineral interest in coal was created, transferred, or preserved. Upon the filing of a statement of claim within the specified period, the mineral interest shall be deemed to have been preserved for an additional period of twenty years, or a shorter period as may be specified in the instrument creating the interest.

91 Acts, ch 183, §2 HF 618
NEW section

557C.2 Mineral interest — definition.

A mineral interest in coal means an interest created by an instrument which creates or transfers either by grant, assignment, reservation, or otherwise, an interest of any kind in coal, as described in chapter 83, without limitation on the manner of mining the coal.

91 Acts, ch 183, §3 HF 618
NEW section

557C.3 Statement of claim — filing requirement.

The statement of claim provided in section 557C.1 shall be filed by the owner of the mineral interest in

coal prior to the end of the twenty-year period set forth in section 557C.1 or by July 1, 1994, whichever is later. The statement of claim shall contain the name and address of the owner of the mineral interest in coal, and a description of the real estate on, or under, which the mineral interest in coal is located. The statement of claim shall be filed in the office of the recorder in the county in which the real estate is located.

91 Acts, ch 183, §4 HF 618
NEW section

557C.4 Statement of claim — recorder's duty.

Upon the filing of the statement of claim provided for in section 557C.3 in the recorder's office for the county where the real estate on, or under, which the mineral interest in coal exists, is located, the recorder shall record the statement of claim and index it in the claimant's book.

91 Acts, ch 183, §5 HF 618
NEW section

557C.5 Reservation in other conveyance.

A reservation of a mineral interest in coal or an exception of a mineral interest in coal, contained in a conveyance of the interest out of which it is carved, by a nonowner of the mineral interest in coal shall not be deemed to satisfy the requirements of this chapter or as a revival of a mineral interest in coal otherwise extinguished under this chapter.

91 Acts, ch 183, §6 HF 618
NEW section

557C.6 Exemption.

The filing of the statement of claim required under section 557C 3 to preserve the mineral interest in coal shall not be required of an owner if the mineral

interest was separately taxed for real estate tax purposes at any time after July 1, 1971

91 Acts ch 183 §7 HF 618
NEW section

CHAPTER 558

CONVEYANCES

558.5 Contract for deed — presumption of abandonment.

When the record shows that a contract or bond for a deed has been executed more than ten years earlier, and the record discloses no performance of the same and that more than ten years have elapsed since the contract by its terms was to be performed, the contract shall be deemed abandoned and of no effect and the land shall be freed from any lien or defect on account of the contract

On and after July 1, 1992, this section shall apply to a contract or bond described in this section, if the contract or bond is not filed of record but referred to in another instrument which is filed of record The contract or bond shall be deemed abandoned ten years from the date that the contract or bond is to be performed according to the recorded instrument However, if the recorded instrument does not refer to a performance date for the contract or bond, the contract or bond shall be deemed abandoned ten years after the date that the instrument containing the reference is recorded

91 Acts ch 183 §8 HF 618
Section amended

558.14 Grantor described as “spouse” or “heir” — presumption.

All conveyances or the record title thereof of real estate executed more than ten years earlier, wherein the grantor or grantors described themselves as the surviving spouse, heir at law, heirs at law, surviving spouse and heir at law, or surviving spouse and heirs at law, of some person deceased in whom the record title or ownership of said real estate previously vested, shall be conclusive evidence of the facts so recited as far as they relate to the right of the grantor or grantors to convey, as fully as if the record title of said grantor or grantors had been established by due probate proceedings in the county wherein the real estate is situated

91 Acts ch 183 §9 HF 618
Section amended

558.42 Acknowledgment as condition precedent.

It shall not be deemed lawfully recorded, unless it

has been previously acknowledged or proved in the manner prescribed in this chapter or chapter 77A, except that affidavits, and certified copies of petitions in bankruptcy with or without the schedules appended, of decrees of adjudication in bankruptcy, and of orders approving trustees' bonds in bankruptcy, and Uniform Commercial Code financing statements and financing statement changes need not be thus acknowledged

91 Acts ch 211 §12 HF 556
Section amended

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 or by affidavit of or on behalf of a surviving spouse that has been recorded by the recorder, 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” In the case of a certificate from the clerk of the district court or an appellate court, the fee shall be taxed as court costs, collected by the clerk, and paid to the treasurer as provided in section 331 902, subsection 3 In the case of the affidavit filed with the recorder, the fee set forth in section 331 507, subsection 2, paragraph “a”, and the fee set forth in section 331 604, shall be collected by the recorder and paid to the treasurer as provided in section 331 902, subsection 3

An affidavit of or on behalf of a surviving spouse may be filed with the auditor only when real estate owned by a decedent, who died on or after January 1, 1988, was held in joint tenancy with right of survivorship solely with the surviving spouse and shall be in the following form

AFFIDAVIT OF SURVIVING SPOUSE FOR CHANGE OF TITLE TO REAL ESTATE STATE OF IOWA)) ss COUNTY OF)

I,, being first duly sworn on oath, depose and state as follows:

1. I am [..... is] the surviving spouse of, who died on the day of, 19.....

2. The following described real estate was owned only by and this Affiant, [or] as joint tenants with full rights of survivorship at the time of [.....'s] death:

.....
.....

3. I hereby request that the auditor enter this information on the transfer books pursuant to section 558.66 of the Iowa Code.

Subscribed and sworn to before me this day of, 19.....

.....
Notary Public in and for the State of Iowa

91 Acts, ch 86, §1 HF 627
Section amended

CHAPTER 561

HOMESTEAD

561.13 Conveyance or encumbrance.

A conveyance or encumbrance of, or contract to convey or encumber the homestead, if the owner is married, is not valid, unless and until the spouse of the owner executes the same or a like instrument, or a power of attorney for the execution of the same or a like instrument, and the instrument or power of attorney sets out the legal description of the homestead. However, when the homestead is conveyed or encumbered along with or in addition to other real estate, it is not necessary to particularly describe or set aside the tract of land constituting the homestead, whether the homestead is exclusively the sub-

ject of the contract or not, but the contract may be enforced as to real estate other than the homestead at the option of the purchaser or encumbrancer. If a spouse who holds only homestead rights and surviving spouse's statutory share in the homestead specifically relinquishes homestead rights in an instrument, including a power of attorney constituting the other spouse as the husband's or wife's attorney in fact, as provided in section 597.5, it is not necessary for the spouse to join in the granting clause of the same or a like instrument.

91 Acts, ch 106, §1 SF 355
Section amended

CHAPTER 566

CEMETERIES AND MANAGEMENT THEREOF

MANAGEMENT BY POLITICAL SUBDIVISIONS

566.14 Political subdivisions as trustees.

Counties, cities, irrespective of their form of government, boards of trustees of cities to whom the management of municipal cemeteries has been transferred by ordinance, and civil townships wholly outside of any city, are trustees in perpetuity, and are required to accept, receive, and expend all mon-

neys and property donated or left to them by bequest for perpetual care, and that portion of cemetery lot sales or permanent charges made against cemetery lots which has been set aside in a perpetual care fund for which there is no other acting trustee, to be used in caring for the property of the donor or lot owner who by purchase or otherwise has provided for the perpetual care of a cemetery lot in any cemetery, or in accordance with the terms of the donation, be-

quest, or agreement for sale and purchase of a cemetery lot, and the money or property thus received shall be used for no other purpose.

91 Acts, ch 188, §3 HF 237
Section amended

566.15 Authority to invest funds — current care charge payments.

The board of supervisors, mayor and council, or other elected governmental body, as the case may be, has the authority to receive and invest all moneys and property, donated or bequeathed, and that portion of cemetery lot sales and permanent charges made against cemetery lots which have been set aside in a perpetual care fund, in investments for which they have exercised the judgment and care, under the circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their affairs. The income from the investment shall be used in caring for the property of the donor in any cemetery, or as shall be provided in the terms of the gift or donations or agreement for sale and purchase of a cemetery lot.

All current charges received shall be allocated to the perpetual care fund or to the fund paying the costs of cemetery operation. Care charge payments received one year or more after the date they were incurred shall be used to fund the cost of operating the cemetery. Care charge payments received one year or more in advance of their due date shall be deposited in the perpetual care fund. Interest from the perpetual care fund shall be used for the maintenance of both occupied and unoccupied lots or spaces. Any remaining interest may be used for costs of access roads and paths, fencing, and general maintenance of the cemetery. Lots under perpetual care shall be maintained in accordance with the cemetery covenants of sale.

91 Acts, ch 188, §4, 5 HF 237
Section amended
NEW unnumbered paragraph 2

566.16 Resolution of acceptance — interest.

Before any part of the principal may be invested or used, the county, city, board of trustees of a city to whom the management of a municipal cemetery has been transferred by ordinance, or civil township shall, by resolution, accept the moneys described in section 566.14 and, by resolution, shall provide for the payment of interest annually to the appropriate fund, or to the cemetery association, or the person in charge of the cemetery, to be used in caring for or maintaining the individual property of the donor in the cemetery, or lots which have been sold if provision was made for perpetual care, all in accordance with the terms of the donation or bequest, or the terms of the sale or purchase of a cemetery lot.

If there is no cemetery association or person in charge of the cemetery, the income from the fund shall be expended under the direction of the board

of supervisors, city council, board of trustees, or civil township trustees, as the case may be, in accordance with the terms of the donation or bequest, or the terms of the sale or purchase of a cemetery lot.

91 Acts, ch 188, §6 HF 237
Section amended

566.21 Presumption of abandonment.

The continued failure by the owner to maintain or care for an unoccupied cemetery lot or space not under perpetual care, or to pay the annual care fee, for a period of ten years shall create the presumption that the lot or space has been abandoned. A lot with empty space under perpetual care which has not had a burial for seventy-five years shall create a presumption that the empty space has been abandoned.

91 Acts, ch 188, §7 HF 237
Section amended

566.22 Notice of abandonment.

Abandonment shall not be deemed complete unless after the ten-year or seventy-five year period, whichever is applicable, there is given by the reversionary owner to the recorded owner, or if the recorded owner is deceased or the recorded owner's whereabouts are unknown, to the heirs of the recorded owner, notice declaring the lot to be abandoned.

91 Acts, ch 188, §8 HF 237
Section amended

566.24 Overcoming presumption of abandonment.

If within one year from the time of serving the notice, the recorded owner or the owner's heirs pay the past due annual care charges against the lot, then the presumption of abandonment shall no longer exist and the recorded owner may be required to make full payment for future perpetual care.

91 Acts, ch 188, §9 HF 237
Section amended

566.26 Use of funds.

Any funds realized from the sale of all or a part of an unoccupied lot not under perpetual care which has reverted shall be allocated to the perpetual care fund and to the fund paying the costs of cemetery operation.

91 Acts, ch 188, §10 HF 237
Section stricken and rewritten

566.27 Abandonment if perpetual care provided by will, court order, or contract.

After the seventy-five year period, sections 566.20 through 566.26 are applicable to an unoccupied lot or space for which perpetual care has been provided by will, court order, contract, or as provided by law. However, the reversionary owner shall not acquire the absolute right to sell the unoccupied lot or space until three years after the date notice was served on the recorded owner or the recorded owner's heirs.

91 Acts, ch 188, §11 HF 237
Section stricken and rewritten

CHAPTER 566A

CEMETERY REGULATIONS

566A.1 Applicability of chapter — requirements for certain organizations.

1. A corporation or other form of organization engaging in the business of the ownership, maintenance, or operation of a cemetery, which provides lots or other interment space for the remains of human bodies is subject to this chapter. However, a church, religious organization, or established fraternal society is subject only to subsection 2 of this section. Political subdivisions of the state are exempt from this chapter.

2. An organization which establishes a fund for the perpetual care of a cemetery shall establish the fund as an irrevocable trust to provide for the care and maintenance of the cemetery for which it was established, and shall provide for the appointment of a trustee, with perpetual succession, in case the organization is dissolved or ceases to be responsible for the cemetery's care and maintenance.

91 Acts, ch 188, §12, 13 HF 237
Section amended
NEW subsection 2

CHAPTER 569

ACQUISITION OF TITLE BY STATE OR MUNICIPAL CORPORATION

569.8 Title under tax deed — sale — proceeds.

1. Disposition by a county of a parcel acquired by tax deed shall comply with section 331.361, subsection 2.

2. When title to a parcel acquired by tax deed is transferred, the auditor shall immediately record the deed and the assessor shall enter the parcel to be assessed following the assessment date.

3. A parcel the county holds by tax deed shall not be assessed or taxed until transferred.

4. The transfer of a parcel acquired by tax deed gives the purchaser free title as to previously levied or set taxes.

5. The proceeds of the sale shall be credited to the county general fund.

91 Acts, ch 191, §122 HF 687
1991 amendment effective April 1, 1992, 91 Acts, ch 191, §124 HF 687
For definitions applicable to this section effective April 1, 1992, see §445 1
Section amended

CHAPTER 570A

AGRICULTURAL SUPPLY DEALER'S LIEN

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 fee as provided under section 554.9403.

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.

91 Acts, ch 267, §630 HF 479
Subsection 4 amended

CHAPTER 573

LABOR AND MATERIAL ON PUBLIC IMPROVEMENTS

573.12 Payments and retention from payments on contracts.

1. *Retention.* Payments made under contracts for the construction of public improvements, unless provided otherwise by law, shall be made on the basis of monthly estimates of labor performed and material delivered, as determined by the project architect or engineer. The public corporation shall retain from each monthly payment not more than five percent of that amount which is determined to be due according to the estimate of the architect or engineer. However, institutions governed pursuant to chapter 262 may, on contracts where a bond is required under section 573.2, make payments under this section without retention until ninety-five percent of the contract amount has been paid and the remaining five percent of the contract amount shall be paid as provided under section 573.14.

The contractor may retain from each payment to a subcontractor not more than the lesser of five percent or the amount specified in the contract between the contractor and the subcontractor.

2. *Prompt payment.*

a. (1) Interest shall be paid to the contractor on any progress payment that is approved as payable by the public corporation's project architect or engineer

and remains unpaid for a period of fourteen days after receipt of the payment request at the place, or by the person, designated in the contract, or by the public corporation to first receive the request, or for a time period greater than fourteen days, unless a time period greater than fourteen days is specified in the contract documents, not to exceed thirty days, to afford the public corporation a reasonable opportunity to inspect the work and to determine the adequacy of the contractor's performance under the contract.

(2) Interest shall accrue during the period commencing the day after the expiration of the period defined in subparagraph (1) and ending on the date of payment. The rate of interest shall be determined as set forth in section 573.14.

b. A progress payment or final payment to a subcontractor for satisfactory performance of the subcontractor's work shall be made no later than one of the following, as applicable:

(1) Seven days after the contractor receives payment for that subcontractor's work.

(2) A reasonable time after the contractor could have received payment for the subcontractor's work, if the reason for nonpayment is not the subcontractor's fault.

A contractor's acceptance of payment for one subcontractor's work is not a waiver of claims, and does not prejudice the rights of the contractor, as to any other claim related to the contract or project.

3. *Interest payments.*

a. If the contractor receives an interest payment under section 573.14, the contractor shall pay the subcontractor a share of the interest payment proportional to the payment for that subcontractor's work.

b. If a public corporation other than a school corporation, county, or city retains funds, the interest earned on those funds shall be payable at the time of final payment on the contract in accordance with the schedule and exemptions specified by the public corporation in its administrative rules. The rate of interest shall be determined by the period of time during which interest accrues, and shall be the same as the rate of interest that is in effect under section 453.6 as of the day interest begins to accrue.

91 Acts, ch 148, §1 SF 346
Subsection 2 amended

573.14 Retention of unpaid funds.

The fund provided for in section 573.13 shall be retained by the public corporation for a period of thirty days after the completion and final acceptance of the improvement. If at the end of the thirty-day period claims are on file as provided the public corporation shall continue to retain from the unpaid funds a sum equal to double the total amount of all claims on file. The remaining balance of the unpaid fund, or if no claims are on file, the entire unpaid fund, shall be released and paid to the contractor.

The public corporation shall order payment of any amount due the contractor to be made in accordance with the terms of the contract. Except as provided in section 573.12 for progress payments, failure to make payment pursuant to this section, of any amount due the contractor, within forty days, unless a greater time period not to exceed fifty days is specified in the contract documents, after the work under the contract has been completed and if the work has been accepted and all required materials, certifications, and other documentations required to be submitted by the contractor and specified by the contract have been furnished the awarding public corporation by the contractor, shall cause interest to accrue on the amount unpaid to the benefit of the unpaid party. Interest shall accrue during the period commencing the thirty-first day following the completion of work and satisfaction of the other requirements of this paragraph and ending on the date of payment. The rate of interest shall be determined by the period of time during which interest accrues, and shall be the same as the rate of interest that is in effect under section 453.6, as of the day interest begins to accrue, for a deposit of public funds for a comparable period of time. This paragraph does not abridge any of the rights set forth in section 573.16. Except as provided in sections 573.12 and 573.16, interest shall not accrue on funds retained by the pub-

lic corporation to satisfy the provisions of this section regarding claims on file. This chapter does not apply if the public corporation has entered into a contract with the federal government or accepted a federal grant which is governed by federal law or rules that are contrary to the provisions of this chapter.

91 Acts, ch 148, §2 SF 346
Section amended

573.16 Optional and mandatory actions — bond to release.

The public corporation, the principal contractor, any claimant for labor or material who has filed a claim, or the surety on any bond given for the performance of the contract, may, at any time after the expiration of thirty days, and not later than sixty days, following the completion and final acceptance of said improvement, bring action in equity in the county where the improvement is located to adjudicate all rights to said fund, or to enforce liability on said bond.

Upon written demand of the contractor served, in the manner prescribed for original notices, on the person filing a claim, requiring the claimant to commence action in court to enforce the claim, an action shall be commenced within thirty days, otherwise the retained and unpaid funds due the contractor shall be released. Unpaid funds shall be paid to the contractor within twenty days of the receipt by the public corporation of the release as determined pursuant to this section. Failure to make payment by that date shall cause interest to accrue on the unpaid amount. Interest shall accrue during the period commencing the twenty-first day after the date of release and ending on the date of the payment. The rate of interest shall be determined pursuant to section 573.14. After an action is commenced, upon the general contractor filing with the public corporation or person withholding the funds, a surety bond in double the amount of the claim in controversy, conditioned to pay any final judgment rendered for the claims so filed, the public corporation or person shall pay to the contractor the amount of funds withheld.

91 Acts, ch 148, §3 SF 346
Unnumbered paragraph 2 amended

573.18 Adjudication — payment of claims.

The court shall adjudicate all claims for which an action is filed under section 573.16. Payments from the retained percentage, if still in the hands of the public corporation, shall be made in the following order:

1. Costs of the action.
2. Claims for labor.
3. Claims for materials.
4. Claims of the public corporation.

Upon settlement or adjudication of a claim and after judgment is entered, unpaid funds retained with respect to the claim which are not necessary to satisfy the judgment shall be released and paid to the contractor within twenty days of receipt by the pub-

lic corporation of evidence of entry of judgment or settlement of the claim. Failure to make payment by that date shall cause interest to accrue on the unpaid amount. Interest shall accrue during the period commencing on the twenty-first day after receipt by the

public corporation of evidence of entry of judgment and ending on the date of payment. The rate of interest shall be determined as set forth in section 573.14.

91 Acts, ch 148, §4 SF 346
Section amended

CHAPTER 577

ARTISAN'S LIEN

577.1 Nature of lien — generally — aircraft and equipment.

1. Any person who renders any service or furnishes any material in the making, repairing, improving, or enhancing the value of any inanimate personal property, with the assent of the owner, express or implied, shall have a lien thereon for the agreed or reasonable compensation for the service and material while such property is lawfully in the person's possession, which possession the person may retain until such compensation is paid, but such lien shall be subject to all prior liens of record, unless notice is given to all lienholders of record and written consent is obtained from all lienholders of record to the making, repairing, improving, or enhancing the value of any inanimate personal property and in this event the lien created under this section shall be prior to liens of record.

2. The assent of the owner shall be implied, for purposes of determining whether a lien on inanimate personal property exists, if all of the following are established:

a. The inanimate personal property is a multi-engine aircraft, eligible for registration under section 501 of the federal Aviation Act of 1958, 49 U.S.C. § 1401.

b. The aircraft is either owned, leased, operated, or on order by an air carrier certified under section 604(b) of the federal Aviation Act of 1958, 49 U.S.C. § 1424(b), or by any other person that rents or leases commercial airliners to certified air carriers in the regular course of business.

c. The material furnished is new electronic navigation or communications aviation equipment.

d. The equipment is delivered for installation on the aircraft at the request of a lessee, operator, or other person, or an agent of the lessee, operator, or other person, who has an interest in or exercises control over the aircraft.

The aircraft and equipment shall be deemed, for purposes of determining priority over perfected security interests, to be in the possession of the person who furnished the equipment, if the person either manufactures or sells the equipment in the regular course of business and allows the equipment to be made available for installation on the aircraft by releasing it for delivery. Possession of the aircraft and equipment shall be deemed to continue up to, and including, ninety days after the equipment is fully installed on the aircraft, except that if a notice of lien is filed with the federal aviation administration, and no subsequent release of the lien is on file, it shall be deemed to continue indefinitely. A notice of lien under this section is not required to be verified or notarized, but shall be signed by the lienholder, the lienholder's designated agent, or the lienholder's attorney and must identify the aircraft which is the subject of the lien. Notwithstanding subsection 1, liens obtained under this subsection attach and take priority over all other prior liens of record without the giving of prior notice or the obtaining of consent and are enforceable against all persons, including a bona fide purchaser.

91 Acts, ch 22, §1 HF 220
Secured transactions, §554 9101 et seq
Section amended

CHAPTER 587

JUDGMENTS AND DECREES LEGALIZED

587.10 Affidavit of publication of notice by assistant publisher.

All affidavits of proof of publication of any notice or original notice made by the assistant publisher of any newspaper of general circulation, which were ex-

ecuted and filed more than ten years earlier, are hereby legalized, declared valid, binding, and of full force and effect.

91 Acts, ch 183, §10 HF 618
Section amended

CHAPTER 589

REAL PROPERTY LEGALIZING ACTS

589.1 Acknowledgments — seal not affixed.

All deeds, mortgages, or other instruments in writing for the conveyance of lands which have been made and executed more than ten years earlier, and the officer taking the acknowledgment has not affixed the officer's seal to the acknowledgment; the acknowledgment is, nevertheless, good and valid in law and equity, any other provision of law to the contrary notwithstanding.

91 Acts, ch 183, §11 HF 618
Section amended

589.2 Conveyances by county.

All deeds executed more than ten years earlier, by a court or the chairperson of the board of supervisors of a county, and to which the officer executing the deed has failed or omitted to affix the county seal, and all deeds where the clerk has failed or omitted to countersign when required so to do, are legalized and valid as though the law had in all respects been fully complied with.

91 Acts, ch 183, §12 HF 618
Section amended

589.3 Absence of or defective acknowledgments.

Any instrument in writing affecting the title to real estate within the state of Iowa, to which is attached no certificate of acknowledgment, or to which is attached a defective certificate of acknowledgment, which was, more than ten years earlier, recorded or spread upon the records in the office of the recorder of the county in which the real estate described in the instrument is located, is, together with the recording and the record of the recording, valid, legal, and binding as if the instrument had been properly acknowledged and legally recorded.

91 Acts, ch 183, §13 HF 618
Section amended

589.4 Acknowledgments by corporation officers.

The acknowledgments of all deeds, mortgages, or other instruments in writing taken or certified more than ten years earlier, which instruments have been recorded in the recorder's office of any county of this state, including acknowledgments of instruments made by a corporation, or to which the corporation was a party, or under which the corporation was a beneficiary, and which have been acknowledged before or certified by a notary public who was at the time of the acknowledgment or certifying a stockholder or officer in the corporation, are legal and valid official acts of the notaries public, and entitle the instruments to be recorded, anything in the laws of the state of Iowa in regard to acknowledgments to the contrary notwithstanding. This section does not affect pending litigation.

91 Acts, ch 183, §14 HF 618
Section amended

589.5 Acknowledgments by stockholders.

All deeds and conveyances of lands within this state executed more than ten years earlier, but which have been acknowledged or proved according to and in compliance with the laws of this state before a notary public or other official authorized by law to take acknowledgments who was, at the time of the acknowledgment, an officer or stockholder of a corporation interested in the deed or conveyance, or otherwise interested in the deeds or conveyances, are, if otherwise valid, valid in law as though acknowledged or proved before an officer not interested in the deeds or conveyances; and if recorded more than ten years earlier, in the respective counties in which the lands are, the records are valid in law as though the deeds and conveyances, so acknowledged or proved

and recorded, had, prior to being recorded, been acknowledged or proved before an officer having no interest in the deeds or conveyances.

91 Acts, ch 183, §15 HF 618
Section amended

589.6 Instruments affecting real estate.

All instruments in writing executed by a corporation more than ten years earlier, conveying, encumbering, or affecting real estate, including releases, satisfactions of mortgages, judgments, or any other liens by entry of the release or satisfaction upon the page where the lien appears recorded or entered, where the corporate seal of the corporation has not been affixed or attached, and which are otherwise legally and properly executed, are legal, valid, and binding as though the corporate seal had been attached or affixed.

91 Acts, ch 183, §16 HF 618
Section amended

589.8 Mortgages, trust deeds and realty liens — releases.

A release or satisfaction of a mortgage or trust deed, or of an instrument in writing creating a lien upon real estate where the release or satisfaction has been recorded in the recorder's office of the county in this state, or upon the margin of the record, where the original instrument was recorded and which release or satisfaction was made by an individual, association, copartnership, assignee, corporation, attorney in fact, or by a resident or foreign executor, administrator, referee, receiver, trustee, guardian, or commissioner, and which release or satisfaction was executed, filed, and recorded more than ten years earlier, is valid, legal and binding, any defects in the execution, acknowledgment, recording, filing, or otherwise of the releases or satisfactions to the contrary notwithstanding.

91 Acts, ch 183, §17 HF 618
Section amended

589.9 Marginal releases of school-fund mortgages.

The release or satisfaction of a school-fund mortgage entered on the margin of the record of the mortgage by the auditor of the county more than ten years earlier, is legalized as though the auditor had, at the time of entering the release or satisfaction, the same power thereafter conferred upon the auditor by chapter 53 of the Acts of the Twenty-fifth General Assembly.

91 Acts, ch 183, §18 HF 618
Section amended

589.10 Marginal assignment of mortgage or lien.

If an assignment of a mortgage or other recorded lien on real estate has been executed more than ten years earlier, by written assignment on the margin of the record where the mortgage or other lien is recorded or entered, the assignment passed all the right, title, and interest in the real estate, which the

assignor at the time had, with like force and effect as if the assignment had been made by separate instrument duly acknowledged and recorded; and an assignment or a duly authenticated copy of an assignment when accompanied by a duly authenticated copy of the record of the instrument or lien it purports to assign, is admissible in evidence as provided by law for the admission of the records of deeds and mortgages.

91 Acts, ch 183, §19 HF 618
Section amended

589.11 Conveyances by fiduciaries.

If an executor, administrator, trustee, guardian, assignee, receiver, referee, or commissioner, acting in that capacity in this or any state, has conveyed in the trust capacity real estate lying in this state and the conveyance has been of record for more than ten years, in the county where the real estate so conveyed is located and which conveyance purports to sustain the title in the present record owner, the conveyance is not void or insufficient because due and legal notice of all proceedings with reference to the making of the conveyance was not served upon all interested or necessary parties, or that the executor, administrator, trustee, guardian, assignee, receiver, referee, or commissioner is not shown to have been duly authorized by an order of court to make and execute the conveyance, that a bond was not given, or that a report of the sale was not made; or the sale or deed of conveyance was not approved by order of court, or a foreign executor, administrator, trustee, guardian, assignee, receiver, referee, or commissioner was not appointed or qualified in the state of Iowa prior to the making of the conveyance, or the record fails to disclose compliance with any law, and all such conveyances are valid, legal, and binding. Allotments by referees in partition are conveyances within the meaning of this section.

91 Acts, ch 183, §20 HF 618
Section amended

589.12 Sheriffs' deeds.

A sheriff's deed executed more than ten years earlier which purports to sustain the record title is not ineffectual on account of the failure of the record to show that any of the steps in obtaining the judgment or in the sale of the property were complied with. The proceedings are legalized as if the record showed that the law has been complied with.

91 Acts, ch 183, §21 HF 618
Section amended

589.13 Sheriff's deed executed by deputy.

All conveyances of land in this state, executed in this state by a deputy sheriff, and properly recorded in the office of the county recorder of the county where the land is located, more than ten years earlier, have the same force and effect as though the conveyance had been executed by the sheriff.

91 Acts, ch 183, §22 HF 618
Section amended

589.14 Defective tax deeds.

A tax deed executed more than ten years earlier which purports to sustain the record title, is not ineffectual because of the failure of the record to show that any of the steps in the sale and deeding of the property were complied with and these proceedings are legalized and valid as if the record showed that the law had been complied with.

91 Acts, ch 183, §23 HF 618
Section amended

589.17 Conveyances by spouse under power.

A conveyance of real estate executed more than ten years earlier, in which the husband or wife conveyed or contracted to convey the inchoate right of dower through the other spouse, acting as the attorney in fact, by virtue of a power of attorney executed by the spouse, the power of attorney not having been executed as a part of a contract of separation, are not invalid.

91 Acts, ch 183, §24 HF 618
Section amended

589.18 Conveyances by foreign executors.

All conveyances of real property executed more than ten years earlier, by executors or trustees under foreign wills and prior to the date upon which the will was admitted to probate in Iowa or prior to the expiration of three months after the recording of a duly authenticated copy of the will, original record of appointment, qualification, and bond, and in which the will was, subsequent to the conveyance, probated in Iowa, and in which a duly authenticated copy of the will, original record of appointment, qualification, and bond was, subsequent to the conveyance, made a matter of record as provided in those sections, are legalized and valid in law and in equity as though the will had been probated in Iowa prior to the conveyance. However, this section does not affect pending litigation.

91 Acts, ch 183, §25 HF 618
Section amended

589.19 Conveyances under school-fund foreclosures.

If the title to real estate has been conveyed more than ten years earlier, by the sheriff of a county pursuant to sheriff's sale under the foreclosure of permanent school-fund mortgages to the state, or to the state for the use of the school fund, or to the county for the school fund; and the land has been sold under authority of the board of supervisors of the county and conveyed under its authority, more than ten years earlier, and the full purchase price paid and credited to, and used by, the county for the permanent school fund of the county, all right, title, or interest of the state in and to the real estate is relinquished and quitclaimed to the purchaser or the purchaser's grantees forever, and the title confirmed in the purchaser, or the purchaser's grantees insofar as the erroneous conveyance is concerned.

91 Acts, ch 183, §26 HF 618
Section amended

589.20 Conveyances according to law of other states. Repealed by 91 Acts, ch 183, § 40.**589.21 Releases and discharges.**

All releases and discharges of judgments, mortgages, or deeds of trust affecting property in this state executed more than ten years earlier, by administrators, executors, or guardians appointed by the court of any other state or country are legalized, valid and effective in law and in equity. However, this section does not affect pending litigation.

91 Acts, ch 183, §27 HF 618
Section amended

589.23 Descriptions referring to defective plats.

The description of land in all instruments, conveyances, and encumbrances describing lots in or referring to plats of survey or to plats made by a county auditor, or by a county surveyor for the owner, and placed of record by a county recorder more than ten years earlier, are legalized, valid and binding.

91 Acts, ch 183, §28 HF 618
Section amended

589.24 Defective instruments.

A deed of conveyance, or other instrument purporting to convey real estate within the state, where the deed or instrument has been recorded in the office of the recorder of any county in which the real estate is situated, and the deed or instrument was executed by a county treasurer under a tax sale, a sheriff under execution sale, or by a resident or foreign executor, administrator, referee, receiver, trustee, guardian, commissioner, individual, copartnership, association, or corporation, and was executed and recorded more than ten years earlier, and if the grantee named in the deed or conveyance, or other instrument, or the grantee's heirs or devisees, by direct line of title or conveyance have been in the actual, open, adverse possession of the premises since that date, is legalized, valid, and binding, notwithstanding defects in the execution of the deed or instrument.

91 Acts, ch 183, §29 HF 618
Section amended

589.25 Sales of real estate by school district.

All deeds and conveyances of land executed by or purporting to be executed by a school district or by the board of directors of a school district, and placed of record more than ten years earlier, which deeds or conveyances purport to sustain the record title, are legalized and valid, even though the record fails to show that all necessary steps in the sale and deeding of the property were complied with. The deeds and conveyances are legalized and valid as if the record showed that the law had been complied with, and that the sales had been duly authorized by the electors of the school district.

91 Acts, ch 183, §30 HF 618
Section amended

589.26 Land transfers by the department of human services legalized.

Every deed, release or other instrument in writing purporting to transfer any interest in land held or claimed by the department of human services or a predecessor agency, which is signed by a departmental official, and which was filed of record more than ten years earlier, in the office of the auditor or recorder or clerk of the district court of any county is

legalized and shall be good and valid in law and in equity as fully as if the record expressly showed that it in all respects complied with and was fully authorized as provided in any statute pertaining to such instrument, any other provision of law to the contrary notwithstanding.

91 Acts, ch 183, §31 HF 618
Section amended

CHAPTER 592

CITIES AND TOWNS — LEGALIZING ACTS

592.3 City and town plats.

1. In all cases where, prior to January 1, 1980, any person has laid out any parcel of land into town or city lots and the plat of the lots has been recorded and the plat appears to be insufficient because of failure to show certificates of the county clerk of the district court, county treasurer, or county recorder, or the affidavit and bond, if any, and the certificate of approval of the local governing body or because the certificates are defective, or because of a failure to fully comply with all of the provisions of chapter 409A of the Code in effect at the time of the recording of the plat, or corresponding statutes of earlier Codes, or because the plat failed to show signatures or acknowledgment of proprietors as provided by law, or because the acknowledgment was defective, and subsequent to the platting, lots or subdivisions of the lots have been sold and conveyed, all such said plats which have not been vacated, are legalized as of the date of the recording of the plat, the same as though all certificates have been attached and all the other necessary steps taken as provided by law, and the record of the plat shall be conclusive evidence that the person was the proprietor of the tract of land and the owner of the tract at the time of the platting, and that the tract of land was free and clear of all encumbrances unless an affidavit to the contrary was filed at the time of recording the plat.

After July 1, 1992, no action shall be brought on any cause arising more than ten years earlier or which has been in existence for more than ten years, to establish, enforce, or recover any right, title, interest, lien, or condition existing at the time of the platting, and adverse to a clear and unqualified title in fee simple in the owner unless on or before July 1,

1992, there is filed in the office of county recorder of the county where the real estate involved is located a written statement, acknowledged by the claimant, definitely describing the real estate involved, stating the nature and extent of the right or interest claimed, and stating the facts upon which the claim is based.

2. After July 1, 1992, in all cases where more than ten years earlier, a plat of lots from a parcel of land which has been laid into town or city lots has been recorded and the plat appears to be insufficient, the plat is legalized as of the date of the recording of the plat to the same extent as if the plat did not appear insufficient, if subsequent to the platting, the lots or a subdivision of the lots have been sold and conveyed, and the plats have not been vacated. A plat shall appear insufficient because of one of the following:

a. A failure to show or a deficiency in a certificate of the county clerk of the district court, county treasurer, or county recorder, or an affidavit and bond, or a certificate of approval of a local governing body.

b. A failure to fully comply with Code provisions in effect at the time of the recording of the plat.

c. A failure to show or a deficiency in a signature or acknowledgment of a proprietor as provided by law.

The record of the plat shall be conclusive evidence that the person was the proprietor of the tract of land and the owner of the tract at the time of the platting, and that the tract of land was free and clear of all encumbrances unless an affidavit to the contrary was filed at the time of recording the plat.

91 Acts, ch 183, §32 HF 618
Section amended

CHAPTER 595

MARRIAGE

595.3 License.

Previous to the solemnization of any marriage, a license for that purpose must be obtained from the clerk of the district court. Such license must not be granted in any case:

1. Where either party is under the age necessary to render the marriage valid.
2. Where either party is under eighteen years of age, unless the marriage is approved by a judge of the district court as provided by section 595.2, subsection 2.
3. Where either party is disqualified from making any civil contract.
4. Where the parties are within the degrees of consanguinity or affinity in which marriages are prohibited by law.
5. Where either party is a ward under a guardianship and the court has made a finding that the ward lacks the capacity to contract a valid marriage.

91 Acts, ch 93, §2 SF 495
Subsection 5 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 six months 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.

91 Acts, ch 116, §5 HF 534
Unnumbered paragraph 2 amended

CHAPTER 596

PREMARITAL AGREEMENTS

Chapter applies to premarital agreements executed on or after January 1, 1992; agreements entered into prior to that date not affected, § 596.12

596.1 Definitions.

As used in this chapter:

1. “*Premarital agreement*” means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.
2. “*Property*” means an interest, present or future, legal or equitable, vested or contingent, in real or personal property.

91 Acts ch 77 §1 HF 357
NEW section

596.2 Construction and application.

This chapter shall be construed and applied to effectuate its general purpose to make uniform the law with respect to premarital agreements.

91 Acts ch 77 §2 HF 357
NEW section

596.3 Short title.

This chapter may be cited as the Iowa uniform premarital agreement Act.

91 Acts ch 77 §3 HF 357
NEW section

596.4 Formalities.

A premarital agreement must be in writing and signed by both prospective spouses. It is enforceable without consideration other than the marriage. Both parties to the agreement shall execute all documents necessary to enforce the agreement.

91 Acts ch 77 §4 HF 357
NEW section

596.5 Content.

1. Parties to a premarital agreement may contract with respect to the following:

- a The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located.
- b The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property.
- c The disposition of property upon separation, dissolution of the marriage, death, or the occurrence or nonoccurrence of any other event.
- d The making of a will, trust, or other arrangement to carry out the provisions of the agreement.
- e The ownership rights in and disposition of the death benefit from a life insurance policy.
- f The choice of law governing the construction of the agreement.

g Any other matter, including the personal rights and obligations of the parties, not in violation of public policy or a statute imposing a criminal penalty.

2. The right of a spouse or child to support shall not be adversely affected by a premarital agreement.

91 Acts ch 77 §5 HF 357
NEW section

596.6 Effective date of agreement.

A premarital agreement becomes effective upon the marriage of the parties.

91 Acts ch 77 §6 HF 357
NEW section

596.7 Revocation.

After marriage, a premarital agreement may be revoked only as follows:

1. By a written agreement signed by both spouses. The revocation is enforceable without consideration.

2. To revoke a premarital agreement without the consent of the other spouse, the person seeking revocation must prove one or more of the following:

- a The person did not execute the agreement voluntarily.
- b The agreement was unconscionable when it was executed.

c Before the execution of the agreement the person was not provided a fair and reasonable disclosure of the property or financial obligations of the other spouse; and the person did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other spouse.

91 Acts ch 77 §7 HF 357
NEW section

596.8 Enforcement.

A premarital agreement is not enforceable if the person against whom enforcement is sought proves any of the following:

1. The person did not execute the agreement voluntarily.
2. The agreement was unconscionable when it was executed.
3. Before the execution of the agreement the person was not provided a fair and reasonable disclosure of the property or financial obligations of the other spouse; and the person did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other spouse.

If a provision of the agreement or the application of the provision to a party is found by the court to be unenforceable, the provision shall be severed from the remainder of the agreement and shall not affect the provisions, or application, of the agreement which can be given effect without the unenforceable provision.

91 Acts ch 77 §8 HF 357
NEW section

596.9 Unconscionability.

In any action under this chapter to revoke or enforce a premarital agreement the issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

91 Acts ch 77 §9 HF 357
NEW section

596.10 Enforcement — void marriage.

If a marriage is determined to be void, an agreement that would otherwise have been a premarital

agreement is enforceable only to the extent necessary to avoid an inequitable result.

91 Acts ch 77 §10 HF 357
NEW section

596.11 Limitation of actions.

Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

91 Acts ch 77 §11 HF 357
NEW section

596.12 Effective date.

This chapter takes effect on January 1, 1992, and applies to any premarital agreement executed on or after that date. This chapter does not affect the validity under Iowa law of any premarital agreement entered into prior to January 1, 1992.

91 Acts ch 77 §12 HF 357
NEW section

CHAPTER 597

HUSBAND AND WIFE

597.5 Attorney in fact.

A husband or wife may constitute the other spouse as the husband's or wife's attorney in fact, to control and dispose of the husband's or wife's property, including the relinquishment of homestead rights and surviving spouse's statutory share in the homestead,

as provided in section 561.13, for their mutual benefit, and may revoke the appointment, the same as other persons.

91 Acts ch 106 §2 SF 355
Section amended

CHAPTER 598

DISSOLUTION OF MARRIAGE

598.22A Satisfaction of support payments.

Notwithstanding sections 252B.14 and 598.22, support payments ordered pursuant to any support chapter for orders entered on or after July 1, 1985, which are not made pursuant to the provisions of section 252B.14 or 598.22, shall be credited only as provided in this section.

1. For payment made pursuant to an order, the clerk of the district court or collection services center shall record a satisfaction as a credit on the official support payment record if its validity is confirmed by the court upon submission of an affidavit by the person entitled to receive the payment, after notice is given to all parties.

If a satisfaction recorded on the official support payment record by the clerk of the district court or collection services center prior to July 1, 1991, was not confirmed as valid by the court, and a party to the action submits a written affidavit objecting to the satisfaction, notice of the objection shall be mailed to all parties at their last known addresses. After all parties have had sufficient opportunity to respond to the objection, the court shall either require the satisfaction to be removed from the official support payment record or confirm its validity.

2. For purposes of this section, the state is a party to which notice shall be given when public funds have been expended pursuant to chapter 234, 239, or 249A, or similar statutes in another state. If proper notice is not given to the state when required, any order of satisfaction is void.

3. The court shall not enter an order for satisfaction of payments not made through the clerk of the district court or collection services center if those payments have been assigned as a result of public funds expended pursuant to chapter 234, 239, or 249A, or similar statutes in other states.

91 Acts, ch 177, §7 HF 558
Subsection 1 amended

598.26 Record — impounding — violation indictable.

The record and evidence in each case of marriage dissolution shall be kept pursuant to the following provisions:

1. Until a decree of dissolution has been entered, the record and evidence shall be closed to all but the court, its officers, and the child support recovery unit of the department of human services pursuant to section 252B.9. No other person shall permit a copy of any of the testimony, or pleading, or the substance thereof, to be made available to any person other than a party to the action or a party's attorney. Nothing in this subsection shall be construed to prohibit publication of the original notice as provided by the rules of civil procedure.

2. The court shall, in the absence of objection by another party, grant a motion by a party to require the sealing of an answer to an interrogatory or of a financial statement filed pursuant to section 598.13. The court may in its discretion grant a motion by a

party to require the sealing of any other information which is part of the record of the case except for court orders, decrees and any judgments. If the court grants a motion to require the sealing of information in the case, the sealed information shall not thereafter be made available to any person other than a party to the action or a party's attorney except upon order of the court for good cause shown.

3. If the action is dismissed, judgment for costs shall be entered in the judgment docket and lien index. The clerk shall maintain a separate docket for dissolution of marriage actions.

4. Violation of the provisions of this section shall be a serious misdemeanor.

91 Acts, ch 177, §8 HF 558
Subsection 1 amended

598.29 Annuling illegal marriage — causes.

Marriage may be annulled for the following causes:

1. Where the marriage between the parties is prohibited by law.

2. Where either party was impotent at the time of marriage.

3. Where either party had a husband or wife living at the time of the marriage, provided they have not, with a knowledge of such fact, lived and cohabited together after the death or marriage dissolution of the former spouse of such party.

4. Where either party was a ward under a guardianship and was found by the court to lack the capacity to contract a valid marriage.

91 Acts, ch 93, §3 SF 495
Subsection 4 amended

598.42 Notice of certain orders by clerk of court.

The clerk of the district court shall provide oral or other notice and copies of temporary or permanent protective orders and orders to vacate the homestead entered pursuant to this chapter to the applicable law enforcement agencies and the twenty-four hour dispatcher for the law enforcement agencies, in the manner provided for protective orders under section 236.5. The clerk shall provide oral or other notice and copies of modifications or vacations of these orders in the same manner.

91 Acts, ch 218, §20 SF 444
NEW section

CHAPTER 600

ADOPTION

600.16 Termination and adoption record.

1. Any information compiled under section 600.8, subsection 1, paragraph "c", subparagraphs (1) and (2) shall be made available at any time by the clerk of the court, the department, or any agency which made the placement to:

a. The adopting parents.

b. The adopted person, provided that person is an adult at the time the request for information is made.

c. Any person approved by the department if the person uses this information solely for the purposes of conducting a legitimate research project or of treating a patient in a medical facility.

Information regarding an adopted person's existing medical and developmental history and family medical history, which meets the definition of background information in section 600.8, subsection 1, paragraph "c", but which was compiled prior to July 1, 1976, shall be made available as provided in this subsection. However, the identity of the adopted person's natural parents shall not be disclosed.

2. The permanent termination of parental rights record of the juvenile court under chapter 600A and the permanent adoption record of the court shall be sealed by the clerk of the juvenile court and the clerk of court, as appropriate, when they are complete and after the time for appeal has expired. All papers and records pertaining to a termination of parental rights under chapter 600A and to an adoption, whether a part of the permanent termination and adoption records of the juvenile court and of the court or on file with a guardian, guardian ad litem, custodian, person who placed a minor person, or the department shall not be open to inspection and the identity of the natural parents of an adopted person shall not be revealed. However, an agency involved in placement shall contact the adopting parents or the adult adopted child regarding eligibility of the adopted child for benefits based on entitlement of benefits or inheritance from the terminated natural parents. Also, the clerk of the court or county recorder shall, upon application to and order of the court for good cause shown, open the permanent adoption record of the court for the adopted person who is an adult and reveal the names of either or both of the natural parents.

An adopted person whose adoption became final prior to July 4, 1941, and whose adoption record was not required to be sealed at the time when the adoption record was completed, shall not be required to show good cause for an order opening the adoption record under this subsection, provided that the court shall consider any affidavit filed under this subsection.

A natural parent may file an affidavit requesting that the court reveal or not reveal the parent's name. The court shall consider any such affidavit in determining whether there is good cause to order opening of the records. If the adopted person who applies for revelation of the natural parents' name has a sibling who is a minor and who has been adopted by the same parents, the court may deny the application on the grounds that revelation to the applicant may also indirectly and harmfully permit the same revelation to the applicant's minor sibling. To facilitate the natural parents in filing an affidavit, the department shall, upon request of a natural parent, file an affidavit in the court in which the adoption records have been sealed.

3. Notwithstanding any other provision in this section, the juvenile court or court may, upon competent medical evidence, open termination or adoption records if opening is shown to be necessary to save the life of or prevent irreparable physical harm to an adopted person or the person's offspring. The juvenile court or court shall make every reasonable effort to prevent the identity of the natural parents from becoming revealed under this subsection to the adopted person. The juvenile court or court may, however, permit revelation of the identity of the natural parents to medical personnel attending the adopted person or the person's offspring. These medical personnel shall make every reasonable effort to prevent the identity of the natural parents from becoming revealed to the adopted person.

4. Any person, other than the adopting parents or the adopted person, who discloses information in violation of the provisions of this section shall be, upon conviction, guilty of a simple misdemeanor.

91 Acts, ch 243, §3 HF 380

Subsection 2, NEW unnumbered paragraph 2

CHAPTER 601A

CIVIL RIGHTS COMMISSION

601A.2 Definitions.

When used in this chapter, unless the context otherwise requires

1 “*Commission*” means the Iowa state civil rights commission created by this chapter

2 “*Commissioner*” means a member of the commission

3 “*Court*” means the district court in and for the judicial district of the state of Iowa in which the alleged unfair or discriminatory practice occurred or any judge of said court if the court is not in session at that time

4 “*Disability*” means the physical or mental condition of a person which constitutes a substantial handicap, and the condition of a person with a positive human immunodeficiency virus test result, a diagnosis of acquired immune deficiency syndrome, a diagnosis of acquired immune deficiency syndrome-related complex, or any other condition related to acquired immune deficiency syndrome. The inclusion of a condition related to a positive human immunodeficiency virus test result in the meaning of “*disability*” under the provisions of this chapter does not preclude the application of the provisions of this chapter to conditions resulting from other contagious or infectious diseases

5 “*Employee*” means any person employed by an employer

6 “*Employer*” means the state of Iowa or any political subdivision, board, commission, department, institution, or school district thereof, and every other person employing employees within the state

7 “*Employment agency*” means any person undertaking to procure employees or opportunities to work for any other person or any person holding itself to be equipped to do so

8 “*Familial status*” means one or more individuals under the age of eighteen domiciled with one of the following

a A parent or another person having legal custody of the individual or individuals

b The designee of the parent or the other person having custody of the individual or individuals, with the written permission of the parent or other person

c A person who is pregnant or is in the process of securing legal custody of the individual or individuals

9 “*Labor organization*” means any organization which exists for the purpose in whole or in part of collective bargaining, of dealing with employers concerning grievances, terms, or conditions of employment, or of other mutual aid or protection in connection with employment

10 “*Person*” means one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state of Iowa and all political subdivisions and agencies thereof

11 “*Public accommodation*” means each and every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods for a fee or charge to nonmembers of any organization or association utilizing the place, establishment, or facility, provided that any place, establishment, or facility that caters or offers services, facilities, or goods to the nonmembers gratuitously shall be deemed a public accommodation if the accommodation receives governmental support or subsidy. Public accommodation shall not mean any bona fide private club or other place, establishment, or facility which is by its nature distinctly private, except when such distinctly private place, establishment, or facility caters or offers services, facilities, or goods to the nonmembers for fee or charge or gratuitously, it shall be deemed a public accommodation during such period.

“*Public accommodation*” includes each state and local government unit or tax-supported district of whatever kind, nature, or class that offers services, facilities, benefits, grants or goods to the public, gratuitously or otherwise. This paragraph shall not be construed by negative implication or otherwise to restrict any part or portion of the pre-existing definition of the term “*public accommodation*”

12 “*Unfair practice*” or “*discriminatory practice*” means those practices specified as unfair or discriminatory in sections 601A 6, 601A 7, 601A 8, 601A 9, 601A 10 and 601A 11

91 Acts ch 184 §1 HF 656
Subsection 8 amended

601A.5 Powers and duties.

The commission shall have the following powers and duties

1 To prescribe the duties of a director and appoint and prescribe the duties of such investigators and other employees and agents as the commission shall deem necessary for the enforcement of this chapter

2 To receive, investigate, and finally determine the merits of complaints alleging unfair or discriminatory practices

3 To investigate and study the existence, character, causes, and extent of discrimination in public accommodations, employment, apprenticeship programs, on-the-job training programs, vocational schools, credit practices, and housing in this state

and to attempt the elimination of such discrimination by education and conciliation

4 To seek a temporary injunction against a respondent when it appears that a complainant may suffer irreparable injury as a result of an alleged violation of this chapter. A temporary injunction may only be issued ex parte, if the complaint filed with the commission alleges discrimination in housing. In all other cases a temporary injunction may be issued only after the respondent has been notified and afforded the opportunity to be heard.

5 To hold hearings upon any complaint made against a person, an employer, an employment agency, or a labor organization, or the employees or members thereof, to subpoena witnesses and compel their attendance at such hearings, to administer oaths and take the testimony of any person under oath, and to compel such person, employer, employment agency, or labor organization, or employees or members thereof to produce for examination any books and papers relating to any matter involved in such complaint. The commission shall issue subpoenas for witnesses in the same manner and for the same purposes on behalf of the respondent upon the respondent's request. Such hearings may be held by the commission, by any commissioner, or by any hearing examiner appointed by the commission. If a witness either fails or refuses to obey a subpoena issued by the commission, the commission may petition the district court having jurisdiction for issuance of a subpoena and the court shall in a proper case issue the subpoena. Refusal to obey such subpoena shall be subject to punishment for contempt.

6 To issue such publications and reports of investigations and research as in the judgment of the commission shall tend to promote good will among the various racial, religious, and ethnic groups of the state and which shall tend to minimize or eliminate discrimination in public accommodations, employment, apprenticeship and on-the-job training programs, vocational schools, or housing because of race, creed, color, sex, national origin, religion, ancestry or disability.

7 To prepare and transmit to the governor and to the general assembly from time to time, but not less often than once each year, reports describing its proceedings, investigations, hearings conducted and the outcome thereof, decisions rendered, and the other work performed by the commission.

8 To make recommendations to the general assembly for such further legislation concerning discrimination because of race, creed, color, sex, national origin, religion, ancestry or disability as it may deem necessary and desirable.

9 To co-operate, within the limits of any appropriations made for its operation, with other agencies or organizations, both public and private, whose purposes are consistent with those of this chapter, and in the planning and conducting of programs designed to eliminate racial, religious, cultural, and intergroup tensions.

10 To adopt, publish, amend, and rescind regu-

lations consistent with and necessary for the enforcement of this chapter.

11 To receive, administer, dispense and account for any funds that may be voluntarily contributed to the commission and any grants that may be awarded the commission for furthering the purposes of this chapter.

12 To defer a complaint to a local civil rights commission under commission rules promulgated pursuant to chapter 17A.

13 To issue subpoenas and order discovery as provided by this section in aid of investigations and hearings of alleged unfair or discriminatory housing or real property practices. The subpoenas and discovery may be ordered to the same extent and are subject to the same limitations as subpoenas and discovery in a civil action in district court.

14 To defer proceedings and refer a complaint to a local commission that has been recognized by the United States department of housing and urban development as having adopted ordinances providing fair housing rights and remedies that are substantially equivalent to those granted under federal law.

91 Acts ch 184 §2 HF 656
NEW subsections 13 and 14

601A.8A Additional unfair or discriminatory practices — housing.

1 A person shall not induce or attempt to induce another person to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular race, color, creed, sex, religion, national origin, disability, or familial status.

2 A person shall not represent to a person of a particular race, color, creed, sex, religion, national origin, disability, or familial status that a dwelling is not available for inspection, sale, or rental when the dwelling is available for inspection, sale, or rental.

3 a A person shall not discriminate in the sale or rental or otherwise make unavailable or deny a dwelling to a buyer or renter because of a disability of any of the following persons:

(1) That buyer or renter

(2) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available.

(3) A person associated with that buyer or renter.

b A person shall not discriminate against another person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability of any of the following persons:

(1) That person

(2) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available.

(3) A person associated with that person.

c For the purposes of this subsection only, discrimination includes any of the following circumstances:

(1) A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications are necessary to afford the person full enjoyment of the premises.

In the case of a rental, a landlord may, where reasonable to do so, condition permission for a modification on the renter's agreement to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(2) A refusal to make reasonable accommodations in rules, policies, practices, or services, when the accommodations are necessary to afford the person equal opportunity to use and enjoy a dwelling.

(3) In connection with the design and construction of covered multifamily dwellings for first occupancy after January 1, 1992, a failure to design and construct those dwellings in a manner that meets the following requirements:

(a) The public use and common use portions of the dwellings are readily accessible to and usable by disabled persons.

(b) All doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs.

(c) All premises within the dwellings contain the following features of adaptive design:

(i) An accessible route into and through the dwelling.

(ii) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.

(iii) Reinforcements in bathroom walls to allow later installation of grab bars.

(iv) Usable kitchens and bathrooms so that a person in a wheelchair can maneuver about the space.

d. Compliance with the appropriate requirements of the American national standard for buildings and facilities providing accessibility and usability for physically handicapped people, commonly cited as "ANSI A 117.1", satisfies the requirements of paragraph "c", subparagraph (3), subparagraph subdivision (c).

e. Nothing in this subsection requires that a dwelling be made available to a person whose tenancy would constitute a direct threat to the health or safety of other persons or whose tenancy would result in substantial physical damage to the property of others.

4. a. A person whose business includes engaging in residential real estate related transactions shall not discriminate against a person in making a residential real estate related transaction available or in terms or conditions of a residential real estate related transaction because of race, color, creed, sex, religion, national origin, disability, or familial status.

b. For the purpose of this subsection, "*residential real estate related transaction*" means any of the following:

(1) To make or purchase loans or provide other financial assistance to purchase, construct, improve, repair, or maintain a dwelling, or to secure residential real estate.

(2) To sell, broker, or appraise residential real estate.

5. A person shall not deny another person access to, or membership or participation in, a multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate against a person in terms or conditions of access, membership, or participation in such organization because of race, color, creed, sex, religion, national origin, disability, or familial status.

91 Acts, ch 184, §3 HF 656
NEW section

601A.11 Aiding, abetting, or retaliation.

It shall be an unfair or discriminatory practice for:

1. Any person to intentionally aid, abet, compel, or coerce another person to engage in any of the practices declared unfair or discriminatory by this chapter.

2. Any person to discriminate or retaliate against another person in any of the rights protected against discrimination by this chapter because such person has lawfully opposed any practice forbidden under this chapter, obeys the provisions of this chapter, or has filed a complaint, testified, or assisted in any proceeding under this chapter.

91 Acts, ch 94, §1 HF 324
Section amended

601A.11A Housing discrimination, threat of force or intimidation — penalty.

1. A person commits a public offense if the person, whether or not acting under color of law, by force or threat of force, intentionally intimidates or interferes with or attempts to interfere with a person under any of the following circumstances:

a. Because of the person's race, color, creed, sex, religion, national origin, disability, or familial status, and because the person is or has been selling, purchasing, renting, occupying, or financing, contracting for, or negotiating for the sale, purchase, rental, or occupation of any dwelling, or applying for or participating in a service, organization, or facility relating to the business of selling or renting dwellings.

b. Because the person is or has been doing any of the following:

(1) Participating, without discrimination because of race, color, creed, sex, religion, national origin, disability, or familial status, in an activity, service, organization, or facility described in paragraph "a".

(2) Affording another person the opportunity or protection to so participate.

(3) Lawfully aiding or encouraging other persons to participate, without discrimination because of race, color, creed, sex, religion, national origin, disability, or familial status, in an activity, service, organization, or facility described in paragraph "a".

2. A person violating this section is guilty of a serious misdemeanor.

91 Acts, ch 184, §4 HF 656
NEW section

601A.12 Exceptions.

The provisions of section 601A.8 shall not apply to:

1. Any bona fide religious institution with respect to any qualifications it may impose based on religion, when such qualifications are related to a bona fide religious purpose.

2. The rental or leasing of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner or members of the owner's family reside in one of such housing accommodations.

3. The rental or leasing of less than four rooms within a single housing accommodation by the occupant or owner of such housing accommodation, if the occupant or owner or members of that person's family reside in the accommodation.

4. The rental or leasing of a housing accommodation within which residents of both sexes must share a common bathroom facility on the same floor of the building.

5. Housing accommodations provided under any state or federal program specifically designed and operated to assist elderly persons, as defined in the state or federal program, and housing for older persons. As used in this subsection, "housing for older persons" means housing communities consisting of accommodations intended for either of the following:

a. For eighty percent occupancy by at least one person fifty-five years of age or older per unit, and providing significant facilities and services specifically designed to meet the physical or social needs of such persons.

b. For and occupied solely by persons sixty-two years of age or older.

6. The rental or leasing of a housing accommodation in a building which contains housing accommodations for not more than four families living independently of each other, if the owner resides in one of the housing accommodations for which the owner qualifies for the homestead tax credit under section 425.1.

91 Acts, ch 184, §5-7 HF 656
Subsection 3 amended
Subsection 4 stricken and former subsections 5-7 renumbered as 4-6
Subsection 5, paragraph a amended

601A.12A Additional housing exception.

Section 601A.8A does not prohibit a person engaged in the business of furnishing appraisals of real estate from taking into consideration factors other than race, color, creed, sex, religion, national origin, disability, or familial status in appraising real estate.

91 Acts, ch 184, §8 HF 656
NEW section

601A.15A Additional proceedings — housing discrimination.

1. a. The commission may join a person not named in the complaint as an additional or substitute respondent if in the course of the investigation, the commission determines that the person should be alleged to have committed a discriminatory housing or real estate practice.

b. In addition to the information required in the notice, the commission shall include in a notice to a respondent joined under this subsection an explanation of the basis for the determination under this subsection that the person is properly joined as a respondent.

2. a. The commission shall, during the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal by the commission, to the extent feasible, engage in mediation with respect to the complaint.

b. A mediation agreement is an agreement between a respondent and the complainant and is subject to commission approval.

c. A mediation agreement may provide for binding arbitration or other method of dispute resolution. Dispute resolution that results from a mediation agreement may authorize appropriate relief, including monetary relief.

d. A mediation agreement shall be made public unless the complainant and respondent agree otherwise, and the commission determines that disclosure is not necessary to further the purposes of this chapter relating to unfair or discrimination in housing or real estate.

e. The proceedings or results of mediation shall not be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of the persons who are party to the mediation.

f. After the completion of the commission's investigation, the commission shall make available to the aggrieved person and the respondent information derived from the investigation and the final investigation report relating to that investigation.

3. a. If the commission concludes, following the filing of a complaint, that prompt judicial action is necessary to carry out the purposes of this chapter relating to unfair or discriminatory housing or real estate practices, the commission may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint.

b. On receipt of the commission's authorization, the attorney general shall promptly file the action.

c. A temporary restraining order or other order granting preliminary or temporary relief under this section is governed by the applicable Iowa rules of civil procedure.

d. The filing of a civil action under this section does not affect the initiation or continuation of administrative proceedings in regard to an administrative hearing.

4. *a.* The commission shall prepare a final investigative report.

b. A final report under this section may be amended by the commission if additional evidence is discovered.

5. *a.* The commission shall determine based on the facts whether probable cause exists to believe that a discriminatory housing or real estate practice has occurred or is about to occur.

b. The commission shall make its determination under paragraph “*a*” not later than one hundred days after a complaint is filed unless any of the following applies:

(1) It is impracticable to make the determination within that time period.

(2) The commission has approved a mediation agreement relating to the complaint.

c. If it is impracticable to make the determination within the time period provided by paragraph “*b*”, the commission shall notify the complainant and respondent in writing of the reasons for the delay.

d. If the commission determines that probable cause exists to believe that a discriminatory housing or real estate practice has occurred or is about to occur, the commission shall immediately issue a determination unless the commission determines that the legality of a zoning or land use law or ordinance is involved as provided in subsection 7.

6. *a.* A determination issued under subsection 5 must include all of the following:

(1) Must consist of a short and plain statement of the facts on which the commission has found probable cause to believe that a discriminatory housing or real estate practice has occurred or is about to occur.

(2) Must be based on the final investigative report.

(3) Need not be limited to the facts or grounds alleged in the complaint.

b. Not later than twenty days after the commission issues a determination, the commission shall send a copy of the determination with information concerning the election under section 601A.16A to all of the following persons:

(1) Each respondent, together with a notice of the opportunity for a hearing as provided under subsection 10.

(2) Each aggrieved person on whose behalf the complaint was filed.

7. If the commission determines that the matter involves the legality of a state or local zoning or other land use ordinance, the commission shall not issue a determination and shall immediately refer the matter to the attorney general for appropriate action.

8. *a.* If the commission determines that no probable cause exists to believe that a discriminatory housing or real estate practice has occurred or is about to occur, the commission shall promptly dismiss the complaint.

b. The commission shall make public disclosure of each dismissal under this section.

9. The commission shall not issue a determination under this section regarding an alleged discriminatory housing or real estate practice after the beginning of the trial of a civil action commenced by the aggrieved party under federal or state law seeking relief with respect to that discriminatory housing or real estate practice.

10. *a.* If a timely election is not made under section 601A.16A, the commission shall provide for a hearing on the charges in the complaint.

b. Except as provided by paragraph “*c*”, the hearing shall be conducted in accordance with chapter 17A for contested cases.

c. A hearing under this section shall not be continued regarding an alleged discriminatory housing or real estate practice after the beginning of the trial of a civil action commenced by the aggrieved person under federal or state law seeking relief with respect to that discriminatory housing or real estate practice.

11. *a.* If the commission determines at a hearing under subsection 10 that a respondent has engaged or is about to engage in a discriminatory housing or real estate practice, the commission may order the appropriate relief, including actual damages, reasonable attorney’s fees, court costs, and other injunctive or equitable relief.

b. To vindicate the public interest, the commission may assess a civil penalty against the respondent in an amount that does not exceed the following applicable amount:

(1) Ten thousand dollars if the respondent has not been adjudged by the order of the commission or a court to have committed a prior discriminatory housing or real estate practice.

(2) Except as provided by paragraph “*c*”, twenty-five thousand dollars if the respondent has been adjudged by order of the commission or a court to have committed one other discriminatory housing or real estate practice during the five-year period ending on the date of the filing of the complaint.

(3) Except as provided by paragraph “*c*”, fifty thousand dollars if the respondent has been adjudged by order of the commission or a court to have committed two or more discriminatory housing or real estate practices during the seven-year period ending on the date of the filing of the complaint.

c. If the acts constituting the discriminatory housing or real estate practice that is the object of the complaint are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing or real estate practice, the civil penalties in paragraph “*b*”, subparagraphs (2) and (3) may be imposed without regard to the period of time within which any other discriminatory housing or real estate practice occurred.

d. At the request of the commission, the attorney general shall initiate legal proceedings to recover a civil penalty due under this section. Funds collected under this section shall be paid to the treasurer of state for deposit in the state treasury to the credit of the general fund.

601A.16A Civil action elected — housing.

1 *a* A complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed may elect to have the charges asserted in the complaint decided in a civil action as provided by section 601A 17A

b The election must be made not later than twenty days after the date of receipt by the electing person of service under section 601A 15, subsection 5, or in the case of the commission, not later than twenty days after the date the determination was issued

c The person making the election shall give notice to the commission and to all other complainants and respondents to whom the election relates

2 *a* An aggrieved person may file a civil action in district court not later than two years after the occurrence of the termination of an alleged discriminatory housing or real estate practice, or the breach of a mediation agreement entered into under this chapter, whichever occurs last, to obtain appropriate relief with respect to the discriminatory housing or real estate practice or breach

b The two-year period does not include any time during which an administrative hearing under this chapter is pending with respect to a complaint or charge based on the discriminatory housing or real estate practice. This subsection does not apply to actions arising from a breach of a mediation agreement

c An aggrieved person may file an action under this section whether or not a discriminatory housing or real estate complaint has been filed under section 601A 15A, and without regard to the status of any discriminatory housing or real estate complaint filed under that section

d If the commission has obtained a mediation agreement with the consent of an aggrieved person, the aggrieved person shall not file an action under this section with respect to the alleged discriminatory practice that forms the basis for the complaint except to enforce the terms of the agreement

e An aggrieved person shall not file an action under this section with respect to an alleged discriminatory housing or real estate practice that forms the basis of a charge issued by the commission if the commission has begun a hearing on the record under this chapter with respect to the charge

91 Acts ch 184 §10 HF 656
NEW section

601A.17A Civil proceedings — housing.

1 *a* If timely election is made under section 601A 16A, subsection 1, the commission shall authorize, and not later than thirty days after the election is made, the attorney general shall file a civil action on behalf of the aggrieved person in a district court seeking relief

b Venue for an action under this section is in the county in which the alleged discriminatory housing or real estate practice occurred

c An aggrieved person may intervene in the action

d If the district court finds that a discriminatory housing or real estate practice has occurred or is about to occur, the district court may grant as relief any relief that a court may grant in a civil action under subsection 6

e If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the district court shall not award the monetary relief if that aggrieved person has not complied with discovery orders entered by the district court

2 A commission order under section 601A 15A, subsection 11, does not affect a contract, sale, encumbrance, or lease that was consummated before the commission issued the order and involved a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the charge issued under this chapter

3 If the commission issues an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a governmental agency, the commission, not later than thirty days after the date of issuance of the order, shall do all of the following

a Send copies of the findings and the order to the governmental agency

b Recommend to the governmental agency appropriate disciplinary action

4 If the commission issues an order against a respondent against whom another order was issued within the preceding five years under section 601A 15A, subsection 11, the commission shall send a copy of each order issued under that section to the attorney general

5 On application by a person alleging a discriminatory housing practice or by a person against whom a discriminatory practice is alleged, the district court may appoint an attorney for the person

6 In an action under this section, if the district court finds that a discriminatory housing or real estate practice has occurred or is about to occur, the district court may award or issue to the plaintiff one or more of the following

a Actual and punitive damages

b Reasonable attorney's fees

c Court costs

d Subject to subsection 7, any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in the practice or ordering appropriate affirmative action

7 Relief granted under this section does not affect a contract, sale, encumbrance, or lease that was consummated before the granting of the relief and involved a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the filing of a complaint under this chapter or a civil action under this section

8 *a* On the request of the commission, the attorney general may intervene in an action under this section if the commission certifies that the case is of general public importance

b. The attorney general may obtain the same relief available to the attorney general under subsection 9.

9. a. On the request of the commission, the attorney general may file a civil action in district court for appropriate relief if the commission has reasonable cause to believe that any of the following applies:

(1) A person is engaged in a pattern or practice of resistance to the full enjoyment of any housing right granted by this chapter.

(2) A person has been denied any housing right granted by this chapter and that denial raises an issue of general public importance.

b. In an action under this section, the district court may do any of the following:

(1) Order preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of housing rights as necessary to assure the full enjoyment of the housing rights granted by this chapter.

(2) Order another appropriate relief, including the awarding of monetary damages, reasonable attorney's fees, and court costs.

(3) To vindicate the public interest, assess a civil penalty against the respondent in an amount that does not exceed any of the following:

(a) Fifty thousand dollars for a first violation.

(b) One hundred thousand dollars for a second or subsequent violation.

c. A person may intervene in an action under this section if the person is any of the following:

(1) An aggrieved person to the discriminatory housing or real estate practice.

(2) A party to a mediation agreement concerning the discriminatory housing or real estate practice.

10. The attorney general, on behalf of the commission or other party at whose request a subpoena is issued, may enforce the subpoena in appropriate proceedings in district court.

11. A court in a civil action brought under this section or the commission in an administrative hearing under section 601A.15A, subsection 11, may award reasonable attorney's fees to the prevailing party and assess court costs against the nonprevailing party.

91 Acts, ch 184, §11 HF 656
NEW section

601A.20 Effect on other law.

1. This chapter does not affect a reasonable local or state restriction on the maximum number of occupants permitted to occupy a dwelling or restriction relating to health or safety standards.

2. This chapter does not affect a requirement of nondiscrimination in other state or federal law.

91 Acts, ch 184, §12 HF 656
NEW section

CHAPTER 601D

RIGHTS OF BLIND, PARTIALLY BLIND AND PHYSICALLY DISABLED

601D.11 Service dogs and assistive animals.

1. For purposes of this section "*service dog*" means a dog specially trained at a recognized training facility to assist a disabled or handicapped person, whether described as a service dog, a support dog, an independence dog, or otherwise. "*Assistive animal*" means a simian or other animal specially trained or in the process of being trained under the auspices of a recognized training facility to assist a disabled or handicapped person.

2. A disabled or handicapped person or person training an assistive animal has the right to be accompanied by a service dog or an assistive animal,

under control, in any of the places listed in sections 601D.3 and 601D.4 without being required to make additional payment for the service dog or assistive animal. A landlord shall waive lease restrictions on the keeping of animals for the service dog or assistive animal of a disabled or handicapped person. The person is liable for damage done to any premises or facility by a service dog or assistive animal.

3. A person who knowingly denies or interferes with the right of a person under this section is, upon conviction, guilty of a simple misdemeanor.

91 Acts, ch 69, §1 HF 392
Section amended

CHAPTER 601J

TRANSPORTATION PROGRAMS

601J.4 Federal, state, local and private aid — report.

1. The department shall compile and maintain current information on available and pending federal, state, local, and private aid affecting urban and rural public transit programs. Public, private, and private nonprofit organizations applying for or receiving federal, state or local aid for providing transit services shall provide a copy of their fiscal year operating budget annually prior to June 1 depicting funds used for public transit programs and such other information as the department may require prior to receiving any federal or state funds or any aid from a political subdivision of the state. The operating budget shall list all of the funding sources of the organization along with the listing of funds expended by that organization during the preceding fiscal year. The department, in co-operation with the regional planning agencies as the responsible agency for annual updating the regional transit development programs, shall compile this information annually. Any state agency or organization administering funds for transit services is required to submit all funding requests through the regional and state clearinghouse and the state department of transportation. Any organization, state agency, political subdivision, and public transit system, except public school transportation, receiving federal, state or local aid to provide or contract for public transit services or transportation to the general public and specific client groups, must coordinate and consolidate funding and resulting service, to the maximum extent possible, with the urban or regional transit system.

2. Upon request, the department shall provide assistance to political subdivisions, state agencies, and organizations affected by this chapter for federal aid applications for urban and rural transit system program aid. The department, in co-operation with the regional planning agencies, shall maintain current information reflecting the amount of federal, state and local aid received by the public and private nonprofit organizations providing public transit services and the purpose for which the aid is received. The department shall annually prepare a report to be submitted to the general assembly, the department of management, and to the governor, prior to February 1 of each year, stating the receipts and disbursements made during the preceding fiscal year and the adequacy of programs financed by federal, state, local, and private aid in the state. The department shall analyze the programs financed and recommend methods of avoiding duplication and increasing the efficacy of programs financed. The

department shall receive comments from the department of human services, department of elder affairs, and the officers and agents of the other affected state and local government units relative to the department's analysis. The department shall use the following criteria to adopt rules to determine compliance with and exceptions to subsection 1:

a Elimination of duplicative and inefficient administrative costs, policies and management.

b Utilization of resources for transportation services effectively and efficiently.

c Elimination of duplicative and inefficient transportation services.

d Development of transportation services which meet the needs of the general public and insure services adequate to the needs of transportation disadvantaged persons.

e Protection of the rights of private enterprise public transit providers.

f Coordination of planning for transportation services at the urban and regional level by all agencies or organizations receiving public funds that are purchasing or providing transportation services.

g Management of equipment and facilities purchased with public funds so that efficient and routine maintenance and replacement is accomplished.

h Training of transit management, drivers and maintenance personnel to provide safe, efficient, and economical transportation services.

Eligibility to receive or expend federal, state or local funds for transportation services by all agencies or organizations purchasing or providing these services shall be contingent upon compliance with these criteria as determined by the department, except that services provided by or purchased by the department of human services, which include transportation, shall be subject to section 601J.5, subsection 3, paragraph "c"

3. The department shall receive and distribute federal aid to public transit systems unless precluded by federal statute; however, the department shall not retain or redirect any portion of funds received by the department for a particular public transit system except that the department may redirect unused funds after a project is completed in order to prevent the lapse of funds. The department may designate the public transit systems as the direct recipients of federal aid.

91 Acts ch 27 §5 HF 307
Subsection 3 amended

601J.6 Public transit assistance fund established.

1. There is established a public transit assistance fund in the office of the treasurer of state. Moneys in this fund shall be expended for providing assistance to public transit for the development, improvement, and maintenance of public transit systems. Unencumbered moneys appropriated by the general assembly for the implementation of a state assistance plan shall be deposited in the public transit assistance fund. Moneys received by the department by agreements, grants, gifts, or other means from individuals, companies or other business entities, or cities and counties for the purposes stated in this section shall be credited to the public transit assistance fund.

Notwithstanding the provisions of this section and section 312.2, subsection 15, directing that moneys be deposited into the public transit assistance fund, for the fiscal period beginning on July 1, 1991, and ending June 30, 1993, all such moneys under these sections shall be deposited into the general fund of the state. There is appropriated during this fiscal period from moneys received by the department by agreements, grants, gifts, or other means and deposited into the state general fund as a result of this paragraph to the department for purposes of this subsection. Moneys appropriated from the gen-

eral fund under this paragraph and section 312.2, subsection 15, shall not be deposited into the public transit assistance fund.

2. The department may enter into agreements with public transit systems, the United States government, cities, counties, business entities, or other persons for carrying out the purposes of this section.

3. The department may accept federal funds to carry out this section. Federal funds received under this section are appropriated for the purposes set forth in the federal grants.

4. Moneys deposited in the public transit assistance fund are not subject to sections 8.33 and 8.39.

5. Notwithstanding chapter 8, funds appropriated for public transit purposes to implement a state assistance plan shall be allocated in whole or in part to a public transit system prior to the time actual expenditures are incurred if the allocation is first approved by the department. A public transit system shall make application for advance allocations to the department specifically stating the reasons why an advance allocation is required and this allocation shall be included in the total to be audited.

91 Acts, ch 260, §1249 HF 173
Restrictions on use of moneys deposited in state general fund, see 91 Acts, ch 263, §38 SF 209, 91 Acts, ch 268, §508 SF 529
Subsection 1, NEW unnumbered paragraph 2

CHAPTER 601K

DEPARTMENT OF HUMAN RIGHTS

601K.1 Department of human rights.

A department of human rights is created, with the following divisions:

1. Division of Latino affairs.
2. Division on the status of women.
3. Division of persons with disabilities.
4. Division of community action agencies.
5. Division of deaf services.
6. Division of criminal and juvenile justice planning.
7. Division on the status of African-Americans.

91 Acts, ch 50, §2 SF 389, 91 Acts, ch 109, §8 SF 479
Subsection 2 stricken and former subsections 3-8 renumbered as 2-7
Subsection 7 amended

601K.12 Commission of Latino affairs — terms — compensation.

The commission of Latino affairs consists of nine members, appointed by the governor. Commission members shall be appointed in compliance with sections 69.16 and 69.16A and with consideration given to geographic residence and density of Latino population represented by each member. The members of the commission shall be appointed during the month

of June and shall serve for terms of two years commencing July 1 of each odd-numbered year. Members appointed shall continue to serve until their respective successors are appointed. Vacancies in the membership of the commission shall be filled by the original appointing authority and in the manner of the original appointments. Members shall receive actual expenses incurred while serving in their official capacity. Members may also be eligible to receive compensation as provided in section 7E.6.

91 Acts, ch 50, §1 SF 389
Section amended

SUBCHAPTER 3

DIVISION OF CHILDREN, YOUTH, AND FAMILIES

601K.31 through 601K.39 Repealed by 91 Acts, ch 109, § 9. SF 479 See § 217.9A.

601K.102 Energy crisis fund.

1. An energy crisis fund is created in the state treasury. Moneys deposited in the fund shall be used

to assist low-income families who qualify for the low-income heating energy assistance program to avoid loss of essential heating.

2. The fund may receive moneys including, but not limited to, the following:

a. Moneys appropriated by the general assembly for the fund.

b. Moneys credited to the fund under section 93.11.

c. After July 1, 1988, unclaimed patronage dividends of electric cooperative corporations or associations shall be applied to the fund following the time specified in section 556.12 for claiming the dividend from the holder.

d. The fund may also receive contributions from customer contribution funds established under section 476.66.

3. Under rules developed by the division of community action agencies of the department of human rights, the fund may be used to negotiate reconnection of essential utility services with the energy provider.

91 Acts, ch 270, §6 SF 542
Subsection 2, paragraph b amended

SUBCHAPTER 10

DIVISION ON THE STATUS OF AFRICAN-AMERICANS

601K.141 Definitions.

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

1. "*Commission*" means the commission on the status of African-Americans.

2. "*Division*" means the division on the status of African-Americans of the department of human rights.

3. "*Administrator*" means the administrator of the division on the status of African-Americans of the department of human rights.

91 Acts, ch 50, §3 SF 389
Section amended

601K.142 Establishment.

There is established a commission on the status of African-Americans to consist of nine members, appointed by the governor, and confirmed by the senate, to staggered four-year terms. At least five members shall be individuals who are African-American. Members shall be appointed representing every geographical area of the state. No more than a simple majority of the commission shall be of the same political party. The members of the commission shall appoint from its membership a commission chairperson and a vice chairperson and other officers as the commission deems necessary. Vacancies on the commission shall be filled for the remainder of the term of the original appointment.

91 Acts, ch 50, §4 SF 389
Section amended

601K.144 Objectives of commission.

The commission shall study the changing needs and problems of African-Americans in this state, and recommend new programs, policies, and constructive action to the governor and the general assembly including, but not limited to, the following areas:

1. Public and private employment policies and practices.

2. Iowa labor laws.

3. Legal treatment relating to political and civil rights.

4. African-American children, youth, and families.

5. Expanded programs to assist African-Americans as consumers.

6. The employment of African-Americans and the initiation and sustaining of African-American businesses and African-American entrepreneurship.

7. African-Americans as members of private and public boards, committees, and organizations.

8. Education, health, housing, social welfare, human rights, and recreation.

9. The legal system, including law enforcement, both criminal and civil.

10. Social service programs.

91 Acts, ch 50, §5 SF 389
Section amended

601K.146 Duties.

The commission shall do all of the following:

1. Serve as an information clearinghouse on programs and agencies operating to assist African-Americans. Clearinghouse duties shall include, but are not limited to:

a. Service as a referral agency to assist African-Americans in securing access to state agencies and programs.

b. Service as a liaison with federal, state, and local governmental units and private organizations on matters relating to African-Americans.

c. Service as a communications conduit to state government for African-American organizations in the state.

d. Stimulation of public awareness of the problems of African-Americans.

2. Conduct conferences and training programs for African-Americans, public and private agencies and organizations, and the general public.

3. Coordinate, assist, and cooperate with public and private agencies in efforts to expand equal rights and opportunities for African-Americans in the areas of: employment, economic development, education, health, housing, recreation, social welfare, social services, and the legal system.

4. Serve as the central permanent agency for the advocacy of services for African-Americans.

5. Provide assistance to and cooperate with individuals and public and private agencies and organizations in joint efforts to study and resolve problems

relating to the improvement of the status of African-Americans.

6. Publish and disseminate information relating to African-Americans, including publicizing their accomplishments and contributions to this state.

7. Evaluate existing and proposed programs and legislation for their impact on African-Americans.

8. Coordinate or conduct training programs for African-Americans to enable them to assume leadership positions.

9. Conduct surveys of African-Americans to ascertain their needs.

10. Assist the department of personnel in the elimination of underutilization of African-Americans in the state's workforce.

11. Recommend legislation to the governor and the general assembly designed to improve the educational opportunities and the economic and social conditions of African-Americans in this state.

91 Acts, ch 50, §6 SF 389

Section amended

CHAPTER 601L

DEPARTMENT FOR THE BLIND

601L.3 Commission duties.

The commission shall:

1. Prepare and maintain a complete register of the blind of the state which shall describe the condition, cause of blindness, ability to receive education and industrial training, and other facts the commission deems of value.

2. Assist in marketing of products of blind workers of the state.

3. Ameliorate the condition of the blind by promoting visits to them in their homes for the purpose of instruction and by other lawful methods as the commission deems expedient.

4. Make inquiries concerning the causes of blindness to ascertain what portion of cases are preventable, and cooperate with the other organized agents of the state in the adoption and enforcement of proper preventive measures.

5. Provide for suitable vocational training if the commission deems it advisable and necessary. The commission may establish workshops for the employment of the blind, paying suitable wages for work under the employment. The commission may provide or pay for, during their training period, the temporary lodging and support of persons receiving vocational training. The commission may use receipts or earnings that accrue from the operation of workshops as provided in this chapter, but a detailed statement of receipts or earnings and expenditures shall be made monthly to the director of the department of management.

6. Establish, manage, and control a special training, orientation, and adjustment center or centers for the blind. Training in the centers shall be limited to persons who are sixteen years of age or older, and the department shall not provide or cause to be provided any academic education or training to children under the age of sixteen except that the commission may provide library services to these children. The

commission may provide for the maintenance, upkeep, repair, and alteration of the buildings and grounds designated as centers for the blind including the expenditure of funds appropriated for that purpose. Nonresidents may be admitted to Iowa centers for the blind as space is available, upon terms determined by rule.

7. Establish and maintain offices for the department and commission.

8. Accept gifts, grants, devises, or bequests of real or personal property from any source for the use and purposes of the department. Notwithstanding sections 8.33 and 453.7, the interest accrued from moneys received under this section shall not revert to the general fund of the state.

9. Provide library services to blind and physically handicapped persons.

10. Act as a bureau of information and industrial aid for the blind, such as assisting the blind in finding employment.

11. Be responsible for the budgetary and personnel decisions for the department and commission.

12. Manage and control the property, both real and personal, belonging to the department. The commission shall, according to the schedule established in this subsection, when the price is reasonably competitive and the quality as intended, purchase soybean-based inks and starch-based plastics, including but not limited to starch-based garbage can liners.

a. By July 1, 1989, a minimum of fifty percent of the purchases of inks which are used for newsprint paper for printing services performed internally or contracted for by the commission shall be soybean-based. The percentage of purchases by the commission of soybean-based inks used for newsprint printing services shall increase by July 1, 1991, to one hundred percent of the total purchases of inks used for newsprint printing services.

b. By July 1, 1989, a minimum of fifteen percent of the purchases of garbage can liners made by the commission shall be starch-based plastic garbage can liners. The percentage purchased shall increase by five percent annually until fifty percent of the purchases of garbage can liners are purchases of starch-based plastic garbage can liners.

c. By July 1, 1991, a minimum of twenty-five percent of the purchases of inks, other than inks which are used for newsprint printing services, and which are used internally or contracted for by the commission, shall be soybean-based to the extent formulations for such inks are available. The percentage of purchases by the commission of the soybean-based inks, to the extent formulations for such inks are available, shall increase by July 1, 1992, to fifty percent of the total purchases of the inks, and shall increase by July 1, 1993, to one hundred percent of the total purchases of the inks.

d. The commission shall report to the general assembly on February 1 of each year, the following:

(1) Plastic products which are regularly purchased by the commission for which starch-based product alternatives are available. The report shall also include the cost of the plastic products purchased and the cost of the starch-based product alternatives.

(2) Information relating to soybean-based inks and starch-based garbage can liners regularly purchased by the commission. The report shall include the cost of purchasing soybean-based inks and starch-based garbage can liners, the percentage of inks purchased which are soybean-based and the percentage of liners purchased which are starch-based.

e. The department of natural resources shall review the procurement specifications currently used by the commission to eliminate, wherever possible, discrimination against the procurement of products manufactured with starch-based plastics and soybean-based inks.

f. The department of natural resources shall assist the commission in locating suppliers of starch-based plastics and soybean-based inks, and collecting data on recycled content, starch-based plastic, and soybean-based ink purchases.

g. The commission, in conjunction with the department of natural resources, shall adopt rules to carry out the provisions of this section.

h. The department of natural resources shall cooperate with the commission in all phases of implementing this section.

13. In conjunction with the recommendations made by the department of natural resources, purchase and use recycled printing and writing paper in accordance with the schedule established in section 18.18; establish a wastepaper recycling program, by January 1, 1990, in accordance with the recommendations made by the department of natural resources and requirements of section 18.20; comply with the recycling goal, recycling schedule, and ultimate termination of purchase and use of polystyrene products for the purpose of storing, packaging, or serving food for immediate consumption pursuant to section 455D.16; and, in accordance with section 18.6, require product content statements, the provision of information regarding on-site review of waste management in product bidding and contract procedures, and compliance with requirements regarding contract bidding.

14. Develop a plan to provide telephone yellow pages information without charge to persons declared to be blind under the standards in section 422.12, subsection 1, paragraph "e". The department may apply for federal funds to support the service. The program shall be limited in scope by the availability of funds.

15. A motor vehicle purchased by the commission shall not operate on gasoline other than gasoline blended with at least ten percent ethanol. A state issued credit card used to purchase gasoline shall not be valid to purchase gasoline other than gasoline blended with at least ten percent ethanol. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on gasoline blended with ethanol.

91 Acts, ch 97, §59 HF 198, 91 Acts, ch 194, §8 SF 318, 91 Acts, ch 254, §23 SF 545

Subsection 12, unnumbered paragraph 1 amended
NEW subsections 14 and 15

CHAPTER 602

THE COURTS

602.1301 Budget and 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 the format specified by the director of management and used by all departments and establishments in transmitting to the director estimates of their expenditure requirements pursuant to section 8.23, except the estimates of expenditure requirements shall be based upon one hundred percent of funding for the current fiscal year accounted for by program, and using the same line item definitions of expenditures as used for the current fiscal year's budget request, and the remainder of the estimate of expenditure requirements prioritized by program. The supreme court shall also make use of the department of management's automated budget system when submitting information to the director of management to assist the director in the transmittal of information as required under section 8.35A. The supreme court shall budget and track expenditures by the following separate organization codes:

- (1) Iowa court information system.
- (2) Appellate courts.
- (3) Central administration.
- (4) District court administration.
- (5) Judges and magistrates.
- (6) Court reporters.
- (7) Juvenile court officers.
- (8) District court clerks.
- (9) Jury and witness fees.

b. Before December 1, the supreme court shall submit to the director of management an estimate of the total expenditure requirements of the judicial department. The director of management shall submit this estimate received from the supreme court to the governor for inclusion without change in the governor's proposed budget for the succeeding fiscal year. The estimate shall also be submitted to the chairpersons of the committees on appropriations.

3. The state court administrator shall prescribe the procedures to be used by the operating compo-

nents 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.

91 Acts, ch 267, §414 HF 479

Subsection 2, paragraph a, subparagraph (1) stricken and rewritten

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.

5. The pay plan shall set the compensation of court employees within the funds appropriated by the general assembly.

91 Acts, ch 116, §6 HF 534
NEW subsection 5

602.1502 State court administration salaries.

1. The supreme court shall set the compensation of the state court administrator. The salaries of other employees of the judicial department shall be set pursuant to the department's pay plan established under section 602.1401.

2. Court reporters who are employed on an emergency basis in the district court shall be paid not more than their usual and customary fees, while employed by the court. Payments shall be made at least once each month.

3. Court reporters shall be paid compensation for transcribing their notes as provided in section 602.3202, but shall not work on outside depositions during the hours for which they are compensated as a court employee.

91 Acts, ch 116, §7 HF 534
Section amended

602.1503 through 602.1507. Repealed by 91 Acts, ch 116, § 23. See § 602.1502.

602.6306 Jurisdiction, procedure, appeals.

1. District associate judges have the jurisdiction provided in section 602.6405 for magistrates, and when exercising that jurisdiction shall employ magistrates' practice and procedure.

2. District associate judges also have jurisdiction in civil actions for money judgment where the amount in controversy does not exceed five thousand dollars, jurisdiction over involuntary commitment, treatment, or hospitalization proceedings under chapters 125 and 229, jurisdiction of indictable misdemeanors, and felony violations of section 321J.2, and the jurisdiction provided in section 602.7101 when designated as a judge of the juvenile court. While presiding in these subject matters a district associate judge shall employ district judges' practice and procedure.

3. When a district judge is unable to serve as a result of temporary incapacity, a district associate judge may, by order of the chief judge of the judicial

district enrolled in the records of the clerk of the district court, temporarily exercise any judicial authority within the jurisdiction of a district judge during the time of incapacity with respect to the matters or classes of matters specified in that order.

4. Appeals from judgments or orders of district associate judges while exercising the jurisdiction of magistrates shall be governed by the laws relating to appeals from judgments and orders of magistrates. Appeals from judgments or orders of district associate judges while exercising any other jurisdiction shall be governed by the laws relating to appeals from judgments or orders of district judges.

91 Acts, ch 108, §7 SF 453
Subsection 2 amended

602.6405 Jurisdiction — procedure.

1. Magistrates have jurisdiction of simple misdemeanors, including traffic and ordinance violations, and preliminary hearings, search warrant proceedings, county and municipal infractions, and small claims. Magistrates have jurisdiction to exercise the powers specified in sections 644.2 and 644.12, and to hear complaints or preliminary informations, issue warrants, order arrests, make commitments, and take bail. Magistrates have jurisdiction over violations of section 123.47 involving persons eighteen years of age, and section 123.49, subsection 2, paragraph "h". Magistrates who are admitted to the practice of law in this state have jurisdiction over all proceedings for the involuntary commitment, treatment, or hospitalization of individuals under chapters 125 and 229, except as otherwise provided under section 229.6A; nonlawyer magistrates have jurisdiction over emergency detention and hospitalization proceedings under sections 125.91 and 229.22. Magistrates have jurisdiction to conduct hearings authorized under section 809.4 and section 809.10, subsection 2.

2. The criminal procedure before magistrates is as provided in chapters 804, 806, 808, 811, 820 and 821 and rules of criminal procedure 1, 2, 5, 7, 8, and 32 to 56. The civil procedure before magistrates shall be as provided in chapters 631 and 648.

91 Acts, ch 108, §8 SF 453
Subsection 1 amended

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 or magistrate of the district court, give written notice to the department of management and the department of revenue and finance of the date of death. The clerk shall also give written notice of the death of a justice of the supreme court, a judge of the court of appeals, or a judge or magistrate of 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 considered filed when the clerk entered the date the pleading was received on the pleading and the pleading shall not be 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. Reserved.

12. At the order of a justice of the supreme court, docket without fee any civil or criminal case trans-

ferred 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. Reserved.

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 employment appeal board 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 employment appeal board as provided in section 89A.10, subsection 2.

26. With sufficient surety, approve an appeal bond for judicial review of an order or action of the department of natural resources 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. Reserved.

32. Carry out duties as county registrar of vital statistics as provided in chapter 144.

33. Furnish to the Iowa department of public 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. Reserved.

46. Carry out duties relating to reprieves, pardons, commutations, remission of fines and forfeitures, and restoration of citizenship as provided in sections 248A.5 and 248A.6.

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 education 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 321J.2 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 chapter 409A.

58. Upon order of the director of revenue and finance, issue a commission for the taking of depositions as provided in section 421.17, subsection 8.

58A. Assist the department of revenue and finance 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 and finance 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 468.86 through 468.95.

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 as provided in section 490.1433.

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 department of agriculture and land stewardship as receiver for agricultural commodities on behalf of a warehouse operator whose license is suspended or revoked as provided in section 543.3.

77. Reserved.

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 607A.9 and 607A.13.

92. Carry out duties relating to the selection of jurors as provided in chapter 607A.

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. Reserved.

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.

105A. Provide written notice to all duly appointed guardians and conservators of their liability as provided in sections 633.633A and 633.633B.

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 post-conviction 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 809.

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, 3d 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, 3d ed.

138. Issue summons or warrants to defendants as provided in R.Cr.P. 7, Ia. Ct. Rules, 3d ed.

139. Carry out duties relating to the change of venue as provided in R.Cr.P. 10, Ia. Ct. Rules, 3d ed.

140. Issue blank subpoenas for witnesses at the request of the defendant as provided in R.Cr.P. 14, Ia. Ct. Rules, 3d ed.

141. Carry out duties relating to the entry of judgment as provided in R.Cr.P. 22, Ia. Ct. Rules, 3d ed.

142. Carry out duties relating to the execution of a judgment as provided in R.Cr.P. 24, Ia. Ct. Rules, 3d ed.

143. Carry out duties relating to the trial of simple misdemeanors as provided in R.Cr.P. 32 through 56, Ia. Ct. Rules, 3d ed.

144. Serve notice of an order of judgment entered as provided in R.C.P. 82, Ia. Ct. Rules, 3d 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, 3d ed.

146. Maintain a motion calendar as provided in R.C.P. 117, Ia. Ct. Rules, 3d ed.

147. Provide notice of a judgment, order, or decree as provided in R.C.P. 120, Ia. Ct. Rules, 3d ed.

148. Issue subpoenas as provided in R.C.P. 155, Ia. Ct. Rules, 3d ed.

149. Tax the costs of taking a deposition as provided in R.C.P. 157, Ia. Ct. Rules, 3d ed.

150. With acceptable sureties, approve a bond filed for change of venue under R.C.P. 167, Ia. Ct. Rules, 3d ed.

151. Transfer the papers relating to a case transferred to another court as provided in R.C.P. 173, Ia. Ct. Rules, 3d ed.

152. Maintain a ready calendar list as provided in R.C.P. 181.1, Ia. Ct. Rules, 3d ed.

153. Assess costs related to a continuance motion as provided in R.C.P. 182, Ia. Ct. Rules, 3d ed.

154. Carry out duties relating to the impaneling of jurors as provided in R.C.P. 187 through 190, Ia. Ct. Rules, 3d 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, 3d 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, 3d 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, 3d 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, 3d 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, 3d ed.

160. Docket the request for a hearing on a sale of property as provided in R.C.P. 290, Ia. Ct. Rules, 3d 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, 3d 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, 3d ed.

163. Carry out duties relating to the issuance of an injunction as provided in R.C.P. 320 through 330, Ia. Ct. Rules, 3d ed.

164. Make every reasonable effort to collect all outstanding fines, penalties, surcharges, and court costs. The clerk shall notify in writing within forty-five days after assessment, those persons who have unpaid fines, penalties, surcharges, and court costs.

165. Carry out other duties as provided by law.

91 Acts ch 86, §2 HF 627, 91 Acts ch 116 §8 HF 534, 91 Acts ch 267 §415 HF 479

Subsection 10 amended

Subsections 45 and 100 stricken

NEW subsection 164 and former subsection 164 renumbered as 165

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 cash journal in which is listed in detail the costs and fees in each action or proceeding under the title of the action or proceeding. The cash journal shall also have an index containing the information specified in paragraph "a"

d An encumbrance book in which the sheriff shall enter a statement of the levy of each attachment on real estate.

e 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"

f A lien book in which an index of all liens in the court are kept.

g A record of official bonds as provided in section 64.24.

h A cemetery record as provided in section 566.4.

i A hospital lien docket as provided in section 582.4.

j A marriage license book as provided in section 595.6.

k A book of surety company certificates and recitations as provided in section 682.13.

l A book in which the deposits of funds, money, and securities kept by the clerk are recorded as provided in section 682.37.

91 Acts ch 116 §9 10 HF 534

Subsection 2 paragraph c amended

Subsection 2 paragraph d stricken and former paragraphs e through m relettered as d through l

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 to which a written stipulation is attached at the time of filing containing the agreement of the parties to the terms of the modification, or an appeal or writ of error, fifty dollars. The fee shall be deposited in the court revenue distribution account established under section 602.8108, and 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. 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.

d. For filing and entering an agricultural supply dealer's lien, three dollars.

e. For filing and entering any statutory lien not specifically enumerated in this section, three dollars.

f. For a certificate and seal, two dollars.

g. 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.

h. In addition to the fees required in paragraph "g", 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.

i. For a certificate and seal to an application to procure a pension, bounty, or back pay for a soldier or other person, no charge.

j. For making out a transcript in a criminal case appealed to the supreme court, for each one hundred words, fifty cents.

k. In criminal cases, the same fees for the same services as in civil cases, and an additional five dollar fee to be remitted to the treasurer of state by the clerk of the district court for deposit in the general fund of the state, 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 in habitual offender actions pursuant to section 321.556, and the court costs taxed in connection with the trial of those actions or appeals from the judgments in those actions are waived.

l. For filing an application for a license to marry,

thirty dollars. 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. The court shall authorize the issuance of a marriage license without the payment of any fees imposed by this paragraph upon a showing that the applicant is unable to pay the fees.

m. For entering a final decree of dissolution of marriage, thirty dollars. 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.

n. For certifying a change in title of real estate, two dollars.

o. 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.

p. For providing transcripts, certificates, other documents, and services in probate matters, the fees specified in section 633.31.

q. The jury fee and court reporter fee specified in chapter 625.

r. For filing and docketing a transcript of judgment from another county, two dollars. However, transcripts of judgments submitted by the United States shall be docketed without payment of the fee at the time of filing, and the fee shall be paid by the judgment debtor at the time of filing the satisfaction of judgment.

s. For entering a judgment by confession, two dollars.

t. Other fees provided by law.

Notwithstanding any other provision of law to the contrary, including but not limited to the other provisions of this section, five dollars of the fees imposed pursuant to paragraph "a", the five dollar additional fee imposed pursuant to paragraph "k", and fifteen dollars of the fees imposed pursuant to paragraphs "l" and "m" shall be remitted to the treasurer of state for deposit into the general fund of the state, and shall not be deposited in the court revenue distribution account, and shall not be deposited in the judicial retirement fund.

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 all fees which have come into the clerk's possession and which are unclaimed pursuant to section 556.8 accompanied by a form prescribed by the treasurer. Claims for payment of the moneys must be filed pursuant to chapter 556.

91 Acts, ch 48, §1, HF 598, 91 Acts, ch 116, §11-13 HF 534, 91 Acts, ch 218, §21-24 SF 444, 91 Acts, ch 219, §15, 16 SF 496

See Code editor's note to §15 287

Subsection 1, paragraph a amended

Subsection 1, paragraph c stricken and former paragraphs d-u relettered as

c-t

Subsection 1, paragraphs k, l, m and r amended

Subsection 1, NEW unnumbered paragraph 2

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-five dollars except that the filing and docketing of a complaint or information for a nonscheduled simple misdemeanor under chapter 321 is twenty dollars. The fee for filing and docketing a complaint or information or uniform citation and complaint for parking violations under sections 321 236, 321 239, 321 358, 321 360, and 321 361 is one dollar, effective January 1, 1991. The court costs in cases of parking meter and overtime parking violations which are denied, and charged and collected pursuant to section 321 236, subsection 1, or pursuant to a uniform citation and complaint are eight dollars per information or complaint or per uniform citation and complaint, effective January 1, 1991.

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 deposit all other fines and forfeited bail received from a magistrate in the court revenue distribution account established in section 602 8108, except that annually the first two million five hundred thousand dollars in fines which are imposed through vehicle violation citations issued by motor vehicle division personnel at portable and fixed weigh stations in the state which shall be credited to the road use tax fund.

5 All fees and costs for the filing of a complaint or information or upon forfeiture of bail received from a magistrate shall be deposited in the court revenue distribution account established under section 602 8108.

Of the amount paid to the state treasurer, three-tenths shall be credited to the judicial retirement fund established under section 602 9104.

6 Notwithstanding any other provision of law to

the contrary, including but not limited to the other provisions of this section, five dollars of the fee for filing and docketing of a complaint or information for a simple misdemeanor and five dollars of the fee for filing and docketing of a complaint or information for a nonscheduled simple misdemeanor imposed pursuant to subsection 1 shall be remitted to the treasurer of state for deposit into the general fund of the state, and shall not be deposited in the court revenue distribution account, and shall not be deposited in the judicial retirement fund.

91 Acts ch 116 §14 HF 534 91 Acts ch 218 §25 SF 444 91 Acts ch 219 §17 SF 496
Subsections 1 4 and 5 amended
NF W subsection 6

602.8108 Court revenue distribution account.

1 The clerk of the district court shall establish and maintain a court revenue distribution account. The clerk shall deposit in this account all fees and other receipts that are specifically required by law to be deposited in the court revenue distribution account.

2 The clerk of the district court shall account for and distribute revenue deposited in the court revenue distribution account on a monthly basis. Not later than the fifteenth day of each calendar month, the clerk shall distribute all revenues received during the preceding calendar month. Each distribution shall be accompanied by a statement disclosing the total amount of revenue received during the accounting period, and any adjustments of gross revenue figures that are necessary to reflect changes in the balance of the court revenue distribution account, including but not limited to reductions resulting from the dishonor of checks previously accepted by the clerk.

3 Except as otherwise provided, the clerk shall remit all revenue received to the treasurer of state. Revenue distributed to the treasurer of state under this section shall be deposited in the general fund of the state except as otherwise provided by applicable law.

91 Acts ch 116 §15 HF 534
Section amended

602.9104 Deductions from judges' salaries — contributions by state.

1 A judge to whom this article applies, shall be paid an amount equal to ninety-six percent of the basic salary of the judge as set by the general assembly. An amount equal to four percent of the basic salary of the judge as set by the general assembly is designated as the judge's contribution to the judicial retirement fund, and shall be paid by the state in the manner provided in subsection 2.

2 The amount designated in subsection 1 as the judge's contribution to the judicial retirement fund shall be paid by the department of revenue and finance from the general fund of the state to the court administrator for deposit with the treasurer of state to the credit of the judicial retirement fund. Moneys

in the fund are appropriated for the payment of annuities, refunds, and allowances provided by this article, except that the amount of the appropriations affecting payment of annuities, refunds, and allowances to judges of the municipal and superior court is limited to that part of the fund accumulated for their benefit as provided in this article. The corpus and income of the fund shall be used only for the exclusive benefit of the judges covered under this article, their survivors, or an alternate payee who is assigned benefits pursuant to a domestic relations order.

3. A judge covered under this article is deemed to consent to the reduction in basic salary as provided in subsection 1.

4. The state shall contribute an amount equal to three percent of the basic salary of all judges covered under this article, or such sums as may be necessary over the amount contributed by the judges to finance the system, but only to the extent that the system applies to them.

91 Acts ch 116 §16 HF 534
Subsection 2 amended

CHAPTER 611

ACTIONS

611.23 Civil actions involving allegations of sexual abuse or domestic abuse — counseling.

In a civil case in which a plaintiff is seeking relief or damages for alleged sexual abuse as defined in section 709.1 or domestic abuse as defined in section 236.2, the plaintiff may seek, and the court may

grant, an order requiring the defendant to receive professional counseling, in addition to any other appropriate relief or damages.

91 Acts ch 181 §1 HF 430
NEW section

CHAPTER 613

PARTIES — CAUSES OF ACTION — LIABILITY AND LIMITATIONS ON LIABILITY

613.17 Emergency assistance in an accident.

A person, who in good faith renders emergency care or assistance without compensation, shall not be liable for any civil damages for acts or omissions occurring at the place of an emergency or accident or while the person is in transit to or from the emergency or accident or while the person is at or being moved to or from an emergency shelter unless such acts or omissions constitute recklessness. For purposes of this section, if a volunteer fire fighter, a volunteer operator or attendant of an ambulance or rescue squad service, a volunteer paramedic, a

volunteer emergency medical technician, or a volunteer registered member of the national ski patrol system receives nominal compensation not based upon the value of the services performed, that person shall be considered to be receiving no compensation. The operation of a motor vehicle in compliance with section 321.231 by a volunteer fire fighter, volunteer operator, or attendant of an ambulance or rescue squad service, a volunteer paramedic, or volunteer emergency medical technician shall be considered rendering emergency care or assistance for purposes of this section.

91 Acts ch 182 §1 HF 596
Section amended

CHAPTER 614

LIMITATIONS OF ACTIONS

614.1 Period.

Actions may be brought within the times herein limited, respectively, after their causes accrue, and not afterwards, except when otherwise specially declared:

1. *Penalties or forfeitures under ordinance.* Those to enforce the payment of a penalty or forfeiture under an ordinance, within one year.

2. *Injuries to person or reputation — relative rights — statute penalty.* Those founded on injuries to the person or reputation, including injuries to relative rights, whether based on contract or tort, or for a statute penalty, within two years.

3. *Against sheriff or other public officer.* Those against a sheriff or other public officer for the non-payment of money collected on execution within three years of collection.

4. *Unwritten contracts — injuries to property — fraud — other actions.* Those founded on unwritten contracts, those brought for injuries to property, or for relief on the ground of fraud in cases heretofore solely cognizable in a court of chancery, and all other actions not otherwise provided for in this respect, within five years, except as provided by subsections 8 and 10.

5. *Written contracts — judgments of courts not of record — recovery of real property.* Those founded on written contracts, or on judgments of any courts except those provided for in the next subsection, and those brought for the recovery of real property, within ten years.

6. *Judgments of courts of record.* Those founded on a judgment of a court of record, whether of this or of any other of the United States, or of the federal courts of the United States, within twenty years.

7. *Judgment quieting title.* No action shall be brought to set aside a judgment or decree quieting title to real estate unless the same shall be commenced within ten years from and after the rendition thereof.

8. *Wages.* Those founded on claims for wages or for a liability or penalty for failure to pay wages, within two years.

9. *Malpractice.* Those founded on injuries to the person or wrongful death against any physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, podiatrist, optometrist, pharmacist, chiropractor, or nurse, licensed under chapter 147, or a hospital licensed under chapter 135B, arising out of patient care, within two years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or re-

ceived notice in writing of the existence of, the injury or death for which damages are sought in the action, whichever of the dates occurs first, but in no event shall any action be brought more than six years after the date on which occurred the act or omission or occurrence alleged in the action to have been the cause of the injury or death unless a foreign object unintentionally left in the body caused the injury or death.

10. *Secured interest in farm products.* Those founded on a secured interest in farm products, within two years from the date of sale of the farm products against the secured interest of the creditor.

11. *Improvements to real property.* In addition to limitations contained elsewhere in this section, an action arising out of the unsafe or defective condition of an improvement to real property based on tort and implied warranty and for contribution and indemnity, and founded on injury to property, real or personal, or injury to the person or wrongful death, shall not be brought more than fifteen years after the date on which occurred the act or omission of the defendant alleged in the action to have been the cause of the injury or death. However, this subsection does not bar an action against a person solely in the person's capacity as an owner, occupant, or operator of an improvement to real property.

12. *Sexual abuse by a counselor or therapist.* An action for damages for injury suffered as a result of sexual abuse by a counselor or therapist shall be brought within five years of the date the victim was last treated by the counselor or therapist.

91 Acts, ch 130, §3 SF 2
NEW subsection 12

614.14 Recovery by beneficiary of trust.

1. In all cases where a deed of trust or declaration of trust has been executed and the real estate affected by the deed or declaration has been conveyed by the trustee or the surviving spouse or heirs of the trustee and the conveyance was recorded in the proper county prior to March 1, 1982, and the interest of the beneficiary of the trust in the real estate has not been conveyed or established by proper proceedings in court, by the beneficiary, an action, suit or proceeding shall not be commenced or maintained to foreclose the same, or to establish or recover the interest of the beneficiary in the real estate, or of the surviving spouse or heirs of the beneficiary, unless the action, suit, or proceeding is commenced by filing petition and service of notice not later than March 1, 1992.

2. In all cases where a deed of trust or declaration of trust has been executed, no legal action shall be

commenced or maintained to foreclose real estate or establish or recover the interest of a beneficiary or of the surviving spouse or an heir of the beneficiary in the real estate, if all the following conditions are satisfied:

a. The real estate affected by the deed or declaration of trust has been conveyed by the trustee or the surviving spouse or heir of the trustee.

b. The conveyance was recorded in the proper county for more than ten years.

c. The interest of the beneficiary of the trust and the real estate has not been conveyed or established by the proper proceedings in court.

However, this section shall not apply if the legal action is commenced by filing a petition of service of notice within ten years of the recording of the conveyance.

91 Acts, ch 183, §33 HF 618
Section amended

614.15 Spouse failing to join in conveyance.

1. In all cases where the holder of the legal or equitable title or estate to real estate situated within this state, prior to July 1, 1981, conveyed the real estate or any interest in the real estate by deed, mortgage, or other instrument, and the spouse failed to join in the conveyance, the spouse or the heirs at law, personal representatives, devisees, grantees, or assignees of the spouse are barred from recovery unless suit is brought for recovery within one year after July 1, 1991. But in case the right to the distributive share has not accrued by the death of the spouse executing the instrument, then the one not joining is authorized to file in the recorder's office of the county where the land is situated, a notice with affidavit setting forth affiant's claim, together with the facts upon which the claim rests, and the residence of the claimants. If the notice is not filed within two years from July 1, 1991, the claim is barred forever. Any action contemplated in this section may include land situated in different counties, by giving notice as provided by section 617.13.

2. In all cases where the holder of the legal or equitable title or estate to real estate situated within this state, after July 1, 1991, conveyed the real estate or any interest in the real estate by deed, mortgage, or other instrument, and spouse failed to join in the conveyance, the spouse or the heirs at law, personal representative, devisees, grantees, or assignees of the spouse are barred from recovery unless suit is brought for recovery within ten years from the date of the conveyance. However, in the case where the right to the distributive share has not accrued by the death of the spouse executing the instrument, then the party not joining is authorized to file in the recorder's office in the county where the land is situated, a notice with affidavit setting forth the affiant's claim, together with the facts upon which the claim is based, and the residence of the claimants. If the notice is not filed within ten years from the date of the execution of the instrument the claim is barred forever. Any action contemplated in this section may

include land situated in different counties by giving notice as provided in section 617.13. The effect of filing the notice with affidavit shall extend for a further period of ten years the time within which the action may be brought. Successive notices may be filed extending this period.

91 Acts, ch 183, §34 HF 618
Section amended

614.16 Interpretative clause.

Sections 614.14 and 614.15 do not affect litigation pending on July 1, 1991, nor do they operate to revive rights or claims barred previous to that date, nor permit an action to be brought or maintained upon any claim or cause of action which is barred by a statute in force prior to July 1, 1991.

91 Acts, ch 183, §35 HF 618
Section amended

614.17 Claims to real estate antedating 1980.

An action based upon a claim arising or existing prior to January 1, 1980, shall not be maintained, either at law or in equity, in any court to recover real estate in this state or to recover or establish any interest in or claim to real estate, legal or equitable, against the holder of the record title to the real estate in possession, when the holder of the record title and the holder's immediate or remote grantors are shown by the record to have held chain of title to the real estate, since January 1, 1980, unless the claimant in person, or by the claimant's attorney or agent, or if the claimant is a minor or under legal disability, by the claimant's guardian, trustee, or either parent, within one year from and after July 1, 1991, files in the office of the recorder of deeds of the county in which the real estate is situated, a statement in writing, which is duly acknowledged, definitely describing the real estate involved, the nature and extent of the right or interest claimed, and stating the facts upon which the claim is based.

For the purposes of this section, section 614.17A, and sections 614.18 to 614.20, a person who holds title to real estate by will or descent from a person who held the title of record to the real estate at the date of that person's death or who holds title by decree or order of a court, or under a tax deed, trustee's, referee's, guardian's, executor's, administrator's, receiver's, assignee's, master's in chancery, or sheriff's deed, holds chain of title the same as though holding by direct conveyance.

For the purposes of this section and section 614.17A, such possession of real estate may be shown of record by affidavits showing the possession, and when the affidavits have been filed and recorded, it is the duty of the recorder to enter upon the margin of the record, a certificate to the effect that the affidavits were filed by the owner in possession, as named in the affidavits, or by the owner's attorney in fact, as shown by the records and in like manner, the affidavits may be filed and recorded where any action was barred on any claim by this section as in force prior to July 1, 1991.

91 Acts, ch 183, §36 HF 618
Section amended

614.17A Claims to real estate after 1992.

1 After July 1, 1992, an action shall not be maintained in a court, either at law or in equity, in order to recover or establish an interest in or claim to real estate if all the following conditions are satisfied

a The action is based upon a claim arising more than ten years earlier or existing for more than ten years

b The action is against the holder of the record title to the real estate in possession

c The holder of the record title to the real estate in possession and the holder's immediate or remote grantors are shown by the record to have held chain of title to the real estate for more than ten years

2 The claimant within ten years of the date on which the claim arose or first existed must file with the county recorder in the county where the real estate is located a written statement which is duly acknowledged and definitely describes the real estate involved, the nature and extent of the right of interest claimed, and the facts upon which the claim is based. The claimant must file the statement in person or by the claimant's attorney or agent. If the claimant is a minor or under a legal disability, the statement must be filed by the claimant's guardian, trustee, or by either parent.

The filing of a claim shall extend for a further period of ten years the time within which such action may be brought by any person entitled to bring the claim. The person may file extensions for successive claims.

3 Nothing in this section shall be construed to revive any cause of action barred by section 614 17

91 Acts ch 183 §37 HF 618
NEW section

614.20 Limitation on Act.

Sections 614 17 to 614 19 do not limit or extend the time within which actions by a spouse to recover dower or distributive share in real estate within this state may be brought or maintained under the provisions of section 614 15, nor do they limit or extend the time within which actions may be brought or maintained to foreclose or enforce any real estate mortgage, bond for deed, trust deed, or contract for the sale or conveyance of real estate under the provisions of section 614 21, nor do they revive or permit an action to be brought or maintained upon any claim or cause of action which is barred by a statute

which is in force prior to July 1, 1991, nor do they affect litigation pending on July 1, 1991

91 Acts ch 183 §38 HF 618
Section amended

614.22 Action affecting ancient deeds.

1 An action shall not be maintained to set aside, cancel, annul, declare void or invalid, or to redeem from a tax deed, guardian's deed, executor's deed, administrator's deed, receiver's deed, referee's deed, assignee's deed or sheriff's deed which has been recorded in the office of the recorder of the county or counties in this state in which the land described in the deed is situated prior to January 1, 1980, unless the action is commenced prior to January 1, 1992, and if an action to set aside, cancel, annul, declare void or invalid, or to redeem from the deed is not commenced prior to January 1, 1992, then the deed and all the proceedings upon which the deed is based are valid and unimpeachable and effective to convey title as stated in the deed, without exception for infancy, mental illness, absence from the state, or other disability or cause, provided that this section and section 614 23 do not apply to real property described in a deed which is not on July 1, 1991, in the possession of those claiming title under the deed.

2 On and after January 1, 1992, an action shall not be maintained to set aside, cancel, annul, or void a deed, and an action shall not be maintained to redeem from such deed, if the deed has been recorded in the office of the recorder for more than ten years. The deed must be recorded in the office of the recorder of the county or counties in which the land described in the deed is situated. If an action under this subsection is not commenced within ten years of the recording of the deed, then the deed and all proceedings upon which the deed is based are valid and unimpeachable and effective to convey title as stated in the deed, without exception for infancy, mental illness, absence from the state, or other disability or cause. As used in this subsection "deed" means a tax deed, guardian's deed, executor's deed, administrator's deed, receiver's deed, referee's deed, assignee's deed, or sheriff's deed.

However, this subsection and section 614 23 do not apply to real property described in any deed which is for more than ten years in the possession of a person claiming title under the deed.

91 Acts ch 183 §39 HF 618
Section amended

CHAPTER 616

PLACE OF BRINGING ACTIONS

616.10 Insurance companies.

Insurance companies may be sued in any county in which their principal place of business is kept, or in which the contract of insurance was made, or in which the loss insured against occurred, or, in case of insurance against death or disability, in the county of the domicile of the insured at the time the loss occurred, or in the county of plaintiff's residence. As

used in this section the term "*insurance companies*" includes nonprofit hospital service corporations and nonprofit medical service corporations which have incorporated under the provisions of chapter 504 or chapter 504A.

91 Acts, ch 97, §60 HF 198
Section amended

CHAPTER 622

EVIDENCE

622.10 Communications in professional confidence — exceptions — application to court.

A practicing attorney, counselor, physician, surgeon, physician's assistant, mental health professional, or the stenographer or confidential clerk of any such person, who obtains information by reason of the person's employment, or a member of the clergy shall not be allowed, in giving testimony, to disclose any confidential communication properly entrusted to the person in the person's professional capacity, and necessary and proper to enable the person to discharge the functions of the person's office according to the usual course of practice or discipline. The prohibition does not apply to cases where the person in whose favor the prohibition is made waives the rights conferred; nor does the prohibition apply to physicians or surgeons, physician's assistants, mental health professionals, or to the stenographer or confidential clerk of any physicians or surgeons, physician's assistants, or mental health professionals, in a civil action in which the condition of the person in whose favor the prohibition is made is an element or factor of the claim or defense of the person or of any party claiming through or under the person. The evidence is admissible upon trial of the action only as it relates to the condition alleged.

If an adverse party desires the oral deposition, either discovery or evidentiary, of a physician or surgeon, physician's assistant, or mental health professional to which the prohibition would otherwise apply or the stenographer or confidential clerk of a physician or surgeon, physician's assistant, or men-

tal health professional or desires to call a physician or surgeon, physician's assistant, or mental health professional to which the prohibition would otherwise apply or the stenographer or confidential clerk of a physician or surgeon, physician's assistant, or mental health professional as a witness at the trial of the action, the adverse party shall file an application with the court for permission to do so. The court upon hearing, which shall not be ex parte, shall grant permission unless the court finds that the evidence sought does not relate to the condition alleged and shall fix a reasonable fee to be paid to the physician or surgeon, physician's assistant, or mental health professional by the party taking the deposition or calling the witness.

For the purposes of this section, "*mental health professional*" means a psychologist licensed under chapter 154B, a registered nurse licensed under chapter 152, a social worker licensed under chapter 154C, a marital and family therapist licensed under chapter 154D, a mental health counselor licensed under chapter 154D, or an individual holding at least a master's degree in a related field as deemed appropriate by the board of behavioral science examiners.

No qualified school guidance counselor, who has met the certification and accreditation standards of the department of education as provided in section 256.11, subsection 10, who obtains information by reason of the counselor's employment as a qualified school guidance counselor shall be allowed, in giving testimony, to disclose any confidential communications properly entrusted to the counselor by a pupil or the pupil's parent or guardian in the counselor's

capacity as a qualified school guidance counselor and necessary and proper to enable the counselor to perform the counselor's duties as a qualified school guidance counselor.

91 Acts, ch 229, §11 SF 193
Unnumbered paragraph 1 amended and divided into unnumbered paragraphs 1-3

622.30 Photographic copies — originals destroyed.

1. In all cases where depositions are taken by either method provided by law, outside of the county in which the case is for trial where books of account are competent evidence in the case, the party desiring to offer the entries of said books as evidence may cause the same to be photographed by or under the direction of the officer taking the deposition and such photographic copy when certified by such officer with the officer's seal attached shall be attached to the deposition, and if the record shows affirmatively the preliminary proof required by section 622.28, such copy shall be admitted in evidence with the same force and effect as the original.

2. If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writ-

ing, entry print, representation or combination thereof, of any act, transaction, occurrence or event and in the regular course of business has caused any or all of the same to be recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, electronic imaging, electronic data processing, or other process which accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or reproduction of the original, the original may be destroyed in the regular course of business unless held in a custodial or fiduciary capacity or unless its preservation is required by law, except if the originals are records, reports, or other papers of a county officer they shall not be destroyed until they have been preserved for ten years. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original recording, copy, or reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.

91 Acts, ch 83, §1 HF 506
Subsection 2 amended

CHAPTER 625

COSTS

625.21 Interest.

Except for an action brought pursuant to chapter 668, when the judgment is for the recovery of money, interest from the time of the verdict or report until

judgment is finally entered shall be added to the costs of the party entitled to the costs.

91 Acts, ch 116, §17 HF 534
Section amended

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 filing fee for a small claims action is twenty-five dollars. The fee shall be deposited in the court revenue distribution account as established in sec-

tion 602.8108. Of the amount of the fee 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.

The clerk shall collect an additional fee of five dollars upon docketing a small claims action, and shall

remit the fee to the treasurer of state for deposit in the general fund of the state. Notwithstanding any provision of law to the contrary, including but not limited to the other provisions of this section, the additional fee of five dollars imposed in this paragraph shall not be deposited in the court revenue distribution account, and shall not be deposited in the judicial retirement fund.

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, 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.

91 Acts, ch 116, §18 HF 534, 91 Acts, ch 218, §26 SF 444, 91 Acts, ch 219, §34 SF 496

See Code editor's note to §15 287

Section amended

Subsection 1, NEW unnumbered paragraph 2

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.*

a. 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.

b. 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 was in existence on May 20, 1985, and is subject to the court's jurisdiction, and following notice to the beneficiaries as provided in section 633.40, subsection 4, the court shall release the trust from further jurisdiction unless one or more beneficiaries object, on the condition that jurisdiction may be thereafter invoked by the trustee or beneficiary.

c. The provisions of paragraph "b" shall be effective for applications filed on or after July 1, 1991.

91 Acts, ch 36, §1 SF 213

Subsection 4 amended

633.76A Exception — voting of publicly traded securities.

Where there are two or more fiduciaries, a fiduciary may delegate to another fiduciary the power to vote publicly traded securities, unless the instrument creating the estate provides to the contrary. The delegating fiduciary shall not be personally liable for the manner in which such securities are voted by the fiduciary to whom the power is delegated.

91 Acts, ch 36, §2 SF 213

NEW section

633.123 Model prudent person investment Act.

1. *Investments by fiduciaries.* When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing property for the benefit of another, a fiduciary shall exercise the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain

the purposes of the account. This standard requires that when making investment decisions, a fiduciary shall consider the role that the investment plays within the account's portfolio of assets and may consider the general economic conditions, the anticipated tax consequences of the investment, the anticipated duration of the account, and the needs of all beneficiaries of the account.

The propriety of an investment decision is to be determined by what the fiduciary knew or should have known at the time of the decision about the inherent nature and expected performance of the investment, the attributes of the account portfolio, the general economy, and the needs and objectives of the beneficiaries of the account as they existed at the time of the investment decision.

2. *Actions pursuant to governing instrument.* A fiduciary acting under a governing instrument is not liable to anyone whose interests arise from the instrument for the fiduciary's good faith reliance on the express provisions of the instrument. In the absence of an express provision to the contrary in the governing instrument, a fiduciary shall not be deemed to have breached the person's fiduciary duties for continuing to hold property received into an account at the account's inception or subsequently added to the account or acquired pursuant to proper authority if the fiduciary, in good faith and with reasonable prudence, considers that retention is in the best interest of the trust or estate or in furtherance of the goals of the governing instrument.

If a fiduciary is expressly directed or permitted by a will, agreement, court order, or other instrument creating or defining the fiduciary's duties and powers, to invest in United States government obligations, the fiduciary may, in the absence of an express prohibition in the instrument, invest in and hold such obligations either directly or in the form of interests in an investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. § 80a, the portfolio of which is limited to United States government obligations and to repurchase agreements fully collateralized by United States government obligations, if the investment company or investment trust takes delivery of the collateral either directly or through an authorized custodian.

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.

91 Acts, ch 36, §3, 4 SF 213

Subsection 1 stricken and rewritten

Subsection 2, unnumbered paragraph 1 stricken and rewritten

633.175 Waiver of bond by court.

The court may, for good cause shown, exempt any fiduciary from giving bond, if the court finds that the interests of creditors and distributees will not thereby be prejudiced. However, the court shall not exempt a conservator from giving bond in a conservatorship with total assets of more than ten thousand dollars, excluding real property, unless it is a voluntary conservatorship in which the petitioner is eighteen years of age or older and has waived bond in the petition.

91 Acts, ch 36, §5 SF 213
Section amended

633.356 Distribution of property by affidavit.

1. When the gross value of the decedent's personal property does not exceed ten thousand dollars and there is no real property or the real property passes to a surviving spouse as joint tenant with right of survivorship, and if forty days have elapsed since the death of the decedent, the successor of the decedent as defined in subsection 2 may, by filing an affidavit prepared pursuant to subsection 3, and without procuring letters of appointment, do any of the following with respect to one or more particular items of personal property:

a. Receive any particular item of property that is tangible personal property of the decedent.

b. Have any particular item of property that is evidence of a debt, obligation, interest, right, security, or chose in action belonging to the decedent transferred.

c. Collect the proceeds from any life insurance policy or any other item of property for which a beneficiary has not been designated.

2. "Successor of the decedent" means:

a. If the decedent died testate, the beneficiary or beneficiaries who succeeded to the particular item of property of the decedent under the decedent's will. For the purposes of this subsection the trustee of a trust created during the decedent's lifetime is a beneficiary under the decedent's will if the trust succeeds to the particular item of property under the decedent's will.

b. If the decedent died intestate, the person or persons who succeeded to the particular item of property of the decedent under the laws of intestate succession of this state.

3. To collect money, receive tangible personal property, or have evidences of intangible personal property transferred under this chapter, the successor of the decedent shall furnish to the holder of the decedent's property an affidavit under penalty of perjury stating all of the following:

a. The decedent's name and the date and place of the decedent's death.

b. That at least forty days have elapsed since the death of the decedent, as shown by an attached certified copy of the death certificate of the decedent.

c. That the gross value of the decedent's personal property does not exceed ten thousand dollars and

there is no real property or the real property passes to a surviving spouse as joint tenant with right of survivorship

d A description of the property of the decedent that is to be paid, transferred, or delivered to the successor

e The name, address, and social security number of the successor of the decedent to the described property, and whether the successor is under a legal disability

f If applicable, that attached copy of the decedent's will is the last will of the decedent and has been admitted to probate or otherwise filed in the office of a clerk of the district court

g That no persons other than those listed in the affidavit have a right to the interest of the decedent in the described property

h That the affiant requests that the described property be paid, delivered, or transferred to the successors of the decedent to the described property

i That the affiant affirms under penalty of perjury that the affidavit is true and correct

More than one person may execute an affidavit under this subsection

4 If the decedent had evidence of ownership of the property described in the affidavit and the holder of the property would have the right to require presentation of the evidence of ownership before the duty of the holder to pay, deliver, or transfer the property to the decedent would have arisen, the evidence of the ownership, if available, shall be presented with the affidavit to the holder of the decedent's property

If the evidence of ownership is not presented to the holder of the property, the holder may require, as a condition for the payment, delivery, or transfer of the property, that the successor provide the holder with a bond in a reasonable amount determined by the holder to be sufficient to indemnify the holder against all liability, claims, demands, loss, damages, costs, and expenses that the holder may incur or suffer by reason of the payment, delivery, or transfer of the property. This subsection does not preclude the holder and the successor from dispensing with the requirement that a bond be provided, and instead entering into an agreement satisfactory to the holder concerning the duty of the successor to indemnify the holder

Judgments rendered by any court in this state and mortgages belonging to a decedent whose personal property is being distributed pursuant to this section may, without prior order of court, be released, discharged, or assigned, in whole or in part, as to any particular property, and deeds may be executed in performance of real estate contracts entered into by the decedent, where an affidavit made pursuant to subsection 3 is filed in the office of the county recorder of the county wherein any judgment, mortgage, or real estate contract appears of record

5 Reasonable proof of the identity of each successor of the decedent seeking distribution by virtue of the affidavit shall be provided to the satisfaction of the holder of the decedent's property

6 If the requirements of this section are satisfied

a The property described in the affidavit shall be paid, delivered, or transferred to the successor of the decedent's interest in the property

b A transfer agent of a security described in the affidavit shall change registered ownership on the books of the corporation from the decedent to the person listed on the affidavit as the successor of the decedent's interest

If the holder of the decedent's property refuses to pay, deliver, or transfer any property or evidence thereof to the successor of the decedent within a reasonable time, the successor may recover the property or compel its payment, delivery, or transfer in an action brought for that purpose against the holder of the property. If an action is brought against the holder under this subsection, the court shall award attorney's fees to the person bringing the action if the court finds that the holder of the decedent's property acted unreasonably in refusing to pay, deliver, or transfer the property to the person as required by this subsection

7 If the requirements of this section are satisfied, receipt by the holder of the decedent's property of the affidavit constitutes sufficient acquittance for the payment of money, delivery of property, or transferring the registered ownership of property pursuant to this chapter and discharges the holder from any further liability with respect to the money or property. The holder may rely in good faith on the statements in the affidavit and has no duty to inquire into the truth of any statement in the affidavit

If the requirements of this section are satisfied, the holder is not liable for any debt owed by the decedent by reason of paying money, delivering property, or transferring registered ownership of property pursuant to this chapter

8 When a deceased distributee is entitled to money or property claimed in an affidavit presented under this section with respect to a deceased person whose estate is being administered in this state, the personal representative of the person whose estate is being administered shall present the affidavit to the court in which the estate is being administered. The court shall direct the personal representative to pay the money or deliver the property to the person identified by the affidavit as the successor of the deceased distributee to the extent that the court determines that the deceased distributee was entitled to the money or property under the will or the laws of intestate succession

9 The procedure provided by this section may be used only if no administration of the decedent's estate is pending

91 Acts ch 36 §6 SF 213
NEW section

633.480 Certificate to county recorder for tax purposes with administration.

After discharge as provided in section 633.479, the clerk shall certify under chapter 558 relative to each parcel of real estate described in the final report of the personal representative which has not been sold by the personal representative, and deliver the certificate to the county recorder of the county in which the real estate is situated. The county recorder shall deliver the certificate to the county auditor as provided in section 558.58.

91 Acts, ch 116, §19 HF 534
Section amended

633.591 Voluntary petition for appointment of conservator — standby basis.

Any person of full age and sound mind may execute a verified petition for the voluntary appointment of a conservator of the person's property upon the express condition that such petition shall be acted upon by the court only upon the occurrence of an event specified or the existence of a described condition of the mental or physical health of the petitioner, the occurrence of which event, or the existence of which condition, shall be established in the manner directed in the petition. The petition, if executed on or after January 1, 1991, shall advise the proposed ward of a conservator's powers as provided in section 633.576.

91 Acts, ch 36, §7 SF 213
Section 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.

c. Consent to the withholding or withdrawal of life-sustaining procedures in accordance with chapter 144A.

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. The court may make a finding that the ward lacks the capacity to contract a valid marriage.

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.

91 Acts, ch 93, §4 SF 495
Subsection 3 amended

CHAPTER 654

FORECLOSURE OF REAL ESTATE MORTGAGES

654.2B Requirements of notice of right to cure.

The notice of right to cure shall be in writing and shall conspicuously state the name, address, and telephone number of the creditor or other person to which payment is to be made, a brief identification of the obligation secured by the deed of trust or mortgage and of the borrower's right to cure the default, a statement of the nature of the right to cure the default, a statement of the nature of the alleged

default, a statement of the total payment, including an itemization of any delinquency or deferral charges, or other performance necessary to cure the alleged default, and the exact date by which the amount must be paid or performance tendered and a statement that if the borrower does not cure the alleged default the creditor or a person acting on behalf of the creditor is entitled to proceed with initiating a foreclosure action or procedure. The failure of the notice of right to cure to comply with one or more

provisions of this section is not a defense or claim in any action pursuant to this chapter and does not invalidate any procedure pursuant to chapter 655A, unless the person asserting the defense, claim, or invalidity proves that the person was substantially prejudiced by such failure.

91 Acts, ch 46, §1 HF 567
Section amended

654.2D Nonagricultural land — notice, right to cure default.

1. Except as provided in section 654.2A, a creditor shall comply with this section before initiating an action pursuant to this chapter or initiating the procedure established pursuant to chapter 655A to foreclose on a deed of trust or mortgage.

2. A creditor who believes in good faith that a borrower on a deed of trust or mortgage on a homestead is in default shall give the borrower a notice of right to cure as provided in section 654.2B. A creditor gives the notice when the creditor delivers the notice to the consumer or mails the notice to the borrower's residence as defined in section 537.1201, subsection 4.

3. The borrower has a right to cure the default within thirty days from the date the creditor gives the notice.

4. a. The creditor shall not accelerate the maturity of the unpaid balance of the obligation, demand or otherwise take possession of the land, otherwise than by accepting a voluntary surrender of it, or otherwise attempt to enforce the obligation until thirty days after a proper notice of right to cure is given.

b. Until the expiration of thirty days after notice

is given, the borrower may cure the default by tendering either the amount of all unpaid installments due at the time of tender, without acceleration, or the amount stated in the notice of right to cure, whichever is less, or by tendering any other performance necessary to cure a default which is described in the notice of right to cure.

5. The act of curing a default restores to the borrower the borrower's rights under the obligation and the deed of trust or mortgage.

6. This section does not prohibit the creditor from enforcing the creditor's interest in the land at any time after the creditor has complied with this section and the borrower did not cure the alleged default.

7. A borrower has a right to cure the default unless the creditor has given the borrower a proper notice of right to cure with respect to a prior default which occurred within three hundred sixty-five days of the present default.

8. This section does not apply if the creditor is an individual or individuals, or if the mortgaged property is property other than a one-family or two-family dwelling which is the residence of the mortgagor.

9. An affidavit signed by an officer of the creditor that the creditor has complied with this section is deemed to be conclusive evidence of compliance by all persons other than the creditor and the mortgagor.

10. As used in this section, "creditor" includes a person acting on behalf of a creditor.

91 Acts, ch 46, §2 HF 567
NEW subsection 10

CHAPTER 656

FORFEITURE OF REAL ESTATE CONTRACTS

656.2 Notice.

1. The forfeiture shall be initiated by the vendor by serving on the vendee a written notice which shall:

a. Reasonably identify the contract and accurately describe the real estate covered.

b. Specify the terms of the contract with which the vendee has not complied.

c. State that unless, within thirty days after the completed service of the notice, the vendee performs the terms in default and pays the reasonable costs of serving the notice, the contract will be forfeited.

d. Specify the amount of attorney fees claimed by the vendor pursuant to section 656.7 and state that payment of the attorney fees is not required to comply with the notice and prevent forfeiture.

2. The vendor shall also serve a copy of the notice required in subsection 1 on the person in possession of the real estate, if different than the vendee; on all the vendee's mortgagees of record; and on a person who asserts a claim against the vendee's interest, except a government or governmental subdivision or agency holding a lien for real estate taxes or assessments, if the person has done both of the following:

a. Requested, on a form which substantially complies with the following form, that notice of forfeiture be served on the person at an address specified in the request.

REQUEST FOR NOTICE PURSUANT TO IOWA CODE SECTION 656.2, SUBSECTION 2

The undersigned requests service of notice under Iowa Code sections 656.2 and 656.3 to forfeit the contract recorded on the day of 19....., in book or roll, image or page, office of the county recorder, county, Iowa, wherein is/are seller(s) and is/are buyer(s), for sale of real estate legally described as: [insert complete legal description]

NAME

ADDRESS

CAUTION: Your name and address must be correct. If not correct, you will not receive notice requested because notice need only be served on you at the above address. If your address changes, a new request for notice must be filed.

The request for notice shall be indexed pursuant to section 558.50.

b. Filed the request form for record in the office of the county recorder after acquisition of the vendee's interest but prior to the date of recording of the proof and record of service of notice of forfeiture required by section 656.5 and paid a fee of five dollars.

The request for notice is valid for a period of five years from the date of filing with the county recorder. The request for notice may be renewed for additional periods of five years by the procedure specified in this subsection. The request for notice may be amended at any time by the procedure specified in this subsection.

The vendee's mortgagees of record include all assignees of record for collateral purposes.

3. As used in this section, the terms "vendor" and "vendee" include a successor in interest but the term "vendee" excludes a vendee who assigned or conveyed of record all of the vendee's interest in the real estate.

91 Acts, ch 161, §1 SF 445
1991 amendment applies only to forfeiture proceedings for which the proof and record of service of notice required by §656.5 are filed after July 1, 1991, 91 Acts, ch 161 §3 SF 445
Subsection 2 stricken and rewritten

656.9 Defect in forfeiture proceedings — limitation of actions.

An action shall not be commenced after July 1, 1992, which asserts a claim against real estate previously subject to a forfeiture proceeding, based upon a defect in the forfeiture proceeding, in which the proof and record of service of notice of forfeiture required by section 656.5 has been filed for record in the office of the county recorder prior to July 1, 1991.

91 Acts, ch 161, §2 SF 445
NEW section

CHAPTER 663A

POSTCONVICTION PROCEDURE

663A.5 Payment of costs.

1. If the applicant is unable to pay court costs and expenses of legal representation, including stenographic, printing, or other legal services or consultation, these costs and expenses shall be made available to the applicant in the preparation of the application, in the trial court, and on review. However, nothing in this section shall be interpreted to require payment of expenses of legal representation, including stenographic, printing, or other legal services or consultation, when the applicant is self-represented or is utilizing the services of an inmate.

2. If an applicant confined in a state institution seeks relief under section 663A.2, subsection 6, and the court finds in favor of the applicant, or when relief is denied and costs and expenses referred to in subsection 1 cannot be collected from the applicant, these costs and expenses initially shall be paid by the

county in which the application was filed. The facts of payment and the proceedings on which it is based, with a statement of the amount of costs and expenses incurred, shall be submitted to the county in a timely manner with approval in writing by the presiding or district judge appended to the statement or endorsed on it, and shall be certified by the clerk of the district court under seal to the state executive council. The executive council shall review the proceedings and authorize reimbursement for the costs and expenses or for that part which the executive council finds justified, and shall notify the director of revenue and finance to draw a warrant to the county treasurer on the state general fund for the amount authorized.

91 Acts, ch 219, §18 SF 496
Appropriation limit for 1991-1992 fiscal year, see 91 Acts, ch 267, §507 HF 479
Section 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 state court administrator no later than January 15 of the fines, penalties, for-

feitures, and recognizances which have not been paid, remitted, canceled, or otherwise satisfied during the previous calendar year.

91 Acts ch 185 §1 SF 102
Section amended

CHAPTER 682

SURETIES — FIDUCIARY FUNDS — FEDERALLY INSURED LOANS — TRUSTS

682.11 Authority to act as surety — agent qualifications.

1. The commissioner of insurance shall annually file with the clerk of the district court of each county a complete list of the corporate sureties to whom the commissioner has issued a current certificate of authority to transact the business of a surety in this state.

2. An agent for a company authorized to engage in the business of becoming surety upon bonds pursuant to subsection 1 must be a resident of this state for the purpose of acting on behalf of the surety company with respect to any bond or bail in criminal cases.

91 Acts ch 213 §33 HF 634
Subsection 1 amended

682.13 Record by clerk.

The clerk shall keep a book, properly indexed, in which shall be recorded all such annual lists from the commissioner of insurance and subsequent notices of revocations.

91 Acts ch 213 §34 HF 634
Section amended

682.38 Liability.

The clerk shall be liable upon the clerk's bond for all such funds, moneys, or securities which may be deposited with the clerk and shall make complete verified statements thereof as required by the supreme court.

91 Acts ch 258 §63 HF 709
Section amended

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 commissioner of public safety.

c The department of human services for the purposes of section 218.13, section 232.71, subsection 16, section 232.142, section 237.8, subsection 2, section 237A.5, section 237A.20, and section 600.8, subsections 1 and 2.

d The state racing and gaming commission for the purposes of section 99D.8A.

e The state lottery division for purposes of section 99E.9, subsection 2.

f The Iowa department of public health for the

purposes of screening employees and applicants for employment in substance abuse treatment programs which admit juveniles and are licensed under chapter 125.

g. Licensed private child-caring and child-placing agencies and certified adoption investigators for the purpose of section 237.8, subsection 2, and section 600.8, subsections 1 and 2.

h. A psychiatric medical institution for children licensed under chapter 135H for the purposes of section 237.8, subsection 2 and section 600.8, subsections 1 and 2.

i. The board of educational examiners for the purpose of carrying out duties imposed under section 260.2, subsection 14.

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 re-dissemination 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 re-dissemination 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 commissioner of public safety. 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 non-law-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. Notwithstanding any other limitation, the department is authorized to use revenues generated from the fee to employ clerical personnel to process criminal history checks for nonlaw-enforcement purposes.

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.

91 Acts, ch 138, §9 HF 296

Applicability of 1991 amendment to subsection 1, paragraph c, 91 Acts, ch 138, §10 HF 296

Subsection 1, paragraph c amended

692.17 Exclusions — purposes.

Criminal history data in a computer data storage system shall not include arrest or disposition data after the person has been acquitted or the charges dismissed.

For the purposes of this section, "*criminal history data*" includes information maintained by any criminal justice agency if the information otherwise meets the definition of criminal history data set forth in section 692.1.

Criminal history data may be collected for management or research purposes.

91 Acts, ch 116, §20 HF 534

Section amended

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. However, sexual abuse in the third degree committed between spouses, sexual abuse in vi-

olation of section 709.4, subsection 2, paragraph “c”, subparagraph (4), or sexual exploitation by a counselor or therapist in violation of section 709.15, is not a “*forcible felony*”.

91 Acts, ch 130, §1 SF 2
Section amended

CHAPTER 708

ASSAULT

708.2A Domestic abuse assault — mandatory minimums, penalties enhanced.

1. For the purposes of this chapter, “*domestic abuse assault*” means an assault, as defined in section 708.1, which is domestic abuse as defined in section 236.2.

2. On a first offense of domestic abuse assault, the person commits:

a. A simple misdemeanor for a domestic abuse assault, except as otherwise provided.

b. A serious misdemeanor, if the domestic abuse assault is committed without the intent to inflict a serious injury upon another, and the assault causes bodily injury or disabling mental illness.

c. An aggravated misdemeanor, if the domestic abuse assault is committed with the intent to inflict a serious injury upon another, or if the person uses or displays a dangerous weapon in connection with the assault. This paragraph does not apply if section 708.6 or 708.8 applies.

3. Except as otherwise provided in subsection 2, on a second or subsequent domestic abuse assault, a person commits:

a. A serious misdemeanor, if the first offense was classified as a simple misdemeanor, and the second offense would otherwise be classified as a simple misdemeanor.

b. An aggravated misdemeanor, if the first offense was classified as a simple or aggravated misdemeanor, and the second offense would otherwise be classified as a serious misdemeanor, or the first offense was classified as a serious or aggravated misdemeanor, and the second offense would otherwise be classified as a simple or serious misdemeanor.

A 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 not be considered in determining that the violation charged is a second or subsequent offense. For the purpose of determining if a violation charged is a second or subsequent offense, deferred judgments issued pursuant to section 907.3 for violations of section 708.2 or this section, which were issued on domestic abuse assaults, and convictions or the equivalent of deferred judgments for violations in any other states under statutes substantially corresponding to this section shall be counted as previous offenses. The courts shall judicially notice the statutes of other states which define offenses substantially equivalent to the offenses defined in this section and can therefore be considered corresponding statutes. Each previous violation on which conviction or deferral of judgment was entered prior to the date of the offense charged shall be considered and counted as a separate previous offense. An offense shall be considered a prior offense regardless of whether it was committed upon the same victim.

4. A person convicted of violating this section shall serve a minimum term of two days of the sentence imposed by law, and shall not be eligible for suspension of the minimum sentence. The minimum term shall be served on consecutive days. This section does not prohibit the court from sentencing and the defendant from serving the maximum term of confinement or from paying the maximum fine permitted pursuant to chapters 902 and 903, and does not prohibit the court from entering a deferred judgment or sentence pursuant to section 907.3, if the defendant has not previously received a deferred sentence or judgment for a violation of section 708.2 or

this section which was issued on a domestic abuse assault. However, once the defendant has received one deferred sentence or judgment involving a violation of section 708.2 or this section which was issued on a domestic abuse assault, the defendant shall not be eligible to receive another deferred sentence or judgment for a violation of this section.

5. The clerk of the district court shall provide oral or other notice and copies of a judgment entered under this section to the applicable law enforcement agencies and the twenty-four hour dispatcher for the law enforcement agencies, in the manner provided for protective orders under section 236.5. The clerk shall provide oral or other notice and copies of modifications of the judgment in the same manner.

6. In addition to the mandatory minimum term of confinement imposed by this section, the court shall order the defendant to participate in a batterers' treatment program as required under section 708.2B. In addition, as a condition of deferring judgment or sentence pursuant to section 907.3, the court shall order the defendant to participate in a batterers' treatment program. The clerk of the district court shall send a copy of the judgment or deferred judgment to the judicial district department of correctional services.

91 Acts ch 218, §27 SF 444, 91 Acts, ch 219, §19, 20 SF 496
 Subsection 6 effective January 1, 1992, transition and timetable, requirement for participation in other programs pending implementation, 91 Acts, ch 218, §36 SF 444, 91 Acts, ch 219, §36 SF 496
 Pilot program for domestic abuse prosecution plans and procedures, 91 Acts, ch 219, §38 SF 496
 Section stricken and rewritten
 Subsections 4 and 6 amended

708.2B Treatment of domestic abuse offenders.

As used in this section, "district department" means a judicial district department of correctional services, established pursuant to section 905.2. A person convicted of, or receiving a deferred judgment for, domestic abuse assault shall report to the district department in order to participate in a batterers' treatment program for domestic abuse offenders. Participation in the batterers' treatment program shall not require a person to be placed on probation, but a person on probation may participate in the program. The district departments may contract for services in completing the duties relating to the batterers' treatment programs. The district departments shall assess the fees for participation in the program, and shall either collect or contract for the collection of the fees to recoup the costs of treatment, but may waive the fee or collect a lesser amount upon a showing of cause. The fees shall be used by each of the district departments or contract service providers for the establishment, administration, coordination, and provision of direct services of the batterers' treatment programs.

91 Acts ch 218, §28 SF 444, 91 Acts, ch 219 §35 SF 496
 NEW section

CHAPTER 709

SEXUAL ABUSE AND RELATED VIOLATIONS

709.10 Cost of medical examination in crimes of sexual abuse.

The cost of a medical examination for the purpose of gathering evidence and the cost of treatment for the purpose of preventing venereal disease shall be paid from the fund established in section 912.14.

91 Acts, ch 258, §64 HF 709
 Section amended

709.15 Sexual abuse by a counselor or therapist.

1. As used in this section:

a. "Counselor or therapist" means a physician, psychologist, nurse, professional counselor, social worker, marriage or family therapist, alcohol or drug counselor, member of the clergy, or any other person, whether or not licensed or registered by the state,

who provides or purports to provide mental health services.

b. "Emotionally dependent" means that the nature of the patient's or client's or former patient's or client's emotional condition or the nature of the treatment provided by the counselor or therapist is such that the counselor or therapist knows or has reason to know that the patient or client or former patient or client is significantly impaired in the ability to withhold consent to sexual conduct, as described in paragraph "f", by the counselor or therapist.

For the purposes of paragraph "f", a former patient or former client is presumed to be dependent for one year following the termination of the provision of mental health services.

c “Former patient or client” means a person who received mental health services from the counselor or therapist

d “Mental health service” means the treatment, assessment, or counseling of another person for a cognitive, behavioral, emotional, mental, or social dysfunction, including an intrapersonal or interpersonal dysfunction

e “Patient or client” means a person who receives mental health services from the counselor or therapist

f “Sexual abuse by a counselor or therapist” occurs when either or both of the following are found

(1) A pattern or practice or scheme of conduct to engage in any of the conduct described in subparagraph (2) or (3)

(2) Any sexual conduct, with a patient or client or emotionally dependent former patient or client for the purpose of arousing or satisfying the sexual desires of the counselor or therapist or the patient or client or emotionally dependent former patient or client, which includes but is not limited to the following kissing, touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals, or a sex act as defined in section 702 17

(3) Any sexual conduct with a patient or client or former patient or client within one year of the termination of the provision of mental health services by the counselor or therapist for the purpose of arousing or satisfying the sexual desires of the counselor or therapist or the patient or client or former patient or client which includes but is not limited to the following kissing, touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals, or a sex act as defined in section 702 17

“Sexual abuse by a counselor or therapist” does not include touching which is part of a necessary examination or treatment provided a patient or client by a counselor or therapist acting within the scope of the practice or employment in which the counselor or therapist is engaged

2 A counselor or therapist who commits sexual abuse in violation of subsection 1, paragraph “f”, subparagraph (1), commits a class “D” felony

3 A counselor or therapist who commits sexual abuse in violation of subsection 1, paragraph “f”, subparagraph (2), commits an aggravated misdemeanor

4 A counselor or therapist who commits sexual abuse in violation of subsection 1, paragraph “f”, subparagraph (3), commits a serious misdemeanor In lieu of the sentence provided for under section 903 1, subsection 1, paragraph “b”, the offender may be required to attend a sexual abuser treatment program

91 Acts ch 130 §2 SF 2
NEW section

709.16 Sexual misconduct with offenders.

An officer, employee, contractor, vendor, volunteer, or agent of the department of corrections, or an officer, employee, or agent of a judicial district department of correctional services, who engages in a sex act with an individual committed to the custody of the department of corrections or a judicial district department of correctional services commits an aggravated misdemeanor

91 Acts ch 219 §21 SF 496
NEW section

CHAPTER 714

THEFT, FRAUD, AND RELATED OFFENSES

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.

13. Fraudulent practices in connection with targeted small business programs.

a. Knowingly transfers or assigns assets, ownership, or equitable interest in property of a business to a woman or minority person primarily for the purpose of obtaining benefits under targeted small business programs if the transferor would otherwise not be qualified for such programs.

b. Solicits and is awarded a state contract on behalf of a targeted small business for the purpose of transferring the contract to another for a percentage

if the person transferring or intending to transfer the work had no intention of performing the work.

c. Knowingly falsifying information on an application for the purpose of obtaining benefits under targeted small business programs.

A violation under this subsection is grounds for decertification of the targeted small business connected with the violation. Decertification shall be in addition to any penalty otherwise authorized by this section.

14. Makes payment pursuant to an agreement with a dealer or market agency for livestock held by the dealer or market agency by use of a financial instrument which is a check, share draft, draft, or written order on any financial institution, as defined in section 543.1, if after seven days from the date that possession of the livestock is transferred pursuant to the purchase, the financial institution refuses payment on the instrument because of insufficient funds in the maker's account.

This subsection is not applicable if the maker pays the holder of the instrument the amount due on the instrument within one business day from a receipt of notice by certified mail from the holder that payment has been refused by the financial institution.

As used in this subsection, "dealer" means a person engaged in the business of buying or selling livestock, either on the person's own account, or as an employee or agent of a vendor or purchaser. "Market agency" means a person engaged in the business of buying or selling livestock on a commission basis.

91 Acts, ch 15, §1 SF 174, 91 Acts, ch 258, §65 HF 709

NEW subsection 14

Subsection 14, unnumbered paragraph 1 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 build-

ing or commercial building unless an undivided interest in the land is granted as a condition precedent to occupying space in said structure.

f. “*Unfair practice*” means an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefits which the practice produces.

g. “*Deception*” means an act or practice which has the tendency or capacity to mislead a substantial number of consumers as to a material fact or facts.

h. “*Water treatment system*” means a device or assembly for which a claim is made that it will improve the quality of drinking water by reducing one or more contaminants through mechanical, physical, chemical, or biological processes or combinations of the processes. As used in this paragraph and in subsection 2, paragraph “h”, each model of a water treatment system shall be deemed a distinct water treatment system.

i. “*Contaminant*” means any particulate, chemical, microbiological, or radiological substance in water which has a potentially adverse health effect and for which a maximum contaminant level (MCL) has been specified in the national primary drinking water regulations.

j. “*Label*”, as used in subsection 2, paragraph “h”, means the written, printed, or graphic matter permanently affixed or attached to or printed on the water treatment system.

k. “*Manufacturer’s performance data sheet*” means a booklet, document, or other printed material containing, at a minimum, the information required pursuant to section 714.16, subsection 2, paragraph “h”.

l. “*Seller*”, as used in subsection 2, paragraph “h”, means the person offering the water treatment system for sale, lease, or rent.

m. “*Buyer*”, as used in subsection 2, paragraph “h”, means the person to whom the water system is being sold, leased, or rented.

n. “*Consummation of sale*” means completion of the act of selling, leasing, or renting.

o. “*Consumer information pamphlet*” means a publication which explains water quality, health effects, quality expectations for drinking water, and the effectiveness of water treatment systems.

2. a. The act, use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression, or omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise or the solicitation of contributions for charitable purposes, whether or not a person has in fact been misled, deceived, or damaged, is an unlawful practice.

It is deceptive advertising within the meaning of this section for a person to represent in connection with the lease, sale, or advertisement of any merchandise that the advertised merchandise has certain performance characteristics, accessories, uses, or benefits or that certain services are performed on

behalf of clients or customers of that person if, at the time of the representation, no reasonable basis for the claim existed. The burden is on the person making the representation to demonstrate that a reasonable basis for the claim existed.

A retailer who uses advertising for a product, other than a drug or other product claiming to have a health related benefit or use, prepared by a supplier shall not be liable under this section unless the retailer participated in the preparation of the advertisement; knew or should have known that the advertisement was deceptive, false, or misleading; refused to withdraw the product from sales upon the request of the attorney general pending a determination of whether the advertisement was deceptive, false, or misleading; refused upon the request of the attorney general to provide the name and address of the supplier; or refused to cooperate with the attorney general in an action brought against the supplier under this section.

“*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 the filing, however, this filing is not required for a subdivision subject to section 306.21 or chapter 409A. A 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) or section 306.21 or chapter 409A, and advertising, offers to sell, or contracts not in substantial conformity with the filings made pursuant to section 306.21 or chapter 409A 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.

h It is an unlawful practice for a person to sell, lease, rent, or advertise the sale, lease, or rental of a water treatment system in this state, for which claims or representations of removing health-related contaminants are made, unless the water treatment system:

(1) Has been performance tested by a third-party testing agency that has been authorized by the Iowa department of public health. Alternatively, in lieu of third-party performance testing of the manufacturer's water treatment system, the manufacturer may rely upon the manufacturer's own test data after approval of the data by an accepted third-party evaluator as provided in this subparagraph. The Iowa department of public health shall review the qualifications of a third-party evaluator proposed by the manufacturer. The department may accept or reject a proposed third-party evaluator based upon the required review. If a third-party evaluator, accepted by the Iowa department of public health, finds that the manufacturer's test data is reliable, adequate, and fairly presented, the manufacturer may rely upon that data to satisfy the requirements of this subparagraph after filing a copy of the test data and the report of the third-party evaluator with the Iowa department of public health. The testing agency shall use, or the evaluator shall review for the use of, approved methods of performance testing determined to be appropriate by the state hygienic laboratory.

(2) Has met the performance testing requirements specified in the testing protocol.

(3) Bears a conspicuous and legible label stating, "**IMPORTANT NOTICE - Read the Manufacturer's Performance Data Sheet**" and is accompanied by a manufacturer's performance data sheet.

The manufacturer's performance data sheet shall be given to the buyer and shall be signed and dated by the buyer and the seller prior to the consummation of the sale of the water treatment system. The manufacturer's performance data sheet shall contain information including, but not limited to:

(a) The name, address, and telephone number of the seller.

(b) The name, brand, or trademark under which the unit is sold, and its model number.

(c) Performance and test data including, but not

limited to, the list of contaminants certified to be reduced by the water treatment system; the test influent concentration level of each contaminant or surrogate for that contaminant; the percentage reduction or effluent concentration of each contaminant or surrogate; where applicable, the maximum contaminant level (MCL) specified in the national primary drinking water regulations; where applicable, the approximate capacity in gallons; where applicable, the period of time during which the unit is effective in reducing contaminants based upon the contaminant or surrogate influent concentrations used for the performance tests; where applicable, the flow rate, pressure, and operational temperature of the water during the performance tests.

(d) Installation instructions.

(e) The recommended operational procedures and requirements necessary for the proper operation of the unit including, but not limited to, electrical requirements; maximum and minimum pressure; flow rate; temperature limitations; maintenance requirements; and where applicable, replacement frequencies.

(f) The seller's limited warranty.

(4) Is accompanied by the consumer information pamphlet compiled by the Iowa department of public health.

The consumer information pamphlet provided to the buyer of a water treatment system shall be compiled by the Iowa department of public health, reviewed annually, and updated as necessary. The consumer information pamphlet shall be distributed to persons selling water treatment systems and the costs of the consumer information pamphlet shall be borne by persons selling water treatment systems. The Iowa department of public health shall adopt rules pursuant to chapter 17A and charge all fees necessary to administer this section.

i. It is an unlawful practice for a person to sell, lease, rent, or advertise the sale, lease, or rental of a water treatment system in this state for which false or deceptive claims or representations of removing health-related contaminants are made.

j. It is an unlawful practice for a person to make any representation or claim that the seller's water treatment system has been approved or endorsed by any agency of the state.

k. It is an unlawful practice for a supplier to commit a deceptive act or practice under chapter 537B.

l. It is an unlawful practice for a repair facility or manufacturer or distributor of aftermarket crash parts, as defined in section 537B.4, to commit a deceptive act or practice under chapter 537B.

m. It is an unlawful practice for a person to advertise the sale of wood products without disclosing information which may affect the price of the product.

An advertisement for all plywood and dimension lumber products shall include the grade and species, in accordance with federal products standards 1 and 20, and the measure. The products advertised shall also be labeled according to the federal products standards.

An advertisement for any other wood product shall include the grade and species, according to the applicable federal product standards, and the measure. These products need not be labeled.

An advertisement for any wood products must also include the following:

(1) The condition of the wood product, including but not limited to the following designations:

(a) Green.

(b) Kiln-dried.

(c) Air-dried or partially air-dried.

(2) Whether the wood product consists of seconds, culls, shop grade, or ungraded material.

Use of any contrived or unrecognized grading standard is prohibited, and any factors affecting the final delivered price of the products shall be disclosed and displayed in a conspicuous place.

This paragraph applies only to persons who offer wood products for sale in the ordinary course of business, except that this paragraph does not apply to any person who produces rough-sawed lumber, commonly referred to as native lumber, in this state. For purposes of this paragraph:

"Dimension lumber" means softwood lumber nominally referred to as *"two inch by four inch"* or greater.

"Labeling" means all labels and other written, printed, branded, or graphic matter upon any building material.

"Plywood" means a structural material consisting of sheets or chips of wood glued or cemented together.

"Wood products" means any wood products derived from trees as a result of any work or manufacturing process upon the wood, and intended primarily for use as a building material.

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. A civil action pursuant to this section shall be

by equitable proceedings. If it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in a practice declared to be unlawful by this section, the attorney general may seek and obtain in an action in a district court a temporary restraining order, preliminary injunction, or permanent injunction prohibiting the person from continuing the practice or engaging in the practice or doing an act in furtherance of the practice. The court may make orders or judgments as necessary to prevent the use or employment by a person of any prohibited practices, or which are necessary to restore to any person in interest any moneys or property, real or personal, which have been acquired by means of a practice declared to be unlawful by this section, including the appointment of a receiver in cases of substantial and willful violation of this section. Except in an action for the concealment, suppression, or omission of a material fact with intent that others rely upon it, it is not necessary in an action for restitution or an injunction, to allege or to prove reliance, damages, intent to deceive, or that the person who engaged in an unlawful act had knowledge of the falsity of the claim or ignorance of the truth. A claim for restitution may be proved by any competent evidence, including evidence that would be appropriate in a class action.

In addition to the remedies otherwise provided for in this subsection, the attorney general may request and the court may impose a civil penalty not to exceed forty thousand dollars per violation against a person found by the court to have engaged in a method, act, or practice declared unlawful under this section; provided, however, a course of conduct shall not be considered to be separate and different violations merely because the conduct is repeated to more than one person. In addition, on the motion of the attorney general or its own motion, the court may impose a civil penalty of not more than five thousand dollars for each day of intentional violation of a temporary restraining order, preliminary injunction, or permanent injunction issued under authority of this section. A penalty imposed pursuant to this subsection is in addition to any penalty imposed pursuant to section 537.6113. Civil penalties ordered pursuant to this subsection shall be paid to the treasurer of state to be deposited in the general fund of the state.

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 A civil action pursuant to this section may be commenced in the county in which the person against whom it is brought resides, has a principal place of business, or is doing business, or in the county where the transaction or any substantial portion of the transaction occurred, or where one or more of the victims reside.

11 In an action brought under this section, the attorney general is entitled to recover costs of the court action and any investigation which may have been conducted, including reasonable attorneys' fees, for the use of this state.

12 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.

13 The attorney general or the designee of the attorney general is deemed to be a regulatory agency under chapter 692 for the purpose of receiving criminal intelligence data relating to violations of this section.

14 This section does not apply to the newspaper, magazine, publication, or other print media in which the advertisement appears, or to the radio station, television station, or other electronic media which disseminates the advertisement if the newspaper, magazine, publication, radio station, television station, or other print or electronic media has no knowledge of the fraudulent intent, design, or purpose of the advertiser at the time the advertisement is accepted, 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.

91 Acts ch 212 §1 HF 571
Subsection 2 NEW paragraph m

714.16A Additional civil penalty for consumer frauds committed against elderly — fund established.

1 If a person violates section 714.16, and the vio-

lation is committed against an older person, in addition to any other civil penalty, the court may impose an additional civil penalty not to exceed five thousand dollars for each such violation.

A civil penalty imposed pursuant to this section shall be paid to the treasurer of state, who shall deposit the money in the elderly victim fund, a separate fund created in the state treasury and administered by the attorney general for the investigation and prosecution of frauds against the elderly. Notwithstanding section 8.33, any balance in the fund on June 30 of any fiscal year shall not revert to the general fund of the state. An award of restitution pursuant to section 714.16 has priority over a civil penalty imposed by the court pursuant to this subsection.

2 In determining whether to impose a civil penalty under subsection 1, and the amount of any such penalty, the court shall consider the following:

a Whether the defendant's conduct was in willful disregard of the rights of the older person.

b Whether the defendant knew or should have known that the defendant's conduct was directed to an older person.

c Whether the older person was substantially more vulnerable to the defendant's conduct because of age, poor health, infirmity, impaired understanding, restricted mobility, or disability, than other persons.

d Any other factors the court deems appropriate.

3 As used in this section, "older person" means a person who is sixty-five years of age or older.

91 Acts ch 102 §1 SF 211
NEW section

714.23 Refund policies.

1 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 no less than ninety percent of the tuition for a terminating student to the appropriate agency based upon the ratio of completed number of scheduled school days to sixty percent of the scheduled school days of the school term or course.

2 Notwithstanding the provisions of subsection 1, the following refund policy shall apply:

a If a terminating student has completed sixty percent or more of a school term or course that is more than four months in length, the person offering the course of instruction is not required to refund tuition for the student. However, if, at any time, a student terminates a school term or course that is more than four months in length due to the student's physical incapacity or due to the transfer of the student's spouse's employment to another city, the terminating student shall receive a refund of tuition in an amount which equals the amount of tuition multiplied by the ratio of the remaining number of school days to the total school days of the school term or course.

b A refund of ninety percent of the tuition for a

terminating student shall be paid 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. This paragraph applies to those persons offering courses of instruction at the postsecondary level, for profit, whose cohort default rate for students under the Stafford loan program as defined by the United States department of education is more than one hundred ten percent of the national average cohort default rate for that program for that period or six percent, whichever is higher.

3. If the financial obligations of a student are for three or fewer months duration, this section does not apply.

4. Refunds shall be paid to the appropriate agency within thirty days following the student's termination.

5. A student who terminates a course of instruction or term shall not be charged any fee or other monetary penalty for terminating a course of instruction or term other than a reduction in tuition refund as specified in this section.

6. A violation of this section is a simple misdemeanor.

91 Acts, ch 97, §61 HF 198
 Subsection 2, paragraph b amended

CHAPTER 714A

PAY-PER-CALL SERVICE

714A.1 Definitions.

As used in this chapter:

1. "Advertisement" means advertisement as defined in section 714.16, subsection 1, paragraph "a". However, for purposes of this chapter, advertisement does not include a residential listing or a listing in any section of the directory in which businesses or professions are listed alphabetically rather than grouped by subject category, or a standard listing in the subject category section of a telephone directory. Advertisement also does not include a display advertisement or a listing which is made to appear more conspicuous than other listings in the subject category section of a telephone directory, provided that such display advertisement or listing includes a conspicuous disclosure that the call is a pay-per-call service and refers a reader in a clear and conspicuous manner to a page number of the directory where the reader may find an explanation of pay-per-call services. Such explanation of pay-per-call services shall include all of the following:

- a. The disclosure and preamble requirements under the law.
- b. The availability and costs of blocking options, if any.
- c. Whether a consumer's phone service may be terminated for failure to pay for pay-per-call services.
- d. The procedures for handling consumer inquiries and complaints.

2. "Amount of time necessary to complete a call" means for purposes of a fixed length call, the total length of the call in minutes, and for purposes of a variable length call, a reasonable, good faith estimate in minutes of the likely length of the call.

3. "Merchandise" means merchandise as defined in section 714.16, subsection 1, paragraph "b".

4. a. "Pay-per-call service" means electronic communications products and services which are provided to end users by information or service providers, and which meet all of the following requirements:

(1) The end users send or receive information, services, or communications whose general subject matter is determined or influenced by the service provider.

(2) The end users send or receive the information, services, or communications via a telephone connection using audio input which is not modulated or demodulated by the end user.

(3) The charge to the end user for the information, services, or communications is determined by the information or service provider and is made on a per-call or per-minute basis.

b. (1) Where the requirements under paragraph "a" are met, pay-per-call service includes, but is not limited to, the following:

(a) Information retrieval from a remote database.

(b) Information collection for polling and data entry.

(c) Services offered for public entertainment in which users participate in or listen to a conversation.

(2) Pay-per-call service does not include electronic communication for the purpose of conducting financial transactions, or any service the price of which is established pursuant to a tariff approved by a regulatory agency.

5. "Person" means person as defined in section 714.16, subsection 1, paragraph "c", and includes a

long distance company and local exchange company as defined in section 477 10

91 Acts ch 171 §1 SF 317
NEW section

714A.2 Disclosure of charges.

With respect to each pay-per-call service, the call shall contain an introductory disclosure message that specifies clearly, and at the same audio volume of the ensuing program, if the charge for the call is on a flat rate basis, the total charge for the call, or if charged on a per-minute basis, the charge per minute for the call, the charge for each additional minute, and the amount of time necessary to complete the call, and all other fees, and which informs the caller of the option to disconnect the call at the end of the introductory message without incurring a charge. However, an introductory message is not required if the total charge for the call is one dollar or less.

91 Acts ch 171 §2 SF 317
NEW section

714A.3 Advertisements.

Advertisements for pay-per-call service shall clearly state if the charge for the service is on a flat rate basis, the total charge for the call or, if charged on a per-minute basis, the charge per minute for the call, the charge for each additional minute, and the amount of time necessary to complete the call. Additionally, if in order to obtain the full advertised services or other merchandise, a caller will be required to make any payments in addition to the cost of the initial call, that fact shall be disclosed, along with the amounts of such additional payments. If the advertisement is oral, all cost information must be disclosed clearly and at the same audio volume of the ensuing program prior to providing the pay per call number and each time the number is mentioned.

91 Acts ch 171 §3 SF 317
NEW section

714A.4 Billing and collection.

A person shall not bill or collect for a pay-per-call service if such person has actual knowledge of the failure of the pay per-call service to comply with the requirements of this chapter. A person shall cease billing and collecting for a pay per call service which fails to comply with the requirements of this chapter as soon as practicable, but in no event more than thirty days, after acquiring knowledge of the non compliance. Billing and collection contracts shall contain a provision which refers the pay-per call service to chapter 714A, which provides for an introductory disclosure message and the requirements for such message.

Additionally, a person shall not bill or collect a charge for a pay-per-call service unless the call for which the charge is being made is completed.

91 Acts ch 171 §4 SF 317
NEW section

714A.5 Enforcement.

A violation of this chapter is an unfair or deceptive trade practice and is subject to the provisions of section 714 16, except that the remedies and penalties provided pursuant to that section shall not be applied to a newspaper, magazine, publication, directory, or other print media in which an advertisement appears, or to a radio station, television station, or other electronic media which disseminates the advertisement, and no other penalty or cause of action under this chapter shall accrue against the media in or by which the advertisement appears or is disseminated, where the particular advertisement is not sponsored by the media, unless the media also performs the billing or collecting for the pay per call service.

91 Acts ch 171 §5 SF 317
NEW section

CHAPTER 717A

OFFENSES RELATING TO ANIMAL FACILITIES

717A.1 Animal facilities — civil action — criminal penalties.

1 As used in this section, unless the context otherwise requires

a "Animal" means a warm- or cold-blooded animal, including an animal belonging to the bovine, canine, feline, equine, ovine, or porcine species, or an animal which belongs to a species of poultry or fish, or an animal which is an invertebrate

b "Animal facility" means any of the following

(1) A location where an animal is maintained for agricultural production, including an operation dedicated to farming as defined in section 172C 1, a live stock market, exhibition, or a vehicle used to transport the animal

(2) A location where an animal is maintained for educational or scientific purposes, including an institution as defined in section 351A 1, a research facility as defined in section 162 2, an exhibition, or a vehicle used to transport the animal

(3) A location which is a facility operated by a person licensed to prescribe veterinary medicine pursuant to chapter 169.

(4) A pound as defined in section 162.2.

(5) An animal shelter as defined in section 162.2.

(6) A pet shop as defined in section 162.2.

(7) A boarding kennel as defined in section 162.2.

(8) A commercial kennel as defined in section 162.2.

c. "Consent" means express or apparent assent by a person authorized to provide such assent.

d. "Deprive" means to do any of the following:

(1) Withhold an animal or property belonging to or maintained by an animal facility for a period of time sufficient to significantly reduce the value or enjoyment of the animal or property.

(2) Withhold an animal or property for ransom or upon condition to restore the animal or property in return for compensation.

(3) Dispose of an animal or property of an owner in a manner that makes recovery of the animal or property by the owner unlikely.

e. "Maintain" means to keep, handle, house, exhibit, breed, or offer for sale, or sell an animal.

f. "Owner" means a person who has a legal interest in an animal or property or who is authorized by the holder of the legal interest to act on the holder's behalf.

2. A person shall not, without the consent of the owner, do any of the following:

a. Willfully destroy property of an animal facility, or injure an animal maintained at an animal facility.

b. Exercise control over an animal facility including property of the animal facility, or an animal maintained at an animal facility, with intent to deprive the animal facility of an animal or property.

c. Enter onto or into an animal facility, or remain on or in an animal facility, if the person has notice that the facility is not open to the public, if the person has an intent to do one of the following:

(1) Disrupt operations conducted at the animal facility, if the operations directly relate to agricultural production, animal maintenance, educational or scientific purposes, or veterinary care.

(2) Injure an animal maintained at the animal facility.

A person has notice that an animal facility is not open to the public if the person is provided notice before entering onto or into the facility, or the person refuses to immediately depart from the facility after being informed to leave. The notice may be in the form of a written or verbal communication by the owner, a fence or other enclosure designed to exclude intruders or contain animals, or a sign posted which is reasonably likely to come to the attention of an intruder and which indicates that entry is forbidden.

3. A person suffering damages resulting from an action which is in violation of subsection 2 may bring an action in the district court against the person causing the damage to recover all of the following:

a. An amount equaling three times all actual and consequential damages.

b. Court costs and reasonable attorney fees.

4. A person violating this section is guilty of the following penalties:

a. A person who violates subsection 2, paragraph "a", is guilty of a class "C" felony if the injury to an animal or damage to property exceeds fifty thousand dollars, a class "D" felony if the injury to an animal or damage to property exceeds five hundred dollars but does not exceed fifty thousand dollars, an aggravated misdemeanor if the injury to an animal or damage to property exceeds one hundred dollars but does not exceed five hundred dollars, a serious misdemeanor if the injury to an animal or damage to property exceeds fifty dollars but does not exceed one hundred dollars, or a simple misdemeanor if the injury to an animal or damage to property does not exceed fifty dollars.

b. A person who violates subsection 2, paragraph "b", is guilty of a class "D" felony.

c. A person who violates subsection 2, paragraph "c", is guilty of an aggravated misdemeanor.

5. This section does not prohibit any conduct of a person holding a legal interest in an animal or property which is superior to the interest held by a person suffering from damages resulting from the conduct. The section does not apply to activities of a governmental agency.

CHAPTER 719

OBSTRUCTING JUSTICE

719.1 Interference with official acts.

1. A person who knowingly resists or obstructs anyone known by the person to be a peace officer or fire fighter, whether paid or volunteer, in the performance of any act which is within the scope of the lawful duty or authority of that officer or fire fighter, whether paid or volunteer, or who knowingly resists or obstructs the service or execution by any authorized person of any civil or criminal process or order of any court, commits a simple misdemeanor. However, if a person commits an interference with official acts, as defined in this subsection, and in so doing inflicts bodily injury other than serious injury, that person commits a serious misdemeanor. If a person commits an interference with official acts, as defined in this subsection, and in so doing inflicts or attempts to inflict serious injury, or displays a dangerous weapon, as defined in section 702.7, or is armed with a firearm, that person commits an aggravated misdemeanor.

2. A person under the custody, control, or supervision of the department of corrections who know-

ingly resists, obstructs, or interferes with a correctional officer, agent, employee, or contractor, whether paid or volunteer, in the performance of the person's official duties, commits a serious misdemeanor. If a person violates this subsection and in so doing commits an assault, as defined in section 708.1, the person commits an aggravated misdemeanor. If a person violates this subsection and in so doing inflicts or attempts to inflict bodily injury other than serious injury to another, displays a dangerous weapon, as defined in section 702.7, or is armed with a firearm, the person commits a class "D" felony. If a person violates this subsection and uses or attempts to use a dangerous weapon, as defined in section 702.7, or inflicts serious injury to another, the person commits a class "C" felony.

3. The terms "*resist*" and "*obstruct*", as used in this section, do not include verbal harassment unless the verbal harassment is accompanied by a present ability and apparent intention to execute a verbal threat physically.

91 Acts, ch 219, §22 SF 496
Section amended

CHAPTER 724

WEAPONS

Restrictions on shooting over public waters or roads, § 109 54

724.11 Issuance of permit to carry weapons.

Applications for permits to carry weapons shall be made to the sheriff of the county in which the applicant resides. Applications from persons who are nonresidents of the state, or whose need to go armed arises out of employment by the state, shall be made to the commissioner of public safety. In either case, the issuance of the permit shall be by and at the discretion of the sheriff or commissioner, who shall, before issuing the permit, determine that the requirements of sections 724.6 to 724.10 have been satisfied. However, the training program requirements in section 724.9 may be waived for renewal permits. The issuing officer shall collect a fee of ten dollars, except from a duly appointed peace officer or correctional

officer, for each permit issued. Renewal permits or duplicate permits shall be issued for a fee of five dollars. The issuing officer shall notify the commissioner of public safety of the issuance of any permit at least monthly and forward to the director an amount equal to two dollars for each permit issued and one dollar for each renewal or duplicate permit issued. All such fees received by the commissioner shall be paid to the treasurer of state and deposited in the operating account of the department of public safety to offset the cost of administering this chapter. Any unspent balance as of June 30 of each year shall revert to the general fund as provided by section 8.33.

91 Acts, ch 207, §1 SF 535
Section amended

CHAPTER 726

PROTECTION OF THE FAMILY AND DEPENDENT PERSONS

726.7 Wanton neglect of a resident of a health care facility.

1. A person commits wanton neglect of a resident of a health care facility when the person knowingly acts in a manner likely to be injurious to the physical or mental welfare of a resident of a health care facility as defined in section 135C.1.
2. A person who commits wanton neglect result-

ing in serious injury to a resident of a health care facility is guilty of a class “C” felony.

3. A person who commits wanton neglect not resulting in serious injury to a resident of a health care facility is guilty of an aggravated misdemeanor.

91 Acts, ch 107, §13 SF 412
Section amended

CHAPTER 805

CITATIONS IN LIEU OF ARREST

805.6 Uniform citation and complaint.

1. *a.* The commissioner of public safety, the director of transportation, and the director of natural resources, 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 filing fees and court costs in cases of parking meter and overtime parking violations which are denied are as stated in section 602.8106, subsection 1. 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 an abstract of the uniform citation and complaint in accordance with section 321.491 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 director of natural resources 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 five hundred 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 out of the budget of the municipal corporation or county receiving the fine resulting

from use of the citation and complaint. Supplies of the uniform citation and complaint form used by other agencies shall be paid for out of the budget of the agency concerned and not out of the budget of the judicial department.

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 director of the department of natural resources, 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 department of natural resources, 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.

91 Acts, ch 116, §21 HF 534
Subsection 3 amended

CHAPTER 809

DISPOSITION OF SEIZABLE AND FORFEITABLE PROPERTY

809.17 Proceeds applied to various programs.

Except as provided in section 809.21, proceeds from the disposal of seized or forfeited property pursuant to this chapter may be transferred in whole or

in part to the victim compensation fund created in section 912.14 at the discretion of the recipient agency, political subdivision, or department.

91 Acts, ch 181, §16 HF 430, 91 Acts, ch 258, §66 HF 709
Section amended

CHAPTER 815

COSTS — COMPENSATION AND FEES — INDIGENT DEFENSE

Payment under §815.1 limited for 1991-1992 fiscal year 91 Acts ch 267 §507 HF 479

815.10 Appointment of counsel by court.

1 The court, for cause and upon its own motion or upon application by an indigent person or a public defender, shall appoint the state public defender or the state public defender's designee pursuant to section 13B 4, or an attorney pursuant to section 13B 9 to represent an indigent person at any stage of the criminal or juvenile proceedings or on appeal of any criminal or juvenile action in which the indigent person is entitled to legal assistance at public expense. However, in juvenile cases the court may directly appoint an existing nonprofit corporation established for and engaged in the provision of legal services for juveniles. An appointment shall not be made unless the person is determined to be indigent under section 815 9.

2 If a court finds that a person desires legal assistance and is not indigent, but refuses to employ an attorney, the court shall appoint the state public defender or the state public defender's designee pursuant to section 13B 4, or an attorney pursuant to section 13B 9 to represent the person. The cost of providing legal assistance shall be taxed as a court cost against the person.

3 An attorney other than a public defender or a

contract attorney who is appointed by the court under this section shall apply to the district court for compensation and for reimbursement of costs incurred. The amount of compensation due shall be determined in accordance with section 815 7.

91 Acts ch 268 §436 SF 529
1991 amendment repealed July 1 1995 instructions to Code editor 91 Acts ch 268 §439 SF 529
Section amended

815.10A Claim for compensation — requirements.

1 The department of inspections and appeals shall require all claims for compensation filed by court-appointed attorneys for indigent defense cases, whether adult or juvenile, to include specific information as required by rules of the department.

2 If the information required in this section is submitted with the claim for compensation, the court may then award reasonable and proper compensation to the attorney. If information required is not submitted with the claim for compensation, the department may reject the claim until such information is submitted.

91 Acts ch 268 §437 SF 529
NFW section

CHAPTER 901

JUDGMENT AND SENTENCING PROCEDURES

901.3 Presentence investigation report.

If a presentence investigation is ordered by the court, the investigator shall promptly inquire into all of the following:

1 The defendant's characteristics, family and financial circumstances, needs, and potentialities, including the presence of any previously diagnosed mental disorder.

2 The defendant's criminal record and social history.

3 The circumstances of the offense.

4 The time the defendant has been in detention.

5 The harm to the victim, the victim's immediate family, and the community. Additionally, the

presentence investigator shall provide a victim impact statement form to each victim, if one has not already been provided, and shall file the completed statement or statements with the presentence investigation report.

6 The defendant's potential as a candidate for the community service sentence program established pursuant to section 907 13.

All local and state mental and correctional institutions, courts, and police agencies shall furnish to the investigator on request the defendant's criminal record and other relevant information. With the approval of the court, a physical examination or psychiatric evaluation of the defendant may be ordered,

or the defendant may be committed to an inpatient or outpatient psychiatric facility for an evaluation of the defendant's personality and mental health. The results of any such examination or evaluation shall

be included in the report of the investigator

91 Acts ch 219 §23 SF 496
Subsection 7 stricken

CHAPTER 903

MISDEMEANORS

903.1 Maximum sentence for misdemeanants.

1 If a person eighteen years of age or older is convicted of a simple or serious misdemeanor and a specific penalty is not provided for or if a person under eighteen years of age has been waived to adult court pursuant to section 232.45 on a felony charge and is subsequently convicted of a simple, serious, or aggravated misdemeanor, the court shall determine the sentence, and shall fix the period of confinement or the amount of fine, if such be the sentence, within the following limits

a For a simple misdemeanor, imprisonment not to exceed thirty days, or a fine not to exceed one hundred dollars

b For a serious misdemeanor, imprisonment not to exceed one year, or a fine not to exceed one thousand dollars, or both

2 When a person is convicted of an aggravated misdemeanor, and a specific penalty is not provided for, the maximum penalty shall be imprisonment not

to exceed two years, or a fine not to exceed five thousand dollars, or both. When a judgment of conviction of an aggravated misdemeanor is entered against any person and the court imposes a sentence of confinement for a period of more than one year the term shall be an indeterminate term

3 A person under eighteen years of age convicted of a simple misdemeanor under chapter 98, 106, 106A, 109, 109A, 110, 110A, 110B, 111, 321, or 321G, or a violation of a county or municipal curfew or traffic ordinance, except for an offense subject to section 805.8, may be required to pay a fine, not to exceed one hundred dollars, as fixed by the court, or may be required to perform community service as ordered by the court

The criminal penalty surcharge required by section 911.2 shall be added to a fine imposed on a misdemeanant, and is not a part of or subject to the maximums set in this section

91 Acts ch 240 §10 HF 232
Subsection 3 amended

CHAPTER 905

COMMUNITY-BASED CORRECTIONAL PROGRAM

905.1 Definitions.

As used in this chapter, unless the context otherwise requires

1 "Administrative agent" means the county selected by the district board to perform accounting, budgeting, personnel, facilities management, insurance, payroll and other supportive services on the behalf of the district board, or the district department itself, if so designated by the district board

2 "Community based correctional program" means correctional programs and services designed to supervise and assist individuals who are charged

with or have been convicted of a felony, an aggravated misdemeanor or a serious misdemeanor, or who are on probation or parole in lieu of or as a result of a sentence of incarceration imposed upon conviction of any of these offenses, or who are contracted to the district department for supervision and housing while on work release

3 "Director" means the director of a judicial district department of correctional services

4 "District board" means the board of directors of a judicial district department of correctional services

5. “*District department*” means a judicial district department of correctional services, established as required by section 905.2.

6. “*Project*” means a locally functioning part of a community-based correctional program, officed and operating in a physical location separate from the offices of the district department.

7. “*Project advisory committee*” means a committee of no more than seven persons which shall act in an advisory capacity to the director on matters pertaining to the planning, operation, and other pertinent functions of each project in the judicial district. The members of the project advisory committee for each project shall be initially appointed by the director from among the general public. Not more than one half of the project advisory committee shall hold public office or public employment during membership on the committee. A person who holds public office as a county supervisor and serves on the board of directors under section 905.3 shall not be a member of a project advisory committee under this section. The terms of the initial members of the project advisory committee shall be staggered to permit the terms of just over half of the members to expire in two years and those of the remaining members to expire in one year. Subsequent appointments to the project advisory committee shall be by vote of a majority of the whole project advisory committee for two-year terms.

91 Acts, ch 99, §1 SF 112
Subsection 7 amended

905.4 Duties of the board.

The district board shall:

1. Adopt bylaws and rules for the conduct of its own business and for the government of the district department’s community-based correctional program.

2. Employ a director having the qualifications required by section 905.6 to head the district department’s community-based correctional program and, within a range established by the Iowa department of corrections, fix the compensation of and have control over the director and the district department’s staff. For purposes of collective bargaining under chapter 20, employees of the district board who are not exempt from chapter 20 are employees of the state, and the employees of all of the district boards shall be included within one collective bargaining unit.

3. Designate one of the counties in the judicial district to serve as the district department’s administrative agent to provide, in that capacity, all accounting, personnel, facilities management and supportive services needed by the district department, on terms mutually agreeable in regard to advancement of funds to the county for the added expense it incurs as a result of being so designated. However, the district board may designate the district department itself as the district department’s administrative agent, if the district board determines that it would be more efficient and less costly than designating a county as the administrative agent.

4. File with the board of supervisors of each county in the district and with the Iowa department of corrections, within ninety days after the close of each fiscal year, a report covering the district board’s proceedings and a statement of receipts and expenditures during the preceding fiscal year.

5. Arrange for, by contract or on such alternative basis as may be mutually acceptable, and equip suitable quarters at one or more sites in the district as may be necessary for the district department’s community-based correctional program, provided that the board shall to the greatest extent feasible utilize existing facilities and shall keep capital expenditures for acquisition, renovation and repair of facilities to a minimum. The district board shall not enter into lease-purchase agreements for the purposes of constructing, renovating, expanding, or otherwise improving a community-based correctional facility or office unless express authorization has been granted by the general assembly, and current funding is adequate to meet the lease-purchase obligation.

6. Have authority to accept property by gift, devise, bequest or otherwise and to sell or exchange any property so accepted and apply the proceeds thereof, or the property received in exchange thereof, to the purposes enumerated in subsection 5.

7. Recruit, promote, accept and use local financial support for the district department’s community-based correctional program from private sources such as community service funds, business, industrial and private foundations, voluntary agencies and other lawful sources.

8. Accept and expend state and federal funds available directly to the district department for all or any part of the cost of its community-based correctional program.

9. Arrange, by contract or on an alternative basis mutually acceptable, and with approval of the director of the Iowa department of corrections or that director’s designee for utilization of existing local treatment and service resources, including but not limited to employment, job training, general, special, or remedial education; psychiatric and marriage counseling; and alcohol and drug abuse treatment and counseling. It is the intent of this chapter that a district board shall approve the development and maintenance of such resources by its own staff only if the resources are otherwise unavailable to the district department within reasonable proximity to the community where these services are needed in connection with the community-based correctional program.

10. Establish a project advisory committee to act in an advisory capacity on matters pertaining to the planning, operation, and other pertinent functions of each project in the judicial district.

91 Acts, ch 267, §420 HF 479
1991 amendment to subsection 5 effective January 1, 1992, 91 Acts, ch 267, §425 HF 479
Subsection 5 amended

905.6 Duties of director.

The director employed by the district board under section 905 4, subsection 2, shall be qualified in the administration of correctional programs. The director shall

1 Perform the duties and have the responsibilities delegated by the district board or specified by the Iowa department of corrections pursuant to this chapter

2 Manage the district department's community-based correctional program, in accordance with the policies of the district board and the Iowa department of corrections

3 Employ, with approval of the district board, and supervise the employees of the district department

4 Prepare all budgets and fiscal documents, and certify for payment all expenses and payrolls lawfully incurred by the district department. The director may invest funds which are not needed for current expenses, jointly with one or more cities, city utilities, or counties pursuant to a joint investment agreement

5 Act as secretary to the district board, prepare its agenda and record its proceedings. The district shall provide a copy of minutes from each meeting of the district board to the legislative fiscal bureau

6 Develop and submit to the district board a plan for the establishment, implementation, and operation of a community-based correctional program in that judicial district, which program conforms to the guidelines drawn up by the Iowa department of corrections under this chapter and which conform to rules, policies, and procedures pertaining to the supervision of parole and work release adopted by the director of the Iowa department of corrections concerning the community based correctional program

7 Negotiate and, upon approval by the district board, implement contracts or other arrangements for utilization of local treatment and service resources authorized by section 905 4, subsection 9

8 Administer the batterers' treatment program for domestic abuse offenders required in section 708 2B

91 Acts ch 218 §29 SF 444 91 Acts ch 267 §421 HF 479
Subsection 5 amended
NEW subsection 8

CHAPTER 906**PAROLES AND WORK RELEASE****906.9 Clothing, transportation, and money.**

When an inmate is discharged, paroled, or placed on work release, the warden or superintendent shall furnish the inmate, at state expense, appropriate clothing and transportation to the place in this state indicated in the inmate's discharge, parole, or work release plan. When an inmate is discharged, paroled, or placed on work release, the warden or superintendent shall provide the inmate, at state expense or through inmate savings as provided in section 246 508, money in accordance with the following schedule

1 Upon discharge or parole, one hundred dollars

2 Upon being placed on work release, fifty dollars

3 Upon going from an educational work release to parole or discharge, fifty dollars

Those inmates receiving payment under subsection 2 or 3 shall not be eligible for payment under subsection 1 unless they are returned to the institution. The warden or superintendent shall maintain an account of all funds expended pursuant to this section

91 Acts ch 219 §24 SF 496
Unnumbered paragraph 1 amended

906.10 Parole relief fund. Repealed by 91 Acts, ch 267, § 526 HF 479

CHAPTER 907

DEFERRED JUDGMENT, DEFERRED OR SUSPENDED SENTENCE AND PROBATION

907.3 Deferred judgment, deferred sentence or suspended sentence.

Pursuant to section 901.5, the trial court may, upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, exercise any of the options contained in this section. However, this section does not apply to a forcible felony.

1. With the consent of the defendant, the court may defer judgment and place the defendant on probation upon such conditions as it may require. Upon a showing that the defendant is not co-operating with the program of probation or is not responding to it, the court may withdraw the defendant from the program, pronounce judgment, and impose any sentence authorized by law. Before taking such action, the court shall give the defendant an opportunity to be heard on any matter relevant to the proposed action. Upon fulfillment of the conditions of probation, the defendant shall be discharged without entry of judgment. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.

However, this subsection shall not apply if any of the following is true:

a. The offense is a violation of section 709.8 and the child is twelve years of age or under.

b. The defendant previously has been convicted of a felony. "Felony" means a conviction in a court of this or any other state or of the United States, of an offense classified as a felony by the law under which the defendant was convicted at the time of the defendant's conviction.

c. Prior to the commission of the offense the defendant had been granted a deferred judgment or similar relief, two or more times anywhere in the United States.

d. Prior to the commission of the offense the defendant had been granted a deferred judgment or similar relief in a felony prosecution anywhere in the United States within the preceding five years, measured from the date of granting of deferment of judgment to the date of commission of the offense.

e. The defendant committed an assault as defined in section 708.1, against a peace officer in the performance of the peace officer's duty.

f. The defendant is a corporation.

g. The offense is a violation of section 321J.2 and, within the previous six years, the person has been convicted of a violation of that section or the person's driver's license has been revoked pursuant to section 321J.4, 321J.9, or 321J.12.

h. Prior to the commission of the offense the de-

fendant had been granted a deferred judgment or deferred sentence for a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault, or was granted similar relief anywhere in the United States concerning that jurisdiction's statutes which substantially correspond to domestic abuse assault as provided in section 708.2A, and the current offense is a violation of section 708.2A.

2. At the time of or after pronouncing judgment and with the consent of the defendant, the court may defer the sentence and assign the defendant to the judicial district department of correctional services. However, the court shall not defer the sentence for a violation of section 708.2A if the defendant has previously received a deferred judgment or sentence for a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault, or if similar relief was granted anywhere in the United States concerning that jurisdiction's statutes which substantially correspond to domestic abuse assault as provided in section 708.2A. Upon a showing that the defendant is not fulfilling the conditions of probation, the court may revoke probation and impose any sentence authorized by law. Before taking such action, the court shall give the defendant an opportunity to be heard on any matter relevant to the proposed action. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.

3. By record entry at the time of or after sentencing, the court may suspend the sentence and place the defendant on probation upon such terms and conditions as it may require including commitment to an alternate jail facility or a community correctional residential treatment facility for a specific number of days to be followed by a term of probation as specified in section 907.7. A person so committed who has probation revoked shall be given credit for such time served. However, the court shall not suspend the minimum term of two days imposed pursuant to section 708.2A.

91 Acts, ch 218, §30 SF 444, 91 Acts, ch 219, §25, 26 SF 496
Subsection 1, NEW paragraph h
Subsections 2 and 3 amended

907.9 Discharge from probation.

At any time that the court determines that the purposes of probation have been fulfilled, the court may order the discharge of a person from probation. At any time that a probation officer determines that the purposes of probation have been fulfilled, the officer may order the discharge of a person from probation after approval of the district director, and notification of the sentencing court and county attorney who prosecuted the case. The sentencing judge, un-

less the judge is no longer serving or is otherwise unable to, may order a hearing on its own motion, or shall order a hearing upon the request of the county attorney, for review of such discharge. If the sentencing judge is no longer serving or unable to order such hearing, the chief judge of the district or the chief judge's designee shall order any hearing pursuant to this section. Following the hearing, the court shall approve or rescind such discharge. If a hearing is not ordered within thirty days after notification by the probation officer, the person shall be discharged and the probation officer shall notify the state court administrator of such discharge. At the expiration of the period of probation, in cases where the court fixes the term of probation, the court shall order the discharge of the person from probation, and the court shall forward to the governor a recommendation for or against restoration of citizenship rights to

that person. A person who has been discharged from probation shall no longer be held to answer for the person's offense. Upon discharge from probation, if judgment has been deferred under section 907.3, the court's criminal record with reference to the deferred judgment shall be expunged. The record maintained by the state court administrator as required by section 907.4 shall not be expunged. The court's record shall not be expunged in any other circumstances.

A probation officer or the director of the judicial district department of correctional services who acts in compliance with this section is acting in the course of the person's official duty and is not personally liable, either civilly or criminally, for the acts of a person discharged from probation by the officer after such discharge, unless the discharge constitutes willful disregard of the person's duty.

91 Acts, ch 219, §27 SF 496
Unnumbered paragraph 2 amended

CHAPTER 908

VIOLATIONS OF PAROLE OR PROBATION

908.9 Disposition of violator.

If the parole of a parole violator is revoked, the violator shall remain in the custody of the Iowa department of corrections under the terms of the parolee's original commitment. The violator may be placed in a violator facility established pursuant to section 246.207 if the parole revocation officer or board panel determines that placement in a violator facility is necessary. If the parole of a parole violator is not revoked, the parole revocation officer or board panel shall order the person's release subject to the terms of the person's parole with any modifications that the parole revocation officer or board panel determines proper.

91 Acts, ch 219, §28 SF 496
Section amended

908.11 Violation of probation.

A probation officer or the judicial district department of correctional services having probable cause to believe that any person released on probation has violated the conditions of probation shall proceed by arrest or summons as in the case of a parole violation. The functions of the liaison officer and the board of parole shall be performed by the judge or magistrate who placed the alleged violator on proba-

tion if that judge or magistrate is available, otherwise by another judge or magistrate who would have had jurisdiction to try the original offense. If the probation officer proceeds by arrest, any magistrate may receive the complaint, issue an arrest warrant, or conduct the initial appearance and probable cause hearing if it is not convenient for the judge who placed the alleged violator on probation to do so. The initial appearance, probable cause hearing, and probation revocation hearing, or any of them, may at the discretion of the court be merged into a single hearing when it appears that the alleged violator will not be prejudiced thereby. If the violation is established, the court may continue the probation with or without an alteration of the conditions of probation. If the defendant is an adult the court may hold the defendant in contempt of court and sentence the defendant to a jail term while continuing the probation, order the defendant to be placed in a violator facility established pursuant to section 246.207 while continuing the probation, or revoke the probation and require the defendant to serve the sentence imposed or any lesser sentence, and, if imposition of sentence was deferred, may impose any sentence which might originally have been imposed.

91 Acts, ch 219, §29 SF 496
Section amended

CHAPTER 909

FINES

909.9 Collection of delinquent fines and court costs — disposition.

A fine or court costs remaining unpaid after six months from the date the fine or court costs were imposed may be collected in accordance with section 331.756 by the county attorney. Of the amount collected, after payment of court costs, sixty-five percent shall be remitted to the treasurer of state for de-

posit and disposition as otherwise provided by law. The remaining thirty-five percent shall be retained by the county and deposited in the general fund of the county, notwithstanding the disposition provisions of sections 602.8106 and 911.3.

91 Acts, ch 192, §1 HF 697
NEW section

CHAPTER 910

VICTIM RESTITUTION

910.1 Definitions.

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

1. "*Criminal activities*" means any crime for which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered and any other crime committed after July 1, 1982, which is admitted or not contested by the offender, whether or not prosecuted. However, "*criminal activities*" does not include simple misdemeanors under chapter 321.

2. "*Pecuniary damages*" means all damages to the extent not paid by an insurer, which a victim could recover against the offender in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish, and loss of consortium. Without limitation, "*pecuniary damages*" includes damages for wrongful death and expenses incurred for psychiatric or psychological services or counseling or other counseling for the victim which became necessary as a direct result of the criminal activity.

3. "*Restitution*" means payment of pecuniary damages to a victim in an amount and in the manner provided by the offender's plan of restitution. Restitution also includes the payment of crime victim assistance reimbursements, court costs, court-appointed attorney's fees or the expense of a public defender, and the performance of a public service by an offender in an amount set by the court when the offender cannot reasonably pay all or part of the court costs, court-appointed attorney's fees or the expense of a public defender.

4. "*Victim*" means a person who has suffered pecuniary damages as a result of the offender's criminal activities. However, for purposes of this chapter, an insurer is not a victim and does not have a right of subrogation. The crime victim compensation program is not an insurer for purposes of this chapter, and the right of subrogation provided by section 912.12 does not prohibit restitution to the crime victim compensation program.

91 Acts, ch 181, §2, 16 HF 430
Subsections renumbered to alphabetize
Subsection 2 amended and terminology changed throughout section

910.3 Determination of amount of restitution.

The county attorney shall prepare a statement of pecuniary damages to victims of the defendant and, if applicable, any award by the crime victim assistance programs and shall provide the statement to the presentence investigator or submit the statement to the court at the time of sentencing. The clerk of court shall prepare a statement of court-appointed attorney's fees, the expense of a public defender and court costs, which shall be provided to the presentence investigator or submitted to the court at the time of sentencing. If these statements are provided to the presentence investigator, they shall become a part of the presentence report. If pecuniary damage amounts are not available at the time of sentencing, the county attorney shall provide a statement of pecuniary damages incurred up to that time to the clerk of court. The statement shall be provided no later than thirty days after sentencing. If a defen-

dant believes no person suffered pecuniary damages, the defendant shall so state. If the defendant has any mental or physical impairment which would limit or prohibit the performance of a public service, the defendant shall so state. The court may order a mental or physical examination, or both, of the defendant to determine a proper course of action. At the time of sentencing or at a later date to be determined by the court, the court shall set out the amount of restitution including the amount of public service to be performed as restitution and the persons to whom restitution must be paid. If the full amount of restitution cannot be determined at the time of sentencing, the court shall issue a temporary order determining a reasonable amount for pecuniary damages incurred up to that time, any award by the crime victim assistance programs, court-appointed attorney's fees or the expense of a public defender, and court costs. At a later date as determined by the court, the court shall issue a permanent, supplemental order, setting the full amount of restitution. The court shall enter further supplemental orders, if necessary. These court orders shall be known as the plan of restitution.

91 Acts ch 219 §30 SF 496
Section amended

910.9 Collection of payments — payment by clerk of court.

An offender making restitution pursuant to a restitution plan of payment shall make the payment monthly to the clerk of court of the county from which the offender was sentenced, unless the restitution plan of payment provides otherwise.

The clerk of court shall maintain a record of all receipts and disbursements of restitution payments and shall disburse all moneys received to the victims designated in the plan of restitution. If there is more than one victim, disbursements to the victims shall be on the basis of the victim's percentage of the total owed by the offender to all victims, except that the clerk of court may decide the allocation of payments of twenty dollars or less.

Court costs, court-appointed attorney's fees, and expenses for public defenders, shall not be withheld by the clerk of court until all victims have been paid in full. Payments to victims shall be made by the clerk of court at least quarterly. Payments by a clerk of court shall be made no later than the last business day of the quarter, but may be made more often at the discretion of the clerk of court. The clerk of court receiving final payment from an offender, shall notify all victims that full restitution has been made, and a copy of the notice shall be sent to the sentencing court. Each office or individual charged with super-

vising an offender who is required to perform community service as full or partial restitution shall keep records to assure compliance with the portions of the plan of restitution and restitution plan of payment relating to community service and, when the offender has complied fully with the community service requirement, notify the sentencing court.

91 Acts ch 116 §22 HF 534
Unnumbered paragraph 2 amended

910.10 Restitution lien.

1 The state or a person entitled to restitution under a court order may file a restitution lien.

2 The restitution lien shall set forth all of the following information, if known:

a The name and date of birth of the person whose property or other interests are subject to the lien.

b The present address of the residence and principal place of business of the person named in the lien.

c The criminal proceeding pursuant to which the lien is filed, including the name of the court, the title of the action, and the court's file number.

d The name and business address of the attorney representing the state in the proceeding pursuant to which the lien is filed or the name and residence and business address of each person entitled to restitution pursuant to a court order.

e A statement that the notice is being filed pursuant to this section.

f The amount of restitution the person has been ordered to pay or is likely to be ordered to pay.

3 A restitution lien may be filed by either of the following:

a A prosecuting attorney in a criminal proceeding in which restitution is likely to be sought after the filing of an information or indictment. At the time of arraignment, the prosecuting attorney shall give the defendant notice of any restitution lien filed.

b A victim in a criminal proceeding after restitution is determined and ordered by the trial court following pronouncement of the judgment and sentence.

4 The filing of a restitution lien in accordance with this section creates a lien in favor of the state and the victim in any personal or real property identified in the lien to the extent of the interest held in that property by the person named in the lien.

5 This section does not limit the right of the state or any other person entitled to restitution to obtain any other remedy authorized by law.

91 Acts ch 219 §31 SF 496
NEW section

910.11 to 910.14 Reserved

CHAPTER 910A

VICTIM AND WITNESS PROTECTION ACT

910A.6 Notification by county attorney.

The county attorney shall notify a victim registered with the county attorney's office of the following:

1. The cancellation or postponement of a court proceeding that was expected to require the victim's attendance.
2. The possibility of assistance through the crime victim compensation program, pursuant to chapter 912, and the procedures for applying for that assistance.
3. The right, pursuant to chapter 910, to restitution for pecuniary losses suffered as a result of crime.
4. The victim's right to make a written impact statement.
5. The date on which the offender is released on bail or appeal, pursuant to section 811.5.

91 Acts, ch 181, §3, 16 HF 430
Section amended to change terminology
NEW subsection 5

910A.9A Notification by department of human services.

The department of human services shall notify a victim registered with the department, regarding a juvenile adjudicated delinquent for a violent crime, committed to the custody of the department of human services, and placed at the state training school at Eldora or Toledo, of the following:

1. The date on which the juvenile is expected to be temporarily released from the custody of the department of human services, and whether the juvenile is expected to return to the community where the registered victim resides.
2. The juvenile's escape from custody.
3. The recommendation by the department to consider the juvenile for release or placement.
4. The date on which the juvenile is expected to be released from a facility pursuant to a plan of placement.

91 Acts, ch 181, §4 HF 430
NEW section

910A.10 Notification by board of parole.

1. The board of parole shall notify a registered victim, regarding an offender who has committed a violent crime, as follows:

- a. Not less than twenty days prior to conducting a hearing at which the board will interview an offender, the board shall notify the victim of the interview and inform the victim that the victim may submit the victim's opinion concerning the release of the offender in writing prior to the hearing or may appear personally or by counsel at the hearing to express an opinion concerning the offender's release.

b. Whether or not the victim appears at the hearing or expresses an opinion concerning the offender's release on parole, the board shall notify the victim of the board's decision regarding release of the offender.

2. Offenders who are being considered for release on parole may be informed of a victim's registration with the county attorney and the substance of any opinion submitted by the victim regarding the release of the offender.

3. If the board of parole makes a recommendation to the governor for a reprieve, pardon, or commutation of sentence of an offender, as provided in section 248A.3, the board shall forward with the recommendation information identifying a registered victim for the purposes of notification by the governor as required in section 910A.10A.

91 Acts, ch 181, §5 HF 430
NEW subsection 3

910A.10A Notification by the governor.

1. Prior to the governor granting a reprieve, pardon, or commutation to an offender convicted of a violent crime, the governor shall notify a registered victim that the victim's offender has applied for a reprieve, pardon, or commutation. The governor shall notify a registered victim regarding the application not less than forty-five days prior to issuing a decision on the application. The governor shall inform the victim that the victim may submit a written opinion concerning the application.

2. The county attorney may notify an offender being considered for a reprieve, pardon, or commutation of sentence of a victim's registration with the county attorney and the substance of any opinion submitted by the victim concerning the reprieve, pardon, or commutation of sentence.

91 Acts, ch 181, §6 HF 430
NEW section

910A.11 Civil injunction to restrain harassment or intimidation.

1. Upon application, the court shall issue a temporary restraining order prohibiting the harassment or intimidation of a victim or witness in a criminal case if the court finds, from specific facts shown by affidavit or by verified complaint, that there are reasonable grounds to believe that harassment or intimidation of an identified victim or witness in a criminal case exists or that the order is necessary to prevent and restrain an offense under this chapter.

A temporary restraining order may be issued under this subsection without written or oral notice to the adverse party or the party's attorney in a civil

action under this section or in a criminal case if the court finds, upon written certification of facts, that the notice should not be required and that there is a reasonable probability that the party will prevail on the merits. The temporary restraining order shall set forth the reasons for the issuance of the order, be specific in terms, and describe in reasonable detail the act or acts being restrained.

A temporary restraining order issued without notice under this section shall be endorsed with the date and hour of issuance and be filed immediately in the office of the clerk of the court issuing the order.

A temporary restraining order issued under this section shall expire at such time as the court directs, not to exceed ten days from issuance. The court, for good cause shown before expiration of the order, may extend the expiration date of the order for up to ten days, or for a longer period agreed to by the adverse party.

When a temporary restraining order is issued without notice, the motion for a protective order shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. If the party does not proceed with the application for a protective order when the motion is heard, the court shall dissolve the temporary restraining order.

If, after two days' notice to the party or after a shorter notice as the court prescribes, the adverse party appears and moves to dissolve or modify the temporary restraining order, the court shall proceed to hear and determine the motion as expeditiously as possible.

2. Upon motion of the party, the court shall issue a protective order prohibiting the harassment or intimidation of a victim or witness in a criminal case if the court, after a hearing, finds by a preponderance of the evidence that harassment or intimidation of an identified victim or witness in a criminal case exists or that the order is necessary to prevent and restrain an offense under this chapter.

At the hearing, any adverse party named in the complaint has the right to present evidence and cross-examine witnesses.

A protective order shall set forth the reasons for the issuance of the order, be specific in terms, and

describe in reasonable detail the act or acts being restrained.

The court shall set the duration of the protective order for the period it determines is necessary to prevent the harassment or intimidation of the victim or witness, but the duration shall not be set for a period in excess of one year from the date of the issuance of the order. The party, at any time within ninety days before the expiration of the order, may apply for a new protective order under this section.

3. Violation of a restraining or protective order issued under this section constitutes contempt of court, and may be punished by contempt proceedings.

4. An application may be made pursuant to this section in a criminal case, and if made, a district associate judge or magistrate having jurisdiction of the highest offense charged in the criminal case or a district judge shall have jurisdiction to enter an order under this section.

5. The clerk of court shall provide oral or other notice and copies of restraining orders issued pursuant to this section in a criminal case involving an alleged violation of section 708.2A to the applicable law enforcement agencies and the twenty-four hour dispatcher for the law enforcement agencies, in the manner provided for protective orders under section 236.5. The clerk shall provide oral or other notice and copies of modifications or vacations of these orders in the same manner.

91 Acts, ch 181, §7, 8 HF 430, 91 Acts, ch 218, §31, 32 SF 444, 91 Acts, ch 219, §32 SF 496

See Code editor's note to §15 287

Subsection 1, unnumbered paragraph 2 amended

NEW subsections 3, 4 and 5

910A.19 Citizen intervention.

Any person who, in good faith and without remuneration, renders reasonable aid or assistance to another against whom a crime is being committed or, if rendered at the scene of the crime, to another against whom a crime has been committed is not liable for any civil damages for acts or omissions resulting from the aid or assistance and is eligible to file a claim for reimbursement as a victim pursuant to section 912.1.

91 Acts, ch 181, §9 HF 430

Section amended

CHAPTER 911

SURCHARGE ADDED TO CRIMINAL PENALTIES

911.1 Criminal penalty surcharge established.

A criminal penalty surcharge shall be levied against certain law violators as provided in section 911.2. The surcharge shall be deposited as provided in section 911.3 and shall be used for the maintenance and improvement of criminal justice programs, law enforcement efforts, victim compensation, crime prevention, and improvement of the professional training of personnel, and the planning and support services of the criminal justice system.

91 Acts ch 181 §16 HF 430
Section amended to change terminology

911.2 Surcharge.

When a court imposes a fine or forfeiture for a violation of a state law, or of a city or county ordinance except an ordinance regulating the parking of motor vehicles, the court shall assess an additional penalty in the form of a surcharge equal to thirty percent of the fine or forfeiture imposed. In the event of multiple offenses, the surcharge shall be based upon the total amount of fines or forfeitures imposed for all offenses. When a fine or forfeiture is suspended in whole or in part, the surcharge shall be reduced in proportion to the amount suspended.

The surcharge is subject to the provisions of chapter 909 governing the payment and collection of fines, as provided in section 909.8.

91 Acts ch 260, §816 818 HF 173 91 Acts ch 263 §35 SF 209
1991 increase to thirty percent effective April 1 1991 for fines and forfeitures collected on or after that date 91 Acts ch 263 §42 SF 209
Unnumbered paragraph 1 amended

911.3 Disposition of surcharge.

When a court assesses a surcharge under section 911.2, the clerk of the district court shall transmit sixteen and two-thirds percent of the surcharge collected to the treasurer of state to be deposited in the fund established in section 912.14. Ninety-four percent of the remainder of the surcharge collected shall be transmitted to the treasurer of state by the fifteenth day of the following month. The treasurer of state shall deposit that money in the general fund of the state. The clerk of the district court shall transmit six percent of the remainder of the surcharge to the county treasurer or shall remit six percent of the remainder of the surcharge to the city that was the plaintiff in any action for deposit in the general fund of the city.

91 Acts ch 258 §67 HF 709 91 Acts ch 260 §817 818 HF 173 91 Acts ch 263 §37 SF 209
1991 amendment by 91 Acts ch 263 §37 effective April 1 1991 for fines and forfeitures collected on or after that date 91 Acts ch 263 §42 SF 209
Section amended

CHAPTER 912

CRIME VICTIM COMPENSATION PROGRAM

912.1 Definitions.

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

1. "Compensation" means moneys awarded by the department as authorized by this chapter.
2. "Crime" means conduct that occurs or is attempted in this state, poses a substantial threat of personal injury or death, and is punishable as a felony or misdemeanor, or would be so punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this state. "Crime" does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, motorcycle, motorized bicycle, train, boat, or aircraft except for violations of section

106.14, 321.261, 321.277, 321J.2, or 707.6A, or when the intention is to cause personal injury or death. A license revocation under section 321J.9 or 321J.12 shall be considered by the department as evidence of a violation of section 321J.2 for the purposes of this chapter.

3. "Department" means the department of justice.

4. "Dependent" means a person wholly or partially dependent upon a victim for care or support and includes a child of the victim born after the victim's death.

5. "Victim" means a person who suffers personal injury or death as a result of any of the following:

- a A crime.

b. The good faith effort of a person attempting to prevent a crime.

c. The good faith effort of a person to apprehend a person suspected of committing a crime.

91 Acts, ch 181, §10 HF 430
Section stricken and rewritten

912.2 Award of compensation.

The department shall award compensation authorized by this chapter if the department is satisfied that the requirements for compensation have been met.

91 Acts, ch 181, §16 HF 430
Section amended to change terminology

912.2A Crime victim assistance board.

1. A crime victim assistance board is established, and shall consist of the following members to be appointed pursuant to rules adopted by the department:

- a. A county attorney or assistant county attorney.
- b. Two persons engaged full time in law enforcement.
- c. A public defender or an attorney practicing primarily in criminal defense.
- d. A hospital medical staff person involved with emergency services.
- e. Two public members who have received victim services.
- f. A victim service provider.
- g. A person licensed pursuant to chapter 154B or 154C.
- h. A person representing the elderly.

Board members shall be reimbursed for expenses actually and necessarily incurred in the discharge of their duties.

2. The board shall adopt rules pursuant to chapter 17A relating to program policies and procedures.

3. A victim aggrieved by the denial or disposition of the victim's claim may appeal to the district court within thirty days of receipt of the board's decision.

91 Acts, ch 181, §11 HF 430
Subsection 1, paragraph e amended

912.3 Duties of department.

The department shall:

1. Adopt rules pursuant to chapter 17A relating to the administration of the crime victim compensation program, including the filing of claims pursuant to the program, and the hearing and disposition of the claims.

2. Hear claims, determine the results relating to claims, and reinvestigate and reopen cases as necessary.

3. Publicize through the department, county sheriff departments, municipal police departments, county attorney offices, and other public or private agencies, the existence of the crime victim compensation program, including the procedures for obtaining compensation under the program.

4. Request from the department of human services, the divisions of job service and industrial ser-

vices of the department of employment services, the department of public safety, the county sheriff departments, the municipal police departments, the county attorneys, or other public authorities or agencies reasonable assistance or data necessary to administer the crime victim compensation program.

5. Require medical examinations of victims as needed. The victim shall be responsible for the cost of the medical examination if compensation is made. The department shall be responsible for the cost of the medical examination from funds appropriated to the department for the crime victim compensation program if compensation is not made to the victim unless the cost of the examination is payable as a benefit under an insurance policy or subscriber contract covering the victim or the cost is payable by a health maintenance organization.

6. Receive moneys collected pursuant to section 246.702 for the purpose of compliance with Pub. L. 98-473.

91 Acts, ch 181, §16 HF 430
Section amended to change terminology

912.4 Application for compensation.

1. To claim compensation under the crime victim compensation program, a person shall apply in writing on a form prescribed by the department and file the application with the department within two years after the date of the crime, the discovery of the crime, or the date of death of the victim.

2. A person is not eligible for compensation unless the crime was reported to the local police department or county sheriff department within seventy-two hours of its occurrence. If the crime cannot reasonably be reported within that time period, the crime shall have been reported within seventy-two hours of the time a report can reasonably be made.

3. Notwithstanding subsection 2, a victim under the age of eighteen or dependent adult as defined in section 235B.1 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 compensation 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 7, or upon a dependent adult by a caretaker as defined in section 235B.1, and was reported to an employee of the department of human services and the employee verifies the report to the department.

4. When immediate or short-term medical services or mental health services are provided to a victim under section 910A.16, the department of human services shall file the claim for compensation as provided in subsection 3 for the victim.

5. When immediate or short-term medical services to a victim are provided pursuant to section 910A.16 by a professional licensed or certified by the state to provide such services, the professional shall file the claim for compensation, unless the depart-

ment of human services is required to file the claim under this section. The requirement to report the crime to the local police department or county sheriff department under subsection 2 does not apply to this subsection.

6. The victim shall cooperate with reasonable requests by the appropriate law enforcement agencies in the investigation or prosecution of the crime.

91 Acts, ch 181, §12 HF 430
Section amended

912.5 Compensation payable.

The department may order the payment of compensation:

1. To or for the benefit of the person filing the claim.

2. To a person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of personal injury to the victim.

3. To or for the benefit of one or more dependents of the victim, in the case of death of the victim. If two or more dependents are entitled to compensation, the compensation may be apportioned by the department as the department determines to be fair and equitable among the dependents.

4. To a victim of an act committed outside this state who is a resident of this state, if the act would be compensable had it occurred within this state and the act occurred in a state that does not have an eligible crime victim compensation program, as defined in the federal Victims of Crime Act of 1984, Pub. L. 98-473, section 1403(b), as amended and codified in 42 U.S.C. § 10602(b).

91 Acts, ch 181, §16 HF 430
Section amended to change terminology

912.6 Computation of compensation.

The department shall award compensation, 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 five hundred dollars. Reasonable charges incurred for mental health care not to exceed one thousand five hundred dollars which includes services provided by a psychologist licensed under chapter 154B, a person holding at least a master's degree in social work or counseling and guidance, or a victim counselor as defined in section 236A.1.

2. Loss of income from work the victim would have performed and for which the victim would have received remuneration if the victim had not been injured not to exceed two thousand dollars.

3. Reasonable replacement value of clothing that is held for evidentiary purposes not to exceed one hundred dollars.

4. Reasonable funeral and burial expenses not to exceed two thousand five hundred dollars.

5. 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.

6. In the event of a victim's death, reasonable charges incurred for counseling the victim's spouse, children, parents, siblings, or persons cohabiting with or related by blood or affinity to the victim if the counseling services are provided by a psychologist licensed under chapter 154B, a victim counselor as defined in section 236A.1, subsection 1, or an individual holding at least a master's degree in social work or counseling and guidance, and reasonable charges incurred by such persons for medical care counseling provided by a psychiatrist licensed under chapter 147 or 150A. The allowable charges under this subsection shall not exceed five hundred dollars per person or a total of two thousand dollars per victim death.

91 Acts, ch 181, §13 HF 430
Section amended

912.7 Reductions and disqualifications.

Compensation is subject to reduction and disqualification as follows:

1. Compensation 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, a person who committed the crime or who is otherwise responsible for damages resulting from 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. Compensation 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. The victim assisting, attempting, or committing a criminal act.

91 Acts, ch 181, §14 HF 430
Section amended

912.8 Compensation when money insufficient.

Notwithstanding this chapter a victim otherwise qualified for compensation under the crime victim compensation program, is not entitled to the compensation when there is insufficient money from the appropriation for the program to pay the compensation.

91 Acts, ch 181, §16 HF 430
Section amended to change terminology

912.9 Erroneous or fraudulent payment — penalty.

1. If a payment or overpayment of compensation is made because of clerical error, mistaken identity, innocent misrepresentation by or on behalf of the recipient, or other circumstances of a similar nature, not induced by fraud by or on behalf of the recipient, the recipient is liable for repayment of the compen-

sation. The department may waive, decrease, or adjust the amount of the repayment of the compensation. However, if the department does not notify the recipient of the erroneous payment or overpayment within one year of the date the compensation was made, the recipient is not liable for the repayment of the compensation.

2. If a payment or overpayment has been induced by fraud by or on behalf of a recipient, the recipient is liable for repayment of the compensation.

91 Acts, ch 181, §16 HF 430
Section amended to change terminology

912.10 Release of information.

A person in possession or control of investigative or other information pertaining to an alleged crime or a victim filing for compensation shall allow the inspection and reproduction of the information by the department upon the request of the department, to be used only in the administration and enforcement of the crime victim compensation program. Information and records which are confidential under section 22.7 and information or records received from the confidential information or records remain confidential under this section.

A person does not incur legal liability by reason of releasing information to the department as required under this section.

91 Acts, ch 181, §16 HF 430
Section amended to change terminology

912.11 Emergency payment compensation.

If the department determines that compensation may be made and that undue hardship may result to the person if partial immediate payment is not

made, the department may order emergency compensation to be paid to the person, not to exceed five hundred dollars.

91 Acts, ch 181, §15 HF 430
Section amended

912.12 Right of action against perpetrator — subrogation.

A right of legal action by the victim against a person who has committed a crime is not lost as a consequence of a person receiving compensation under the crime victim compensation program. If a person receiving compensation under the program seeks indemnification which would reduce the compensation under section 912.7, subsection 1, the department is subrogated to the recovery to the extent of payments by the department to or on behalf of the person. The department has a right of legal action against a person who has committed a crime resulting in payment of compensation by the department to the extent of the compensation payment. However, legal action by the department does not affect the right of a person to seek further relief in other legal actions.

91 Acts, ch 181, §16 HF 430
Section amended to change terminology

912.14 Victim compensation fund.

A victim compensation fund is established as a separate fund in the state treasury. Moneys deposited in the fund shall be administered by the department and dedicated to and used for the purposes of section 709.10 and this chapter. Notwithstanding section 8.33, any balance in the fund on June 30 of any fiscal year shall not revert to the general fund of the state.

91 Acts, ch 258, §68 HF 709
NEW section

**CONVERSION TABLE OF SENATE AND HOUSE FILES
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220	22	455	200	619	95
231	7	459	45	625	142
232	240	479	267	626	85
233	235	480	80	627	86
237	188	483	176	634	213
252	127	485	71	639	120
254	56	486	51	644	165
260	11	487	81	649	155
274	42	489	196	651	166
275	67	491	114	655	143
285	241	498	82	656	184
288	57	499	59	657	87
289	236	500	151	661	121
294	14	501	140	662	227
296	138	502	152	668	225
297	128	506	83	679	167
298	175	510	189	683	255
302	242	516	84	687	191
306	43	518	115	688	244
307	27	534	116	689	168
309	31	556	211	690	198
322	28	558	177	691	156
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CODE EDITOR'S NOTES

Code Section

- 15.287** The 1991 amendments do not conflict, so they were harmonized to give effect to each, as required by Code section 4.11. In some cases where this section is referred to, the amendments are identical. It was generally assumed that a strike or repeal prevails over an amendment to the same material and does not create a conflict.
- 43.42** It appears that the last unnumbered paragraph of section 43.42, Code 1991, was inadvertently omitted when the section was stricken and rewritten; corrective legislation is pending.
- 45.3** Although 1991 Acts, chapter 129, section 9, purports to insert new material after unnumbered paragraph 2, the material appears to be more appropriately inserted after the first paragraph of the form, which is unnumbered paragraph 3 of the section, and it was so codified.
- 93.11** Although the lead-in of 1991 Acts, chapter 253, section 5, indicates that it amends subsection 6, it appears from the text of the amendment that only unnumbered paragraph 1 of the subsection was intended, and the amendment was so codified.
- 99D.15** 1991 Acts, chapter 166, section 6, and chapter 268, section 427, both amend subsection 3, paragraph c. In the codification they have been harmonized to give effect to both. However, 1991 Acts, chapter 166, section 6, adds a new subparagraph (1) which is not effective until January 1, 1993, and to avoid confusion with the rest of that amendment the new subparagraph was also codified, but without changing the word "track" to "licensee", as was done in the rest of the section. This change will be proposed in corrective legislation.
- 135B.7** Although the lead-in of 1991 Acts, chapter 218, section 3, indicates the addition of a new unnumbered paragraph to section 135B.6, it appears that the new paragraph as enacted is more appropriately placed in section 135B.7 and the paragraph was so codified.
- 155A.15** Although the lead-in of 1991 Acts, chapter 233, section 2, indicates that it amends subsection 2, paragraph d, subparagraph (4), it appears from the text of the amendment that the last part of paragraph d was also amended, and that part was codified as an unnumbered paragraph in paragraph d.
- 246.108** 1991 Acts, chapter 218, section 37, provided that 1991 Acts, chapter 218, section 18, adding new paragraphs p and q to subsection 1 of section 246.108, would take effect only upon enactment of a specific appropriation for that purpose during the 1991 regular session. Since no such appropriation was enacted, the new paragraphs were considered ineffective and were not codified. For the text of the proposed paragraph p, as amended, see 1991 Acts, chapter 219, section 5. For the text of the proposed paragraph q, see 1991 Acts, chapter 218, section 18.
- 312.2** Although 1991 Acts, chapter 264, section 906, purports to amend all of subsection 13, an earlier enactment, 1991 Acts, chapter 260, section 1223, added another paragraph to the subsection. Both amendments have been codified in order to give effect to both and carry out the apparent intent.

- 324.3** 1991 Acts, chapter 87, section 4, and 1991 Acts, chapter 254, section 20, both amend the last unnumbered paragraph. They could not be harmonized in every detail to give effect to both, so the later enactment, 1991 Acts, chapter 254, section 20, was codified.
- 331.233** Although the lead-in of 1991 Acts, chapter 256, section 5, indicates that it amends subsection 1, it appears from the text of the amendment that only unnumbered paragraph 1 of the subsection was intended, and the amendment was so codified.
- 331.247** Although the lead-in of 1991 Acts, chapter 256, section 20, indicates that it amends section 331.247 in its entirety, it appears from the text of the amendment that only subsections 1 through 3 were intended, and the amendment was so codified.
- 411.2** Although 1991 Acts, chapter 52, section 8, did not, by direct terms, amend section 411.2, it repeated the language there with the addition of the May 3, 1990, retroactive applicability date, so that date has been codified.
- 425A.4** The amendments in 1991 Acts, chapter 97, section 51, and 1991 Acts, chapter 267, section 614, could not be harmonized. The later amendment, 1991 Acts, chapter 267, section 614, struck and rewrote subsection 1, so it was codified.
- 455A.19** Although the amendments in 1991 Acts, chapter 146, section 5, effective July 1, 1991, and 1991 Acts, chapter 191, section 120, effective April 1, 1992, were technically in conflict, they were harmonized as required by Code section 4.11.
- 546.11** 1991 Acts, chapter 260, section 1247, adds a new unnumbered paragraph to section 546.11, which appears to be moot as to section 534.408 because of amendments in 1991 Acts, chapter 92, section 15 that struck former provisions relating to the savings and loan revolving fund and transfers to the administrative services trust fund. See also the footnote to section 534.408, subsection 1, unnumbered paragraph 2.

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References are to Code Supplement sections or chapters. Explanatory notes following each section in this Supplement indicate whether the section is new or amended, or if only a part of the section is amended. Generally, only the new material in a section is indexed, unless the entire section is amended. Consult the one-volume Index (blue) to the 1991 Code of Iowa for more detailed entries.

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